

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 1st day of August, 2011

TRANSFERRED APPLICATION No.6/2009

[CWP No.7639/2007]

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Naresh Kumar Khemani
S/o Shri H.C.Khemani,
R/o C-132, Gole Market, Jawahar Nagar,
Jaipur.

... Applicant

(By Advocate : Shri C.B.Sharma)

Versus

1. National Institute of Ayurveda,
Madhav Vilas Palace,
Amer Road, Jaipur, through
Its Director.
2. Mahesh Chander Sharma,
Director,
National Institute of Ayurveda,
Madhav Vilas Palace,
Amer Road, Jaipur, through
Its Director.

... Respondents

(By Advocate : Shri Puneet Gupta, proxy counsel for
Shri M.D.Agarwal)

ORDER (ORAL)

The petitioner/applicant had filed a Civil Writ Petition
[No.7639/2007] before the Hon'ble High Court with the
following prayer :

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- i) to quash and set aside the recommendations and the minutes of the Departmental Promotion Committee dated 26.9.2006;
- ii) to direct the respondents to reconvene the Departmental Promotion Committee for the post of Professor (Dravya Guna) by considering the candidature of the petitioner alongwith his entire record of service and published works.
- iii) to declare the action of the respondents in advertising the singular post of Professor (Dravya Guna) for filling up the same by way of direct recruitment as bad in law and the advertisement dated 2.8.2007 (Anx.11) and the corrigendum dated 4.9.2007 (Anx.12) may kindly be quashed and set aside so far as it relates to the Professor (Dravya Guna).
- iv) to restrain the respondent No.2 from participating as Member Secretary of the DPC as he is having personal prejudiceness and maliciousness against the petitioner.
- v) to further direct that the review DPC shall ignore the ACRs toned down by respondent No.2 for the purpose of consideration of the candidature of the petitioner for promotion to the post of Professor (Dravya Guna).
- vi) any other order or direction which this Hon'ble Court may deem just and proper, may also kindly be passed in favour of the petitioner with costs."

2. Hon'ble High Court transferred this Writ Petition to this Tribunal for adjudication vide its order dated 13.1.2009, which has been registered in this Tribunal as TA No.6/2009.

3. Brief facts of the case are that the applicant was working as Associate Professor in the subject (Dravya Guna) in the National Institute of Ayurveda. The post of Professor in the subject Dravya Guna fell vacant on account of promotion of respondent No.2 to the post of Director in 2006 and the applicant being the seniormost Associate Professor having the requisite experience, as required under the rules, became eligible for consideration for the said post. The Departmental Promotion Committee [DPC] met on 26.9.2006 for considering the candidature of the applicant. However, the DPC did not recommend name of the applicant on the ground that he did

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not fulfill the benchmark. The applicant has also stated that his ACRs were downgraded by respondent No.2 because he had malice towards him and, therefore, he could not fulfill the criteria of the benchmark. Respondent No.2 also did not place the published work of the applicant before the DPC. The DPC further recommended to fill-up the post by direct recruitment although there is no such power available with the DPC and there is no such provision available under the existing rules. It is further submitted that since there is no other post of Professor (Dravya Guna), the same has to be filled by way of promotion alone. He has further submitted that the benchmark was never circulated. He is the seniormost person in the department and, therefore, he should not have been deprived of his promotion merely because the benchmark of 'very good' has not been achieved.

4. Thus, feeling aggrieved by the action of the respondents in depriving the applicant of his due promotion and also feeling aggrieved with the recommendations of the DPC and further aggrieved by the action of the respondents in shifting the vacancy to direct recruitment and advertising the same vide notification dated 2.8.2007 and subsequent corrigendum dated 4.9.2007, the applicant has filed this petition/application.

5. The respondents have filed their reply denying the allegations made by the applicant against respondent No.2. The respondents have admitted that the applicant is working under respondent No.2 but have denied that respondent No.2 had any difference of opinion on any issue relating to the subject of Dravya Guna. They have also denied that respondent No.2 does not have good relation with the applicant. The respondents have also denied that the applicant being seniormost Associate Professor would automatically become the Head of Department of Dravya Guna. They have submitted that Director of the Institute can hold the charge of Head of Department in the discipline to which he belongs. In fact, a Head of Department is nominated by the Director of the Institute. The respondents have also denied that respondent

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No.2 did not place the entire service record of the applicant, including the published work and the posts held by him as well as the work performed by him in the Institute, before the DPC. In fact, all the relevant record of the applicant, which was available with the Institute, was duly placed before the DPC. The respondents have submitted that the DPC met on 26.9.2006, however, considering the candidature of the applicant did not recommend his name on the ground that he did not fulfill the benchmark. The respondents have also denied that respondent No.2 was instrumental in spoiling the service career of the applicant by toning down the ACRs or not placing the published work of the applicant before the DPC or in any other manner. The ACRs of the applicant were rightly written on the basis of his performance and without any prejudice. The benchmark prescribed for promotion to the post of Professor is 'very good' and for 'very good' benchmark it is required that out of the last preceding five years, the applicant ought to have secured three 'very good' ACRs grading, whereas the applicant is having only one 'very good' grading out of five years, which is apparent from the following statement :

Year	Grading
2001-2002	Good
2002-2003	Very Good
2003-2004	Good
2004-2005	Good
2005-2006	Good

Thus, the applicant was not having the required benchmark of 'very good' and as such he was not recommended by the DPC for the post of Professor.

6. Heard learned counsel for the parties and perused the documents on record. Learned counsel for the applicant reiterated the averments made as well as the grounds taken in the OA. He further argued that the ACRs, which were below the benchmark, were not communicated to the applicant and,

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therefore, they should have been ignored by the DPC. Learned counsel for the respondents argued that since the applicant did not fulfill the benchmark, therefore, he was rightly not recommended by the DPC for promotion to the post of Professor. The Institute advertised the post for open recruitment according to rules. He emphatically denied the malafide on the part of respondent No.2 towards the applicant. He further stated that it was not necessary to communicate the below benchmark ACRs to the applicant unless they were adverse in nature. Since the ACRs for the period under consideration were 'good' and not adverse in nature, they were not rightly communicated to the applicant. The applicant has since been given appointment on the post of Professor vide order dated 4.2.2011 and, therefore, the present OA has no merit and the same deserves dismissal.

7. After hearing the rival submissions of the parties and after perusing the documents on record, we are of the opinion that this OA does not require any interference by this Tribunal. The applicant, being the seniormost Associate Professor, was duly considered by the DPC. However, he did not fulfill the benchmark of 'very good', therefore, he was not recommended for the post of Professor by the DPC. The recommendations of the DPC cannot be faulted on this account. Learned counsel for the applicant could not show any rule, order or circular by which the ACRs which were below the benchmark required to be communicated to the applicant. On the contrary, learned counsel for the respondents also argued that since the ACRs of the applicant were not in the nature of adverse, therefore, they were not rightly communicated to him.

8. We are, therefore, of the view that action of the respondents in not communicating the below benchmark entries to the applicant is not violative of any law or circular on the subject. We, therefore, do not find any infirmity in the recommendations of the DPC dated 26.9.2006. Further, the applicant has already been appointed as Professor vide order

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dated 4.2.2011, therefore, we find no merit in this OA and the same stands dismissed accordingly with no order as to costs.

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(Anil Kumar)
Member (A)

K.S. Rathore

(Justice K.S.Rathore)
Member (J)

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