

(13)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of Order: 24/12/2000

OA 289/95

Ganpat Lal Gora son of Shri Laxman Ram Gora aged about 55 years, resident of 52, Kalyanpuri, Ajmer presently posted as Pharmacist, Medical Department, Western Railway, Sojat Road.

.... Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Ajmer.
3. Chief Medical Officer, Western Railway, Churchgate, Mumbai.
4. Shri Mahadev Prasad Bajpai, Chief Pharmacist, Railway Hospital (Store), Ajmer.
5. Shri Hari Narayan, Chief Pharmacist, Railway Dispensary, Dungarpur (Raj.)

.... Respondents

Mr. P.P. Mathur, Counsel for the applicant.

Mr. S.S. Hassan, Counsel for respondents no. 1 to 3.

CO RAM

Hon'ble Mr. S.K. Agarwal, Member (Judicial)

Hon'ble Mr. A.P. Nagrath, Member (Administrative)

ORDER

(PER HON'BLE MR. A.P. NAGRATH, MEMBER (ADMN.))

The applicant in this OA filed u/s 19 of the Administrative Tribunals Act, 1985 has prayed /the following reliefs:

"(i) That a writ quo warranto or any other order or direction may be issued to the official respondents for removing the private respondents on the post of Pharmacists; and

(iii) That the official respondents may be directed to give promotion to the applicant in the higher pay scale of Rs. 1400-2900(RP) as he is the only qualified Pharmacist."

2. Admitted facts in the case are that applicant was appointed as Pharmacist Grade III on 13.11.63. Consequent to departmental inquiry, he was removed from service in the year 1975. He filed the OA 858/89 and the same was decided on 11.5.93. The applicant was ordered to be reinstated without the benefit of back wages from the date of removal to the date of joining back in service. Further, it was held that :-

"As far as continuity of the service and the pensionary benefits on retirement are concerned, the applicant will be entitled to these benefits. However, he will not be entitled to claim any benefit of promotion and will also not be entitled to the benefits extended to his juniors on account of the removal order, during the intervening period from 1975 to 1993."

Consequent to this order, the applicant was allowed to join on 11.6.93. Thus, he remained out of service from 22.9.75 to 11.6.93.

3. The case of the applicant is that respondents no. 4 & 5 have been promotted by the respondent department to hold the post of Pharmacist and given further promotion to grade 1400-2600 and 1640-2900 in violation of rules. It is submitted that respondents no. 4 & 5 are not eligible to hold the post as they are not qualified pharmacists. They are not registered pharmacists and they cannot be permitted to continue in these posts. They are alleged to have usurped these posts which should rightly be given to the applicant who is registered Pharmacist. It has been stated that inspite of specific direction and rules, the

respondent department have not taken any action against the unregistered pharmacists. Para 162 of Indian Railway Establishment Manual (IREM) provide that a Pharmacist must possess qualifications as prescribed under Section 31 & 32 of Pharmacists Act, 1948. Respondents have promoted unqualified persons ~~to~~ hold these posts. In view of these facts, the applicant has sought direction for removing the private respondents from the post of Pharmacist and to give promotion to the applicant to the higher pay scale of Rs. 1400-2600 as given to the qualified pharmacists.

4. In the reply filed by the respondent department, it has been stated that the applicant was ordered to be reinstated by order of the CAT, Jaipur Bench in OA no. 858/98 where specific directions were that the applicant will not be entitled to claim any benefit of promotion given to his juniors from the date of his removal till reinstatement. It has been stated that respondent no. 4 was promoted to scale 1400-2600 w.e.f. 1.1.84 and scale 1640-2900 w.e.f. 17.11.88 and respondent no. 5 was promoted to scale 1640-2900 in the year 1990 and has already retired. These ~~prom~~otions were effected during the period following from 1975 to 1993 and the applicant was estopped from taking any claim with respect to ~~these~~ promotion. It has further been submitted that the applicant was allowed to join on 11.6.93 and he has filed this application in June, 1995. Considering from all aspects, the OA is stated to be not maintainable under Section 21 of the Administrative Tribunals Act and is liable to be dismissed. The cause of action in the case of respondent no. 4 arose in 1984 and ~~in~~ in 1988 and in the case of respondent no. 5 in the year 1990. Even otherwise the applicant himself joined duty in June, 1993 and

have moved this application two years after his reinstatement, and hence this application is barred by limitation. It has further been stated respondent no. 4, Shri Mahadev Prasad Bajpai, is duly registered and his representation is valid upto December, 2000. Respondent no. 5 has already retired. However, in the meantime applicant has already been promoted to the grade of Rs. 1400-2600 vide order dated 1400-2600.

5. In view of the facts that applicant was reinstated in service consequent to the orders of this Tribunal with specific orders not to claim any benefit with respect to juniors who got any benefit during the period of his removal from service, the applicant is estopped from claiming any rights which might have arisen out of said orders falling within the period of the applicant's removal from service to his reinstatement. Even from the facts of the case, his claim is barred by limitation with respect to the dates of the promotion of the juniors as also in respect to the date he was reinstated in service. We are of the considered view that his claim does not merit any consideration and attracts provision of Section 21 of the Administrative Tribunals Act.

6. We, therefore, dismiss this OA both on merits as also barred by limitation. No order as to costs.

Chirp
(A.P. NAGRATH)
MEMBER (A)

S.K. Agarwal
(S.K. AGARWAL)
MEMBER (J)