

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.347/97

Date of order: 29/8/2007

Udai Krishan Sharma, S/o Sh.Mori Lal, R/o 1136,
Agrawal Mohalla, Nasirabad (Ajmer).

...Applicant.

Vs.

1. Union of India through Director General, Mini. of Labour, Govt of India, Shram Shakti Bhawan, Jaisalmer House, New Delhi.
2. The Welfare Commissioner, Mini. of Labour, Bhilwara Region, Gandhinagar, Bhilwara.

...Respondents.

Mr.Sunil Samdaria : Counsel for applicant

Mr.S.M.Khan : for respondents.

CORAM:

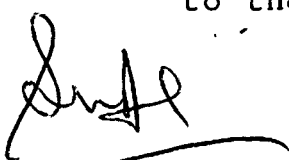
Hon'ble Mr.S.K.Agarwal, Judicial Member.

Hon'ble Mr.S.A.T.Risvi, Administrative Member.

PER HON'BLE MR S.K.AGARWAL, JUDICIAL MEMBER.

In this O.A filed under Sec.19 of the ATs Act, 1985, the applicant makes a prayer (i) to direct the respondents to consider the case of the applicant for promotion on the post of Vaidya from the date of his juniors are promoted, and (ii) to direct the respondents to fix the pay of the applicant on post of Vaidya from the date of his promotion and to grant arrears of pay and allowances with interest @ 18% per annum.

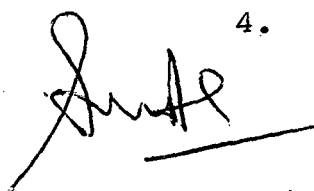
2. In brief, the case of the applicant is that the applicant was working as Up-Vaid in Bidi Shramik Yurvedic Dispensary, Nasirabad and he was retired from this post w.e.f. 31.3.97 but he has not been considered for promotion to the post of Vaidya although he possesses the requisite



qualifications and experience for the post. The applicant filed representations for considering his claim but one Shri Bal Chand Jain who was junior to the applicant was promoted as Vaidya, ignoring the rightful claim of the applicant. Therefore, the applicant filed this O.A for the relief as above.

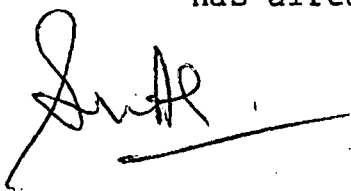
3. Reply was filed. In the reply it is stated that the post of Vaidya was fallen vacant on 31.1.91, 31.8.91 and 1.11.93 on account of retirement of Sh. Babulal Sharma, Shri Rameshwar Prasad Sharma and Shri Banwari Lal Sharma but the applicant was not possessing the requisite qualification for his registration as Vaidya hence he was not considered for promotion to the said post and only eligible Up-Vaidyas who possessed the requisite qualifications had been promoted to the post of Vaidya. It is stated that Degree of Ayurved Ratna of Hindi Sahitya Sammellan (Hindi University), Prayag Allahabad was not a recognised degree and this fact was intimated to the applicant. It is stated that the applicant obtained Degree of Ayurved Ratna of Hindi Sahitya Sammellan, Allahabad after 1967 when it was declared as unrecognised. The respondents' department wanted a registration certificate which is an essential requirement for regular appointment on the post of Vaidya and the applicant failed to furnish such certificate even after extending so many chances. It is denied that the department has ignored the claim of the applicant for promotion against the vacancies arisen between 1991 and 1993 as the applicant was not having the essential qualification for the post of Vaidya, therefore, no chance could be given to an unqualified person. Hence, the applicant has no case.

4. Heard the learned counsel for the parties and also



perused the whole record.

5. Undisputedly, the applicant passed Ayurved Ratna from Hindi Sahitya Sammellan, Prayag and this fact has given in the notice of the respondents' department in the year 1990 as is evident from Annx.A10. Annx.R8 dated 16.6.89 also makes it clear that the applicant was qualified Ayurved Ratna of Hindi Sahitya Sammellan, Prayag but this degree was derecognised by Govt of India, therefore, the applicant was not considered for promotion. The learned counsel for the applicant argued that in Rajasthan Pradesh Vaidya Samiti Vs. State & Anr, Hon'ble Rajasthan High Court vide order dated 9.8.89 has up-held that the Degree of Ayurved Ratna is recognised medical qualification for the purpose of enrolment of State Register or the Central Register of Indian Medicine. Therefore, in view of the judgment delivered by Hon'ble Rajasthan High Court in the aforesaid case, the respondents' department was not proper to deny the promotion to the applicant on the ground that he was not having the requisite qualification for the post of Vaidya on the date his juniors S/Shri Babulal Sharma, Rameshwar Prasad Sharma and Banwari Lal Sharma were considered and given promotion. Therefore, we are of the considered view that the applicant being the senior-most should not have been denied promotion only on the ground that he was not having the requisite qualification for the post of Vaidya whereas juniors to the applicant were given promotion. Therefore, we are of the view that the applicant is also entitled to be considered for promotion on the post of Vaidya from the date when his juniors have been given promotion. As the applicant has already been retired from service on 31.3.97, therefore,



he is entitled for notional fixation of his pay, if he is considered fit for promotion.

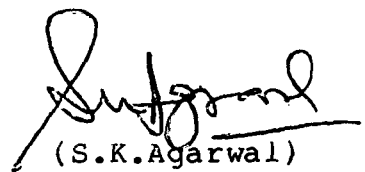
6. We, therefore, allow this O.A. and direct the respondents to consider the candidature of the applicant for promotion on the post of Vaidya by constituting a Review DPC, with effect from the date when his juniors are promoted, within 3 months from the date of receipt of a copy of this order. If the review DPC finds the applicant fit for promotion his fixation of pay shall be notional and the applicant shall not be entitled to any arrears of pay and allowances in view of his promotion but he is entitled to revised pension/pensionary benefits on the basis of notional fixation ~~alongwith arrears if any~~ in view of his promotion on the post of Vaidya, alongwith arrears if any. The applicant shall not be entitled to any interest on arrears of pension/ pensionary benefits.

7. No order as to costs.



(S.A.T. Rizvi)

Member (A).



(S.K. Agarwal)

Member (J).