

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

DATE OF ORDER : 23.4.2002

OA No. 119/2001

Dr. B. Jena son of Durga Charan Jena aged about 54 years resident of Kota and working as Chief Medical Officer, Incharge P&T Dispensary, Kota.

....Applicant.

VERSUS

1. Union of India through the Secretary to the Government of India, Department of Post, Ministry of Communications, New Delhi.

2. Director General, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.

3. Chief Postmaster General, Rajasthan Circle, Jaipur.

4. Secretary to the Government of India, Ministry of Health and Family Welfare, New Delhi.

....Respondents.

Mr. K.L. Thawani, Counsel for the applicant.

Mr. N.C. Goyal, Counsel for the respondents.

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Hon'ble Mr. Gopal Singh, Member (Administrative)

Hon'ble Mr. J.K. Kaushik, Member (Judicial)

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ORDER

PER HON'BLE MR. J. K. KAUSHIK, MEMBER (JUDICIAL)

Applicant, Dr. B. Jena, has filed this Original Application u/s 19 of the Administrative Tribunal's Act, 1985, praying for the following reliefs :-

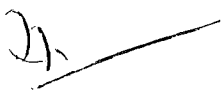
"(i) That the impugned orders Annexure A-1, Annexure A-2 and Annexure A-3 be quashed being illegal, unconstitutional and capricious and violative of articles 14 & 16 and 311(2) of the constitution of India.

(ii) That the respondents be directed by issuance of an appropriate order or directions to treat the applicant in the grade of Rs. 14,300 - 18,300 with effect from 1.1.1997 as already ordered by them keeping in view his interse seniority with effect from 30.11.1974 A.N.

(iii) That the respondents be directed not to make any recovery from the pay and allowances of the applicant regarding difference of arrears of pay and allowances already paid.

(iv) Any other relief which this Hon'ble Tribunal thinks just and proper in favour of the applicant.

2. The brief facts of the case are that the applicant was appointed as Medical Officer in Mana Camp, Raipur (M.P.) under the Ministry of Supply and Rehabilitation, Centre w.e.f. 30.11.1974. This appointment was given to him after due selection by the recommendation of UPSC. The applicant worked in Mana Camp upto 1.5.1980 and thereafter the camp was closed



and he was declared as surplus. He was sent to the surplus cell along with the post for further absorption. The department of Personnel & Administrative Reforms, ordered the absorption of the applicant in the department of Health & Family Welfare, New Delhi. He was posted as Junior Medical Officer, w.e.f. 30.10.1980 at the Central Hospital, Dhanbad. It has been further averred that U.P.S.C. advised the Ministry of Health & Family Welfare, to issue formal orders to accord the original seniority from 30.11.1974 in the new department. He was promoted to the post of Chief Medical Officer (Non functional selection grade) in the grade of Rs. 14,300-18,300 w.e.f. 1.1.1997 vide letter dated 4.10.1999 (Annexure A/8) after considering his inter se seniority. He was paid his due salary on the promotional post from retrospective date i.e. 1.1.1997. Thereafter an order dated 19.12.2000 was issued. The applicant has narrated this order as confusing order. Another order dated 27.9.2000 was issued wherein his promotion has^{been} mentioned as from 6.6.2000 (Annexure A-2). Consequently, another order dated 5.3.2001 (Annexure A/1), has been issued by which the order dated 15.12.1999 (Annexure A/9) has been withdrawn. It has been said to be an order of recovery of difference of pay and allowances. One third of the difference of the pay and Allowances has already been recovered from the pay of the applicant. The applicant has challenged the order dated 27.9.2000 (Annexure A/2) and order dated 5.3.2001 (Annexure A/1), on the ground that there has been violation of the principles of natural justice as he was not given any opportunity of hearing prior to taking the decision in the matter. He was selected and appointed initially as Medical Officer on 30.11.1974 and has been continuing in service without any break. He was given promotion after due selection. There was no justification for changing the date of promotion from 1.1.1997 to 6.6.2000. Hence, this application.

3. The O.A. was admitted on 19.3.2001 and notices were issued to the respondents for filing the counter. An interim order was also passed and the respondents were directed that no recovery shall be made from the applicant in pursuance to the impugned order at Annexure A/1. The interim order has been continuing from time to time.

4. The respondents have filed the reply to the OA and have controverted the facts and grounds made in the OA. They have averred that seniority of the applicant was reckoned from the date of re-employment i.e. from 24.11.1980 in his present Department and not from the date of his initial appointment i.e. from 30.11.1974 in another Department. The respondents have averred that the applicant ^{was} in-fact not promoted from 1.1.1997 in accordance with order dated 4.10.1999. At Sl. No. 36, it is not the applicant, who was promoted but it is another Dr. Jena, who was actually promoted. Said Dr. Jena was posted in Aurranchal Pradesh whereas the applicant was allotted the Department of Posts. It has also been averred that the sl. No. of the seniority list was mentioned at 89, which is seniority in respect of one another Dr. B. Jena. The name of the applicant in fact was at Sl. No. 487 of the seniority list as on 1.1.1997. There was a typographical mistake in respect of posting place of said Dr. Jena and the mistake was rectified vide Corrigendum dated 14.11.2000. In fact the applicant became due for promotion to the post of Chief Medical Officer (NMSG) only on 6.6.2000 as per his seniority. It has also been said that the applicant did not make any representation about the seniority list. Therefore, OA deserves to be dismissed with costs. The applicant has not chosen to file any rejoinder.

5. We have heard the learned counsel for the parties and have perused the records of the case.

6. The learned counsel for the respondents has also produced before us a Civil list of Chief Medical officer as on 1.1.1997 for our perusal. The learned counsel for the applicant has ~~strangely~~ argued that the applicant is entitled to get his seniority from the date of his initial appointment in previous Department i.e. 30.11.1974. It has also been said that UPSC had given such advice. To the knowledge of the applicant, he has been given the promotion to the post of Chief Medical Officer as per his seniority position w.e.f. 1.1.1997 vide letter dated 4.10.99. As regards mentioning of Sl. No. 89, he has shown ignorance regarding seniority

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number. It has also been said that he was taken by surprise as the order dated 27.9.2000 (Annexure A/2) and order dated 5/3/2001 (Annexure A/1), were issued without affording him any opportunity of hearing.

7. On the other hand, learned counsel for the respondents have invited our attention towards the extract of the seniority marked as Annexure R/5 as well as the actual seniority list. We have seen that the name of Dr. B. Jena, Arunachal Pradesh subsequently RLTRI, Gauripur having date of appointment 6.4.1977 appears at Sl. No. 89 was actually promoted. This Sl. No. talies with promotion date 4.10.89 (Annexure A/8) at Sl. No. 36 of the Annexure to said letter. However, we find that Department of posts has been mentioned. This position is further evident from a letter dated 14.11.2000 (Annexure A/3), which has been filed by the applicant himself (Annexure A/3). This letter is a corrigendum issued in respect of the promotion of the applicant to the post of Chief Medical Officer vide Annexure A/8. (supra). But the letter has been said to be confusing. However, no representation was filed by the applicant against it.

8. On the other hand, name of the applicant has been shown at Sl. No. 487 in P&T, Kota with date of appointment as 24.11.1980. In this view of the matter, we are satisfied that there has been typographical mistake and it is not the applicant who infact was promoted to the post of Chief Medical Officer w.e.f. 1.1.97. It is another Dr. B. Jena (Sl. No. 89 of Civil List), who was posted at RLTRI, Gauripur earlier in Arunachal Pradesh and the Department of Post was wrongly mentioned which came to be corrected by this corrigendum. We are constrained to observe that the applicant very well knew ~~xxxx~~ the aforesaid corrigendum which has been filed by him as Annexure A/3. This corrigendum specifically makes a mention that Dr. B. Jena was posted at RLTRI Gauripur instead of Department of Posts. The applicant has cleverly placed the said letter as Annexure A/3. In fact that letter was supplied to the applicant vide letter dated 19.12.2000 (Annexure A/10), which was addressed to him. But conveniently corrigendum is placed at a different place. He has not chosen to file any representation against the said

corrigendum. If the applicant has any grievance against the said corrigendum, which is unambiguous, he would have objected to it immediately but the applicant narrated it to be a confusing one. We are not persuaded with the contention of the applicant that it was a confusing one rather respondents are at their right to rectify the patent mistake and has been very cautious in as much as a copy of the very corrigendum has been addressed and supplied to the applicant himself.

9. Annexure A/1 is the consequential order and similarly by order at Annexure A/2, the applicant has been ordered to be promoted as seniority position w.e.f. 6.6.2000. Of course we observe that order dated 27.9.2000 has been issued prior to the issuance of the corrigendum (Annexure A/3) but this would not make any difference. There has been genuine mistake on the part of the respondents and the same has been sought to be corrected with inimation to the applicant vide communication dated 19.12.2000 (Annexure A/10). The action of the respondents cannot be faulted with.

10. As regards the contention of the applicant, the seniority should have reckoned from the date of his previous department i.e. from 30.11.1974. In respect of date of absorption of alternative post in the new department i.e.. from 24.11.1980. The issue has already been settled by the Hon'ble Supreme Court in catena of judgements, wherein it has been held that on redeployment, one would get the seniority from the date of his appointment in the new department and his services rendered by him in the previous department would not count for the purpose of seniority in the new Department. Thus the contention of the applicant that he should have been assigned seniority from the date of his previous joining has no force.

11. Now turning to the last contention of the applicant that there was no misrepresentation on the part of the applicant in getting higher pay on the promotional post of

Chief Medical Officer from 1.1.1997 till issuance of the impugned order. No recovery could be made against him for a difference of pay which has been allowed to him as a result of so called erroneous promotion. In this way of the matter, no recovery should be made from the pay of the applicant in respect of pay & allowances already drawn by him. We find force in the contention of the applicant and are supported with the judgement of Hon'ble Apex Court in case of Sahib Ram vs. State of Haryana & Others reported in 1995 SCC (L&S) 240 wherein the Hon'ble Supreme Court has categorically observed in Para 5 of the judgement that :-

"Admittedly, the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be a fault. Under the circumstances, the amount paid till date may not be recovered from the appellant."

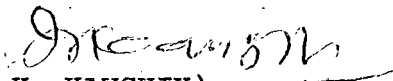
12. Since there was ^{no} misrepresentation on the part of the applicant,, we are of the considered opinion that no recovery in pursuance of the impugned order should be made in the facts and circumstances of this case. However, we do not find any infirmity or illegality in passing of the impugned order.

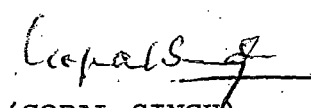
In the premises the OA deserves to be partly allowed and we pass the order as under :-

"Having regard to the position of law, the discussion made and for the reasons recorded here-in-above, the OA is partly allowed. The respondents are restrained from taking any recovery from the applicant for the period from 1.1.1997 till the date of the impugned order dated 5.3.2001 (Annexure A/1), In pursuance with

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the impugned order dated 5.3.2001 (Annexure A/1), order dated 27.9.2000 (Annexure A/2) and corrigendum dated 14.11.2000 (Annexure A/3) and in case any recovery has already been made, the same shall be refunded to the applicant within a period of three months from the date of receipt of a copy of this order. Other reliefs are declined. However, there shall be no order as to costs."


(J.K. KAUSHIK)
MEMBER (J)


((GOPAL SINGH)
MEMBER (A)

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