

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No.176/03

Indore, this the 29th day of September, 2004.

CORAM: Hon'ble Mr.M.P.Singh, Vice Chairman
Hon'ble Mr.Madan Mohan, Judicial Member

Dr.S.C.Khatri
Principal Medical Officer In-charge
(Selection Grade) (Junior Administrative Grade)
Vehicle Factory Hospital, Jabalpur.
R/o Quarter No.10, Type V, Duplex,
Sector I, Vehicle Factory Estate
Jabalpur.

Applicant.

(By advocate Shri Sajid Akhtar)

Versus

1. Union of India through
Secretary
Ministry of Defence Production
New Delhi.
2. Chairman
Ordnance Factory Board
10-A, Auckland Street
Kolkata.
3. Director Health Services
Ordnance Factory Board
10-A, Auckland Street
Kolkata.
4. Dr.(Smt) S.Patkar
W/o not known
Chief Medical Officer
(Senior Administrative Grade)
Heavy Vehicle Factory, Avadi
Chennai.
5. Smt.M.Alphons
Chief Medical Officer
(Senior Administrative Grade)
Ordnance Factory Hospital
Dehu Road (Maharashtra)

Respondents.

(By advocate Shri P.Shankaran for R1-3)
(None for private respondents)

O R D E R

By Madan Mohan, Judicial Member

By filing this OA, the applicant has claimed the following main reliefs:

- (i) To direct the official respondents to promote the applicant to the post of Chief Medical Officer (Senior Administrative Grade) from the date the respondent No.4 was promoted.
- (ii) Direct the respondents to grant proper placement of the applicant in the seniority list.
- (iii) Direct the respondents to grant arrears of pay and allowances and other consequential service benefits to the applicant as a result of his promotion.



2. The brief facts of the case are that the applicant is a duly qualified doctor, having passed his MBBS in the year 1967 and obtained further qualifications in Ayurved in 1980, homeopathy and bio-chemistry in the year 1978. The applicant also attended specialised trainings. The applicant joined the Ministry of Defence, Department of Defence Production (Medical Wing) as an Assistant Surgeon Grade I on 3.5.1971. On regular intervals and on schedule, on account of meritorious service of the applicant, he was granted promotion on date. He is holding the post of Principal Medical Officer (Selection Grade) w.e.f. 22.2.97. Respondent No.4 in turn joined the DGOF organisation on 1.9.97 i.e. 6 years after the applicant. On account of being a reserved category i.e. Scheduled Caste, respondent No.4 was given accelerated promotion and designated as Assistant Medical Officer w.e.f. 23.12.79. Thereafter, respondent No.4 was promoted as Senior Medical Officer on the basis of reservation before the applicant. Further, promotion to the post of Principal Medical Officer was granted to respondent No.4 on 1.4.95. In turn the applicant was extended the benefit of promotion to the post of Principal Medical Officer on 24.2.97 being a general category candidate. Against the seniority list issued by the respondents on 1.1.99, a number of representations were submitted by the applicant objecting to the placement of respondent No.4 in the seniority list at Sl.No.9. The applicant, at no point of time, was superceded and had no grievance. However, by way of the impugned order dated 22.5.02, respondent No.4 was promoted to the post of Chief Medical Officer and posted at Heavy Vehicle Factory, Avadi, Chennai. The applicant enjoyed an excellent service record whereas respondent No.5, Dr.Smt.M.Alphons although senior to the applicant does not have a good service record. Private respondent



No.5 has never been posted and given charge of any big hospitals of the respondent establishment. Promotion of respondent No.4 amounts to a supercession and is per se illegal whereas in order to extend undue benefit to the respondent No.5, the respondents have promoted her even though the service record vis-a-vis the applicant suffered from deficiency. The applicant by way of the instant OA questions the recommendations of the DPC on the ground of malafides, arbitrariness and favouritism and the action of the official respondents on the same grounds in addition to the same being violative of articles 14 and 16 of the Constitution of India.

3. Heard the learned counsel for both parties. It is argued on behalf of the applicant that respondent No.4 Dr. Smt S.Patkar was apparently junior to the applicant. The applicant joined the service on 3.5.71 and respondent No. 4 joined the service on 1.9.1977 i.e. 6 years after the applicant, but she was given accelerated promotion on the ground that she belongs to SC category. The merit of the applicant was not considered. It is further argued that respondent No.5 was senior to the applicant but her service records were not proper whereas the applicant's service records were excellent and there was nothing against the applicant. But promotion of respondent No.5 was considered though there was deficiency in her service records. Hence the action of the respondents is against the provisions of law and cannot be stated to be justified in ignoring the rightful claim of the applicant.

4. In reply, it is argued on behalf of the respondents that the applicant has not stated the correct fact of the case in the application. Respondent No.4 was always senior to the applicant from the date of her promotion to SMO on 8.11.85 i.e. earlier to the applicant. Similarly respondent No.5 was also senior to the applicant from the date of his appointment on 1.5.1968. Therefore the application is not maintainable

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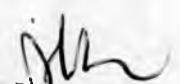
as it is without any merit. As per Government Rules on reservation for SC&ST candidate for promotion, Dr.(Smt) S.Patkar was promoted to the post of SMO w.e.f. 8.11.85 as a candidate belonging to the reserved category and thus she became senior to the applicant. According to the rule, the seniority of an employee in the grade in which he/she was promoted or was appointed on regular basis would count from the date of such appointment. Therefore, respondent No.4 is entitled to get all consequential benefits as admissible to her under the rule from the date of her promotion to SMO in preference to the applicant. Respondent No.4 accordingly got subsequent promotion based on her seniority and merit as PMO(OG) on 16.1.93 and PMO (SG) on 1.4.95. She was also promoted to CMO on 4.9.02 based on her seniority and merit over the applicant from the stage of her promotion to SMO from 8.11.1985. The date of promotion of the applicant to PMO (ordinary grade) is from 31.10.95. The promotion to the Chief Medical Officer is based on selection by merit and not on any other ground. The promotion to the post of CMO is considered by the relevant DPC after due assessment of the performance of candidates in the zone of consideration. The applicant has no locus standi to make assessment and or to make adverse comments on the performance of other employees or respondent No.4. The action taken by the respondents is perfectly legal and justified and they have not committed any irregularity while passing the impugned orders.

5. After hearing the learned counsel for both parties and careful perusal of the records, we find that respondent No.4 was promoted as SMO on 8.11.85 while the applicant was promoted as SMO on 22.5.87 and respondent No.5 was promoted as SMO on 27.4.87 and the applicant has not challenged this promotion at the relevant time. The seniority given before 1995 cannot be reopened. The

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could not show any evidence that his name was considered by the DPC. The applicant has not filed any rejoinder to the reply filed by the respondents. The promotion is based on selection and not merely on seniority. Respondents 4 & 5 were always senior to the applicant. Therefore, the claim of the applicant for promotion would come only after consideration of respondents 4 & 5. The promotion of respondents 4 & 5 as QMC ahead of the applicant is based on the recommendation of the DPC which assessed the records of all candidates in the zone of consideration. The applicant cannot state that he has a better service and records of others are not good. This is the duty of the DPC and the arguments advanced on behalf of the applicant that he served in big hospitals having 100 beds and respondent No.5 served in a small hospital having 25 beds and he has never been an incharge of any hospital cannot be a ground to consider his claim. We have perused Annexure R-1 which clearly supports the arguments advanced on behalf of the respondents and which has not been denied by the applicant by filing a rejoinder. This OA has no merit and hence it is dismissed.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

aa.

पृष्ठांकन सं. श्री/व्या. जलपुर, वि.
प्रतिशिल्पि विवरण:-

- (1) राधिका, जलपुर, वि. श्री Sajid Alkta, HCSBP
- (2) अमृता, जलपुर, वि. श्री P. Shalcanan HCSBP
- (3) प्रकाश, जलपुर, वि.
- (4) कंवल, जलपुर, वि.

संलग्न दस्तावेजों की संख्या: ०५
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