

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

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Original Application No. 268/2001

Jabalpur, this the 15th day of June, 2004

Hon'ble Shri M.P. Singh, Vice-Chairman
Hon'ble Shri Madan Mohan, Member (Judicial)

M.V. Chacko s/o Sh. M.O. Varkey
Aged about 38 years,
Chief Pharmacist,
R/o 9, 1 B, Road No. 8,
New Railway Colony,
Ratlam (MP).

...Applicant

(By Advocate: Shri B.de Silva,)

-versus-

1. Union of India through
Secretary,
Ministry of Railways,
Railway Bhawan,
New Delhi.
2. Divisional Railway Manager,
Western Railway,
Ratlam (MP).
3. Chief Medical Officer,
Western Railway,
Ratlam (MP).
4. Mohd. Arif Khan,
Pharmacist Grade-I
Railway Health Unit,
Ujjain (MP).

...Respondents

(By Advocate: Shri M.N. Banerjee for R-1 to R-3
None for R-4).

ORDER


By Madan Mohan, Member (Judicial) -

By filing this Original Application, the applicant
has sought the following main reliefs:

- i) To quash the impugned order dated 26.3.2001
as the same is bad in law and cannot be
sustained.
2. The brief facts of the case are that the applicant
joined the Railway Department on 21.9.1989 as a
Pharmacist Grade-III. He was firstly promoted in the




year 1992 as Pharmacist Grade-II and thereafter in the year 1995 as Pharmacist Grade-I. With the implementation of the recommendations of the Fifth Central pay Commission, the Railway Board, vide its letter dated 10.5.1999, introduced two grades of Chief Pharmacist Grade II carrying the scale of pay of Rs. 6500-10500/- and Chief Pharmacist Grade I carrying the scale of Rs. 7450-11500/- Both the grades were non-selection posts carved out from the existing cadre of Pharmacist. The applicant is working in the Divisional Medical Stores and was eligible for promotion to the post of Chief Pharmacist Grade II in the Stores Department of Ratlam Division. In order to fill up the newly created post of Chief Pharmacist in the scale of Rs. 6500-10500/-, the respondents vide order dated 21.9.1999 promoted the private respondent no. 4, who was working as Pharmacist Grade I at Ujjain and posted in Ratlam. The respondent no. 4 was promoted on account of his senior declining to accept the promotion. The respondent no. 4 joined as Chief Pharmacist Gr.II on 30.9.1999. However, he, vide his representation dated 17.1.2000 requested the respondents that his promotion be cancelled and he be reverted to his original post of Pharmacist Gr.I at Ujjain. The Chief Medical Officer, Ratlam, vide his letter dated 17.1.2000 advised the respondent no. 4 to re-consider his decision, yet respondent no. 4 opted for his reversion. Vide order dated 21.1.2000, the respondent no. 4 was reverted back to the post of Pharmacist Gr.I in the scale of Rs. 5500-9000/- and vide the same order, the applicant was promoted as Chief Pharmacist Gr.II in the scale of Rs. 6500-10500/-(A-7). In compliance of the said promotion order, the applicant joined as Chief Pharmacist Grade-II in Ratlam on 22.1.2000 (Annexure A-8). According to the applicant, since 22.1.2000 he has been rendering full and satisfactory service on the post of Chief Pharmacist Grade-II and the same being a non-selection post, he is



entitled to regular promotion. Accordingly the applicant preferred a representation dated 14.10.2000. The respondents instead of allowing the representation and to the complete surprise of the applicant, have issued an order dated 26.3.2001, whereby the respondent no. 4 has been promoted as Chief Pharmacist Grade II and posted at Divisional Medical Stores, Ratlam. No order has been served on the applicant reverting into the post of Pharmacist Grade-I nor any order has been issued directing him to hand over the charge to the respondent no. 4. The promotion order of respondent no. 4 is bad in law and deserves to be quashed and set aside. Hence, this Original Application has been filed seeking the aforesaid reliefs.

3. Heard the learned counsel for both the parties.

4. It is argued on behalf of the applicant that private respondent no. 4 himself declined to accept his promotion to the post of Chief Pharmacist Gr.II. However, he was advised by the respondents to re-consider his decision but he opted for cancellation of his promotion. Accordingly, he was reverted back to his former post of Pharmacist Grade-I vide order dated 21.1.2000 whereas by the said the applicant was promoted and joined as Chief Pharmacist Gr.II on 22.1.2000. It is further argued that instead of allowing the representation of the applicant for regular promotion to the post of Chief Pharmacist Gr. II, the respondents have issued order dated 26.3.2001 (Annexure A-1) promoting the respondent no. 4 to the post of Chief Pharmacist Gr.II and he was posted at Divisional Medical Store, Ratlam. It is again argued that the respondent no. 4 should have been aware that he would be debarred for one year for consideration of his promotion and his promotion is not a matter of right. The respondents should have not taken it being granted to promote respondent no. 4 on his convenience.




5. In reply, the learned counsel for the respondents has argued that by letter dated 10.5.1995 (Annexure R-1) after approval of the competent authority it was decided to fill these posts in lower grade i.e. in scale of Rs. 6500-10500 (RSRP) (Chief Pharmacist Gr.II) on temporary basis to manage the work smoothly till the time posts are filled up by the Headquarters and accordingly those were filled in by the Divisional after down-grading the same. Subsequently, above two posts of Pharmacists Gr.I in the scale of Rs. 7450-11500/- were de-centralised vide letter dated 3.2.2000 (Annexure R-2) and the seniority of two units i.e. Ratlam Division and Dehod Workshop was clubbed and one seniormost employee Shri S.K. Waghela, of Dehod Unit was promoted and rest one was filled up on ad hoc basis by promoting Shri K.G. Purohit who was regularly promoted after one year due to refusal of his senior employee for promotion in second time. It is also further argued that private respondent no. 4 took reversion to the post of Pharmacist Grade-I on 21.1.2000 due to his family circumstances on his own request and he was, therefore, debarred for promotion for a period of one year. Thereupon the applicant was promoted on adhoc basis as Chief Pharmacist Gr.II and he joined the said post on 22nd January, 2000. It is further argued that after completion of debarration period of one year in the same sequence, promotions were made on regular basis. In the said process, respondent no. 4 was promoted as Chief Pharmacist Gr.II and he joined the said post. Hence, it is clear that there is no post lying vacant and the applicant is not eligible for regular promotion being the junior-most. The respondent no. 4 joined on 29.3.2001 on transfer on promotion to Chief Pharmacist Gr. II post and handing over of charge to him by the applicant was under process being store items. Regarding non-issuance of reversion order in respect of the applicant, it is argued that earlier in the first

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occasion the private respondent no. 4 has sought reversion, therefore, the competent authority thought it proper to wait for resumption of respondent no. 4 and only after that, reversion order was to be issued. It is further argued that instead of directly approaching the Tribunal, the applicant should have submitted representation to the competent authority and not doing so, the application of the applicant is liable to be dismissed.

6. After hearing the learned counsel for the parties i.e. counsel for the applicant and counsel for the official respondents, we find that the respondent who was promoted as Chief Pharmacist Gr.II, no. 4 (Mohd. Arief Khan) took reversion to the post of Pharmacist Gr.I on 21.1.2000 due to his family circumstances. Though he was advised by the respondents to re-consider his decision but he opted for cancellation of the promotion, and, therefore, he was debarred for promotion for a period of one year. Thereupon the applicant was promoted as Chief Pharmacist Gr.II on ad hoc basis. It is further seen that after one year of debarration, private respondent no. 4 was promoted as Chief Pharmacist Gr.II on regular basis vide order dated 26.3.2001 (Annexure A-1) and in compliance of the said order the respondent no. 4 joined the said post. We further find that the applicant has not challenged his reversion order dated 7.3.2001 (R/3) after coming to know from the reply of the private respondent no. 4 i.e. Mohd. Arief Khan. When the applicant had come to know about passing of his reversion order as has been annexed as Annexure R-3 with the reply of the private respondent no. 4, the applicant should have amended the O.A. challenging the said order or should have represented the department for redressal of his grievances. In this way, he has not exhausted the departmental remedies available to him.



7. In the facts and circumstances of the case and in the light of the discussions made in para 6, we are of the considered view that the O.A. has no merit and fails and the same is accordingly dismissed. No costs.

(Madan Mohan)
Member (Judicial)

(M.P. Singh)
Vice Chairman

/m/

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

प्रतिनिधि द्वारा विस्त:-

(1) सचिव, प्रत्यक्ष न्यायालय नगर एसोसिएशन, जबलपुर

(2) अध्यक्ष, श्री/श्रीमती, पट्टा.....के काउंसल B. Dashra

(3) प्रत्यक्ष न्यायालय नगर एसोसिएशन, जबलपुर के काउंसल MN Bawij

(4) काउंसल, प्रत्यक्ष न्यायालय नगर एसोसिएशन, जबलपुर
सूचना एवं आवश्यक काउंसलिंग हेतु

B. Dashra
प्रतिनिधि 21.6.04

Issued
on 21-6-04