

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 5th day of July, 2008

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ORIGINAL APPLICATION NO.255/2005

CORAM :

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.B.L.KHATRI, ADMINISITRATIVE MEMBER

Dr.S.R.Trivedi
S/o Late Pandit Sri Krishnachandracharya,
R/o Sri Kripa Bhawan, Plot No.1,
Shanti Nagar, Old Hatwara Road,
Jaipur.

... Applicant

(By Advocate : Shri Damodar Mishra)

Versus

1. Secretary,
Government of India,
Ministry of Health and Family Welfare,
Department of Ayurved, Yoga and Naturopathy,
Unani Sidha and Homoeopathy (AYUSH),
IRCS Annexe Building,
Red Cross Road,
New Delhi.
2. Dr.Srimati M.S.Reetha through
Additional Director Head Quarter,
CGHS, Nirman Bhawan,
New Delhi.
3. Dr.Miss Ulka S.Dattar through
Additional Director,
CGHS, Kendriya Swasthya Bhawan,
Prakash Nagar, near Airport,
Hyderabad.

... Respondents

(By Advocate : Ms.Kavita Bhati, proxy counsel for
Shri Kunal Rawat)

ORDER

PER HON'BLE MR.B.L.KHATRI

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985, against the order F.No.A-32012/2/2003-ISM(Estt.I) dated 14.12.2004 (Ann.A/1), whereby his name was not considered for promotion to the post of CMO(Ay) (NFSG), whereas name of his juniors had been considered. Through this OA, the applicant has prayed for the following relief :

- "1) The Non-Applicant No.1 be directed that the applicant be allowed to be promoted in the pay scale of Rs.14300-18300 w.e.f. 17.11.2004, the date from which his juniors have been promoted.
- 2) Any other relief in the circumstances Hon'ble the Tribunal deems proper.
- 3) The cost of the Application may kindly be awarded to the Applicant."

2. Brief facts of the case are that the applicant has challenged the validity of the order dated 14.12.2004 (Ann.A/1). As per this order, issued by the Department, six CMOs(Ay), who were working in the scale of Rs.12000-16500, have been promoted as CMOs (Ay) (NFSG) in the pay scale of Rs.14300-18300 w.e.f. 17.11.2004. The persons at S.No.1 to 4 are senior to the applicant, whereas the persons promoted at S.No.5 and 6 i.e. Dr.Smt.M.S.Reetha & Dr.(Ms.)Ulka S.Dattar are junior to the applicant. As per the seniority list issued by the Department on 11.2.2003, the applicant has also been shown as senior to the above noted doctors promoted at S.No.5 & 6. A copy of the said seniority list is annexed with the OA as Ann.A/2.

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3. The applicant contends that there was no reason to supersede him since his service had always been satisfactory and there were no adverse remarks against him in the Annual Appraisal Reports. The applicant made a representation against the impugned order on 27.1.2005, vide Ann.A/3, but there was no response hence an appeal (Ann.A/4) was submitted by him but without going into the merits of the case the said appeal was rejected vide letter dated 11.4.2005 (Ann.A/5). The applicant was informed by the Ministry of Health and Family Welfare that promotion to the post of CMO(Ay) (NFSG) has been made as per the prescribed provision and no specific reasons had been given for non-consideration of the name of the applicant for promotion to the said post. It was further submitted by learned counsel for the applicant that if there was any dispute/confusion in the annual performance report regarding 'good' or 'very good', such remark should have been communicated to the applicant.

4. The respondents contested this application and have filed their reply. In the reply, the respondents have submitted that the post of CMO(Ay) (NFSG) was considered as per para-3 of the OM dated 25.1.99 for the time bound promotion of ISM&H Physicians subject to the condition that ISM&H Physicians should stand included in the Central Indigenous and Homoeo Medical Services in due course. According to the said OM, the time bound promotions are subject to the condition that ISM&H Physicians should stand included in the Central Indigenous &

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Homoeo Medical Service in due course as the Central Indigenous & Homoeo Medical Service is yet to be constituted. As per Recruitment Rules, the post had to be filled up by selection from amongst the eligible candidates. Respondent No.1 sent requisition to the UPSC for making selection for the post of CMO(NFSG). Name of the applicant was also included in the list of candidates in the consideration zone for promotion. Meeting of the Selection Committee/Departmental Promotion Committee was held on 11.11.2004 but the applicant was not considered fit for promotion. Thus, in view of the above facts, respondent No.1 complied with all the rules and provisions of the law in granting promotion to the eligible persons but the DPC/Selection Committee did not recommend/consider the applicant fit for promotion. Therefore, respondent No.1 could not issue the order promoting the applicant.

5. It is further submitted by the respondents that according to the instructions issued by the DOPT, the benchmark for promotion in the revised scale of Rs.12000-16500 and above shall be 'very good' and as the applicant could not get the 'very good' remark, he could not have been considered for promotion. It was also submitted that only the adverse entries in the ACRs of the government employees are communicated to them and if there is no adverse entry and if the overall grading is 'fair', the same cannot be communicated to the employee concerned.

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6. We have heard the rival submissions and perused the record. As per instructions on the subject, a list of candidates was considered by the DPC and the overall grading was assigned to the each candidate. The DPC determined the merit of those who assessed for promotion with reference to the prescribed benchmark and accordingly graded the officers as 'fit' or 'unfit' only. Only those officers who are graded 'fit', i.e. who meet the prescribed benchmark, by the DPC were included and arranged in the select panel in order to their inter-se seniority in the feeder grade. For promotion to the revised pay scale/grade of Rs.12000-16500 and above, the benchmark for promotion is 'Very Good'.

7. After having considered the facts of the case, we find that in this case when the applicant was not considered for promotion to the post of CMO (Ay) (NFSG), he made a representation but when his representation was not decided, he filed an appeal. On filing of appeal, it was intimated that his case for promotion was considered as per the standing instructions and rules and as per recommendations of the DPC. His merit was below the benchmark. For promotion to this post the benchmark is 'Very Good'. The applicant was not communicated the entries below the benchmark, therefore, he had no occasion to put up his case for redressal of grievance before the higher authority. In this case, it is pertinent to rely on a decision of the Apex Court in the case of Dev Dutt v. Union of India & Ors, reported at JT 2008 (7) SC 463. In that case, the DPC held its meeting on

16.12.94. In the meeting the appellant, Dev Dutt, was not held to be eligible for promotion but his juniors were selected and promoted to the rank of Superintending Engineer as he has not secured the prescribed benchmark which was 'very good'. In that case, grievance of the appellant was that he was not communicated the 'good' entry for the year 1993-94 and had he been communicated that entry, he would have had an opportunity of making a representation for upgrading that entry from 'good' to 'very good', and if that representation was allowed he would have also become eligible for promotion. Therefore, he submitted that, rules of natural justice have been violated. It is considered pertinent to quote para-39, 40 & 45 of the said judgement of the Apex Court, as under :

"39. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

40. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry,

otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

45. In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution."

8. It is also pertinent to rely upon a decision of the Full Bench of this Tribunal in the case of Ashok Kumar Aneja v. Union of India & Ors, decided on 7.5.2008 by the Principal Bench, wherein the Full Bench held that all entries in the ACRs below the benchmark are to be communicated and all entries downgraded from 'very good' to 'good' are also to be communicated to the employee/officer concerned.

9. In our opinion, our natural sense of what is right and wrong tells us that it was wrong on the part of the respondents in not communicating the 'good' entry to the applicant since he was thereby deprived of the right to make a representation against it, which if allowed would have entitled him to be considered for promotion to the post of CMO(Ay) (NFSG). One may not have the right to promotion, but one has the right to be considered for promotion, and this right of the applicant was violated in the present case.

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10. Thus, in view of the law laid down by the Apex Court as also by the Full Bench, the respondents are directed to communicate all the entries below the benchmark to the applicant within a period of two months from the date of receipt of a copy of this order so that he may file representation against such entries and on receipt of the representation the respondents are directed to decide the representation by passing a reasoned and speaking order, as held in the judgements cited supra. Representation must be decided by the authority higher than the one who gave the entry below the benchmark. Therefore, the applicant is directed to file his representation to the authority higher than the one who gave him such entry within one month from the date of communication of such entries received from the respondents and the respondents are directed to decide the representation within a period of three months from the date of receipt thereof. In case the representation of the applicant is decided against him, he would be at liberty to approach this Tribunal again, if he so chooses.

11. With these observations, the OA stands disposed of. No order as to costs.


(B.L.KHATRI)
MEMBER (A)


(M.L.CHAUHAN)
MEMBER (J)