

Central Administrative Tribunal
Jaipur Bench, JAIPUR

TA 23/2009
(C.W.P. No.3880/99)

This the 31st day of August, 2009

Hon'ble Shri M.L. Chauhan, Member (Judicial)
Hon'ble Shri B.L. Khatri, Member (Administrative)

Dinesh Kumar Sharma
S/o Shri Laxmi Narain Sharma,
Aged about 32 years
Presently working as Jr. Stenographer
In the National Institute of Ayurveda,
Madho Vilas Palace, Amer Road,
Jaipur (Rajasthan)Applicant

(By Advocate: Shri I.S. Malik)

VERSUS -

1. National Institute of Ayurveda, Madho Vilas Palace, Amer Road, Jaipur, through its Director,
2. Dy. Director (Administration), National Institute of Ayurveda, Madho Vilas Palace, Amer Road, Jaipur,
3. Jai Prakash S/o Shri Chhajulal, presently working as P.A. to the Director National Institute of Ayurveda, Madho Vilas Palace, Amer Road, Jaipur,

.....Respondents

(By Advocate: Shri. M.D. Agarwal for Resp.No.1&2
and Sh. T.P. Sharma counsel for Resp.No.3)

ORDER

(By Hon'ble Shri M.L. Chauhan, M (J):

The petitioner has filed Writ Petition in the Hon'ble High Court in the year 1999, which was registered as Civil Writ Petition No. 3880/1999. Consequent upon the conferment of

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the jurisdiction upon this Tribunal the Writ Petition was transferred to this Tribunal by the Hon'ble High Court of Rajasthan vide order dated 6.5.2009.

2. As can be seen from averment made in the Writ Petition, the grievance of the petitioner is regarding his promotion to the post of Senior Stenographer from the date he becomes eligible to the post of Senior Stenographer after completion of 5 years of service in the feeder grade and consequent upon such promotion his case may also be considered for promotion to the post of PA to the Director by deeming him as Senior Stenographer in the year 1993. Further prayer was that respondent be restrained from making the Direct Recruitment to the post of PA to the Director and they may be directed to first complete the process by promotion by promoting eligible persons including the petitioner on the post of Senior Stenographer and after that PA to the Director from ^{the} availability of vacancy. It may be stated that subsequently one Shri Jai Prakash was appointed as PA to the Director vide notification dated 29.3.1997. Thereafter the applicant was permitted to file amended Petition in which the Petitioner has impleaded Shri Jai Prakash as respondent No.3. Further, in the amended Petition the additional ground was raised in which it was averred that promotion of the respondent No.3 made on 13-10-1999 ^{is} ~~10-10-1993~~ is liable to be quashed as respondent No.3 is having

no requisite qualification and requirement for the post of PA. As per Rule 5 years of experience of the post of Junior Stenographer is required for promotion which experience he does not possess ^{as in} respondent No.3 was appointed as Junior Stenographer on 21.4.1995. As such promotion of the respondent No.3 is liable to be quashed. Based on this ground in the amended OA, the prayer ii(a) was incorporated to the effect that order of promotion dated 13.10.1999 of the respondent No.3 be quashed and respondents be directed to give promotion to the Petitioner from the date from which the promotion was given to the respondent No. 3 with all back wages admissible on the post of PA.

3. At this stage it will be useful to notice few facts. The petitioner was appointed as Junior Stenographer vide order 4.11.1987 and he joined on 16.11.1987. It is also not in dispute that promotion to the post of Senior Stenographer as well as PA in the respondents department were governed as per provisions existing in the Schedule Appended with the National Institute of Ayurved Service Rules 1982 (hereinafter referred to as Service Rules 1982). Respondent has filed reply and in the reply respondent has stated that prior to 23.4.1991 there were two posts of Senior Stenographer (One for Hindi and Other for English) lying vacant in the department and these posts were upgraded to the post of PA to the Director, vide order dated ^{16/4/91}

23.4.1991 (Annexure R-1). Thus, according to the respondents there was no post of Senior Scale Stenographer when the applicant became eligible for promotion as such the applicant cannot be promoted to the post of Senior Scale Stenographer. It is further stated that feeder category/ grade for promotion to the post of PA is Senior Stenographer with 5 years of experience on the post. Thus according to the respondents the applicant could not have been promoted to the post of PA. Respondent has further stated that the post of PA has fallen vacant in the year 1998. In order to fill up that post, notification dated 26.2.1999 (Annexure A-6) was issued whereby the applications were invited for filling up the said post by way of Direct Recruitment as per conditions stipulated therein. It is stated that Petitioner did not apply pursuant to the said notification, however, respondents No.3 who does not have requisite experience of 7 years applied for the said post. Since he has qualified selection test the relaxation was given to the respondent No.3 in terms of Rule 17 of Service Rule 1982. Thus, according to the respondent the applicant can not have any grievance regarding selection of the respondents No.3. The petitioner has filed rejoinder, reiterating the stand taken in the Petition.

4. We have heard learned counsel for parties and considered the material placed on record. In order to decide

the matter in controversy, it will be relevant to ~~extract~~ ^{notice} the relevant portion of said Recruitment and promotion Rules for the post of Senior Scale Stenographer and PA to Director as stipulated in Schedule Appended to National Institute of Ayurveda Service Rules 1982. The post of Senior Stenographer find mention at Sr. No.8 of the Schedule. As can be seen from Column 5 method of selection is by promotion failing which by Direct Recruitment, Column 6 and 7 stipulates that the said post has to be filled up from Junior Stenographer with 5 years experience on the post. Admittedly, the applicant has joined on the post of Junior Stenographer on 16.11.1987 and he could have completed 5 years of service in the category of Junior Stenographer as on 15.11.1992 so as to become eligible by promotion to the post of Senior Scale Stenographer. As can been seen from the material placed on record (Annexure R-1), two posts of Senior Stenographer which were lying vacant in the department were upgraded as PA to the Director in the scale of Rs. 1640-2900 vide letter dated 23.4.1991, that is much prior to the date when the applicant became eligible for promotion to the post of Senior Scale Stenographer viz 15.11.1992. The applicant has also not challenged the legality and validity of the upgradation order dated 23.4.1991 (Annexure R-1) in this Petition.

5. Thus, in view of what has been stated above, the prayer of the applicant that he should be promoted to the post of Senior Scale Stenographer after completion of 5 years of service w.e.f. 16.11.1992 cannot be accepted, as on 16.11.1992 there was no post of Senior Scale Stenographer in the department. The only two posts of Senior Stenographers which were existing in the department were already upgraded to that post of PA vide order dated 23.4.1991. Thus the Petitioner is not entitled to any relief.

6. Similarly, the Petitioner is also not entitled to promotion to the post of PA. The said post has been mentioned at Sr. No.4 of the Schedule of the Service Rules 1982. As can be seen from the column 5 the said post has to be filled in by promotion failing which by Direct Recruitment from amongst Junior / Senior Scale Stenographer. Column 6 & 7 makes it clear that feeder category for promotion to the post of PA to the Director is Senior Scale Stenographer with 5 years of experience on the post. Since the petitioner belongs to category of Junior Stenographer and not that of Senior Scale Stenographer as such he could not have been promoted to the post of PA. Further as can be seen from the Column 4 the qualification for the post by way of Direct Recruitment has been prescribed as under :-

(1). A degree from a University.

(2) At least 7 years experience.

7. As already noticed above, the post has to be filled in by promotion failing which by way of Direct Recruitment from amongst Junior / Senior Stenographer in the Institute through Written Test and Interview. Since no person was eligible for promotion to the post of PA as per the Recruitment Rules, the respondent issued a notification (Annexure A-6) for filling up the post of PA by way of Direct Recruitment in terms of requirement of the aforesaid rules and for that purpose the applications have to be submitted upto 5.3.1999 till 5.00 PM. Admittedly, the applicant has not applied pursuant to the aforesaid notification for the post of PA, although, he was eligible and was having requisite experience of 7 years as stipulated in the Rules. It is also admitted fact that the respondent No.3 was appointed as Junior Stenographer on 21.4.1995. Admittedly the respondent No.3 was not possessing 7 years of experience as stipulated in the Rules. The stand taken by the respondents is that since respondent No3 was the only candidate who has qualified the Written Test and Interview he was granted relaxation in terms of Service Rule 17 of National Institute of Ayurved. Thus, according to the official respondent there is no infirmity in the selection and appointment of the respondent No.3 as PA to the Director of Institute. In order to decide this controversy it will be useful to

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quote Rule 17 of National Institute of Ayurved Service Rule 1982 which thus reads as under:-

17. Academic and Technical Qualification and Experience:

The academic and technical qualifications and experience shall be as provided in Column NO.4 and 7 of Schedule-I for Direct Recruitment and for Promotion, respectively. The Essential Qualification are not relaxable, however, the appointing authority may grant relaxation in experience to a candidate fro reasons to be recorded in writing.

8. Thus, from the perusal of the Rule 17 as quoted above, it was permissible for the appointing authority to grant relaxation in experience to a candidate for the reasons to be recorded in writing. Admittedly, the petitioner has not applied for the post of PA to Director on the basis of notification (Annexure A-6) and was eligible for selection by Direct Recruitment in terms of Recruitment Rules having at least 7 years of experience on the post of stenographer. In case the petitioner had applied for the post of PA it was not permissible for the respondents to resort to Rule 17 i.e. relaxation clause as relaxation clause, can be invoked only when there are no eligible person. In the instant case ~~there was no eligible person~~. Nothing has been brought on record that there were eligible persons who possesses the requisite experience as stipulated in the rules still respondent No.3 was selected. Since, the respondent No.3 has qualified Written Test and the Interview and no official with requisite experience was available we see no illegality in the action of

the appointing authority to grant relaxation of experience in the case of respondent No.3 Thus, we see no infirmity in the action of the official respondent whereby the respondent No.3 was promoted/ selected and given appointment as PA to the Director of Institute.

9. Yet for another reasons the applicant is precluded from challenging the selection of the respondent No.3. Admittedly, the petitioner has not applied for the post of PA. The Apex

Court in the case of K.H. Siraj Vs. High Court of Kerala 2006 SCC (L&S) at page 1345 in para 68 after relying upon the judgment of the Apex Court in the case of Umkan&Saran (Dr)

Vs. State of Bihar 1973 1 SCC 485 has held that only those who are eligible or in zone of consideration can question the legality or otherwise of a select list. Since the petitioner has not applied for the post of PA to the Director, as such his case for appointment to the post of PA could not have been considered and thus ~~is~~ precluded from challenging the select list pursuant to which respondent No.3 was granted appointment to the post of PA to the Director.

10. The reliance placed by the learned counsel for applicant on the judgment of **Bahadur Singh Vs. State Punjab & Haryana**

High Court 1999 (8) SLR is of no consequence. That was case where the claim of the petitioner before the Hon'ble High Court for appointment to the post of Executive Engineer was

overlooked on the ground that he has not passed the departmental examination. The Hon'ble High Court has held that there is no such requirement of any law for passing such departmental examination. It was in this context the Hon'ble High Court has held that Petitioner could not have held ineligible to be considered for promotion.

11. We fail to understand how the applicant can take assistance from this judgment. The case of the applicant for promotion to the post of Senior Scale Stenographer was not considered on the ground that at the relevant time when he became eligible for promotion no post of Senior Scale Stenographer was in existence and further he could not have been promoted to the post of PA to the Director as feeder grade category for promotion to this post is Senior Scale Stenographer.

12. For the foregoing reasons we are of the view that the petitioner has not made out any case for grant of any relief. Accordingly, the TA is dismissed with no order as to the costs.


(B.L.Khatri)
Member (Administrative)

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(M.L.Chauhan)
Member (Judicial)