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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET
ORDERS OF THE TRIBUNAL

03.09.2012

OA No. 574/2009

Applicant present in person
Mr. M.D. Agarwal, counsel for respondents

Put up the matter on 11.9.2012.

Anil Kumar
(ANIL KUMAR)

Admv. Member

K. S. Rathore
(JUSTICE K.S.RATHORE)
Jdil. Member

R/

11/09/2012

OA No. 574/2009

Mr. Narendra Mishra, counsel for applicant.
Mr. M.D. Agarwal, counsel for respondents.

Hearrd.
O.A. is disposed of by a
separate order on the separate
sheets for the reasons recorded
therein.

Anil Kumar
[Anil Kumar]
Member (A)

K. S. Rathore
[Justice K.S.Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 11th day of September, 2012

ORIGINAL APPLICATION No. 574/2009

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISTRATIVE MEMBER

Smt Geeta Devi Gautam wife of Shri Nand Kishore Gautam, aged 66 years, resident of S-24-25, Krishna Marg, Sewar Area, Bapu Nagar, Jaipur.

... Applicant
(By Advocate : Mr. Narendra Mishra)

Versus

1. Union of India through Secretary, Ministry of Health and Family Welfare, New Delhi.
2. National Institute of Ayurveda, Madhao Vilas Jorawar SinghGate, Amer Road, Jaipur through its Director.
3. President Governing Body, National Institute of Ayurveda through the Ministry of Health and Family Welfar, New Delhi.

... Respondents
(By Advocate : Mr. M.D. Agarwal)

ORDER (ORAL)

The applicant has filed this OA thereby claiming for the following reliefs:-

"In conspectus of above state of facts, it is prayed to Hon'ble Tribunal that this Hon'ble Tribunal may very graciously be pleased to call for and examine the entire record of the case, accept and allow this Original Application, and

- (a) By an appropriate order or direction, the Point 5.3 of the Schedule-I of the Ayurveda Service Rules 1982 as made for promotion to the post of Lecturer may kindly be declared as ultra virus of the mandates of Article 14 and 16 of the Constitution of India.

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(b) By an appropriate order and direction, the action of the respondents of depriving the applicant from promotion on technical ground may kindly be quashed and set aside and it may be held that the applicant fulfilled the condition No. 3 of the Column No. 4 of Schedule I and further they may be directed to promote the applicant as Lecturer from the date when her junior has been promoted with all consequential service benefits.

(c) Respondents may be directed to extend benefit of selection scale of 8000-13500 and 10000-15200 to the applicant from the date when juniors have been extend the said benefit and also to pay interest thereon @ 18% p.a. from the due date to the date of actual payment.

(d) Cost of the Original Application may kindly be awarded to the applicant."

2. Learned counsel for the applicant submitted that the applicant has been working on the post of Physician with the respondent institute since its inception in 1976. The respondents thereafter framed National Institute of Ayurveda Services Rules, 1982. In Schedule I of that Rule, recruitment and promotion channel have been referred under different divisions and for different posts. For the post of Lecturer, it is referred as under:-

Sl. No	Name of the Post	Maximum age for direct recruitment	Qualification for direct recruitment	Method of recruitment whether by direct recruitment or by promotion, transfer or deputation	In case of recruitment by promotion or by transfer or by deputation, from which post	Qualifications in case of promotion or deputation or transfer	Remarks
1.	2	3	4	5	6	7	8
5	Lecturer	40	<p>For Ayurveda</p> <p>1. Degree or Diploma in Ayurveda of a recognized University/ Statutory Faculty/ Board/ Council, etc. or equivalent.</p> <p>2. Post Graduate Degree or Diploma/</p>	50% by promotion and 50% by direct recruitment	Demonstrator cum-clinical Registrars/ Physician	As laid down in Col. NO.4 excluding Item No. 2.	----

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		<p>Certificate of at least two years duration in Ayurveda of a recognized University/ Statutory Faculty/ Board/ Council, etc. or equivalent.</p> <p>3. Three years experience as Demonstrator-cum- Clinical Registrar/ Tutor in the subject concerned.</p>			
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The aforesaid Rules make it clear that the post of Lecturer are to be filled 50% by direct recruitment and 50% by promotion. Accordingly, the applicant should have been given promotion to the post of Lecturer but the said benefit has not been given to the applicant.

3. In the year 1992, the respondents changed the name of the Chikitsak and Demonstrator as Junior Lecturer whereas post of such nomenclature was nowhere in any Medical and Ayurved College.

4. The State Government extended pay scale of Rs.8000-13500/- to the Chiktsaks in the year 1996 as per the recommendations of the 5th Pay Commission but the said benefit too has not been extended to the applicant because nomenclature of that post was changed from Chiktsak to Junior Lecturer. The person junior to the applicant having lesser experience has been given promotion but the applicant has been denied promotion for no reason nor she has been extended benefit of correct selection scale.

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5. The learned counsel for the applicant further argued that the post of Chiktsak has neither been considered in Technical Wing nor in Teaching Wing and under the garb that the name of feeder post of Lecturer as given in the Rules is 'Demonstrator cum Clinical Registrar/ Tutor' whereas the applicant was holding the post of Physician, she has been denied promotion. The applicant has been deprived from promotion despite the fact that she is having rich experience than the junior to her who whom promotion has been given.

6. The learned counsel for the applicant submitted that under the ACP, Assistant Matron has been given the pay scale of Rs.8000-13500/- upon completion of 12 years as first ACP and thereafter Rs.10000-15200/- on second ACP whereas the applicant as Junior Lecturer has been given the scale of Rs.7450-11500/- as first ACP and Rs.7500-12000/- as second ACP. She has been deprived all the benefits of the 5th Pay Commission and equivalent ACP because nomenclature of her post was changed from Physician to that of Junior Lecturer.

7. The learned counsel for the applicant argued that promotion and selection scale for the post of Lecturer is the legal and fundamental right of the applicant, as such the action of the respondents is against the fundamental rights granted under Article 14 & 16 of the Constitution of India.

8. He further argued that Point No. 3 of Sr. No. 5 of the Schedule-I appended with the National Institute of Ayurveda

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Service Rules 1982 is ultra virus and is colorable exercise of powers because in the said Point eligibility for promotion to the post of Lecturer is given as 3 years experience as Demonstrator cum Clinical Registrar/ Tutor in the subject concerned and no provision for giving promotion to the persons like applicant who possesses the requisite experience as 'Physician' instead of 'Tutor' has been made in this Point of the Rules. The grievance of the applicant is that her post 'Chiktsak' has not been considered in Technical Wing and further under the garb of aforesaid nomenclature, she has been deprived from promotion to the post of Lecturer. Thus the said Part-3 of point No. 5 of the Schedule-I appended with the Rules, 1982 negatives the right of equality as guaranteed under Article 14 and 16 of the Constitution of India and, therefore, it deserves to be declared as ultra virus and unconstitutional by this Hon'ble Tribunal. Therefore, he argued that OA be allowed and relief claimed by the applicant be granted by this Tribunal.

9. On the other hand, learned counsel for the respondents argued that for promotion on the post of Lecturer, three years experience as Demonstrator cum Clinical Registrar/ Tutor in the subject concerned is required while the applicant was holding the post of Physician. Therefore, she was not qualified to be promoted as Lecturer under the National Institute of Ayurveda Services Rules, 1982. Subsequently, the post of Demonstrator cum Clinical Registrar and Physician have been re-designated as Junior Lecturer with effect from 26.05.1992 with the revision of pay scale. If the applicant had any

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objection regarding change of nomenclature of the post, she ought to have challenged the change of nomenclature at the relevant time. In fact the applicant has already retired from service of the Institute on 31.07.2003 on superannuation of retirement age.

10. He further argued that the qualification of the applicant was not recognized by the University of Rajasthan for admission in PG Course, hence the permission was not granted to the applicant, which was made clear to the applicant at the relevant time.

11. With regard to the averment of the applicant that the pay scale of Rs.8000-13500/- was extended to the Chikitsak in the year 1996 as per the recommendations of the 5th Pay Commission, learned counsel for the respondents argued that this pay scale was allowed by the Department of Ayush to the Physician of the Department but since the applicant was working on the post of Junior Lecturer at that time, therefore, this benefit was not extended to her as she was not entitled for the same and the Department of Ayush did not permit the same. There is no relevancy with the pay scales of the State Government of Rajasthan since the Institute is an autonomous body under the Government of India.

12. Learned counsel for the respondents further argued that the post of Chikitsak (Physician) was clinical post while the post of Demonstrator cum Clinical Registrar was teaching post,

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therefore, the post of Physician was not included in the feeder cadre for promotion. As stated earlier, in the year 1992, the post of Physician, Demonstrator cum Clinical Registrar was redesignated as Junior Lecturer with the revision of pay scales, the applicant was not promoted and she was not having the minimum qualification for the same.

13. He further argued that in the year 1996-97, the Service Rules of the Institute were amended and the post of Lecturer is to be filled 100% by direct recruitment having PG qualification in the subject concerned. Therefore, after 1996-97, the applicant could not be promoted as Lecturer. The applicant has wrongly mentioned that Rs.8000-13500/- is a selection scale. In fact, it is the pay scale of Lecturer and admittedly, she was not a Lecturer and hence she could not be given that scale.

14. With regard to the averments of the applicant regarding the ACP Scheme, the learned counsel for the respondents argued that scale of first and second upgradation under ACP Scheme have been adopted as mentioned in Annexure-II of OM dated 09.08.1999, while the post of Assistant Matron have promotional post in the pay scale of Rs.8000-13500/-, hence first upgradation in the scale of 8000-13500/- and second upgradation in the scale of Rs.10000-15200/- have been adopted. Therefore, it is not correct to say that the pay scale of the applicant has been wrongly fixed or paid. In fact, she was paid the pay scale for which she was entitled as per the rules.

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15. Learned counsel for the respondents denied that the applicant has been deprived of her any right or due promotion or done any action in violation of Articles 14 & 16 of the Constitution of India or any other provision of law. He also denied any part of Schedule-I of the National Institute of Ayurveda Service Rules, 1982 is ultra virus or colourable exercise of power on any ground as taken by the applicant or otherwise. He also denied that any part of Schedule-I negatives the right of equality under Articles 14 & 16 of the Constitution of India or deserves to be declared ultra-virus. He submitted that the applicant has no case whatsoever in her favour and, therefore, the OA being devoid of merit be dismissed with costs.

16. The applicant has also filed the rejoinder.

17. Heard the learned counsel for the parties and perused the relevant documents on record. It is not disputed that the applicant has been working as Physician with the respondent Institute since its inception. According to the National Institute of Ayurveda Service Rules, 1982, the post of Lecturer was to be filled up 50% by promotion and 50% by direct recruitment. For promotion to the post of Lecturer, three years experience as Demonstrator cum Clinical Registrar/ Tutor in the subject concerned was essential but since the applicant was working on the post of Physician, therefore, her experience was not counted for promotion. As per the averment made by the

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learned counsel for the respondents, the post of Physician was clinical post while the post of Demonstrator cum Clinical Registrar was teaching post and, therefore, the post of Physician was not included in the feeder cadre of promotion. We have carefully gone through the National Institute of Ayurveda Service Rules, 1982 and we are convinced with the averment made by the learned counsel for the respondents that since the applicant was holding the post of Physician, therefore, as per rules, she was not entitled for promotion to the post of Lecturer and, therefore, the action of the respondents in not promoting the applicant to the post of Lecturer is not arbitrary or against the rules.

18. In 1996-97, National Institute Service Rules were amended and the post of Lecturer is to be filled up 100% by direct recruitment having PG qualification in the subject concerned. Therefore, after 1996-97, the applicant could not be promoted as Lecturer and also she was not having educational qualification for the post of Lecturer. Therefore, we do not find any infirmity/irregularity in the action of the respondents in not promoting the applicant to the post of Lecturer.

19. With regard to the submission of the learned counsel for the applicant that the applicant was not given correct ACP while the Assistant Matron have been given the first ACP in the pay scale of Rs.8000-13500/- and second upgradation in the pay scale of Rs.10000-15200/-. The applicant has been given

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first financial upgradation in the scale of Rs.7450-11500/- and second ACP in the pay scale of Rs.7500-12000/- In this regard, the learned counsel for the respondents have made it clear that the scale of first and second upgradation under ACP have been adopted as mentioned in Annexure-II of OM dated 09.08.1999. The post of Assistant Matron has a promotional post in the scale of Rs.8000-13500/-. Hence first upgradation for Assistant Matron was in the pay scale of Rs.8000-13500/- and second upgradation was in the scale of Rs.10000-15200/-. On the other hand, the applicant did not have any promotional post in the scale of Rs.8000-13500/-. Therefore, she was rightly given first ACP in the scale of Rs.7450-11500/- and second ACP in the scale of Rs.7500-12000/- Therefore, in our opinion, it cannot be said that the pay scale of the applicant has been wrongly fixed or paid. In fact, the applicant was paid the pay scale for which she was entitled as per the rules and Government's instructions from time to time on the subject.

20. With regard to the request of the applicant to declare point No. 3 of sr. No. 5 of Schedule I appended with the National Institute of Ayurveda Service Rules, 1982 as ultra virus and colourable exercise of power is concerned, we are of the opinion that the applicant has failed to prove any reason as to why this provision be declared as ultra virus. The applicant could not be promoted from the post of Physician to Lecturer because under the Service Rules, the post of Physician was not included as a feeder cadre for promotion to Lecturer. It is for the Rule making authority to decide what qualification and

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experience are required for a particular post to be filled. We are not convinced that the provision of Point No. 3 of Sr. No. 5 of Schedule-I appended with the National Institute of Ayurveda Service Rules, 1982 are either ultra virus or in colorable exercise of power by the respondents. They are not violative of Articles 14 & 16 of the Constitution of India. Therefore, we are of the view that these provisions cannot be declared as ultra virus.

21. Thus looking from any angle, the applicant is not entitled to any relief by this Tribunal.

22. Consequently the OA being bereft of merit is dismissed with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

AHQ


(Justice K.S.Rathore)
Member (J)