

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
CHANDIGARH**

Date of filing of OA : 26.05.2014

Pronounced on: 22.4.2016

Reserved on : 31.03.2016

OA No. 060/00461/2014

Coram: Hon'ble Mr. Justice L.N. Mittal, Member(J).
Hon'ble Mrs. Rajwant Sandhu, Member(A).

Dr. Anita Sinha Malhotra, Associate Professor, Department of Physiology,
Government Medical College & Hospital, Sector 32, Chandigarh.

.....Applicant

By Advocate : Sh. R.S. Bains

Versus

1. Chandigarh Administration through the Secretary, Medical Education and Research, Deluxe Building, Sector 9, Chandigarh.
2. Government Medical College & Hospital, Sector 32, Chandigarh through its Director Principal.
3. Union Public Service Commission through its Secretary, Dholpur House, New Delhi.
4. Dr. Manish Ramavat, Department of Physiology, Gujarat Medical Education & Research Society Medical College, Patan, Gujarat.

.....Respondents

By Advocate : Sh. Aseem Rai for respondent No.1 & 2.
Sh. B.B. Sharma for respondent No. 3.
None for respondent No. 4.

ORDER

By Hon'ble Mrs. Rajwant Sandhu, Member(A):-

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

Ad. -

"(i) Issuance of an appropriate direction or order for quashing the impugned order/letter Annexure A-1 vide which the claim of the applicant for consideration for selection for the post of Professor (Physiology) in Government Medical College and Hospital, Sector 32, Chandigarh has been declined.

(ii) Issuance of an appropriate direction or order for direction to the respondents Chandigarh Administration and UPSC for discloser of the result of selection and if the original applicant is at No. 1 in the select list, she may kindly be issued appointment letter for the post of Professor (Physiology) in Government Medical College and Hospital, Sector 32, Chandigarh."

2. It is stated in the OA that the applicant joined GMCH Chandigarh on 16.10.1996 as Lecturer on contractual basis, was promoted as Senior Lecturer on 03.12.1999 on contractual basis and was recruited as Senior Lecturer through UPSC on 03.01.2003. Thereafter, the applicant was promoted as Associate Professor on 04.01.2008 under the Career Advancement Scheme (CAS) as per order dated 17.11.2008 (Annexure A-3).

3. A copy of the Career Advancement Scheme published in the Chandigarh Administration Gazette on 01.03.2007 is annexed as Annexure A-4. Further, as per the Recruitment Rules of 2002 dated 28.11.2002, on consideration for promotion/recruitment to the post of Professor, ten years' experience is required after acquiring Post Graduate qualification out of which four years should be as Reader/Associate Professor in a recognized medical college/teaching institution.

3. The UPSC advertised the post of Professor (Physiology) for which the last date of sending applications was 28.11.2013. This was an open post since attempts to fill this post through deputation/contract had failed. The applicant requested for "experience and no objection certificate" from GMCH which was issued to her and she applied in response to the advertisement. The applicant was called for interview vide letter dated 06.03.2014 and appeared for the same on 04.04.2014. However, on the

M—

date of the interview, applicant was given a letter by the UPSC through which she was informed that the interview was provisional as a representation had been received in the UPSC regarding her experience as Associate Professor and the UPSC had sought clarification from GMCH in this regard (Annexure A-9). The applicant then sent representation dated 09.05.2014 to the UPSC (Annexure A-10). The applicant was shocked and surprised when she received letter from UPSC stating that as per clarification given by respondents, those teachers who had been redesignated on higher post, will not receive benefit of experience as Reader/Associate Professor in these posts (Annexure A-1). Hence this OA.

4. In the grounds for relief, it has, interalia, been stated as follows:-

- (i) The very object of the scheme is to check brain drain and take remedial measures for curbing the tendency of exodus of medical faculty from the respondent college as non-availability of vacancies in the promotional post had created stagnation. In order to grapple with this problem flexible cadre concept was introduced through the CAS. The rationale of the scheme is not to grant benefit to those who may not be fit for higher position but to remove stagnation of those who were fit and yet could not get higher position because of shortage of adequate number of such posts. Therefore, when teachers are given higher designation under the career advancement scheme after undergoing a process of selection and after attaining the eligibility as per recruitment rules, it is unjust to deny them the benefit of experience. There is nothing special or exemplary in a person getting selected through recruitment process when compared to a person who gets promoted through a process of evaluation at the Department level. Therefore, the experience gained by the applicant cannot be ignored or brushed aside only on the ground that her attaining that designation in the higher post is only through the UPSC when her order of higher designation clearly says that her appointment at the higher post is on regular basis. The Department is also estopped from claiming that the applicant's experience cannot be counted after having themselves given the "no objection certificate and experience certificate".
- (ii) The respondent college has supplied information to the Medical Council of India that the applicant is Associate Professor and is now giving contrary advice to the UPSC. The true copy of the declaration

16-

forms submitted to Medical Council of India as well as Department wise staff requirement for 50 students and the educational and professional requirements for Physiology are placed on record as Annexures A-11, A-12 and A-13.

- (iii) The Career Advancement Scheme of the respondent college had been challenged before this Tribunal earlier, the OA was dismissed and the Scheme was upheld.
- (iv) The respondents cannot deviate from the educational experience qualifications mandated by the Medical Council of India and therefore to that extent the impugned order which declares applicant ineligible is bad in law.

5. In the written statement filed on behalf of respondents No. 1 & 2, the facts of the matter have not been disputed. It has been stated that although the applicant was redesignated, admittedly, she was redesignated as Associate Professor (Physiology) under the said Career Advancement Scheme in higher cadre vide order dated 17.12.2008 w.e.f. 04.01.2008.

This order was subject to the following conditions:-

- (i) The redesignation shall begin from the date when a faculty member becomes eligible for the post in case such date is later than the date when she starts drawing basic pay of the higher post.
- (ii) The redesignation is further subject to the condition that it is allowed to her if she fulfils all the requirements prescribed in the recruitment rules.
- (iii) The redesignation of the higher cadre made under the scheme will be on in-situ basis and therefore the work allocation of teaching and clinical para-clinical workload will remain the same after redesignation in the higher cadre.
- (iv) The redesignation under the scheme is made irrespective of the vacancies in the higher cadre and the incumbent will keep on drawing the same emoluments as per her existing pay scale and the re-designation shall not entitle the incumbent for any additional financial benefit whatsoever.
- (v) In the case of already appointed faculty through UPSC, the benefit of re-designation is given from the date when the incumbent becomes eligible for higher designation. In case the employee is found ineligible for redesignation on a particular date, her case will be reviewed thereafter on year to year basis and she will be granted the benefit of redesignation from the date when she becomes suitable for the same.

M —

(vi) The existing seniority of the Professors/Readers determined by the competent authority shall remain undisturbed.

In the prevailing 3 tier system in the respondent GMCH, the faculty consists of three designations i.e. Senior Lecturer in the pre-revised pay scale of Rs. 14300-18150, Reader in the pre-revised pay scale of Rs. 16500-20100 and Professor in the pre-revised pay scale of Rs. 18600-22100. In almost all departments, there is one post of Professor, one post of Reader and usually one or two posts of Senior Lecturers. As the respondent GMCH is a relatively new institute, the recruitment/appointment to these posts have been made almost simultaneously. As a result, the age difference between Professors, Readers and Senior Lecturers is not much. In established institutes which have remained in existence since long, there evolves a situation where the initially recruited faculty gradually attains a huge gap in terms of seniority in age and experience. It allows the gradual and systematic induction of fresh talent in the faculty and each faculty member eventually gets promoted to the next higher post as and when senior faculty members get promoted or superannuated. As the respondent Medical College has been in existence for less than 25 years and the recruitment rules came into existence only in 2002, the induction of faculty against the 3 tier designations of the posts has happened simultaneously and within a short span of time. As such, the age difference between the three categories of faculty is not large. Hence, the promotion as provided under the existing rules is only vacancy based i.e. a person in the lower post will get an opportunity to get promoted to the higher post only when the present incumbent occupying the higher post gets promoted or retires. As the age gap inter-se amongst these three posts/cadres is not much, people are liable to stagnate in one post for long years at a stretch. Such

Ms _____

stagnation will be highly detrimental to the motivation and efficiency of the faculty members.

6. It is further stated that the Central Health Service (CHS) also has a three tier system with the following designations and basic scales:-

- (a) Assistant Professor in the pre-revised pay scale of Rs. 10000-15200
- (b) Associate Professor in the pre-revised pay scale of Rs. 12000-16500 and
- (c) Professor in the pre-revised pay scale of Rs. 14300-18300

An Assistant Professor on completion of two years of service is promoted to the post of Associate Professor in the higher pay scale. After four years as Associate Professor, the person is promoted to the post of Professor in the next higher pay scale. The promotions are not vacancy based. This ensures that medical professionals working under the Central Health Service (CHS) are assured of time bound promotion/promotional scales. This prevents stagnation on a post and allows the gradual and continuous progress in the career of the medical professional. Keeping the said facts in mind and in order to mitigate the stagnation and to further motivate the faculty, it was proposed that in the respondent GMCH, a senior lecturer would be redesignated to the post of Reader after five years which is the minimum experience required as per the Medical Council of India's regulations. Further, a Reader would be redesignated as Professor after four years which is also the minimum experience required as per MCI regulations. It was to be ensured that such a faculty member had even otherwise reached the minimum of the basic salary of the higher scale. The minimum period after which a faculty member in the respondent institute would get the designation of Professor is nine years as compared to the Central Health Services which it is only six years. The gist of this entire exercise was to allow merely a higher redesignation after 5 + 4 years

11—

without there being any placement in the higher pay scale corresponding to the higher post. It was made clear that such an exercise neither required creation of extra posts nor did it involve any financial implications. It is reiterated that the purpose of such redesignation is to allow a basic minimum benefit of higher status in the profession without necessarily adding any post or incurring any financial burden. The overall profile of the faculty as a whole would be enhanced and the academic competence would be in accordance with the requirements laid down by the Medical Council of India. It would allow such faculty members to become eligible for prestigious duties such as getting appointed as external examiners in selection/tests for medical staff/faculty and would be helpful for the induction of postgraduate courses like MD/MS as well as increasing the number of seats in MBBS courses in the near future. This proposal after appropriate amendments stands approved by the competent authority and was notified in the official Gazette of the Chandigarh Administration on 01.03.2007 (Annexure R-1/1). This notification is neither contrary to the RRs of 2002 nor does it change or amend the provisions of the said RRs in any manner.

7. It is also stated that the applicant cannot claim any benefit of teaching experience as Associate Professor/Reader (re-designated from Assistant Professor/Sr. Lecturer under Career Advancement (Re-designation in higher Cadre Scheme) with effect from 04/01/2008 to 28/11/2013. As such, she does not fulfil the eligibility criteria and the minimum requirement of four years of experience as Associate Professor out of total ten years teaching experience. Resultantly, based upon the recommendations of the answering respondents, the Union Public Service Commission has cancelled the candidature of the applicant for the posts of

Ms —

Professor (Physiology) vide the impugned communication dated 16/05/2014 (Annexure A-1).

8. In the written statement filed on behalf of respondent No. 3, the facts of the matter have not been disputed. It is stated that the GMCH, Chandigarh clarified vide letter dated 07.05.2014 (Annexure R-3/5), that the applicant was redesignated as Associate Professor in the Department of Physiology vide order No. GMC/EA1/7(245)/2008/53504-534 dated 17.12.2008. In view of the CAS (redesignated in higher cadre) as introduced in the Institute vide order No. GMCH/1EA1/7(177)/206/5056-60 dated 08.02.2007, it is clearly mentioned in para 3 of the Scheme that "the redesignation in the higher cadre made under this Scheme will be on in-situ basis and therefore, the work allocation of teaching and clinical/para clinical workload will remain the same after redesignation in the higher cadre". Para 8 of the Scheme stated that "if the regular post of a Reader and/or Professor falls vacant due to retirement/demise/resignation/new creation, the redesignated incumbent shall be required to undergo the same procedure and meet the same standards as contained in the RRs/instructions and the redesignation earned under this Scheme will not bestow upon any right to him/her for selection to the vacant/newly created post". In view of this, it was clarified that Sr. Lecturer (Assistant Professor) redesignated as Reader (Associate Professor) under CAS will not get the benefit of experience as Reader (Associate Professor). In view of this clarification, the Commission decided that the experience claimed by the applicant as Assistant Professor (redesignated as ^{Associate} Assistant Professor) for the period from 04.01.2008 till date is not relevant experience for the post of Professor (Physiology) in the GMCH, Chandigarh. Therefore, her candidature for the post of Professor (Physiology) was cancelled by the

16 —

Commission due to lack of minimum requirement of four years of experience as Associate Professor out of total ten years teaching experience towards Essential Qualification (B) vide letter dated 16.5.2014 (Annexure R-3/6). As no other candidate was found eligible for the post by the Interview Board, the recruitment action to fill up one post of Professor (Physiology) in the GMCH, Department of Medical Education and Research, Chandigarh Administration, General Central Services Group 'A' became as 'infructuous at interview stage'. Accordingly, advice letter to GMCH, Chandigarh was issued on 19.05.2014 (Annexure R-3/7). Thus, it is evident that the candidature of the candidate has been cancelled by the Commission based on the clarification received from the requisitioning authority (GMCH, Chandigarh) since as per their clarification, the candidate does not fulfil the minimum eligibility criteria of four years of experience as Associate Professor out of the total ten years of experience.

9. Replication has been filed on behalf of the applicant reiterating the content of the OA.

10. Arguments advanced by learned counsel for the parties have been heard at length. Learned counsel for the applicant stated that the applicant was performing all the duties of the Associate Professor and while furnishing details of the faculty at the GMCH to the Medical Council of India (MCI), the respondents had always been showing the applicant to be an Associate Professor performing all the duties related to the post. Learned counsel also referred to the definition of "experience" as per the online dictionary, Cambridge English Dictionary and Webster Dictionary etc. to show that the applicant who was redesignated as Associate Professor under the CAS, could not be denied the benefit of the years of service that she had put in as such. Her service since the date she was

11

designated as Associate Professor had to be counted as "experience" in this post and hence, she fulfilled the eligibility criteria for promotion as Professor. Learned counsel also cited **N. Nagarajan Vs. University of Madras, (2013)6 MLJ 282, Vidya A (Dr.) w/o Vasant Baile & Ors. Vs. Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur & Ors., (2008) 3 Bom CR 872** in this regard.

11. Sh. Aseem Rai, learned counsel for respondents No. 1 & 2 referred to the CAS and stated that as per the Scheme, the applicant was not entitled to any benefit of experience on her redesignation as Associate Professor which designation had been allowed to the applicant as per order dated 17.11.2008 as the Scheme itself did not envisage any such benefit. Hence, the Administration had rightly conveyed to the UPSC that the applicant, who was working as Associate Professor on redesignation basis, did not fulfil the eligibility criteria for the post of Professor.

12. Sh. B.B. Sharma, learned counsel for respondent No. 3 stated that in reaching the decision regarding holding the applicant to be ineligible for the post of Professor, the UPSC had relied on the clarification supplied by respondent No. 1.

13. We have given our careful consideration to the matter. It is seen from the material on record that the applicant who is designated as Associate Professor is performing all the duties assigned to her and she is also drawing the pay of the redesignated post since she had crossed the minimum of the pay scale of Associate Professor while she was Assistant Professor. When the content of the Central Health Scheme and the CAS are compared, it is seen that the faculty in GMCH is not getting the redesignations under CAS as Associate Professor/Reader unduly early, but in fact, are getting the same after a longer duration than prescribed

AS

under the CHS. The respondents have also been conveying to the MCI that the applicant is holding the post of Associate Professor. The raison d'etre for the CAS was to allow the redesignation of faculty members who were fulfilling the criteria for promotion to the higher posts in terms of years of service, but were not able to get promoted on regular basis in view of non-availability of vacant posts. If the service rendered after redesignation was not to be counted as "experience" of manning the higher post, the objective of the CAS would be largely negated as persons such as the applicant would not be able to apply for higher posts against direct recruitment vacancies thus leading to blocking of opportunities for career advancement and consequent frustration. Hence, we conclude that the period that the applicant has served as Associate Professor after her redesignation as such, is to be counted as experience for determining the eligibility of the applicant for the post of Professor (Physiology) keeping in view the RRs for this post. The OA is allowed and the respondents No. 1-3 are directed to take consequential action in this regard within a period of sixty days from the date of receipt of a certified copy of this order being served upon the respondents. No costs.

Rs —————
(RAJWANT SANDHU)
MEMBER(A)

—————
(JUSTICE L.N. MITTAL)
MEMBER(J)

Dated: 22.4.2016
ND*