

**Central Administrative Tribunal
Principal Bench**

OA No.579/2017

Order Reserved on: 26.09.2017

Pronounced on: 13.10.2017

**HON'BLE MR. JUSTICE PERMOD KOHLI, CHAIRMAN
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)**

Dr. Ravi Kumar,
S/o Shri Baidyanath Prasad,
Aged 49 years,
Senior Specialist and Assistant Professor, Biochemistry,
Ram Manohar Lohia Hospital,
New Delhi-01.
R/o Flat No.108, Sector-19,
Sundram Khand, Vasundhara,
Ghaziabad-201012. .. Applicant

(By Advocate : Shri G. Natarajan)

Versus

1. The Secretary to Govt. of India,
Ministry of Health and Welfare,
Nirman Bhawan,
New Delhi-110001.
2. The Director & Medical Superintendent,
Dr. Ram Manohar Lohia Hospital,
PGIMER,
New Delhi-110001.
3. Registrar,
Guru Gobind Singh Indraprastha University,
Dwarka, New Delhi-110075.
4. Dr. Neera Sharma,
GDMO, On deputation as Senior Specialist,
Dr. Ram Manohar Lohia Hospital,
New Delhi-110001. .. Respondents

(By Advocate : Shri Hanu Bhaskar for official respondents and
Shri H.D. Sharma for private respondent)

O R D E R**Hon'ble Mr. K.N. Shrivastava, Member (A):**

Through the medium of this Original Application (OA), filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:

"(ii) Hold and declare that the impugned order No.1-2/2013/Admn./PGIMER dated 10.02.2017 issued by the PGIMER, Dr. Ram Manohar Lohia Hospital is ultra vires being in contravention of Articles 14, 16 and 21 of the constitution of India and the Principles of Natural Justice and set aside the same.

(iii) To direct the Official Respondents to designate the Applicant as HoD in the Department of Bio-chemistry in Dr. Ram Manohar Lohia Hospital, New Delhi as he is already working as sole Specialist Grade-I and as such is eligible to be appointed as such."

2. The factual matrix of this case is as under:

2.1 The applicant is working as a Senior Specialist & Assistant Professor (Biochemistry), CGHS Wing, Dr. Ram Manohar Lohia Hospital (RML Hospital in short), New Delhi, which comes under the administrative control of Ministry of Health and Family Welfare (respondent no.1).

2.2 RML Hospital earlier, known as Willingdon Hospital, was established in 1932 and is a premier multi-super speciality hospital of the Central Government. A Post Graduate Institute of Medical Education and Research (PGIMER) was established in 2008 in the

hospital and thus the hospital became an attached hospital of PGIMER.

2.3 The PGIMER has got various departments. In a meeting held on 09.04.2015 under the Chairmanship of Dr. S.K. Sharma, DDG (P), it was recommended to create a department of Biochemistry and further recommended that the senior-most Doctor in the Biochemistry would function as Head of Department (HOD) of the Department of Biochemistry, till a Professor (Medico) is posted (minutes at p.89).

2.4 In accordance with the aforementioned recommendations, respondent no.2 created the Department of Biochemistry in PGIMER by separating the Biochemistry Unit from Pathology department, vide order dated 14.08.2015 (Annexure A-3) and designated the applicant as its HOD. The order reads as under:

“The competent authority is hereby pleased to create Department of Biochemistry by separating the Biochemistry unit from Pathology Department. The Department of Biochemistry will work under supervision of HoD, Pathology.

2. Dr. Ravi Kumar, Specialist Grade-I is designated as HoD, Department of Biochemistry with immediate effect and until a Professor (medico) is posted. He will hold the charge of HoD, Department of Biochemistry in addition to his normal duties without any extra remuneration.

These issue with the approval of Director, PGIMER.”

2.5 Within three days of issuance of Annexure A-3 order, the respondent no.2 issued Annexure A-5 order dated 17.08.2015 whereby Annexure A-3 order was kept in abeyance until further

orders. Subsequently, respondent no.2 issued the impugned Annexure A-1 order dated 10.02.2017, whereby respondent no.4 has been designated as HOD of Biochemistry Department of PGIMER.

2.6 Aggrieved by the impugned Annexure A-1 order the applicant has filed the instant OA, praying for the reliefs as indicated in para-1 supra.

3. The applicant has pleaded the following important grounds in support of the reliefs claimed by him:

3.1 The applicant is already working as a Specialist Grade-I in the Biochemistry Department of CGHS Wing of RML Hospital and there is no other post of Specialist against which respondent no.4 could have been accommodated.

3.2 The respondent no.4 is a deputationist to RML Hospital and thus not eligible for seeking seniority and leadership as clarified by the RML Hospital vide its Annexure A-9 reply dated 29.09.2016 in response to an RTI query.

3.3 Respondent no.4 belongs to GDMO sub-cadre and hence not entitled for posting as HOD when officers of non-teaching sub cadres are available in the Department.

3.4 Any honorary designation given by a University cannot partake the character/status of doctors in their own cadre to which they belong, as has been held by this Tribunal in **Dr. A.K. Rai v. Union of India** (OA No.1621/2007 dated 12.12.2007) (Annexure A-2).

3.5 Posting of a person as HOD in the Biochemistry Department, who is not eligible to be designated as such, will have demoralizing effect on the applicant who is otherwise eligible to be designated as HOD Biochemistry.

4. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The official respondents (R-1 to R-3) in their reply have broadly made the following averments:

4.1 As per para 11.2 (c) of Post Graduate Medical Education Regulations, 2000 (2000 Regulations, in short) an institution started for postgraduate courses under sub-regulation (1A) of regulation 8 shall set up full-fledged departments of Pathology, Biochemistry, Microbiology and Radiology. The PGIMER had a full-fledged Biochemistry unit but it was working under the Pathology unit since its inception. In a meeting held on 09.04.2015, Director General of Health Services directed PGIMER to create a separate department of Biochemistry and designate the senior-most doctor in the department as HOD till a Professor (Medico) is posted. PGIMER was also directed to take steps to start the course in MD, Biochemistry. In compliance thereof, the PGIMER created a separate department

of Biochemistry vide order dated 14.08.2015 and designated the applicant as its HOD, as he was the senior-most amongst teaching specialists and non-teaching specialists working in the department. The General Duty Medical Officers (GDMOs) posted in the department were not considered for the post of HOD under the prevalent practice on the day. However, in the absence of a Professor in the department, PGIMER could not start the course concurrently and, therefore, requested respondent no.1 to post a Professor of Biochemistry in the department.

4.2 The order dated 17.08.2015 was kept in abeyance vide Annexure A-4 order dated 17.08.2015 as there were resentment about seniority of the applicant as he was claimed to be junior to respondent no.4. Since there was no clarity whether GDMOs could be designated as HODs, PGIMER requested respondent no.1 vide letter dated 31.08.2015 to issue a clarification in the matter. Incidentally, non-Medico Scientists, GDMOs, Non-teaching specialists and teaching specialists are all working in the Department of Biochemistry of PGIMER. Respondent no.1 vide letter dated 27.12.2016 (Annexure A-8) directed to designate HOD in terms of Medical Council of India (MCI) Regulations and existing practices and precedents.

4.3 As a common practice, senior-most non-teaching specialist or teaching specialist is designated as HOD of the department and GDMOs are normally not considered for such designation in view of

the fact that MCI does not\ consider them eligible for equated teaching designations under para 11.1 (d) of 2000 Regulations. However, a significant change in the situation occurred after the pronouncement of the Hon'ble Delhi High Court's judgment dated 24.11.2005 in WP (C) No.10767/2015 – **Delhi Medical Officers Forum v. Union of India & Ors.**, wherein the Hon'ble High Court found the GDMOs eligible for equated teaching designation in terms of MCI clarification dated 26.10.2015, which reads as under:

“..... all those doctors who possess postgraduate qualification and have worked continuously in the department of their PG qualification in Institutions or Hospitals where with the affiliation from any University, postgraduate teaching is being imparted should be considered eligible for grant of equated teaching designation irrespective whether they have worked on the cadre post of General Duty Medical Officer or Specialist. Those who have the experience of working for a period not less than 18 years and 10 years shall be eligible to be equated as Professor and Associate Professor respectively in the department concerned. Those with experience of less than 10 years will be eligible to be equated as Assistant Professor (Notification dated 16.03.2005). Only those GDMOs who do not have W.P.(C) 10767/2015 Page 3 postgraduate qualification and are performing rotational duty at different places will not be considered”.

4.4 Respondent No.2 has been conferred equated teaching designation of Professor w.e.f. 20.01.2017 by Guru Govind Singh Indraprastha University (IP University, for short) vide order dated 24.01.2017 (Annexure -12). The University has accepted that Respondent No.4 has PG degree in Biochemistry and has been working in Biochemistry Department of PGIMER and RML Hospital since more than 18 years, as she has joined RML Hospital on 20.06.1995 as a Medical Officer of GDMO sub-cadre. Accordingly

vide impugned Annexure A-1 order dated 10.02.2017, the Respondent No.4 has been designated as HOD of Biochemistry Department of PGIMER.

4.5 Non-Medico Scientists, GDMOs, Non-Teaching Specialists and Teaching Specialists are all working in the Department of Biochemistry. Teaching Specialist, Non-Teaching Specialist, Public Health and GDMO are the four sub-cadres of the Central Health Services (CHS) and their service conditions are regulated by the CHS Rules, 2014 (Annexure-14). The seniority list of all the four sub-cadres are maintained separately. It is only at the level of Senior Administrative Grade (SAG), the inter-se-seniority of these four sub-cadres comes into play.

4.6 Respondent No.4 belongs to GDMO sub-cadre of CHS whereas the applicant belongs to Non-Teaching Specialist sub-cadre of CHS. Respondent No.4 is holding the post of Chief Medical Officer (CMO) Non-Functional Selection Grade (NFSG) with Grade Pay of Rs.8700/- (Sixth Pay Commission) and was promoted to that post w.e.f. 20.06.2007 (Annexure-15). The applicant on the other hand was granted the said Grade Pay of Rs.8700/- after his promotion w.e.f. 01.02.2013 (Annexure-16). Hence Respondent No.4 is clearly senior to the applicant.

5. The Respondent No.4 in her reply has by and large made the same averments as have been made by the official respondents in their reply.

6. The applicant has filed rejoinder to the replies filed by the respondents in which in addition to repeating his pleadings in the OA, has stated that the claim of seniority of Respondent No.4 over the applicant is indeed bizarre. His contention is that Respondent No.4 is a deputationist to RML Hospital and, thereby to PGIMER and as clarified by RML Hospital in its reply to an RTI query, a deputationist cannot seek seniority for leadership.

7. On completion of the pleadings, the case was taken up for hearing the arguments of the learned counsel of the parties on 26.09.2017. Arguments of Shri G. Natarajan, learned counsel for the applicant, Shri Hanu Bhaskar, learned counsel for respondent Nos. 1 to 3 and Shri H.D. Sharma, learned counsel for respondent No.4 were heard.

8. Shri Natarajan, learned counsel of the applicant submitted that the applicant joined RML Hospital on 19.10.2011 as a Non-Teaching Specialist in Biochemistry Department against one of the six such posts in CGHS Wing of the Hospital. After the Biochemistry Department was created in PGIMER, he was found to be the most eligible specialist to be designated as HOD, Biochemistry. In this regard Shri Natarajan drew our attention to

an internal noting of the PGIMER at pages 150-151. He submitted that the case of Respondent No.4 was also considered in the same note but it was observed that she was not holding the regular posting as she was appointed on deputation and that she belongs to GDMO sub-cadre and not eligible to be equated as teaching faculty in terms of Rule-11.1 (d) of 2000 Regulations. Accordingly vide Annexure A-3 order dated 14.08.2015 of Respondent No.2, the applicant was designated as HOD.

8.1 It was further submitted that pursuant to Annexure A-3 order, the applicant assumed charge as HOD on 17.08.2015 and submitted his charge assumption letter to Respondent No.2 (Annexure A-4). Not only that, in his capacity of HOD Biochemistry he also issued certain instructions to the faculty members of the department as to signing in the faculty attendance register vide notice dated 19.08.2015 (page-149).

8.2 Shri Natarajan vehemently argued that on the basis of a selection process conducted by the UPSC, Respondent No.4 was appointed on deputation basis to the post of Specialist Grade-1 (Biochemistry) at RML Hospital vide OM dated 01.09.2011 (Annexure-18). He submitted that Respondent No.4 belonging to GDMO sub-cadre and being on deputation cannot assume any leadership position in PGIMER, as clarified by the RML Hospital in response to an RTI query. In this connection, the learned counsel

drew our attention to the judgment of the Hon'ble Supreme Court in the case of **State of Punjab & Ors. v. Inder Singh & Ors. etc.**, [JT 1997 (8) SC 466], where the Hon'ble Supreme Court has observed as under:

“19. Concept of "deputation" is well understood in service law and has a recognised meaning. 'Deputation' has a different connotation in service law and the dictionary meaning of the word 'deputation' is of no help. In simple words 'deputation' means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per Recruitment Rules.....”

9. Per contra, Shri Hanu Bhaskar, learned counsel for Respondent Nos. 1-3 argued that Respondent No.4 was promoted to the NFSG with Grade Pay of Rs.8700/- in January, 2007 itself whereas the applicant came to that grade in January, 2013. Hence there can be no doubt that Respondent No.4 is senior to the applicant.

9.1 Learned counsel further submitted that Respondent No.4 has been working as Specialist w.e.f. 01.09.2011 and was conferred equated teaching designation of Professor w.e.f. 20.01.2017 by the IP University. On the other hand, the applicant has been holding the post of Specialist Grade-I since 01.02.2013 and has been conferred equated teaching designation of Assistant Professor by the same University vide order dated 08.09.2016. Hence, Respondent No.4 is not only senior to the applicant in terms of holding the post

of Specialist Grade-1 but is also senior in terms of the teaching designation as well.

9.2 Shri Bhaskar vehemently argued that the applicant's appointment as HOD in Biochemistry Department vide Annexure A-3 order dated 14.08.2015 was withdrawn hastily vide Annexure A-5 order dated 17.08.2015 and as such the applicant never worked as HOD. He submitted that by misrepresenting the facts before this Hon'ble Tribunal, the applicant was able to obtain interim order on 16.02.2017 as per which, he has been allowed to work as head of the Biochemistry Department.

10. Shri H.D. Sharma, learned counsel for Respondent No.4 adopted the arguments of Shri Hanu Bhaskar, learned counsel for Respondent No. 1-3.

11. We have considered the arguments of the learned counsel of the parties and have perused the pleadings. The CHS Rules, 2014 notified by Respondent No.1 vide Notification dated 07.04.2014 make it clear that CHS has got four sub-cadres namely General Duty, Public Health, Non-Teaching Specialist and Teaching Specialist. Schedule-1 annexed to the Rules identifies CHS posts in the Government and its Hospitals, in various grades. The details of the CHS posts identified in PGIMER and RML Hospital are at Para-4 (f) and Para-4 (d) respectively of this Schedule. As can be seen from the Schedule, three posts of Assistant Professor/Associate

Professor/Professor in the Biochemistry Department of PGIMER are identified for CHS.

12. Admittedly the applicant was appointed in the Non-Teaching sub-cadre of CHS and Respondent No.4 was appointed in GDMO sub-cadre of CHS. Respondent No.4 has been working in RML Hospital almost since her joining CHS. PGIMER is an integral part of the RML Hospital. Hence to call Respondent No.4 as a deputationist to the Hospital would be erroneous.

13. As mentioned in the foregoing paras, Respondent No.4 came to be promoted to the NFSG grade with Grade Pay of Rs.8700/- in June, 2007 whereas the applicant came to that grade much belatedly in January, 2013. The Respondent No.4 was equated to the designation of Professor on 20.01.2017 by the IP University whereas the applicant was equated teaching designation of Assistant Professor by the same University on 08.09.2016. Additionally Respondent No.4 has been working as Specialist Grade-I w.e.f. 01.09.2011 whereas the applicant came to that grade on 01.02.2013. From these facts, it is well established that Respondent No.4 is not only senior to the applicant but is also senior in terms of teaching designation as well. The order dated 14.08.2015 (Annexure A-3) whereby a separate department of Biochemistry was created in PGIMER and the applicant was designated as its HOD clearly stipulates that this arrangement

would be valid till a Professor (Medico) is posted in the said department. The said order to the extent of designating the applicant as interim HOD was, however, subsequently kept in abeyance vide order dated 17.08.2015 (Annexure A-5). In this context, it will be prudent to mention that in view of the fact that Respondent No.4 has been equated with teaching designation of Professor by the IP University, hence even in terms of Annexure A-3 order dated 14.08.2015, she would be eligible for being designated as HOD of Biochemistry Department ahead of the applicant. It is to be noted that granting of equated teaching designation of Professor by IP University to Respondent No.4 was perfectly in accordance with sub-clause 11.1 (d) of MCI 2000, Regulations, which reads as under:-

“11.1 (d) Consultants or specialist who have the experience of working for a period not less than 18 years and 10 years in the teaching and other general departments in the institution or hospitals, not attached to any medical college, where with the affiliation from any university, postgraduate teaching is being imparted as contemplated under sub-regulation (1A) of regulation 8, shall respectively be eligible to be equated as Professor and Associate Professor in the department concerned. The requisite experience for equating a Consultant or Specialist working in the super-speciality department of the said institution or hospitals as Professor and Associate Professor shall respectively be 16 years and 8 years. Consultants or specialist having postgraduate degree qualification, working in such an institution or hospital, who do not have the said period of experience, shall be eligible to be equated as Assistant Professor in the department concerned.”

14. The learned counsel for the applicant has harped upon the judgment of this Tribunal in the case of **Dr. A.K. Rai** (supra) to say that any honorary designation given by the IP University cannot partake the character/status of doctors in their own cadre to which

they belong. We have gone through the judgment of this Tribunal in **Dr. A.K. Rai** (supra). The controversy involved therein was that a junior doctor in the ENT department was designated as HOD overlooking the claim of his senior. The plea of the official respondents in that case for designating a junior doctor as HOD of ENT department was that junior has been designated as Professor by the I.P. University whereas the senior has not been designated. The Tribunal has made the following observation in that regard:

“16. Let us examine it from a different angle. Respondents case is that respondent No. 4 has been designated as Professor by Guru Govind Singh Indraprastha University, but neither applicant belongs to that University nor he is an employee of the said University, therefore, any honourary designation given by the said University, cannot partake the status of Doctors in their own cadres, to which they belong. Undisputedly both belong to Non Teaching Specialist sub cadre of ENT. Supposing, respondent No. 4 is transferred from Safdarjung Hospital to Dr. RML Hospital today, will he still be allowed to carry the designation of Professor and make use of it. Answer is nobecause that is not where he belongs to. His seniority has to be seen in the cadre to which he belongs and in the cadre of Non-Teaching speciality of ENT, definitely he is junior to the applicant, therefore, we are satisfied, the impugned order is passed in an arbitrary manner, therefore, the same is not sustainable in law.”

15. The facts of the present case are entirely different from those of **Dr. A.K. Rai** (supra). As discussed earlier, the respondent no.4 is much senior to the applicant since she came to the NFSG grade in June, 2007 whereas the applicant came to that grade in January, 2013. Designation of respondent no.4 as Professor by the I.P. University 20.01.2017 provides her a clear edge over the applicant who continues to be having equated teaching designation of Assistant Professor. The intention of Annexure A-3 order dated

14.08.2015 was to fill up the post of HOD, Department of Biochemistry by a Professor (Medico).

16. In the conspectus of the discussions in the foregoing paras, we do not find any infirmity or illegality in the impugned Annexure A-1 order dated 10.02.2017 of respondent no.2 whereby respondent no.4 has been designated as Head of Biochemistry Department of PGIMER. Accordingly, the OA is dismissed being found devoid of merit. The interim order dated 16.02.2017 is hereby vacated.

17. No order as to costs.

(K.N. Srivastava)
Member (A)

(Justice Permod Kohli)
Chairman

‘San.’