

**Central Administrative Tribunal
Principal Bench**

OA No.622/2012

Order reserved on : 16.09.2015
Order pronounced on: 30.09.2015

**Hon'ble Mr. Justice B.P. Katakey, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)**

Dr. Pankaj Agnihotri,
Aged about 54 years
S/o (Late) Mr. Ayodhya Prasad Agnihotri,
D-II/10, Cornwallis Road,
New Delhi-110003.

...Applicant

(By Advocate: Dr.Ashwani Bhardwaj)

Versus

1. Union of India
Through the Secretary,
Ministry of Health and Family Welfare,
NirmanBhawan,
New Delhi-110001.

2. Dr.Ritu Chawla,
Through C.H.S.-II Section,
Ministry of Health and Family Welfare,
NirmanBhawan,
New Delhi-110001.

...Respondents

(By Advocate : Shri V.S.R.Krishna)

ORDER

Mr. V.N. Gaur, Member (A) :-

The present OA has been filed by the applicant for preponement of date of his promotion as Chief Medical Officer (CMO) and Chief Medical Officer, Non Functional Selection Grade

(CMO NFSG) to the dates on which his junior, respondent No.2 was granted these promotions. The applicant was originally appointed as Medical Officer in UP Provincial Medical Health Service in September, 1985 and Senior Medical Officer (SMO) on 20.03.1992. He came on deputation to the Central Health Services (CHS) on 15.07.1999 in the grade of SMO. Subsequently, he was absorbed in the CHS with effect from 26.09.2003 in terms of Rule 8 of the Central Health Services Rules, 1996. In order to get the benefit of service rendered in the grade of SMO prior to absorption in CHS, the applicant had to resort to several rounds of litigation which we do not consider necessary to recount here in detail. Suffice would it be to say that as a result of these Court battles, the seniority of the applicant was fixed at Sl. No.708-A in the Civil List of SMO as on 01.01.1994, below Dr.(Smt.) Mala Shukla and above Dr. (Mrs.)Ritu Chawla, by giving him the benefit of the past service. He was promoted as CMO with effect from 30.09.2003 and CMO (NFSG) from 30.09.2007. The next junior of the applicant Dr. Ritu Chawla had got these scales of CMO and CMO (NFSG) with effect from 28.08.1997 and 05.04.2002 respectively. The prayer of the applicant in this OA is to promote him to the grade of SMO with effect from 01.01.1994, as CMO with effect from 28.08.1997 and CMO (NFSG) with effect from 05.04.2002, i.e. the dates on

which his immediate junior got these promotions. The prayer clause of the OA is reproduced below:

“a. Direct the Respondent to grant consequential benefits of the order dt. 31.08.2010, by which the seniority of the applicant in the C.H.S. in the Civil List of S.M.O. was fixed w.e.f. 20.03.1992 at S.No.708 A in the C.L. of S.M.O. as on 01.01.1994) below Dr. (Smt.) Mala Shukla and above Dr. (Mrs.) Ritu Chawla nee Anand, AND

b. Partially quash the order No.A.23024/1/04-CHS.II DT.15.04.2011 (as corrected vide its order dt.25.04.2011) only to the extent of granting promotion to the applicant as (Chief Medical Officer) C.M.O. w.e.f. 30.09.2003 and as Chief Medical Officer (Non Functional Selection Grade) C.M.O. (N.F.S.G.) w.e.f. 30.09.2007, instead of granting this promotions from the dates, when his immediate junior Dr. Ritu Chawla was granted these promotions, and

c. Direct the Respondent to grant promotion as (Senior Medical Officer) S.M.O. w.e.f. 01.01.1994, as C.M.O. w.e.f. 28.08.1997 and as C.M.O. (N.F.S.G.) w.e.f. 05.04.2002, i.e. from the dates, when all these promotions were granted to Dr. Ritu Chawla, immediate junior to the applicant, and direct the respondent to give all consequential benefits to the applicant and

d. Pass any other order or direction which this Hon’ble Tribunal thinks fit and proper in the facts and circumstances of the case.”

2. Dr. Ashwani Bhardwaj, learned counsel appearing on behalf of the applicant took us through the developments chronologically and the decisions given by this Tribunal and Hon’ble High Court in various cases filed by the applicant. The ultimate result of these judgments was that the applicant was declared as entitled to get the benefit of service rendered in his parent organisation prior to absorption in CHS and all consequential benefits including promotions. Consequently, the

respondents fixed his seniority in the grade of SMO with effect from 20.03.1992 in the civil list of SMO as on 01.01.1994 and promoted the applicant to the grade of CMO and CMO (NFSG) with effect from 30.09.2003 and 30.09.2007 respectively after giving him benefit of the past service. The learned counsel for the applicant challenged these actions of the respondents. It was contended that once the Hon'ble High Court of Delhi by judgement dated 22.07.2010 in WP(C) 3845/2010 granted the benefit of past service to the applicant, and the seniority of the applicant had been fixed above the respondent no. 2, the applicant was entitled to get all the benefits that have been granted to his immediate junior. Specifically, as the respondent no. 2 was promoted as CMO with effect from 28.08.1997 and as CMO (NFSG) with effect from 05.04.2002, the applicant also had a right to get these promotions from the same dates. It is a settled law that the applicant cannot be denied these benefits once the same has been given to his immediate junior. According to learned counsel, the impugned order dated 15.4.2011 promoting the applicant as CMO and CMO (NFSG) with effect from 30.09.2003 and 30.09.2007 is nothing but reiteration of the order dated 29.08.2006 which was set aside by a Full Bench of this Tribunal by its order dated 22.04.2009 in OA 1436/2007 and 1437/2007. That is also a violation of the judgment of the Hon'ble Delhi High court dated 22.07.2010 in

which relying on the judgment of Hon'ble Supreme court in the case of **SI Roop Lal And Anr. Vs. Lt. Governor, Delhi and Ors.** (JT 1999 (9) SC 597), it had been observed that service rendered by the deputationist shall be taken into consideration while computing his period of service for the purpose of determining the seniority and also for consideration of promotion to the higher grade. The learned counsel further stated that the respondents in their counter have again raised the same contentions, including the case of **Prabha Devi vs UOI**, 1988 (2) SCC 233, which had already been considered by the Full Bench of this Tribunal and the Hon'ble High Court of Delhi while arriving at the conclusions in the cases adverted to above.

3. Per contra, Shri V. S. R. Krishna, learned counsel appearing for the respondents, stated that the respondents have implemented the decisions of this Tribunal and Hon'ble High Court in its true spirit and gave the benefit of the past service to the applicant when he was promoted to the grade of CMO with effect from 30.09.2003. He further submitted that the prayer made by the applicant in this OA is not sustainable in law as he is asking for promotions with effect from the dates on which he was not even a member of the CHS. The respondent did not have jurisdiction to even consider his promotion prior to his absorption in CHS. The consequence of direction given by the Courts in his case was to give him benefit of the past service for

promotion and that is what was done by the respondents. However, after the first promotion, his next promotion would be governed by the Recruitment Rules, which, in this case, required service of four years in the grade of CMO before being considered for promotion to the grade of CMO (NFSG). The applicant was considered, and given promotion to the grade of CMO (NFSG) immediately after he completed 4 years as CMO on 30.09.2007. Thus, he cannot have any grievance in this regard. He further contended that the applicant raised these issues after having accepted the offer of appointment in which it was clearly stated that his regular appointment in the grade of SMO on direct recruitment basis will be with effect from 29.09.2003. The dates from which he is asking for promotion at par with his immediate junior, there is a probability that he might not have got promotion in his parent department. Referring to rule 7(4) of the CHS, Rules, 1996, learned counsel stated that this rule which provides for consideration of the senior when a junior is being considered for higher post, had to be seen in the context of recruitment of Medical Officers who joined CHS in batches on qualifying competitive examination held by UPSC. The DOP&T has advised that the seniority fixed for protecting past service does not make the absorbed doctors eligible for promotion to the next level in CHS. The absorbed doctors in GDMO sub-cadre are required to complete the prescribed qualifying service in the

feeder grade (in addition to any other eligibility requirement) and such qualifying service is to be counted only from the date of absorption. He also referred to the instructions issued by Ministry of Health and Family Welfare (respondent No.1) dated 05.04.2002, stipulating that CHS officers having five years regular service as SMO will be promoted to the post of CMO, and CMO after completion of four years of service in that grade will be promoted to CMO (NFSG). The applicant, therefore, has no case to claim promotion *de hors* the recruitment rules. According to the learned counsel, seniority and promotion were two different things and one cannot be substituted by another. Promotion to a higher post was regulated by the provision contained in the Recruitment Rules and a candidate must fulfil the requirements laid down therein. The applicant did not meet those requirements on the dates from which he is claiming promotions. The learned counsel relied on **Prabha Devi** (supra).

4. We have heard the learned counsels of both the parties and perused the record. As a result of the directions from the Hon'ble High Court and this Tribunal in several rounds of litigation, the seniority of the applicant in the SMO grade of CHS above the respondent No.2, has been fixed with effect from 08.06.1992, the date he got this grade in his parent department. The applicant now claims promotion to the grade of

SMO, CMO and CMO (NFSG) from the dates these promotions were given to the respondent No.2.

5. The applicant has asked for promotion to the grade of SMO in CHS from 01.01.1994 for the reason, as stated in para 5(a) of the OA that the respondent no. 2 got the grade of SMO on that date. This prayer of the applicant does not make any sense when, as admitted by the learned counsel of the applicant during the hearing, the applicant was promoted as SMO in the parent department on 20.03.1992 and that is the date he has been given seniority in CHS in the grade of SMO. Further during the hearing it was submitted that the respondent no. 2 was promoted as SMO on 08.06.1992. Accepting this prayer of the applicant would mean bringing forward the date of promotion of the applicant to 01.01.1994. We are not sure if that is the intention of the applicant.

6. We find merit in the submission of the learned counsel for respondents that the prayer of the applicant to give him promotion to the grade of CMO and CMO (NFSG) from 1997 and 2002 cannot be considered by the respondent No.1 as these dates fall prior to the date of his absorption i.e. 29.09.2003 and on these dates he was a regular employee of the UP Government. It is obvious that in respect of promotion to be given on these dates, the DPCs can be held only by the UP

Government and it has to be in accordance with recruitment rules of the UP Government Health Services. The respondent No.1 did not have the jurisdiction over the applicant during that period. We, therefore, do not find any merit in the prayer of the applicant as far as promotion from the dates prior to his absorption is concerned.

7. The learned counsel for respondents has vehemently urged that having got his first promotion as CMO after taking into account past service, the promotion of the applicant to the next post has to be governed by the Recruitment Rules applicable to the CHS, according to which he has to serve four years as CMO before next promotion.

8. The question before us is whether the applicant who was SMO on date of absorption, and given promotion to the grade of CMO the following day on the strength of the benefit of past service, would be eligible for promotion to the grade of CMO (NFSG) without completing 4 years in the grade of CMO.

9. According to the CHS Rules, 1996, a copy of which has been provided by the learned counsel for the respondent no. 1, promotion to the super time grade (Rs.5900-6700), corresponding to the present CMO (NFSG), required 16 years standing in the medical profession. The relevant portion of the CHS Rules, is extracted below :

Sl. No.	Name of Post	Age	Educational and other qualifications Required
V.	General Duty Sub-Cadre Posts		
1.	(a) Supertime Grade Supertime Grade (Rs.5900-200-6700)	Not exceeding 50 years. (Relaxable for Govt. Servants by 5 years in accordance with instructions issued by the Central Govt.)	Essential: (i) A recognised medical qualification included in the First or Second Schedule or Part II of the Third Schedule (other than licentiate qualifications) to the Indian Medical Council Act, 1956. Holders of educational qualifications included in Part II of the Third Schedule should also fulfil the conditions stipulated in sub-section (3) of section (13) of the Indian Medical Council Act, 1956. (ii) Post-graduate Degree/ Diploma mentioned in Schedule-VI or equivalent. (iii) 16 years' standing in the profession. (iv) Extensive practical and administrative experience.

10. The respondent No.1 has filed a copy of the letter dated 05.04.2002 introducing the Dynamic Assured Career Progression (DACP) Scheme for the officers of the CHS. Under that Scheme the eligibility conditions for CHS promotions in various grades have been modified in the following manner:-

“2.(i) In the General Duty Medical Officer (GDMO) sub cadre, Medical Officer (Rs.8000-13500) will be promoted to Senior Medical Officer (Rs.10000-15200) on completion of 4 (four) years of regular service. Senior Medical Officer with 5 (five) years of regular service as Senior Medical Officer will be promoted to the post of Chief Medical Officer (Rs.12000-16500) and **after completion of 4 (four) years in Chief Medical Officer grade, officer will be promoted to the post of Chief Medical Officer (Non Functional Selection Grade) (Rs.14300-18300). Thus on completion of 13 years of**

regular service in the GDMO sub cadre of CHS, Officer of GDMO sub cadre will be promoted to Chief Medical Officer (Non Functional Selection Grade) (Rs.14300-18300)."

11. The above letter states that on completion of 13 years of service in GDMO sub-cadre of CHS (including four years as MO), officer of GDMO sub-cadre will be promoted as CMO (NFSG). This is a modification of the earlier provision according to which an officer with 16 years standing in the profession was to be promoted to the super time grade. The letter further lays down that SMO with five years service will be promoted to the grade of CMO, and after completion of four years as CMO, the officer will be promoted to the post of CMO (NFSG), i.e., from the date of promotion to the grade of SMO an officer has to serve for nine years before promotion to the grade of CMO (NFSG). The above scheme takes care of career progression of the officers recruited in batches by the UPSC as has been alluded to by the learned counsel for the respondents in the context of consideration of the senior whenever a junior is considered for promotion. In a situation where an officer has been absorbed under rule 8 of the CHS Rules 1996, it is logical that the latter part of the provision requiring 13 years of cumulative service since joining as Medical Officer, implying 9 years service in the grade of SMO, would become applicable. The applicant had completed about 11 years in the grade of SMO on the date of absorption and therefore was

eligible for promotion to the grade of both CMO and CMO (NFSG). Having been given the benefit of past service, the applicant ought to have been considered for the NFSG immediately after promotion to the grade of CMO. The question of gaining experience in the post of CMO for 4 years before grant of CMO (NFSG) grade will also not be relevant in this case since a non-functional grade, by definition, does not envisage a change in the functional characteristics of the post and it is intended to be only an *in situ* upgradation. We are therefore of the view that the recruitment rules as modified by the Government letter dated 05.04.2002 do not place any restriction on promoting an officer with requisite years of cumulative service, having no other disqualification, to the post of CMO (NFSG). With regard to other points raised by the respondents including the judgments, a perusal of the earlier judgments of this Tribunal and the Hon'ble High Court reveals that these had been considered and discussed while giving the benefit of past service to the applicant, and therefore will not have any further implication in the consideration of the issue before us.

12. In the light of the preceding discussion and the specific provision of the CHS Rules 1996, as modified by the Government letter dated 05.04.2002, we are of the view that the applicant is entitled for promotion to the grade of CMO (NFSG) immediately after his promotion to the grade of CMO on 30.09.2003, and not

from the date of promotion of respondent No.2. Accordingly the respondent no. 1 is directed to take action to promote the applicant to the grade of CMO (NFSG) from the date next to the date of promotion to the grade of CMO, within a period of two months. The OA is disposed of in terms of aforesaid directions. No costs.

(V.N. Gaur)
Member (A)

(B. P. Katakey)
Member (J)

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