

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 1140/2012

Reserved on: 2.05.2016
Pronounced on: 9.05.2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Shri Prabodh Raj Chandol
S/o Shri F.C. Chandol
R/o B-328, M.I.G. Flats
East of Loni Road,
Delhi-110093

... Applicant

(Through Shri T.S. Ahuja with Shri Shazeb, Advocate)

Versus

1. The Secretary
Ministry of Health and Family Welfare
Department of AYUSH
Red Cross Building
Red Cross Road, New Delhi-110001
2. Central Council of Homeopathy,
Jawahar Lal Nehru Bhartiya Chikitsa Avam
Homeopathy Anusandhan Bhawan,
No. 61 & 65, 5th & 6th Floors, Opp. D Block
Institutional Area, Janakpuri,
New Delhi
3. Shri Y.D. Vats
S/o Shri Om Dutt Sharma
R/o H.No.2821/217, Vishram Nagar,
Tri Nagar, New Delhi-35
4. Smt. Sudha Sharma
W/o Shri V.K. Sharma
H.No.284/B-1, Janak Puri
New Delhi-58

... Respondents

(Through Shri Naveed for Ms. Priyanka Bhardwaj, Advocate for
respondent 1
Shri Sunil Narula, for respondent 2 and
Ms. Deepti Gupta, for respondents 3 and 4)

ORDER

Mr. P.K. Basu, Member (A)

The applicant had joined the services of respondent no.2, Central Council of Homeopathy (CCH), an autonomous body, as Lower Division Clerk (LDC) on 4.11.1977. He received promotions to the post of Upper Division Clerk (UDC) and Senior Accountant and was finally promoted on ad hoc basis on the post of Office Superintendent (OS) on 1.05.1989 along with one Shri H.D. Rikhadi. Both Shri Rikhadi and the applicant were regularized on the post of OS with effect from 1.05.1989 vide office order dated 18.05.1990. This promotion on ad hoc basis and regularization was effected without holding any DPC i.e. without following prescribed procedure.

2. On 16.10.1989, ad hoc promotion of six other employees was also regularized. In 1994, Shri Rikhadi was promoted to the post of Assistant Secretary. On 11.01.1995, respondent no.3, Shri Vats was promoted to the post of OS.

3. The respondents issued order dated 21.11.2006 which stated the seniority of OS as follows:

1. Shri P.R. Chandol
2. Shri Y.D. Vats
3. Smt. Sudha Sharma

4. On 27.01.2012, a DPC was held for promotion of OS to the post of Assistant Secretary against the vacancy to be created in the post of Assistant Secretary on superannuation of Shri Rikhadi on 31.01.2012. On that date itself i.e. 31.01.2012, an order was issued by respondent no.2 in connection with inter se seniority of Shri Y.D. Vats and the applicant on the representation made by Shri Vats and based on clarification received from Department of Ayush, Government of India, Shri Y.D. Vats was declared to be senior to the applicant. From this order, it is apparent that when this issue was raised by Shri Vats, the matter was examined in the Council and by a speaking order dated 4.07.2006, the Council had circulated the seniority in the following order:

- i) Shri Y.D. Vats
- ii) Smt. Sudha Sharma
- iii) Shri P.R. Chandol

However, on a representation dated 10.10.2006 of the applicant, the Executive Committee issued a revised order dated 21.11.2006, referred to above.

5. The main grievance of Shri Vats, as apparent from the order dated 27.01.2012, was that since he was promoted after following the prescribed procedure in accordance with the Recruitment Rules (RRs), he should be declared senior. The matter had been referred to the Department of Ayush and after consultation with the Department of Personnel and Training (DoP&T), it conveyed its opinion that Shri Y.D. Vats who was promoted after following the prescribed procedure in the RR's will

become senior to the applicant. In this background, the department vide order dated 27.01.2012 decided to restore the seniority as was initially finalized and circulated vide Council's order dated 4.07.2006, as already mentioned above.

6. The DPC promoted Shri Y.D. Vats and he joined as Assistant Secretary.

7. Learned counsel for the applicant states that of the six employees regularized vide order dated 18.05.1990, in no case had the seniority been changed though in their case also, no DPC was held. The learned counsel placed reliance on the judgment in **A. Janardhana Vs. Union of India and others**, AIR 1983 SC 769, where the Hon'ble Supreme Court held as follows:

"It is a well recognised principle of service jurisprudence that any rule of seniority has to satisfy the test of equality of opportunity in public service as enshrined in Article 16. It is an equally well recognised canon of service jurisprudence that in absence of any other valid rule for determining inter se seniority of members belonging to the same service, the rule of continuous officiation or length of service or the date of entering in service and continuous uninterrupted service thereafter would be valid and would satisfy the tests of Article 16."

Reliance was also placed on the following judgments:

- i) **D.R. Nim Vs. Union of India**, AIR 1967 SC 1301
- ii) **G.S. Lamba Vs. Union of India**, AIR 1985 SC 1019
- iii) **Narender Chadha Vs. Union of India**, AIR 1986 SC 638

8. It is the contention of the learned counsel for the applicant that even if there had been a defect in the initial recruitment, the respondents cannot now take the plea to deny applicant seniority over Shri Y.D. Vats, who had become OS much later than him. The applicant has prayed for the following reliefs:

- a) It is most respectfully prayed that the impugned order vide which the seniority of the applicant was changed from number one to number three in the seniority list for Office Superintendents being order no.4-1/99(pt)CCH/28915 dated 27.01.2012 be set aside/quashed.
- b) The Hon'ble Tribunal be pleased to restore the seniority of the applicant/ petitioner to number one in the seniority list of Office Superintendents as per order no. 4-1/99-CCH(pt.1) dated 21.11.2006.
- c) The promotion of the respondent no.3 Shri Y.D. Vats as Assistant Secretary (Administration and Registration) be set aside.
- d) It be decided that the applicant being the senior most amongst the Office Superintendents was entitled to the promotion as Assistant Secretary (Administration and Registration) and the promotion of Shri Y.D. Vats to the said position was illegal and unlawful.
- e) In the alternative to the prayer c if the Hon'ble Tribunal is of the opinion that the applicant is not directly entitled to the promotion to the post of Assistant Secretary (Administration and Registration) the Respondent no.2 be directed to hold a review DPC and the name of the applicant be forwarded as number one in the seniority list for consideration of the promotion to the post of Assistant Secretary (Administration and Registration).

9. Learned counsel for the respondents in his reply stated that the applicant has tried to present his case as a matter of seniority which it is not. It is stated that the post of Assistant Secretary is a selection post filled through seniority-cum-fitness basis. The note for DPC placed at Annexure 'E' (colly) was

referred, which indicates that all the three candidates namely Shri Y.D. Vats, Smt. Sudha Sharma and the applicant were considered by the DPC. Our attention was drawn to column 4 of the chart enclosed with the minutes of the DPC meeting, relating to grading in ACR/ APAR of the candidates in last five years. It would appear from the chart that Shri Y.D. Vats had one "Very Good" and four 'Outstanding' reports with no adverse remarks, Smt. Sudha Sharma had one 'Good' and four "Very Good" reports whereas the applicant had one Satisfactory/ Good, two 'Good', two "Very Good" and adverse remarks for the year 2010-11. It is argued by the learned counsel for the respondents that this itself makes it absolutely clear that the DPC recommended the most fit candidate for the post of Assistant Secretary.

10. Learned counsel for the respondents also referred to letter dated 9.09.1999 from the Ministry of Health and Family Welfare (MoH&FW) to the Council stating therein that the matter has been examined in consultation with the DoP&T who have confirmed that Shri Y.D. Vats who was promoted after following the prescribed procedure in the RRs will become senior to Shri P.R. Chandol. Our attention was also drawn to the detailed order (date illegible) passed by the Council which is regarding the applicant's request to the Council to inform about the applicant's seniority position and on the ground that Shri Y.D. Vats and Smt. Sudha Sharma have been appointed to the post of OS after following prescribed procedure. The letter states that seniority position would be as follows:

- i) Shri Y.D. Vats
- ii) Smt. Sudha Sharma
- iii) Shri P.R. Chandol

11. This was further confirmed by the Department of Ayush in its letter dated 4.01.2012 to the Council that the decision that Shri Vats is senior to Shri Chandol, may be treated as final and should be implemented in letter and spirit.

12. Based on the DPC meeting held on 27.01.2012, the Central Council of Homeopathy recommended Shri Y.D. Vats, OS for promotion to the post of Assistant Secretary. Learned counsel for the respondents states that due procedure was followed by the respondents and based on advice of the DoP&T and the Department of Ayush, the seniority was determined. The DPC considered all the three candidates but since the ACRs of the applicant was not as good as those of Shri Vats and also the fact that there were adverse remarks in the ACR of the applicant, the DPC took the decision which was implemented by the Council. There was no deviation from the procedure or irregularity committed by the respondents.

13. Learned counsel for the applicant, in reply, stated that all the correspondence referred to by the respondents was between MoH&FW and the Council and the applicant was not made aware of this correspondence so that he could have taken appropriate steps. Secondly, it is argued that once the seniority of Shri Vats is shown above the applicant, the DPC was bound to get influenced and opt for the senior most person.

14. We have heard the learned counsel for the parties and gone through the pleadings available on record.

15. We do not accept the contention of the learned counsel for the applicant that the applicant was kept in the dark. For instance, the order issued by the Council finally disposing of the issue was marked to all the three. The applicant had been pursuing the matter with the Council and he knew what decision had been taken. Second, his stand that the DPC was bound to get influenced and choose the senior most is not based on facts. Rather, to the contrary, it is apparent from the ACRs of the three officers that Shri Vats definitely had a better record. Moreover, there were no adverse remarks against Shri Vats whereas there was adverse entry against the applicant. We are, therefore, not persuaded by either of the arguments of the applicant.

16. The applicant's argument that out of six persons regularized in 1990, seniority of none was affected though in their case also DPC was not held, is not acceptable. First of all, those employees are not before us and neither it is germane to the issue here for the simple reason that even if it was so, negative equality as a ground to make a claim is impermissible in law.

17. The applicant has tried to argue that before issuing the final list, no draft list was issued seeking objections. However, the paper trail clearly shows that the applicant himself made representations and had every opportunity to protest the

seniority list dated 4.07.2006. In fact, that is why the whole thing was got examined and final decision was taken in consultation with the Department of Ayush. Thus even this argument of the applicant fails.

18. We are informed by the respondents that though the initial appointment of the applicant was not as per RRs in the sense that no DPC was held for his ad hoc appointment and later his regularization as OS, the applicant continues to hold the post of OS and the respondents have not taken any steps so far against the applicant.

19. In our opinion, no illegality or irregularity has been committed by the respondents in issuing the impugned order dated 27.01.2012. We hold that the OA is devoid of merit. It is, therefore, dismissed. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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