

**Central Administrative Tribunal
Principal Bench**

OA No.2370/2012
with
OA No.1154/2012

New Delhi this the 16th day of March, 2017.

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

OA No.2370/2012

Dr. Ashok Kumar Rawat,
Son of Shri Jagbir Singh Rawat,
R/o 382/2, Nirankari Colony,
Delhi-110009.

-Applicant

(By Advocates: Mr. N.S. Dalal with Ms. Toral Banerjee and Mr. Aman Mudgal)

Versus

1. Municipal Corporation of Delhi (North),
Through its Commissioner,
Dr. S.P. Mukherjee Civic Centre,
Minto Road, New Delhi.
2. Municipal Corporation of Delhi (North),
Through its Director (Personnel),
Dr. S.P. Mukherjee Civic Centre,
Minto Road, New Delhi.
3. Dr. Lallan Ram,
Dy. Health Officer,
Central Zone,
South Delhi Municipal Corporation.
4. Dr. G.R. Chaudhary,
Dy. Health Officer,

Sourth Zone,
South Delhi Municipal Corporation.

-Respondents

(By Advocates Mr. R.N. Singh and Mr. Ratnakar Maltiya)

OA No.1154/2012

Dr. Suresh Chandra Arun,
Aged about 56 years,
S/o Sh. U.R. Chaudhary,
R/o G-4/171, Sector-11,
Rohini, Delhi-85.

Working as:

Deputy MHO, MCD
Civic Centre, Asaf Ali Road,
New Delhi.

-Applicant

(By Advocate: Mr. Shyam Moorjani)

Versus

1. North Municipal Corporation of Delhi,
Through the Commissioner,
Civic Centre, Asaf Ali Road,
New Delhi.
2. The Addl. Commissioner (Establishment),
North Municipal Corporation of Delhi,
Civic Centre, Asaf Ali Road,
New Delhi.
3. Director (Personnel),
North Municipal Corporation of Delhi,
Civic Centre, Asaf Ali Road,
New Delhi.

4. The Chairman,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi.

-Respondents

(By Advocates Mr. R.N. Singh and Mr. Ratnakar Maltiya)

O R D E R (ORAL)

Hon'ble Mr. K.N. Shrivastava, Member (A):

As common questions of law and fact are involved in these two cases, we proceed to dispose them of through this common order. However, for the sake of convenience the facts in OA No.2370/2012 are discussed.

2. This OA has been filed by the applicant Dr. Ashok Kumar Rawat under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:

“(ii) Set-aside the decision of the House/Corporation dated 27.02.2012 (Annexure A-1), Office Order dated 10.06.2011 (Annexure A-2) issued by the Assistant Commissioner, Recommendation/Proposal so made by the Commissioner, M.C.D. vide his letter dated 09.02.2012 (Annexure A-4);

iii) Confirm the seniority list dated 27.07.2007 thereby showing the applicant at Serial No.4 as he was earlier shown;”

3. The brief facts of the case are as under:

3.1 The applicant was appointed as a General duty Medical Officer (GDMO)-II in the erstwhile Municipal Corporation of Delhi (MCD)

vide Annexure A-5 order dated 03.12.1992. He was promoted as GDMO-I vide Annexure A-6 order dated 17.02.1997 with effect from 29.12.1996. He was further promoted as Chief Medical Officer (CMO) (GD) vide Annexure A-7 order dated 04.09.2006 w.e.f. 05.04.2002. He was granted Non Functional Selection Grade (NFSG) on ad hoc basis in the grade of CMO and thus designated as CMO (NFSG) vide Annexure A-8 order dated 23.01.2008 w.e.f. 05.04.2006. He acquired Post Graduate Diploma in Public Health in the year 2002.

3.2 The MCD had created two cadres in its Health Department, namely, General Duty Cadre (GDC) and Public Health Cadre (PHC) in the year 1982. GDMO-I holding diploma in PH were deployed to work in the PHC. In the year 2007, the MCD decided to create a permanent cadre for PHC and accordingly sought willingness of the GDMOs-I having diploma in PH for their absorption in PHC vide Annexure A-10 notification dated 07.03.2007. The retirement age for the GDC was 60 years whereas that for the PHC was 62 years. Accordingly, a Screening Committee was set up to make recommendations in respect of the applicants found eligible for their absorption in the PHC. The Screening Committee selected 08 candidates for the PHC. The Competent Authority, accepting the recommendations of the Screening Committee, approved induction

of 08 Medical Officers (GDMOs-I) into the PHC vide circular dated 27.07.2007. The name of the applicant is at serial no.4. The said circular *inter alia*, stipulated that the seniority of the Officers inducted in PHC will be governed under the provisions of the Government of India instructions issued from time to time.

3.3 Although the applicant was formerly inducted in the PHC vide Annexure A-9 circular dated 27.07.2007 but he has been working in the PHC from 01.07.2004 itself.

3.4 One Dr. Bhagwan Das, who was GDMO-I in the PHC was retired by the MCD on 31.07.2007 after he had attained the age of 60 years, vide order dated 11.01.2007. He challenged the order dated 31.07.2007 of the MCD before this Tribunal in TA-257/2009, claiming therein that his age of retirement should be 62 years since he belongs to the PHC. The said TA was allowed vide order dated 08.10.2009 and thus the MCD was directed to allow Dr. Bhagwan Das to continue in service till he attained the age of 62 years. The MCD challenged the *ibid* order of the Tribunal in Writ Petition (Civil) No.2906/2010 before the Hon'ble High Court of Delhi, which was dismissed vide judgment dated 30.04.2010. The Hon'ble High Court has made the following significant observation in the said

judgment:

“The Tribunal had rejected the plea of the petitioner on the ground that the Recruitment Rules for General Duty Officer Grade-I, Public Health in para-11 categorically contemplates that the officers appointed on transfer had to exercise option to be inducted in public health cadre within one year failing which the officer concerned shall be deemed to have opted for the public health cadre automatically. It was noticed by the Tribunal that once the respondent by a conscious decision of the MCD had been inducted on transfer in public health cadre and the respondent had not exercised his option after one year, he had been automatically inducted in the health sub cadre, where he worked till the time of his superannuation, therefore, the plea that the respondent was not inducted in public health cadre could not be accepted.”

3.5 The judgment of the Hon’ble High Court in Writ Petition (Civil) No.2906/2010 was challenged by the MCD before the Hon’ble Supreme Court in SLP to appeal (Civil) (CC) 16760/2010, which was dismissed by the Hon’ble Supreme Court. As a consequence of it, Dr. Bhagwan Das was allowed to superannuate at the age of 62 years by the MCD and a corrigendum was issued to this effect by the MCD on 30.04.2007 (Annexure A-12 colly.)

3.6 The Commissioner, MCD vide his Annexure A-3 letter dated 09.02.2012 addressed to Municipal Secretary, MCD, made a recommendation on the issue of placement/promotion of Medical Officers inducted in the PHC to higher scale, on ad hoc basis, as per the instructions/orders on the subject and the DACP Scheme. The said letter also contained a table showing the proposed dates of eligibility of Doctors for ad hoc promotion under the PHC. The MCD

taking cognizance of the judicial rulings in **Dr. Bhagwan Das** (supra) and on the basis of the recommendations of the Screening Committee vide Annexure A-2 office order dated 10.06.2011 published a table indicating the names of the Medical Officers allowed to be inducted/transferred in the PHC with effect from the dates as mentioned against them in the said table. The applicant's name figures at serial No.17 in the said list.

3.7 The MCD vide Annexure A-4 office order dated 18.04.2012, based on the recommendations of the Screening Committee and after approval of the Corporation, issued a table indicating therein placement/promotion of Medical Officers of the PHC with effect from the date(s) mentioned against them and as per the details given in the table.

3.8 The grievance of the applicant is that some of his juniors have been placed at higher positions in the table contained in the Annexure A-2 office order. Aggrieved by the action of the MCD, placing the name of the applicant in the table below some of his juniors, the applicant has filed the instant OA praying for the reliefs as indicated in pra-1 supra.

OA No.1154/2014

3.9 For the sake of clarity, we may also discuss few facts from OA No.1154/2014. The applicant in this OA, namely, Dr. Suresh

Chandra Arun was appointed as GDMO-II in the erstwhile MCD on 23.04.1981. He was promoted as GDMO-I in the year 1987 and later on promoted as Chief Medical Officer in the year 1991. He has also prayed for identical reliefs as claimed by the applicant in OA-2370/2012.

4. The main grounds urged by the applicant in support of the reliefs claimed by him are as under:

i) The Agenda Item No.110, which was considered and approved by the Corporation resulted in issuance of the Annexure A-4 office order dated 18.04.2012 in which the date(s) of induction of the Doctors in PHC has been wrongly indicated. The said Agenda Item and so also the Annexure A-4 order are purported to be issued on the basis of the judicial ruling in the case of **Dr. Bhagwan Das** (supra). The respondents have failed to notice that in **Dr. Bhagwan Das** (supra) only the issue of retirement age was involved and not the issues like seniority and promotion. The Annexure A-4 order deals with seniority and promotion and as such its foundation could not have been the judgment in **Dr. Bhagwan Das** (supra).

ii) The reference, if any, given by the Hon'ble Tribunal and Hon'ble High Court of Delhi regarding automatic induction in the

PHC is of no effect and significance particularly when it was not an issue in **Dr. Bhagwan Das** (supra).

iii) The process of formal induction into PHC started since the month of January 2007 and applications were invited vide notification dated 07.03.2007. Dr. Bhagwan Das, who was on duty in the PHC had also applied for absorption but his case could not be considered for formal induction in the PHC on account of pending DE proceedings against him. The applicant was finally absorbed in the PHC vide order dated 27.07.2007, albeit he was working in the PHC w.e.f. 01.07.2004 itself.

iv) Certain Medical Officers who had become GDMOs much later than the applicant have been shown senior to him in terms of their dates of induction in the PHC, which is not at all in order.

5. Pursuant to the notices issued the respondents entered appearance and filed their reply. The applicant thereafter filed his rejoinder. The important averments made in the reply are as under:

a) The Recruitment Rules (RRs) for the posts in PHC came into existence as per the notification No.F.9/38/82-LSG/5485 dated 06.08.1982. As per the existing RRs for the post of GDMO-I (PH), GDMO-II Medical Officers having diploma in Public Health with 05 years regular service or GDMO-I possessing requisite qualification,

which they should have acquired two years back in case of degree holders and four years back in case of diploma holders, are eligible for transfer as GDMO-I (PH) by way of consideration by a duly constituted DPC. The GDMO-I (PH) with five years of regular service in the grade are eligible for promotion to the post of Super Time Grade-II (PH). Likewise, the Super Time Grade-II (PH) with seven years regular service in the grade are eligible for promotion to Super Time Grade-I/Deputy Municipal Health Officer (now called as Additional MHO (PH)) and finally, the Super Time Grade-I officers possessing degree/diploma in PH from recognized university or equivalent will be considered and in case of selection will be appointed to the posts of MHO.

- b) No formal transfer of any GDMO-I to PH cadre was processed prior to the year 2007. Previously, the GDMO-I holding required qualification were posted against such posts in PHC.
- c) The Central Establishment Department invited requests from the eligible Medical Officers for giving their willingness to be transferred/absorbed in the PHC vide notification dated 07.03.2007. The applications received pursuant to the said notification were considered by a Screening Committee in its meeting held on 26.07.2007. Although applications from 31

Medical Officers have been received but only 20 of them were found eligible for transfer to the PH cadre. Ultimately in respect of 08 Doctors only orders were issued for their induction in the PH cadre vide letter dated 27.07.2007. The remaining Doctors, although eligible otherwise, could not be recommended due to non completion of certain formalities or for the reason that some of them were under the currency of RDAs (Regular Departmental Action).

d) Dr. Bhagwan Das, who possessed diploma in PH although was working in the PH cadre, but the Screening Committee did not consider him for absorption in the PH cadre in its meeting held on 26.07.2007 due to pending DE proceedings against him. Consequently, his superannuation was ordered on his completing 60 years of age on 31.07.2007. Due to the judicial intervention by this Hon'ble Tribunal and Hon'ble High Court of Delhi, he was allowed to serve in the Corporation for two more years and was allowed to retire at the age of 62 years. He was also inducted in the PH cadre w.e.f. 26.07.2007 in compliance with the order of this Hon'ble Tribunal and Hon'ble High Court of Delhi. It was perceived that this Tribunal and Hon'ble High Court of Delhi in the case of **Dr. Bhagwan Das** (supra) have held that transfer to the PH cadre was deemed to have taken place from the date of posting of the

Doctors to the PH cadre posts, if the Doctors concerned have not exercised their option to return back to GD cadre within one year.

6. With the completion of the pleadings, the arguments of the learned counsel for the parties were heard on 16.03.017. The learned counsel for the parties by and large reiterated the pleadings made by their respective clients in their respective pleadings in support of their claims and counter claims.

7. The learned counsel for the applicant stated that the date(s) of promotion as GDMO-I in the Health Department of MCD should be the basis for determining the inter-se seniority of the Doctors who have been subsequently absorbed in the PH cadre. He also vehemently argued that the Courts judgments in **Dr. Bhagwan Das** (supra) cannot be used as the basis for determination of inter-se seniority of the Doctors in the PH cadre since the issue involved in **Dr. Bhagwan Das** (supra) was in regard to the age of superannuation and not in regard to absorption/promotion in the PH cadre.

8. Per contra, the thrust of the arguments of the learned counsel for the respondents was that in **Dr. Bhagwan Das** (supra) the Courts have held that in terms of the RRs for the post of GDMO-I (PH), a Medical Doctor posted against the post of GDMO-I (PH), if fails to exercise his option within one year from the date of the

appointment whether he wants to serve in the PH cadre or to go back to the GH cadre, then the Doctor concerned shall be deemed to have opted for the PH cadre automatically. Taking this judicial interpretation, the respondents have issued Annexure A-4 order dated 18.04.2012 indicating therein the date(s) of induction of Doctors against the posts of GDMO-I (PH) and their subsequent upward movements in the hierarchy of the PH cadre.

9. We have carefully considered the arguments of the learned counsel for the parties and have perused their pleadings together with the documents annexed thereto. Indisputably, the lowest post in the PH cadre is that of GDMO-I and the RRs for this post came into existence vide notification No. notification No.F.9/38/82-LSG/5485 dated 06.08.1982. The Medical Officers after becoming GDMOs-I and possessing diploma in PH were being posted against the posts of GDMO-I (PH). The MCD and its successors entities did not enforce the RRs for the posts of GDMO-I (PH) strictly. For better understanding of the issue, we reproduce below the RRs for the post of GDMO-I (PH) notified vide notification dated 06.08.1982:

“11. In case of rectt. By promotion/deputation/transfer grades from which promotions/deputation/transfer to be made

Transfer: (i) General duty Officer Gr.-I
(General Duty)

(ii) Failing (i) above General Duty Officers Grade-II with 5 years regular service in the grade: and b) possessing the requisite post

graduate have acquired two years back in case of degree holders and 4 years back in the case of Diploma Holders. Note:-The Officers appointed on transfer shall have to exercise option within one year from the date of appointment whether he/she wants to serve in the public health Cadre or to go back to the General Duty Cadre. In WP (C) 2906 of 2010 Page 6 of 7 case no option is filed within the stipulated period, the Officers concerned shall be deemed to have opted for the Public Health Cadre automatically. ”

10. Much later, the MCD decided to insist on absorption of the Doctors in the PH cadre at the level of GDMO-I (PH) in the year 2007 and invited applications for such absorption vide notification No. Supdt(M)/CED(M)2007/5137 dated 07.03.2007. Pursuant to this notification only 08 Doctors were absorbed in the cadre of GDMO-I (PH) vide circular dated 27.07.2007, including these two applicants. In the other words, it can be assumed that *de facto* the PH cadre came into existence after the notification dated 07.03.2007. Prior to this, the combined seniority in the cadre of GDMO-I for both the wings namely GDC and PHC has to be considered for their inter-se seniority. After the notification dated 07.03.2007, the RRs for the PHC posts came to be implemented and enforced in true sense. Therefore, all those Doctors who were working against the PHC posts and were duly qualified to hold such posts could be considered as officers of the PH cadre. Furthermore, the GDMO-I from the GDC possessing diploma in PH and posted

against the posts of GDMO-I in PH cadre as on 27.07.2007 (when 08 Doctors were formally inducted into the posts of GDMO-I (PH), if they had failed to exercise option for their absorption in the PHC within a year can be construed to have been absorbed in the PHC in terms of the RRs for the posts of GEMO-I (PH). In the other words, for determining the inter-se seniority of GDMOs-I (PH) as on 27.07.2007, their inter-se seniority in the common cadre of GDMO-I for both GDC and PHC have to be considered in conjunction with the RRs for the posts of GDMO-I (PH).

11. We have gone through the judgment of the Hon'ble High Court of Delhi in **Dr. Bhagwan Das** (supra). Undoubtedly, the issue involved in this case was in regard to the age of superannuation of the petitioner therein and not the issue relating to inter-se seniority and promotion in the PHC; albeit the RRs for the post of GDMO-I (PH) has been discussed therein. In such a situation, we do not find fault with the action of the respondents in bringing out Annexure A-4 order dated 18.04.2012, whereby the status of the Doctors working against various posts of the PHC have been indicated. Obviously, the Annexure A-4 order dated 18.04.2012 has created a controversy of inter-se seniority as the positions of some Doctors like the applicants have been indicated below the positions of some of their juniors in the list contained in that order.

The respondents, however, have clarified that the list contained in Annexure A-4 order is not the seniority list. Nevertheless, a bare perusal of this list gives an impression otherwise. Such an impression is required to be corrected. We believe that such a correction would rule out scope of any controversy regarding the inter-se seniority in future.

12. In the conspectus of the discussions in the foregoing paras, we issue the following directions to the respondents:

- (a) The respondents shall consider the inter-se seniority of GDMO-I (PH) as on 27.07.2007 as they existed in the combined cadre of GDMO-I jointly for GDC and PHC.
- (b) The respondents shall draw a draft seniority list of GDMOs-I (PH) in terms of (a) supra in conjunction with the RRs for the post of GDMO-I (PH). The note contained in Rule-11 shall be strictly applied for preparation of the seniority list.
- (c) The draft seniority list prepared as per (b) supra, shall be circulated to all the concerned Doctors inviting their objections, if any, and after disposal of the objections received, the final seniority list shall be prepared.

(d) In accordance with the final seniority list of GDMO-I status of the various Doctors working in the PHC against various posts, would be notified by the respondents thereafter.

13. Accordingly, both the OAs are allowed.

14. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

‘San.’