

**Central Administrative Tribunal
Principal Bench**

OA No.2079/2012

New Delhi, this the 30th day of January, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Ms. Nita Chowdhury, Member (A)**

Dr. Amita Sen
W/o Shri Surojit Sen
R/o B-111, Sarvodaya Enclave,
New Delhi 110 017.

.... Applicant.

(By Advocate : Shri L. R. Khatana)

Vs

1. Union of India
Through Secretary to the Govt. of India
Ministry of Health and Family Welfare
Nirman Bhawan,
New Delhi 110 108.

2. Administrative Officer
Dr. Ram Manohar Lohia Hospital,
Baba Kharak Marg,
New Delhi 110 001.

.... Respondents.

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

: O R D E R (ORAL) :

Justice Permod Kohli, Chairman :

While working as Specialist Grade-I of Non-Teaching Specialist Sub-Cadre of the Central Health Service (CHS) in the department of Paediatrics Surgery in Dr. Ram Manohar Lohia Hospital & PGIMER, New Delhi, the applicant was promoted to Supertime Grade of Non-Teaching Specialists as Consultant under the Dynamic Assured Career Progression (DACP) Scheme in the pay scale of Rs.37,400-67,000 with Grade Pay of Rs.10,000/- plus N.P.A. as admissible, notionally w.e.f. 29.10.2008, and actually w.e.f. the date of assumption of charge of the

post, and until further orders along-with two other officers vide order dated 14.03.2011. The order further stipulates that the promotion will be personal to the officer concerned.

2. It is admitted case of the parties that the applicant assumed the charge of the promotional post. The aforesaid promotion order, however, came to be cancelled/withdrawn vide order dated 02.01.2012 in respect to the applicant and one Dr. Deepak Bagga, another Paediatrics Surgeon. Aggrieved of the withdrawal of the promotion order, the applicant made a representation dated 23.01.2012 against the cancellation/withdrawal of the promotion order aforesaid. Receiving no response, the applicant filed OA No.1369/2012. This OA came to be disposed of vide order dated 25.04.2012 with the following directions: -

“3. In view of the above prayer by the learned advocate, we direct the respondent No.1 to decide the pending representation of the applicant (Annexure A/5) by passing a reasoned and speaking order within a period of one month from the date of receipt of a copy of the order.”

The applicant thereafter filed MA No.1176/2012 seeking correction in order dated 25.04.2012 by incorporating the following “in a meantime no coercive action will be taken in terms of the impugned orders, in the interest of justice and order DASTI.” This MA was allowed vide order dated 26.04.2012. Consequently, the order dated 25.04.2012 was corrected/modified by incorporating the directions in MA No.1176/2012.

3. While the question of decision on the representation of the applicant was under consideration of the respondents, the respondents deducted some emoluments from the salary of the applicant which prompted her to file the present OA.

4. The respondents filed counter affidavit stating therein that in compliance to the order dated 26.04.2012, representation of the

applicant has been duly considered by the Ministry and after such consideration a speaking order has been passed vide office memorandum dated 08.05.2012. On this disclosure being made in the counter affidavit, the applicant amended the present OA so as to incorporate a challenge to the order dated 08.05.2012 rejecting the representation of the applicant. Thus, in the present amended OA, the applicant sought following reliefs:-

- “ A) That Hon’ble Tribunal be pleased to hold the impugned orders dated 02.01.2012, 13.04.2012 and 08.05.2012 as illegal, arbitrary, punitive, discriminatory, unreasonable, unjust, malafide in law and violative of principles of natural justice and therefore, bad in law and quash and set aside the same and consequently direct the respondents to continue the applicant’s promotion as ordered vide order dated 14.03.2011 and continue the same as of the own admission of the respondents, the applicant is eligible for the same with effect from 18.05.2012 with all consequential benefits.
- B) Without prejudice to the preceding prayer it is further prayed that in the facts and circumstances of the case, this Hon’ble Tribunal may be pleased to hold that the recovery of any amount from the applicant is illegal, unreasonable and contrary to law laid down by the Hon’ble Apex Court and this Hon’ble Tribunal in a number of cases and direct the respondents not to resort to the same.
- C) Pass any such other or further order or direction as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of this case.”

5. Heard learned counsel for the parties.

6. It is admitted case of the parties that later on the applicant was promoted to Supertime Grade of Non-Teaching Specialists w.e.f. 18.05.2012, though the copy of this order has not been placed on record by any of the parties. In view of the subsequent promotion of the applicant, Mr. L. R. Khatana, learned counsel for the applicant has fairly submitted that he has instructions not to press the challenge to the cancellation order dated 02.01.2012. This fair statement is rightly made keeping in view the fact that the earlier promotion order was erroneously made as disclosed in the counter affidavit. The respondents by passing

the impugned cancellation order dated 02.01.2012 only corrected the mistake committed by them. However, the cancellation/withdrawal order was passed without recording any reasons, and without affording any opportunity of being heard to the applicant. It was under these circumstances, the said order has been challenged.

7. The respondents had all the rights to rectify the order on discovery of error. However, there is a caveat on this that if any financial benefit has flown from such erroneous order which was passed on to the applicant without any misrepresentation by or at the instance of the beneficiary government servant, the same cannot be recovered. It is under these circumstances Shri Khatana has fairly submitted that the only relief which survives in the present OA is relief at prayer (B). In the aforesaid prayer, the applicant has prayed for restraining the respondents from making any recovery from him.

6. The issue is no more *res integra* having been considered by the Apex Court in **Sahib Ram vs. State of Haryana** [1995 Supp (1) SCC 18] and various subsequent judgments including **State of Punjab and others vs. Rafiq Masih (White Washer) and Others** [(2015 4 SCC 334)]. The ratio of the aforesaid judgments is that where any financial benefit has been accorded to the government servant under any erroneous order without his misrepresentation or fraud at the instance of the government servant, the said benefit cannot be recovered later on. The applicant having been promoted subsequently by a regular order the only grievance remains is recovery from the applicant during the interregnum period, i.e., grant of promotion vide order dated 14.03.2011 and up to the date of his subsequent promotion w.e.f. 18.05.2012. This Application is accordingly disposed of with the direction to the respondents that any

financial benefit drawn by the applicant during the aforesaid period shall not be recovered from him.

(Nita Chowdhury)
Member (A)

(Justice Permod Kohli)
Chairman

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