

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.3540/2013

Order Reserved on: 11.07.2017
Order pronounced on 11.08.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri Shekhar Agarwal, Member (A)

Dr. Vinod Kumar Pandey
Dte. General of Health Services, MOHFW
Kotla Road
Opposite Mata Sundari College
Near Bal Bhawan
New Delhi – 110002.

... Applicant

(By Advocate: Shri Rajesh Pathak with Sh. Abhishek Chakraborty)

Versus

1. Director Central Health Education Bureau
Dte. General of Health Services,
Ministry of Health & Family Welfare,
Kotla Road
Opposite Mata Sundari College
New Delhi – 110 002.
2. Director General of Health Services
Directorate General of Health Services
Ministry of Health & Family Welfare
Govt. of India
Nirman Bhawan
Maulana Azad Road
New Delhi.
3. Ministry of Health & Family Welfare
Through Secretary

Govt. of India
Nirman Bhawan
Maulana Azad Road
New Delhi.

... Respondents

(By Advocate: Sh. Rajinder Nischal)

ORDER

By V. Ajay Kumar, Member (J):

The applicant, a Junior Investigator under the respondents, filed the OA, seeking the following relief(s):

- (a) "Direct the Respondents to promote the Applicant to the post of an Investigator when such promotion became due i.e. 1.8.2004 and the consequent further promotion on the post of Research Officer from the date it become due i.e. 1.8.2007 as per the Recruitment and Promotion Rules (R and P Rules) applicable to the Applicant along-with consequent benefits including the arrears of pay etc. on the basis of the above promotions.
- (b) Direct the respondents to grant of Second Financial Up gradation under MACP in the pay scale of Rs.15600-39100 [PB-3] and the grade pay of Rs.5400 with effect from the due date i.e. 1.9.2008 in the hierarchy of promotional post of Research Officer i.e. promotional hierarchy of posts instead of Grade Pay hierarchy and direct further to grant the consequential benefits thereof.
- (c) Pass such or further orders as deem fit and proper in facts and circumstances of the case."

2. When the OA was taken up for hearing, the learned counsel for the applicant has submitted that he is not pressing the relief 8(b), referred to above, in the instant OA.

3. The applicant earlier filed OA No.157/2012 seeking the identical relief(s) and the said OA was disposed of on 17.01.2012, as under:

"2. We have heard counsel for the applicant. Since it is stated by the applicant that he has already given a detailed representation to the authority which has not yet been decided by the respondents (annexed at page 39 of the OA), the facts of the case have to be looked into by the authority in the first instance, therefore, this OA is disposed of at the admission stage itself, without going into the merits of the case, by

directing the respondents to consider the representation of the applicant and decide his grievance within a period of 6 weeks from the date of receipt of copy of this order under intimation to the applicant. In case applicant is still aggrieved by the order passed by the respondents, it would be open to him to challenge the same on the original side.

3. With the above direction, OA stands disposed of. No order as to costs."

4. In compliance to the aforesaid orders of this Tribunal, the respondents have passed a speaking order vide Annexure A1 – Memorandum dated 03.07.2013, wherein with regard to the relief claimed in the OA, they have stated as under:

"And whereas even before passing of the Order dated 17.01.2012 of CAT, New Delhi referred to above, Dr. Pandey had already been granted 1st Financial Up-gradation under ACP which was effective from 09.08.1999 vide CHEB's Order of even No. dated 14.12.2005;

And whereas Dr. Pandey has subsequent to the passing of Order dated 17.01.2012 of CAT, New Delhi again been granted 2nd Financial Up-gradation under the Modified Assured Career Progression (MACP) vide CHEB's Order No.A.32012/01/2012-Admn.(CHEB) dated 09.10.2012 effective from 01.09.2008 raising his Grade Pay to Rs.4600/-;

And whereas Dr. Pandey, Junior Investigator has thus been granted two financial up-gradations and is now drawing the Grade Pay of Rs.4600/- which is more than the Grade Pay which he could have been granted consequent upon his assumed promotion as Senior Investigator subject, however to the condition that he was eligible and found fit for promotion by a duly constituted DPC as also subject to availability of higher post in the cadre against which he could have been promoted;

And whereas the higher posts in the cadre of Dr. Pandey against which he could have been considered for promotion had already lapsed due to the same having been vacant for a long time due to various reasons;

Now, therefore, at this stage no more relief may be provided to Dr. Pandey in the matter of his representation under reference as also the earlier representation referred to in the aforesaid CAT Order and as such the same has to be treated as disposed of as per the direction of the CAT, Principal Bench, New Delhi as contained in their Order dated 17.01.2012 under reference."

5. Heard Shri Rajesh Pathak, the learned counsel for the applicant and Shri Rajinder Nischal, the learned counsel for the respondents and perused the pleadings on record.

6. The applicant failed to show that the posts of Investigator and the Research Officer were not lapsed due to the non filling of the same for a long time and that he was qualified and eligible for promotion to the said post as on the date when the said posts fallen vacant or before the deemed abolition of the said posts.

7. In the circumstances and for the aforesaid reasons, we do not find any merit in the OA and accordingly the same is dismissed. No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

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