

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.3150/2012

This the 15th day of November, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)**

Dr. Sangeeta Devi W/o Dr. Rajinder Parshad,
SMO, CGHS Maternity and Gynae Hospital,
R. K. Puram, Sector 5,
New Delhi-110003.

... Applicant

(By Advocate: Mr. H. D. Sharma)

Versus

1. Union of India through
Secretary, Ministry of Health &
Family Welfare, Nirman Bhawan,
New Delhi-110001.
2. Director General of Health Services,
Directorate General of Health Services,
Nirman Bhawan,
New Delhi-110001. ... Respondents

(By Advocates: Mr. V. S. R. Krishna)

O R D E R

Justice Permod Kohli, Chairman :

The applicant was appointed as Assistant Surgeon in the Health & Medical Education Department, Government of Jammu & Kashmir vide Government Order No.367 HME of 1989 dated 29.08.1989 in the pay scale of Rs.1900-4000 plus usual allowances as admissible. At the time of her appointment, the applicant was

possessing MBBS qualification and during the course of her service she acquired M.D. in Gynaecology and Obstetrics from Government Medical College, Jammu in the year 1996. She also did her senior residentship from Safdarjung Hospital, New Delhi in the year 2000.

2. It appears that the applicant approached the State Government for her deputation to the Central Health Service (CHS). The State Government vide its letter dated 16.11.2000 seems to have requested the Ministry of Health and Family Welfare, Government of India for the applicant's deputation. The Ministry of Health and Family Welfare vide letter dated 24.04.2001 to the Secretary, Health & Medical Education Department, Government of Jammu & Kashmir conveyed the approval of the Central Government for appointment of the applicant under rule 8 of the Central Health Services Rules, 1996 on deputation as Medical Officer under the CHS, and for her posting in CGHS, Delhi for a period of three years in the pay scale of Rs.8000-13500 plus NPA and other usual allowances as admissible to Central Government servants along with deputation allowance of 10% of basic pay subject to the prescribed ceiling. Other usual conditions of deputation were also incorporated in the said communication.

3. The applicant, accepting the offer of deputation, joined the service of the Central Government in CHS as Medical Officer.

While on deputation, she was absorbed in the General Duty Medical Officer (GDMO) sub-cadre of CHS as Medical Officer on the recommendations of UPSC under rule 8 of the CHS Rules, 1996 in the pay scale of Rs.8000-275-13500 vide office memorandum dated 26.09.2003. The Central Government vide its communication dated 13.10.2005 sought information from the State of Jammu & Kashmir regarding the date of next promotion of the applicant as well as the scale of pay in the next grade, if she would have remained in the Government of Jammu & Kashmir, to enable the Central Government to fix her seniority in CHS. The State Government informed the Central Government about the date of appointment of the applicant in the State Government as also that she was eligible for the first time-bound promotion in the pay scale of Rs.3000-4500 (pre-revised) w.e.f. 01.04.2000 after putting in ten years' service, and second time-bound promotion in the pre-revised scale of Rs.3000-5000 (revised to Rs.12000-16500) w.e.f. 01.04.2005 after putting in fifteen years' cumulative service as Assistant Surgeon. The applicant made a representation to the State Government for time-bound promotion vide her letter dated 12.06.2009. The State Government issued order No.439 G of 2010 dated 27.07.2010 according sanction to the grant of first time-bound promotion in favour of the applicant on completion of seven years of service, being a Post Graduate Assistant Surgeon, and placed her in the pay scale of Rs.10000-15200 w.e.f. 01.04.1997.

Based upon the aforesaid order, the applicant made representation dated 31.12.2010 to the Central Government seeking her absorption in the higher grade of Rs.10000-15200. Prior to that, seniority of the applicant was fixed in the Civil List of Medical Officers w.e.f. 18.07.1989 on 16.10.2006 in the sub-cadre of GDMOs. Vide the impugned order dated 30.08.2011 representation of the applicant for her absorption as Senior Medical Officer/Chief Medical Officer w.e.f. 26.09.2003 has been rejected. She was also communicated that her further promotion in CHS would be as per DACP scheme. The applicant has accordingly filed present OA seeking following reliefs:

- “(i) Call for the records of this case.
- (ii) Quash & set aside the impugned portion of the order dated 16.10.2006 and 30.8.2011 (wrongly mentioned as 30.8.2010) at Annexure-A-1 and A-2;
- (iii) Declare that the applicant is entitled to count her service from 1.4.1997 for the purposes of promotion to the next higher grade of GDMO sub-cadre of CHS.
- (iv) Direct the respondents to promote the applicant to the next grade in the GDMO sub-cadre of CHS by counting her service from 1.4.1997.
- (v) Direct the respondents to give all consequential benefits to the applicant.
- (vi) Direct the respondents to pay the cost of litigation to the applicant.
- (vii) Pass any other order or direction which this Hon’ble Tribunal deems fit and proper in the facts and circumstances of the case.”

4. The respondents have filed a detailed counter affidavit resisting the claim of the applicant firstly on the ground of limitation. It is further pleaded that the applicant applied to be absorbed as Medical Officer as per her application form (Annexure R-III). She was initially appointed on deputation and later absorbed on the recommendation of the UPSC in accordance with rule 8 of the CHS Rules, 1996, which *inter alia* provides that the absorbee would be treated as a direct recruit. It is also stated that the applicant accepted all the terms and conditions of her deputation as also absorption. Her seniority was fixed in terms of OM No.20011/1/2000-Estt.(D) dated 27.03.2001 in the Civil List of Medical Officers at serial number 241-A as on 31.12.1992. She never disputed her seniority position nor the terms and conditions of offer of appointment, which clearly stipulated that she would be treated as a direct recruit in the grade of Medical Officer. Referring to the State Government's order granting presumptive higher grade to the applicant, it is stated that the said order does not in any manner confer any right upon the applicant as she had ceased to be the employee of the State Government on her absorption in CHS as Medical Officer.

5. We have heard the learned counsel appearing for parties.

6. The facts brought on record are not in dispute. Admittedly, the applicant was serving as an Assistant Surgeon at the

time of her deputation vide order dated 24.04.2001. Her deputation was for three years from the date of assumption of charge. The deputation was against the post of Medical Officer under CHS. Later, vide office memorandum dated 26.09.2003, the applicant was ordered to be absorbed and offer was given to her for such absorption in the following manner:

“The Union Public Service Commission has recommended Dr. (Mrs.) Sangeeta Devi, Assistant Surgeon, Government of Jammu & Kashmir, presently on deputation to CHS, for appointment on absorption basis to the post of Medical Officer in the Central Health Service under the rule 8 of the Central Health Service Rules, 1996. The President is pleased to give an offer to Dr. (Mrs.) Sangeeta Devi for appointment for appointment in Central Health Service as Medical Officer on regular basis with effect from the date she will assume the charge of the post after accepting this offer on the following terms and conditions:

(I) The scale of pay of the post is Rs.8,000-275-13500. Her initial pay in the post will be fixed according to the rules.”

“(X) POST GRADUATE ALLOWANCE:

A medical graduate appointed to the post of Medical Officer or Chief Medical Officer including Chief Medical Officer (Non Functional Selection Grade) for which possession of a recognized post-graduate qualification is not essential, shall be given over and above the pay admissible in the relevant scale, Post-Graduate Allowance per month as per relevant orders/ instructions for possession of recognized Post Graduate Diploma(s) or Post Graduate Degree respectively specified in Central Health Service Rules, 1996 or under the Indian Medical Council Act, 1956 (102 of 1956). The allowance shall be payable only at the rate of allowance admissible for possessing recognized Post Graduate Degree to an officer who

possesses both recognized Post Graduate Degree and Diploma.

(XL) She will be treated as direct recruit in the grade of Medical Officer."

"3. In case the offer is acceptable, she should report for duty to the Additional Director (HQ), CGHS, Nirman Bhawan, New Delhi positively within 30 days from the date of issue of this Memorandum under intimation to this Ministry. If no reply is received and he/she does not report for duty within the stipulated period of 30 days the offer of appointment will be treated as cancelled." *(Emphasis added)*.

This offer has been accepted by the applicant consciously and with open eyes, and without any caveat. From the perusal of the aforesaid memorandum, it is evident that the offer to the applicant was for appointment in the Central Health Service as Medical Officer on regular basis in the pay scale of Rs.8000-275-13500. Condition (X) clearly postulates that a medical graduate appointed to the post of Medical Officer or Senior Medical Officer or CMO etc. for which possession of a recognized post-graduate qualification is not essential, shall be given post-graduate allowance over and above the admissible pay. The offer further clearly indicates that the appointment would be treated as a direct recruitment in the grade of Medical Officer. Para 3 of the said memorandum clearly indicates that the appointment is subject to acceptance of the offer. Obviously, the applicant accepted the offer and came to be absorbed in the cadre of Medical Officer in the CHS. Undisputedly, post-graduate degree was not an essential qualification for the post of Medical Officer, and,

therefore, the subsequent order of the State Government granting presumptive benefit of financial upgradation on account of possession of post-graduate degree is of no consequence, and on that basis the applicant cannot claim absorption against the higher post of Senior Medical Officer/Chief Medical Officer.

7. The applicant has relied upon a Full Bench Judgment of this Tribunal dated 22.04.2009 passed in OA No.1436/2007 and other connected matters – *Dr. Snehal Bhave & others v Union of India & others*, as also a judgment of the Hon'ble Delhi High Court dated 22.07.2010 in WP(C) No.3845/2010 and connected matters – *Union of India & others v Pankaj Agnihotri & others*. The Full Bench of this Tribunal in *Dr. Snehal Bhave & others* (supra) considered a similar question, i.e., reckoning of seniority as also the right of promotion on absorption. Reference made to the Full Bench is reproduced hereunder:

“(1) Is it a universal rule that deputationists are to be given seniority taking into full account the equivalent service rendered by them in the parent department;

(2) Whether such recognition will infringe upon the settled rights of the existing personnel, including their career prospects;

(3) In the light of later decisions what could be the nature and extent of rights available to deputationists who ultimately come to be regularized in the new employment;

(4) Is it mandatory that the special rules as applicable also are to be taken notice of."

The Full Bench on consideration of the relevant Government memorandum as also the judgment of the Apex Court in *Sub Inspector Rooplal v Lt. Governor, Delhi & others* [(2000) 1 SCC 644] held as under:

"24. Resultantly and as a fall out of our discussions hereinabove made, we answer the reference as following:

(1) As per the interpretation given by the Supreme Court in SI Roop Lal's case (supra) deputationists are to be given seniority taking into full account the equivalent service rendered by them in the parent department.

(2) The recognition of service of a transferred employee may infringe rights of existing personnel or may affect their career prospects but if the situation is postulated and permitted by the governing rules, it definitely requires obedience, since seniority or promotions cannot be recognized as fundamental rights but only rights conferred by statute;

(3) In the matter of promotions, as far as the present case is concerned, deputationists who got absorbed will be able to claim weightage on the basis of the seniority that is carried by them. As general rule, in respect of DPC clearance and minimum incumbency, the position will be governed by the respective special rules as are in force."

Insofar as the judgment of the Hon'ble High Court of Delhi in *Union of India & others v Pankaj Agnihotri & others* (supra) is concerned, on consideration of similar question of benefit of seniority and weightage for promotion after absorption, the Hon'ble Court made the following observations:

“34. From the afore-noted decisions, the legal principle which can be deduced is: (i) where one of the sources of appointment to a post in a cadre is deputation, service rendered by a deputationist on an equivalent post in his parent department shall be taken into consideration while computing his period of service in the deputed post for the purposes of determination of his seniority and eligibility for promotion in the transferred department; (ii) in cases where deputation is not the source of appointment in a cadre under the recruitment rules and a deputationist is absorbed in the transferred department by the government in exercise of its residuary powers, whether service rendered by a deputationist in his parent department shall be taken into consideration while computing his period of service in deputed post for the purposes of determination of his seniority and eligibility for promotion in transferred department would be dependent upon terms and conditions of deputation or absorption of deputationists in transferred department.”

8. The Full Bench of this Tribunal held that a deputationist on absorption is entitled to seniority taking into account the equivalent service rendered in the parent department. Admittedly, the applicant has been granted the benefit of seniority by giving benefit of past service on analogous post in the State Government. Insofar as the question of promotion is concerned, the Full Bench has only said that the absorbed deputationist will be able to claim weightage on the basis of seniority that is carried by him, but that is not the claim of the applicant. She is claiming her absorption in a higher grade against a higher post, and her claim is not confined to the weightage of seniority. The ratio of the judgment of the Hon'ble High Court of Delhi referred to hereinabove is that where deputation

is one of the source for appointment on the post under the service rules, service rendered by a deputationist on an equivalent post in his parent department shall be taken into consideration while computing the period of service in the deputed post and for counting seniority and eligibility for promotion in the transferred department. However, where the deputation is not a source of appointment in a cadre under the recruitment rules and the deputationist is absorbed in the transferred department by the Government in exercise of its residuary powers, service rendered by a deputationist in his parent department for purposes of determination of seniority and eligibility for promotion in the transferred department would be dependent upon the terms and conditions of deputation or absorption of deputationist in the transferred department or the rules in this regard.

9. Under the recruitment rules for General Duty Sub-Cadre posts, i.e., "Medical Officer Grade", for the post of Senior Medical Officer, the feeder category is Medical Officer in the General Duty Sub-cadre with four years regular service in the grade, and the post is to be filled by promotion on the basis of seniority-cum-fitness without linkage to vacancies, failing which by direct recruitment. The post of Chief Medical Officer is to be filled up by promotion on the basis of seniority-cum-fitness without linkage to vacancies, from amongst the Senior Medical Officers in the General Duty Sub-cadre

with six years regular service in the grade, or on completion of ten years combined regular service as Medical Officer and Senior Medical Officer of which at least two years shall be as Senior Medical Officer, failing which by direct recruitment. Thus, the recruitment rules clearly provide that the posts of Senior Medical Officer and Chief Medical Officer are only promotional posts. Medical Officer is the feeder channel for Senior Medical Officer, and Senior Medical Officer is the feeder channel for Chief Medical Officer, though all the posts can be filled up by direct recruitment as well in the event candidates for promotion are not available. In view of the recruitment rules, deputation is not a source of recruitment. All deputations in the CHS are made under rule 8 of the CHS Rules, 1996. Rule 8 as amended vide notification dated 30.07.2001 reads as under:

“8. Filling of Duty Posts by Transfer on Deputation (including short term contract):

(1) Notwithstanding anything contained in rule 7, where the Government is of the opinion that it is necessary or expedient so to do, it may for reasons to be recorded in writing and in consultation with the Commission, fill not more than one hundred duty posts in all, in the grades of Medical Officer/Senior Medical Officer in General Duty Sub-Cadre and Specialist Grade II (Junior and Senior Scale) or Specialist Grade I in the Non-Teaching and Public Health Sub-Cadre and Assistant Professor or Associate Professor or Professor in the Teaching Sub-Cadre by transfer on deputation of suitable officers holding analogous posts under the Central Government (including Ministries of Railway and Defence)/State W.P.(C) Nos.3845/2010, 3846/2010

& 3847/2010 Page 9 of 39 Governments/Union Territories and by Short Term Contract of suitable officers holding analogous posts under the statutory bodies, autonomous bodies, semi government organisations, universities or recognised Research Institutions.

Provided that one hundred posts earmarked for deputation (including short term contract) in all the four sub-cadres mentioned above, it may be open to the Central Government, in consultation with the Commission, to consider absorption against fifty posts and only officers of Central Government or State Government or Union Territories shall be eligible for being considered for appointment on absorption basis.

(2) The period of deputation/contract shall be for a period not exceeding three years, which may, in special circumstances be extended upto 5 years, as the Government may think fit.

(3) For appointment to duty posts on absorption basis, the officers shall fulfil minimum educational and other qualifications prescribed for the posts in Schedule V to these Rules."

Rule 8 is in fact not part of the recruitment rules, but general rule providing for deputation, and thus deputation even under rule 8 cannot be said to be a source of recruitment. This clearly falls within the purview of condition (ii) of para 34 of judgment of the Hon'ble High Court of Delhi in *Union of India & others v Pankaj Agnihotri & others* (supra), which *inter alia* provides that the eligibility for promotion would be dependent upon the terms and conditions of deputation or absorption of deputationists in the transferred department. We have already culled out the conditions of deputation/absorption against which the applicant was offered

appointment, and on her acceptance appointment was made. The applicant having consciously accepted the conditions, cannot now turn around and claim her re-absorption against a higher post on the basis of the presumptive promotion granted by the State Government when she had ceased to be the employee of the State Government.

10. A similar issue came up for consideration before another co-ordinate Bench of this Tribunal, of which one of us (Chairman) was the party, in OA No.1699/2012 - *Dr. Niruta Sharma v Union of India & others* decided on 28.10.2016. The co-ordinate Bench, considering this aspect held as under:

“27. Therefore, while the claim of the applicant for fixation of her initial pay in CHS in the higher pay scale, as had been granted to her in her previous substantive employment with the Himachal Government, from the date of her absorption in CHS itself cannot be granted to her, more so when she had knowingly and willingly accepted her absorption under the CHS cadre only as a Senior Medical Officer w.e.f. 09.10.2003, in the pay scale of Rs.10,000-15200, in the interest of her remaining at Delhi, instead of reverting back to her earlier parent cadre in Himachal Pradesh, but the weightage of her having already rendered analogous service during the period of her deputation also would have to be provided to her, and, only if that period of analogous service falls short of the period prescribed for the consideration of her case for promotion, she would be required to render only such balance period of qualifying service after her absorption into CHS. If her analogous service experience while being on deputation with CHS has already exceeded the qualifying period, her eligibility for consideration of her case for promotion would start soon after such absorption.”

11. Thus, this OA is partly allowed with the following directions:

- (1) Prayer of the applicant for quashing the order dated 16.10.2006 to the extent it contains the stipulation, "*However, for the purpose of promotion to next grade in GDMO sib-cadre of CHS, the required qualifying service in respect of Dr. (Mrs.) Sangeeta Devi will be counted from her date of absorption under CHS*", is allowed. The entire service of the applicant for which she has been granted seniority would be treated as qualifying service for purposes of next promotion in General Duty Medical Officers Sub-cadre of Central Health Service.
- (2) Challenge to order dated 30.08.2011 rejecting the application/representation of the applicant for her absorption as Senior Medical Officer/Chief Medical Officer w.e.f. 26.09.2003 fails and the OA to this effect is dismissed.
- (3) The applicant shall be entitled to be considered for next promotion by taking into consideration her seniority as already allowed to her, of course, subject to other conditions of eligibility, seniority, etc.

(Shekhar Agarwal)
Member (A)

/as/

(Justice Permod Kohli)
Chairman