

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.3306/2013

This the 11th of July, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Sh.(Dr.) G. Prakash
S/o Late Sh. Nanak Chand
R/o B-37 LIC Colony,
Meera Bagh,
New Delhi-1100877.

..... Applicant

(By Advocate: Shri G.D.Chawla)

Versus

1. Union of India through its
Secretary, M/o Health & Family Welfare,
Govt. of India,
Nirman Bhawan,
New Delhi.
2. The Director General Health Service,
M/o Health & Family Welfare,
Govt. of India through
Director, CGHS,
Nirman Bhawan,
New Delhi.
3. Medical Superintendent,
Dr. RML Hospital,
Govt. of India,
New Delhi.
4. Additional Director (HQ),
CGHS Headquarters,
Bikaner House,
New Delhi.

5. Medical Superintendent,
Pt.Madan Mohan Malviya Hospital,
Govt. of NCTD,
Malviya Nagar,
New Delhi-110017. Respondents

(By Advocate: Shri Rajinder Nischal)

ORDER(ORAL)

By Hon'ble Mr.Justice Permod Kohli:

The applicant was recruited as Medical Officer pursuant to selection in combined Medical Services Examination, 1996. He was appointed vide order dated 29.01.1998 and posted at RML Hospital, Delhi. The applicant has mentioned about his transfer from one place to another. The applicant later on came to be promoted as Sr.Medical Officer w.e.f. 25.11.2001. The applicant was transferred to GNCT, Delhi in public interest. He was placed under suspension on 28.11.2009 while serving in GNCT, Delhi. However, his suspension came to be revoked on 04.11.2010. The applicant was due for promotion in the year 2006. It is stated that some juniors have been promoted in the year 2006 ignoring the applicant. It is admitted fact that the applicant was not considered for promotion in the year 2006. The 2nd batch of juniors to the applicant were promoted in the year 2012 as Chief Medical Officers (CMO). At this

stage, the applicant filed the present petition on 16.09.2013 with the following prayers:-

“8.1 To direct the respondents to restore the applicant his actual posting under Central Health Services (CGHS) by summoning the records filed of transfer case and posting him to a suitable hospital-institution near his residence in Meera Bagh, Paschim Vihar, New Delhi;

8.2 To command the respondents for settlement of period of suspension i.e 28.11.2009 to 04.11.2010 with all consequential benefits including the salary and other attendant benefits;

8.3 To release arrears of increments with penal interest notwithstanding any other action against the defaulter (s);

8.4 To further direct the respondents to consider and promote the applicant to the regular post of CMO or CMO (NFSG)

8.5 In the event of success in this case, the respondents be directed to pay the arrears of salary at the 18% penal interest;

8.6 To pass any other order or orders, direction or directions as deemed fit in the facts and circumstances of the case;

8.7 To allow the application with exemplary cost and compensation as deemed justified.”

2. However, Paras 8(i) and 8(ii) of the relief clause were later on given up, as is evident from order dated 16.10.2015. Now the remaining prayers for consideration are regarding non-payment of increment w.e.f. year 2009 with interest and non consideration of his promotion to the post of CMO or CMO (NFSG).

3. From the counter affidavit filed on behalf of respondent no.1 to 4, it appears that the applicant was considered for promotion to the post of CMO w.e.f. 25.11.2006 but was not found fit. In para 4.7 and 4.8 of the counter affidavit it is stated that due to non-availability of ACRs the applicant was not considered for promotion. The denial of promotion to the applicant merely for non-availability of ACRs is illegal and impermissible in law. However, learned counsel for the applicant submits that he had furnished his self resume for the ACRs for the period between 2006-2009. Be that as it may, the fact remains that non-consideration of the applicant for promotion to the post of CMO even in the year 2012 is bad in law. Insofar as promotion of his juniors made in the year 2006 is concerned, the applicant chose not to challenge their promotion within the period of limitation. The present petition challenging his non-consideration for promotion made in the year 2006 cannot be entertained at this belated stage. Therefore, the promotions granted to his juniors in the year 2006 cannot be interfered by the Tribunal. The applicant is only entitled to be considered for promotion from the year 2012 when his juniors were so promoted. There is no specific prayer for setting aside the promotions made in the year 2012 and even such juniors are not impleaded as party respondents. Therefore, it is not possible for us to interfere with the promotions made in the year 2012. However, at the same time, non-consideration of the applicant in the year 2012 for promotion

to the post of CMO merely on account of non-availability of ACRs is not justifiable. Similarly, declaration made by the DPC in its meeting held on 26.02.2014 whereby the applicant has been declared 'unfit' for promotion on account of non-availability of ACRs is also required to be declared as illegal.

4. Shri Rajinder Nischal, learned counsel for the respondent has not disputed the fact that the applicant has not been considered for promotion in accordance with law. If his ACRs were not available, he should have been considered based on previous ACRs as were available with the respondents.

5. In view of above, we partially allow this OA with the following directions:-

- (i) Respondents shall release the increments of the applicant w.e.f. 2009 unless there is any disqualification suffered by him, or any valid reason on the basis of which he can be denied such increments.
- (ii) Consider the applicant for promotion to the post of CMO by taking into account his previous ACRs as are available with the respondents by convening a review DPC. The review DPC for consideration of his promotion to the post of CMO shall be convened within a period of three months. If the applicant is found fit to be promoted as CMO or CMO (NFSG) his

promotion shall be confined from the year 2012 when his juniors were so promoted. Since there has been lapse on the part of the applicant by not impleading the persons to be affected by this order, the seniority of those promoted in the year 2012 shall also not be disturbed in the event the applicant is promoted w.e.f. 2012. He shall rank junior to such promotes.

No order as to costs.

(K.N. Shrivastava)
Member(A)

(Justice Permod Kohli)
Chairman

/rb/

- (i) In the event, the applicant is made representation from the date receipt of proceedings of the DPC. If the applicant is found fit and promoted as CMO and NFSG w.e.f. from the date of his juniors were promoted in the year 2012, his consideration for promotion shall also be confined from the year 2012 when his juniors were promoted. Without disturbing earlier promotion made in the year 2006, since there has been lapse on the part of the applicant by not seeking remedial measures, the seniority of those promoted in the year 2012 shall not be disturbed in the event the applicant is promoted.

