

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

O.A.No.4436/2015
M.A.No.4062/2015

Monday, this the 20th day of March 2017

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

Dr. Balkrishna, aged about 57 years
Professor, Department of Physiology
Maulana Azad Medical College, New Delhi
s/o Mr. Nathi Lal
r/o C-253, Pocket-1, Phase-1
Mayur Vihar, Delhi – 91

(Mr. S P Chadha, Advocate)

..Applicant

Versus

Union of India & others through

1. The Secretary
Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi
2. The Secretary
Union Public Service Commission
Dholpur House
Shahjahan Road, New Delhi
3. The Director General
Ministry of health & Family Welfare
Nirman Bhawan, New Delhi
4. The Dean
Maulana Azad Medical College
New Delhi

..Respondents

(Dr. Ch. Shamshuddin Khan, Advocate for respondent Nos. 1 & 3,
Mr. R N Singh, Advocate for Mr. R V Sinha, Advocate for respondent No.2
& Mrs. Alka Sharma, Advocate for respondent No.4)

O R D E R (ORAL)

Justice Permod Kohli:

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This Application has been filed seeking condonation of delay. The applicant has challenged the order dated 07.03.2014 (Annexure A-1) whereby a number of promotions were made from the post of Professor of Teacher Specialist Sub-cadre of CHS (scale of pay `37400-67000) with Grade Pay of `8700/- (Pay Band 4) to the Senior Administrative Grade (SAG) level post of Director Professor (scale of pay `37400-67000) with Grade Pay of `10000/- (Pay Band 4) under Dynamic Assured Career Progression (DACP) Scheme with effect from the dates indicated against the officers mentioned in the order.

2. The grievance of the applicant is that he was fully eligible and entitled for promotion when the persons, including junior to him, were promoted vide the impugned order. The applicant came to know about impugned order later in time and thus filed the present Application. In paragraph 3 of the O.A. and in this condonation Application, the applicant has stated that the impugned order was not communicated to him and he came to know about the passing of the said order later and thus seeks condonation of delay.

3. The prayer for condonation is, however, opposed. Respondent Nos. 1 & 3 filed objections to the condonation Application but nothing much has been said about the averments made in the condonation Application and

the O.A. From the impugned order, we find that the order is not communicated to the promotees or to the persons, who are ignored. In this view of the matter, we are satisfied that there is sufficient cause for condoning the delay. The condonation Application is accordingly allowed, delay in filing the O.A. is condoned.

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4. The applicant has filed this O.A. claiming promotion to the post of Director Professor in SAG with Grade Pay of `10000/- w.e.f. 15.11.2009 by holding a review DPC. The grievance of the applicant, as projected in the O.A., is that he was eligible and entitled for promotion to the post of Director Professor in the Grade Pay of `10000/- under DACP Scheme but he was ignored and number of juniors were promoted vide the impugned order dated 07.03.2014. The only ground raised by respondent Nos. 1 & 3 in the counter affidavit is that there was a vigilance angle. However, the said respondents have not placed on record any document to show that any charge sheet for disciplinary proceedings or criminal case was pending against the applicant at the time the juniors were considered for promotion. Apart from that, the UPSC (respondent No.2), in its reply, stated as under:-

“6.1 A meeting of the DPC for promotion to the SAG level post of Director Professor in the Teaching Specialist Sub-cadre of Central Health Service (Group ‘A’ post in the pay scale of Rs.37,400-67,000/- + GP Rs.10,000 in PB-4) under the Dynamic Assured Career Progression (DACP) Scheme in the Ministry of Health & Family Welfare was held in this office on 30th April, 2013 for the panel year 2009-10 wherein the applicant was also considered including 37 other eligible officers. The Committee recommended a panel of 28 officers including the applicant as “Fit” for the panel year 2009-10 for promotion. The recommendations of the DPC meeting were forwarded to the Ministry vide this office letter dated 03.05.2013.

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8.1 That with regard to averment made in para 7 above, it is respectfully submitted that the Commission holds the meetings of the DPC/Review DPC only on receipt of proposal from the administrative Ministry/Department, complete in all aspects. At the time of holding of DPC on 30.04.2013, the Department had submitted the vigilance clearance in respect of the applicant and did not inform any below benchmark ACR or penalty etc. in respect of the applicant. Therefore, he was assessed 'Fit' for promotion for the year 2009-10 and his assessment was not kept in sealed cover."

5. From the averments made by the UPSC, we find that the case of the applicant was sent to UPSC by the Department for promotion to the SAG level post of Director Professor along with 27 other candidates with vigilance clearance. The UPSC recommended 28 candidates, including the applicant. However, the applicant was not promoted, which persuaded him to approach this Tribunal. It seems that this O.A. was filed on 04.12.2015 and notice was issued. However, during the pendency of this O.A., the respondents have passed order dated 10.11.2016 granting promotion to the applicant to the post of Director Professor under DACP Scheme in the scale of pay `37400-67000 with Grade Pay of `10000/- from the due date, i.e., 15.11.2009. He has also been allowed the arrears of pay.

6. As far as the relief claimed in this O.A. is concerned, that stands granted. Learned counsel for applicant has, however, vehemently argued that the respondents have delayed the promotion of the applicant for no valid reasons, which has caused great agony and harassment to the applicant. He claims interest on the arrears of pay. We find that there is no prayer for grant of interest, though there is a prayer for cost. It is a fit case where the applicant should be awarded cost. Since the applicant has already

been promoted with effect from the due date but after 7 years, that too, on approaching this Tribunal. We have noticed above that Government even ignored the recommendations of the UPSC without any lawful and valid reasons. We are of the considered view that this is a fit case where the applicant needs to be compensated. We, therefore, award cost of `50000/- to the applicant to be paid by respondent No.1 – Secretary, Ministry of Health & Family Welfare, New Delhi. The cost shall be paid within a period of two months, failing which this file shall be placed before the Court for purpose of execution and initiation of contempt proceedings.

7. The O.A. stands disposed of.

(K.N. Shrivastava)
Member (A)

March 20, 2017
/sunil/

(Justice Permod Kohli)
Chairman