

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No. 3205/2013

Reserved on : 01.11.2018
Pronounced on : 27.11.2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Dr. Renuka Kaul Nigam W/o Dr. P. D. Nigam,
Dy. Medical Superintendent Group - A,
Indira Gandhi Employees State Insurance Hospital,
Jhilmil Delhi.
Resident of : A-2, M S Building Spl. Type Flats,
Baba Kharak Singh Marg,
Opp. R M L Hospital Casualty,
New Delhi - 110001. ... Applicant

(By Mr. Piyush Sharma, Advocate)

Versus

1. Union of India, Through,
The Principal Secretary,
Ministry of Labour Employment, Govt. of India,
New Delhi.
2. The Director General,
Employees State Insurance Corporation,
Panchdeep Bhawan, C I G Road,
New Delhi - 110002. ... Respondents

(By Mr. Pradeep Kumar for Mr. Yakesh Anand, Advocate)

O R D E R

Justice L. Narasimha Reddy, Chairman :

The applicant joined the service of Employees State Insurance Corporation (ESIC) as a Medical Officer Grade-II in

the year 1978, and was promoted as Chief Medical Officer in the year 1991. The Dynamic Assured Career Progression (DACP) Scheme was introduced in the ESIC in the year 2008 to the posts of Senior Administrative Grade (SAG) also, in Pay Band-4 with Grade Pay Rs.10,000/-. The DPC for the vacancies of 2008-09 met on 18.02.2009. The ACRs of five years preceding the year of vacancies were taken into account. On finding that the ACRs of the applicant for that period were below benchmark, the DPC declared her as unfit for being promoted to the SAG. Candidates who were declared fit, were promoted w.e.f. 29.10.2008.

2. An attempt was made thereafter to re-consider the case of the applicant. However, the DPC took the view that it cannot review the earlier decision taken in the year 2009, in view of the office memorandum dated 06.02.2010 issued by the DoP&T. The DPC met one month thereafter for the vacancies of the year 2009-10, on 19.03.2010. The applicant was declared fit and was promoted w.e.f. 01.04.2009.

3. The applicant filed OA No.3242/2011, feeling aggrieved by denial of promotion w.e.f. 29.10.2008. The OA was disposed of directing the respondents to pass orders on the

representation submitted by the applicant. On a consideration of the representation, the respondents passed order dated 22.03.2013, stating that the request of the applicant cannot be acceded to. The same is challenged in this OA.

4. The applicant contends that she was not communicated any below benchmark ACRs for the period in question, and that there was no basis for denial of promotion to her w.e.f. 29.10.2008. It is also mentioned that two officers, who too were denied promotion with effect from that date by the DPC which met on 18.02.2009, approached this Tribunal, and on a direction issued by the Tribunal, the review DDPC was held and relief as prayed for was granted to them.

5. The respondents filed a counter-affidavit opposing the OA. According to them, the DPC which met on 18.02.2009, found the applicant as unfit, in view of the gradation in the ACRs, and as long as that stands, the applicant cannot have any genuine grievance. Other contentions are also urged.

6. We heard Shri Piyush Sharma, learned counsel for the applicant, and Shri Pradeep Kumar, learned counsel for the respondents.

7. The DACP was introduced in ESIC in the year 2008, and the attempt to implement the same took place on 18.02.2009 with the convening of the DPC. Since the exercise was with reference to the vacancies of the year 2008-09, the ACRs for the preceding five years became relevant. The gradation of ACRs for the years 2002-03, 2003-04 and 2007-08 was below benchmark. Therefore, the applicant was treated as unfit. It was the prerogative of the DPC to make its own assessment about the ACRs also. However, the concerned DPC chose to take the ACRs on their face value. Though an attempt was made in the subsequent year by the ESIC to get the case of the applicant re-considered by the DPC, it was not possible in view of the office memorandum dated 06.02.2010 issued by the DoP&T.

8. The case of the applicant was next considered on 19.03.2010 vis-à-vis the vacancies referable to the year 2009-10. This time, the ACRs from 2003-04 onwards became relevant. The DPC took the view that the assessment made by the reporting and reviewing officers about the applicant was not proper. It also found that in the ACR for the year 2007-08, though the reporting officer gave a higher rating, it was

downgraded by the reviewing officer. By taking this aspect into account, the DPC chose to ignore the ACRs for both the years, and found her to be 'fit'. As a result, the applicant was promoted to the SAG w.e.f. 01.04.2009.

9. The applicant naturally felt aggrieved on account of denial of promotion w.e.f. 29.10.2008. However, in the circumstances referred to above, it cannot be said that any illegality was committed by the respondents.

10. It may be true that the review DPC was conducted by the Corporation in respect of the two officers, namely, Devender Marwah and Dr. Kumud Sharma on 06.07.2012, and on the basis of the recommendations made by the review DPC, they were promoted to the SAG w.e.f. 28.10.2008. However, a different kind of disposal was given to the OA filed by the applicant, and the only relief granted to her was that her representation be considered. If she was not satisfied with that result, she was expected to pursue further remedies. We find it difficult to direct that review DPC be conducted at this length of time. It was not even mentioned that the two officers referred to above are junior to the applicant.

11. In view of these circumstances, we do not find any basis to interfere with the impugned order. The OA is accordingly dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/as/