

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No. 4463/2013

This the 16th day of October, 2018

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

1. Dr. Mumtaz Ahmad (Scientist Level-3),
S/o. Late Sh. Mahboob Hasan,
R/o. E-32, GTB Nagar,
Kareli, Allahabad (UP).
2. Dr. Mohammad Ehsan Ansari
(Scientist Level-3),
S/o. Sh. Mohammad Shaban Ansari,
R/o. 18-Z/4F/1, Karamat Ki Chowki,
Karelim, Allahabad (UP)-211 016.
3. Najmus Sehar (Scientist Level-3),
D/o. Sh. Sanaullah Khan,
R/o. Sana Vatika, Old Azimabad Colony,
P.O. Mehendru,
Patna – 800 006.

....Applicants

(By Advocate : Mr. Ajesh Luthra)

Versus

1. Union of India through
Secretary,
Department of Ayush
Ministry of Health & Family Welfare,
Ayush Bhawan, B-Block,
Near INA Market,
New Delhi – 110 032.
2. The Central Council for Research in Unani
Medicine, Through its President,
Department of Ayurveda,
Yoga & Naturapathy, Unani,
Siddha & Homeopathy,
Govt. of India,
Ministry of Health & Family Welfare,
Jawahar Lal Nehru Anusandhan Bhavan,
6-65, Institutional Area,

Opp. D-Block, Janakpuri,
New Delhi-110 058.

.....Respondents

(By Advocate : Mr. Rajinder Nischal with Mr. Ashish Nischal for respondent no. 1 and Mr. Sunil Kumar for respondent no. 2)

O R D E R (O R A L)

Justice L. Narasimha Reddy, Chairman :

The applicants have been appointed as Research Officers in Unani of the AYUSH Department of Ministry of Health, Government of India in the year 2009. They have been promoted to the grade of Scientist Level-3 with effect from 2006. The scheme of in-situ promotion, which was introduced in the AYUSH Department through office memorandum dated 03.09.2008 provides for further upgradation of Scientist Level-3 to Scientist Level-4 on completion of 5 years of service in that category. The eligibility however, is to be decided by the Screening Committee as provided in the scheme.

2. The case of the applicants was considered in the year 2011 for upgradation to the Scientist Level-4. However, the Departmental Assessment Board (DAB), which assessed their performance, did not recommend their cases. The action of the respondents in denying upgradation to the applicants is challenged in this O.A.

3. The applicants contend that the respondents have applied the criteria laid down in an office memorandum dated 30.04.2010 and thereby, denied the upgradation to them. It is pleaded that, once they have acquired eligibility to be upgraded on the basis of the scheme introduced in the year 2008, the subsequent modification cannot be permitted to defeat their rights. It is also argued that the persons with less capability, compared to the applicants, were upgraded in an arbitrary and discriminatory manner.

4. Respondents filed counter affidavit. It is stated that the case of the applicants and several others were considered in the year 2007 strictly in accordance with the prescribed procedure and since the applicants did not come up to the mark, they were denied the upgradation. It is also stated that the requirement as to the publication in Peer reviewed Journals, contemplated in the memo dated 30.04.2010 was not treated an essential requirement and at the most, the existence of publication of that nature was treated as a ground to dispense with the interview.

5. We heard Mr. Ajesh Luthra, learned counsel for applicants, Mr. S. Sunil and Mr. Rajinder Nischal, learned counsel for respondents.

6. The procedure for upgradation of Scientist Level-3 to Scientist Level-4 is governed by the procedure prescribed in the office memorandum, dated 03.09.2008. Para 3 of the Annexure (ii) appended to the O.M reads as under :-

“3. Assessment the Departmental Assessment Board for In Situ Promotion :

1. The Department Assessment Board shall –

- (a) Meet twice a year in the months of January and July;
- (b) Take into consideration, the overall performance of a candidate as reflected in his annual confidential reports and on the basis of an evaluation of the research work done in the last 5 years and, if deemed necessary, by interview and may consider in absentia the candidature of such officer (s) who are unable to present themselves for the interview, and shall draw up a list of officers who are assessed as fit for in situ promotion to the next higher grade in accordance with the provisions of the O.M. and recommend to the Central Government accordingly.”

7. From a perusal of this, it becomes clear that the factors to be taken into account are :-

- (a) The performance of the candidate as reflected in the Confidential report, and
- (b) The Research work done in the last 5 years.

For the purpose of evaluation of Research work, the DAB may even interview a candidate if they feel it necessary.

8. In the office memorandum dated 30.04.2010, the procedure prescribed mentioned above has been reiterated and it was added that in the context of evaluation of Research work, the publication of record in Peer Review Journal in the last five years would also be a factor to be taken into account. In the relevant paragraphs it was mentioned that in the absence of such publication the evaluation can be done by interviewing the candidates.

9. Admittedly, the applicants did not have any publication to their credit. However, they were not disqualified on the ground that they did not publish any Articles of Research. They have been interviewed and the DAB was not satisfied with their performance. It is fairly settled that in a specialised field, like the one in hand, the Courts cannot review the opinions of the Selection Committee. The applicants did not attribute any motive or mala fides to the members of the DAB.

10. The applicants contend that several candidates whose evaluation of ACRs was far below than theirs have been up graded, evenwhile they have been denied. It is also mentioned that the candidates who did not have publication were also rendered for upgradation. It needs to

be observed here that the in-situ promotions in the organisation are independent of the availability of vacancies and each upgradation is transferrable to the Scientist concerned. Hardly, there exists any occasion for comparison. The activities undertaken by each Scientist are specific to him.

11. We do not find any basis for granting relief to the applicants and the O.A is dismissed accordingly. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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