

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

ORIGINAL APPLICATION NO.060/01061/2016
Chandigarh, this the 24th day of January, 2018

**CORAM: HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A).**

DALJEET SINGH, AGED 48 YEARS S/O SH. JAGIR SINGH, ACCOUNTS OFFICER O/O FINANCIAL ADVISER, POST GRADUATE INSTITUTE OF MEDICAL EDUCATION & RESEARCH, CHANDIGARH (GROUP-B).

.....Applicant

(Argued by: Mr. Karan Singla, Advocate)

VERSUS

1. UNION OF INDIA, MINISTRY OF HEALTH AND FAMILY WELFARE, THROUGH ITS SECRETARY, NIRMAN BHAWAN, NEW DELHI-110001.
2. POST GRADUATE INSTITUTE OF MEDICAL EDUCATION & RESEARCH, SECTOR-12, CHANDIGARH THROUGH ITS DIRECTOR
3. THE DEPARTMENTAL PROMOTION COMMITTEE (GROUP A), POST GRADUATE INSTITUTE OF MEDICAL EDUCATION & RESEARCH, SECTOR 12, CHANDIGARH THROUGH ITS CHAIRMAN

....RESPONDENTS

**(Argued by: Mr. Vikram Sharma, Advocate for Mr. Amit Jhanji, Advocate For Respondents No.2&3
None for Respondent No.1)**

ORDER (Oral)
JUSTICE M.S. SULLAR, MEMBER (J)

1. The challenge in the instant Original Application (OA), preferred by applicant Daljeet Singh, Accounts Officer of the POST GRADUATE INSTITUTE OF MEDICAL EDUCATION & RESEARCH, CHANDIGARH

(PGIMER), is to the impugned order dated 24.9.2016 (Annexure A-11), whereby he was not promoted to the post of Senior Accounts Officer (SAO), for want of alleged non-approval of the relevant recruitment rules.

2. The epitome of the facts and material, which needs a necessary mention, for the limited purpose of deciding the core controversy, involved in the instant OA, and expository from the record, is that the applicant was appointed, vide order dated 28.7.1998 (Annexure A-1), and joined as Assistant Accounts Officer on 1.8.1998. He was stated to have been confirmed against the substantive post w.e.f. 1.8.2000 vide letter dated 30.9.2002. He was further promoted as Accounts Officer (AO), on the recommendations of the Departmental Promotion Committee (DPC) vide orders dated 3.9.2005 (Annexure A-2). It was alleged that in the absence of further promotional post in the cadre hierarchy, the applicant has been stagnating on the same post and pay scale, for the last about 11 years.

3. The case set up by the applicant, in brief, in so far as relevant, is that although respondent PGIMER has already implemented the recommendations of the Second Cadre Review w.e.f. 1.3.1992, after the approval of the Ministry of Health & Family Welfare (Respondent No.1), dated 8.7.1996 (Annexure A-3) but he was not promoted to the higher post. Two posts of SAO were stated to have been created vide order dated 23.1.2014 (Annexure A-5). According to the applicant that although the PGIMER has implemented the DoPT OM dated 24.3.2009, in respect of the Administrative Officer and Accounts Officer, and even UO Note dated 26.3.2014 was sent to the President of the PGIMER for approval, but still the applicant was not promoted on the pointed post

and instead impugned order dated 24.9.2016 (Annexure A-11) was passed, by the competent authority.

4. Aggrieved thereby, the applicant has preferred the instant OA challenging the validity of impugned order (Annexures A-11), inter-alia, on the following grounds :-

- (i) That it would be relevant to submit and reiterate here that the impugned order dated 24/09/2016, Annexure A-11 passed by respondent no.2 is highly illegal and in appropriate as the recruitment rules for the post of Sr. Accounts Officer already stands approved by respondent No.1 by its order dated 26/03/2014, Annexure A-6. Hence inappropriate and illegal exercise on the part of the respondent No.2 in not holding the DPC despite the fact that the recruitment rules already stands approved is adversely affecting the right of the applicant for further promotion to the post of Sr. Accounts Officer, who has been stagnating on the same post of accounts officer for the past more than 11 years. Hence, the impugned order dated 24/09/2016 needs to be quashed on this ground alone.
- (ii) That the indecisiveness on the part of respondents to consider the applicant for promotion to the sanctioned and vacant posts which has been causing financial hardships and he is deprived of various other facilities attached with higher post.
- (iii) That the action of the respondents is in violation of Article 16 of the Constitution of India.
- (iv) That the inaction on the part of respondents is in complete violation of the letter and spirit of the judgment in the case of Hemraj Singh Chauhan (supra).
- (v) That this Hon'ble Tribunal in OA No. 711-CH of 2011 vide its judgment dated 16.03.2012 has already directed to implement DoPT OM dated 24.3.2009, hence the delay on the part of the respondents in holding the meeting of DPC for promotion of applicant is prejudicial to the interest and rights of the applicant and such kind of inaction on the part of the respondents shall not be supported by the Court of law.
- (vi) That the respondents have been acting with mala fide and bad intentions.
- (vii) That the action of respondents is illegal, arbitrary and unjustified in the facts and circumstances of the case.
- (viii) That the case of the applicant is fully covered by the above said judgment, therefore, the respondent may be directed to hold the meeting of DPC and consider and promote the applicant to the post of Sr. Accounts Officer from the date of availability of vacancy and not from the date of DPC or date of issuance of office orders in view of the judgment in O.A.No. 11-CH-2012 S.K. Chadha Vs. Union of India & Others, decided on 10.10.2012, who is otherwise eligible for promotion.

5. On the strength of the aforesaid grounds, the applicant seeks to quash the impugned order dated 24.9.2016 (Annexure A-11), in the manner, indicated herein above.

6. On the contrary, the respondents have refuted the claim of the applicant and filed the reply, wherein, it was acknowledged that the recruitment rules for the post of SAO, after due deliberations, were approved by the Standing Finance Committee (SFC) of the PGIMER, in its meeting held on 17.5.2016. It was also admitted that the Governing Body and Institute Body of the PGIMER, in its meeting held on 6.8.2016, vide agenda Item No. 34 & 22, respectively, approved the recommendations of the Co-ordination Committee (Annexure R-2/1 colly). It was claimed that the case of the applicant for promotion to the post of SAO, will be placed before the DPC, after approval of the recruitment rules for the post of SAO from the Respondent No.1. It will not be out of place to mention here that the respondents have filed the reply, on the basis of the impugned order dated 24.9.2016 (Annexure A-11). Instead of reproducing the contents of the reply in toto, and in order to avoid repetition of facts, suffice it to say that while virtually acknowledging the factual matrix and reiterating the validity of the impugned orders, the respondents have stoutly denied all other allegations and grounds contained in the OA, and prayed for its dismissal.

7. Controverting the pleadings in reply filed by the respondents, and reiterating the grounds contained in the OA, the applicant has filed the replication. That is how, we are seized of the matter.

8. Having heard the learned counsel for the parties at quite some length, having gone through the record with their valuable help and after considering the entire matter, we are of the firm view that the instant OA deserves to be partly accepted, in the manner, and for the grounds, mentioned herein below.

9. As depicted herein above, the facts of the case are neither intricate, nor much disputed, and fall within a very narrow compass, to decide the real controversy between the parties, involved in the present case.

10. Such thus being the position on record, now the short and significant question, that arises for our consideration, in this case is, as to whether applicant is entitled for consideration to the promotional post of SAO, in the given peculiar facts and special circumstances of the case or not?

11. Having regard to the rival contentions of the learned counsel for the parties, to our mind, the answer must obviously be in the affirmative, in this regard.

12. What cannot possibly disputed here is that, in pursuance of the order dated 3.6.2016 passed in O.A.No. 060/00528/2016 of this Tribunal and while considering the case of the applicant for promotion, the competent authority has passed the impugned order dated 24.9.2016 (Annexure A-11), which in substance reads as under :

“No.F-4157/E-1(2)/PGI/2016

Dated: 24/09/16

ORDER

Whereas Sh. Daljeet Singh has joined this Institute on 1.8.1998 as Assistant Accounts Officer and further promoted to the post of Accounts Officer on 3.9.2005.

Whereas Sh. Daljeet Singh, Accounts Officer has filed an OA in the Hon'ble CAT vide OA No. 060/00528/2016 to consider his claim for promotion to the post of Senior Accounts Officer, PGIMER, Chandigarh.

Whereas the Hon'ble CAT has passed the orders on dated 03.06.2016 in the above said OA, the operative part of which is enumerated as below :-

“In view of the aforesaid limited prayer made by counsel for the applicant, but without going into the merits of the case, the instant OA is disposed of at the admission stage itself, without issuing notice to the respondents, with direction to the competent authority of the respondents to decide representation dated 23.2.2016 (Annexure A-9) with three months from the date of receipt of certified copy of this order and to communicate the same to the applicant”.

Whereas while considering the grant of financial up-gradation under MACP scheme, vigilance clearance from the Chief Vigilance Officer of the Institute is mandatory. The case for vigilance clearance was sent to Vigilance Cell on 25.08.2015 and Vigilance Cell allowed vigilance clearance in the case of Sh. Daljeet Singh, Accounts Officer on 28.04.2016.

Whereas DPC memo for grant of financial up-gradation under MACP Scheme has been placed before the Pre-DPC Committee held on 08.09.2016 and now the DPC memo will be placed before the Screening Committee under the Chairmanship of Deputy Director (Admn.) and if found eligible, financial up gradation under MACPO Scheme will be given to Sh. Daljeet Singh, Accounts Officer after approval of the competent authority.

Whereas Sh. Daljeet Singh is informed that the two posts of Senior Accounts Officer were created vide this Office Order Endst. No. PGI/DDA/2014/MA/FO17/4833 dated 23.01.2014. Further, the Recruitment Rules for the post of Senior Accounts Officer has not yet been finalized. The Agenda regarding framing of Recruitment Rules for the post of Senior Accounts Officer was placed before the Standing Finance Committee for the Institute in its meeting held on 17.05.2016 and SFC after detailed deliberation approved to implement the recommendations of Co-ordination Committee of PGIMER, Chandigarh, subject to the approval of the Ministry of Health & Family Welfare / Deptt. Of Expenditure. Further, Governing Body / Institute Body of the Institute in its meeting held on 06.08.2016 vide Agenda Item No. 34 & 22 respectively also approved the recommendations of the Co-ordination Committee at PGIMER, Chandigarh, subject to the approval of the Ministry of Health & Family Welfare, Govt. of India.

Whereas the case for promotion to the post of Senior Accounts Officer will be placed before the Departmental Promotion Committee after approval of the recommendations of the Co-ordination Committee and the Recruitment Rules for the post of Senior Accounts Officer after following the proper procedure".

13. Meaning thereby, it stands approved on the record that the PGIMER has already created the two posts of SAO, on 13.1.2014. It is not a matter of dispute that the recruitment rules for the post of SAO were approved by SFC of the Institute. Not only that, the Governing Body and Institute Body of the PGIMER, also approved the recommendations of the Co-ordination Committee, subject to approval of the Respondent no.1, in its meeting held on 6.8.2016.

14. Ex-facie, the main argument projected by the learned counsel for the respondents, to deny the promotion to the applicant, that the Recruitment Rules for the post of SAO, have not yet been finalized, is not only devoid of merit but mis-conceived, as well.

15. A perusal of the record would reveal that the PGIMER has referred the matter of recruitment rules for the post of SAO at PGIMER, Chandigarh, to the President of the Institute, vide letter dated 26.3.2014 (Annexure A-6), which reads as under :-

"Sub : Recruitment Rules for the post of Sr. Accounts Officer at PGIMER, Chandigarh.

It is submitted that 2 posts of Senior Accounts Officer have been sanctioned for the Institute on regular basis in the pay scale of Rs.15600-39100 with grade pay of Rs.6600 (PB-3) in pursuance of the approval of Ministry of Finance, Department of Expenditure vide ID No. F-160241/ECI/13 dated 25.11.2013 conveyed vide Ministry of Health & Family Welfare letter No., V-17020/63/2008-ME-II dated 29th November, 2013, which were further circulated vide office order issued under endst No. PGI/DDA/2014/MA/F-017/4833 dated 23.1.2014.

In this connection, it is submitted that presently there is no post of Sr. Accounts Officer in the Institute and as such no recruitment rules have been framed / approved for the post. It is further stated that the post of Sr. Accounts Officer does not exist at AIIMS, New Delhi. However, the post of Chief Accounts Officer exists at AIIMS, New Delhi in the pay8 scale of Rs.15600-39100 with grade pay Rs.6600 (PB-3).

It is pertinent to mention here that an agenda regarding creation of posts of Sr. Accounts Officer, Accounts Officer, Asstt. Accounts Officer was placed in the meeting of SFC held on 24.9.2008 (copy enclosed) in which recruitment rules for the post of Sr. Accounts Officer were as under :-

“100 percent by promotion from Accounts Officer having 5 years of regular service”.

Further as per DoPT letter dated 24.3.2009 also, 5 years experience is required from grade pay of Rs.5400 to Rs.6600. The same recruitment rules for the post of Sr. Account Officer have been recommended by the Coordination Committee and has been sent to Ministry of Health & Family Welfare, New Delhi, for approval.

Under Rule 7 (5) of PGIMER, Chandigarh Rules, 1967 read with regulation 32 of the PGIMER, Chandigarh Regulation, 1967, the Institute Body is competent to create various posts and prescribed experience, qualifications etc.

Since the meeting of Governing Body / Institute Body is not likely to be held in near future, matter is placed before the Hon'ble Minister of Health & Family Welfare in his capacity as President of the Institute to approve the Recruitment Rules for the post of Sr. Accounts Officer as placed at Annexure 'I' subject to the ratification by the Governing Body / Institute Body, so that the posts of Sr. Account Officer may be filled for smooth functioning of the Institute.

Sd/-Dy. Director (Admn.)
PGIMER,

Chandigarh.

Director, PGIMER, Chandigarh. Sd/-26.3.14

U.O.No. PGI/E-1(2)/Sr. AO/2014 Dated: 26.3.2014.

The President, PGIMER, Chandigarh Sd/-12/5/14”

16. It is not a matter of dispute that the concerned Minister / President of the PGIMER, Chandigarh, has already approved the Recruitment Rules on 12.5.2014 (Annexure A-6). Therefore once, recruitment rules for promotion to the post of SAO were already approved by the President / Health Minister, in that eventuality, respondents are legally duty bound to consider the case of the applicant for promotion to the post of SAO, in the obtaining circumstances of the case.,

17. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

18. In the light of the aforesaid prismatic reasons, the OA is hereby partly allowed. The impugned order dated 24.9.2016 (Annexure A-11), in so far as it denies consideration to the applicant for promotion for the post of SAO, is set aside. As a consequence thereof, the matter is remitted back to the competent authority to consider his case for promotion to the post of SAO, (if he is otherwise eligible), and in accordance with the indicated rules, within a period of two months from the date of receipt of a certified copy of this order. However, the parties are left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
24.01.2018

HC*