

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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O.A. NO.684/2003

NEW DELHI THIS 13th DAY OF FEBRUARY 2004

HON'BLE SHRI KULDIP SINGH, MEMBER (J)
HON'BLE SHRI S.A. SINGH, MEMBER (A)

Smt. Kimjamlhing Sithou,
Deptt. of Indian System of Medicine and Homeopathy,
Govt. of India,
Ministry of Health and Family Welfare,
Red Cross Building,
Red Cross Road, New Delhi

.....Applicant

(By : Shri V S R Krishna, Advocate)

VERSUS

Union of India & Ors. through

1. The Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi
2. The Secretary, Ministry of Finance,
Deptt. of Expenditure, North Block, New Delhi
3. The Secretary, Ministry of Personnel, PG & Pension,
Department of Personnel & Training,
Government of India,
North Block, New Delhi

.....Respondents

(By: Ms Promila, Advocate)

O R D E R

BY: HON'BLE SHRI KULDIP SINGH, MEMBER (J)

The applicant in this OA has assailed the order dated 4.2.2003 passed by the respondent No. 1 directing the applicant to show cause as to why she should not be reverted to the post of Assistant from the date of her appointment as SO in the Ministry of Family Welfare on the ground that she has not rendered 8 years approved service in the grade of Assistant as provided in the CSS Rules 1962.

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2. The applicant also assails action of respondent No. 2 in applying the provisions of the CSS Rules, 1962 as amended in February, 1999 in respect of DPC which was originally held in the year 1998 on the basis of Select List of the year 1996 prepared by the respondent No.3 whereby the review DPC was held but the applicant was not having the requisite length of approved service at that time and thus ineligible for consideration for the SO.

3. The applicant pleads that she was rightly considered by the DPC held in 1998 under the then existing provisions of the CSS Rules 1962. The subsequent amendment of the relevant provision relating to relaxation in approved service in respect of SC/ST had taken place in February 1999 which have only prospective effect as the same have come into force only from the date of publication in the Official Gazette, therefore the same cannot have retrospective effect. Thus the applicant have been illegally deprived for almost five years of actual service in the higher grade and respondents are now proposing to revert her to the post of Assistant. As a matter of fact, persons who are many years junior to the applicant have already been promoted as section Officers in subsequent panels and they are all serving as Section Officers. Thus the action of the respondents in seeking to revert the applicant after so many years and in preference to even those hundreds of officers who are many years junior to the applicant and still working as Section Officers, smacks of arbitrary and clear malafides on the part of the respondents. Thus the action of the respondents is against the law. Even the law declared by the Hon'ble Supreme Court says that in case a person had not

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rendered the requisite qualifying service for promotion, but afterwards during the interregnum period if he/she has completed the requisite years of service and becomes eligible for the higher post, such a person cannot be reverted to the lower post on the ground that on the date of the DPC he or she was not eligible for promotion. In the instant case the applicant was all the time eligible in accordance with the recruitment rules.

4. The facts in brief are the applicant was appointed as Assistant vide order dated 30.3.1992 Annexure A-II. The respondents prepared a select list of Assistant for promotion to the next higher post of S.O. for the year 1996 in accordance with the relevant provisions of the CSS Rules, 1962 in October 1998. It is further stated that as per the provisions of Clause (c) of Rule 2 of CSS Rules, 1962 the applicant was entitled to her approved service with effect from 1.7.90 i.e. the year in which examination was held by the Commission. By the time the DPC had met for considering promotions for the posts of S.Os. for the Select List of year 1996 which was held late in 1998, the applicant had put in more than eight years of approved service. The applicant further submits that as per provision of Rule 13(2) of the CSS Rules, 1962 if any person appointed to the Assistant Grade is considered for promotion to the SO Grade in any cadre under this rule, all persons senior to him in the Assistants Grade in that cadre and belonging to SC/ST who had rendered not less than 4 years of approved service in the grade are also entitled to be considered. Thus it is submitted that DoPT while preparing the select list of Assistants correctly applied the

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provisions and since a number of persons junior to the applicant were being considered in the said Select List, rightly included the name of the applicant in the said Select List for promotion to the post of Section Officer.

5. In February 1999, the respondents made an amendment in CSS Rules 1962 and dropped the proviso to Rule 13 which was prospective in nature. Hence the impugned order has been issued. The applicant further submits that it is well settled law that in respect of vacancies that arose before the amendment of recruitment rules, the unamended rules only can be made applicable and the amended provisions of the rules can have no application. So amendment cannot be given retrospective effect. It is further submitted that even if respondents found that the applicant was not eligible for consideration in the DPC for the year 1996, they should have considered the question of her eligibility for the subsequent years simultaneously before ordering reversion of the applicant. The failure of the respondents to hold review DPCs for the subsequent years in order to decide the eligibility of the applicant for consideration in any of the subsequent DPCs but resorting to the reversion of the applicant without any reason is clearly arbitrary and illegal.

6. Respondents are contesting the OA. The respondents raised preliminary objection that if the impugned order is quashed then it would not only make a way to put the similar claim by other persons who were senior to her and were not considered/promoted but will lead to serious administrative problems. It is submitted that the applicant was erroneously considered/promoted for inclusion in the Select List (Seniority Quota (hereinafter referred to

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as "SL(SQ)" for SO Grade 1996. The inadvertent error regarding consideration/promotion of the applicant against SL(SQ) for Section Officers Grade 1966 was detected as such the error is being rectified as a step towards this, the Govt had issued a Show Cause Notice for reversion. Once the mistake is detected cannot be allowed to perpetuate .

7. It is further submitted that applicant does not have any right to claim for promotion against SL(SQ) 1996 when she was not eligible at all for consideration for promotion and in view of the fact that even her seniors were not so considered /promoted. Her seniors got promotion against Section Officers" Grade SL(SQ) 1999. Thus applicant has rightly been issued the Show Cause for reversion. In view of above the OA is liable to be dismissed .

8. The respondents further submit that CSS Rules comprises of four Grades namely Asstt. Grade, SOs Grade, Grade-I (Under Secretary) and Selection Grade (Deputy Secretary) . While the grades of Dy. Secretary and Under Secretary are centralised with the DoPT the other 2 grades i.e. SO and Assistants are decentralised into 33 cadres comprising one or more Ministries/Departments as mentioned in the rules and DoPT maintain the seniority and combined inter se seniority of all the grade being the nodal authority and coordinates the process of appointment and maintains a combined/common seniority list known as Supplementary Common Seniority List (SCSL) of all the Assistants working in these 33 cadres prepared on an all Secretariat basis for promotion of CSS services as per regulations. A copy of regulation is also annexed at R-III. It is further stated that DoPT specify a zone of promotion and the cadre authorities are requested to send the names of

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eligible Assistants covered under the zone thus fixed for inclusion in the SL(SQ) for Section Officers' Grade for a particular year. Thus the Assistants who are found fit by the DPC are promoted against existing Seniority Quota vacancies in the respective cadres and remaining surplus/unadjusted Assistants are included in the Central Panel maintained by the DoPT in the order of SCSL of Assistant which was prepared as per regulations of 1997. It is further submitted that the perusal of SLSQ for the SO Grade for 1996 prepared by the DoPT which is annexed at R-5 the zone for promotion fixed for SL(SQ) was as under:

- General Candidates: All the remaining Assistants upto SCSL-1985 and the Assistants upto Serial No. 48 of SCSL-1986 who have rendered the minimum requisite approved service of 8 years as on 01.07.1996, the crucial date.

- SC Candidates: All the remaining Assistants upto SCSL-1987 and of SL-1988 who have completed 8 years approved service in the Assistants' Grade as on 01.07.1996.

- ST Candidates: All eligible Assistants belonging to ST category, i.e. who have completed 8 years approved service in the Assistants' Grade as on 01.07.1996.

9. It is further stated that the Assistant Grade Examination for year 1988, to which the applicant belongs was held in 1990 and her approved service can be counted from 01st July 1991 as provided in the CSS Rules 1962. Accordingly the applicant as also similarly placed Assistants who appeared in the examination of 1988 would become eligible for consideration for promotion against SL(SQ) 1999. As per the Zone for promotion prescribed by

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the DoPT for the Section Officers' Grade SL(SQ) 1996 no direct recruit Assistant from examination of 1988 was eligible for consideration for promotion against the said Select List. In fact none, other than the applicant from the said examination who was erroneously considered, and promoted/included in the said Select List. Moreover the perusal of SL (SQ) Grade 1996 would reveal that any person junior to the applicant in her parent cadre or any other cadre prepared by the DoPT on the basis of an All Secretariat Seniority List of 1996. Thus the applicant remain ineligible for promotion on the crucial date. It is only because of inadvertent act on the part of then parent cadre Ministry of Finance applicant was promoted. On detection of this it was decided to hold Review DPC to rectify inadvertent error.

10. The fact that the applicant belonging to 1988 examination which was held in 1990 and her seniority is to be counted from 1991 had not been controverted by the applicant in her rejoinder. In the rejoinder the applicant only submitted that she was considered by the review DPC and after assessment recommended her 'unfit for promotion' which was clearly malafide action on the part of the respondent in carrying out the entire exercise and in case applicant was not eligible there was no question of the review DPC. It is further stated that even there is not a single Scheduled Tribe candidate recruited in the 1988 batch as Assistant who is yet to be promoted as Section Officer in the entire CSS except who was found unfit by the DPC. It is submitted that the action of the respondents in reverting the applicant at this stage is illegal.

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11. We have heard the learned counsel for the parties. From the pleadings of the parties the main issues which arises for determination are:

- a) whether the applicant had been inadvertently included in the Select List of 1996 and was in fact ineligible for consideration for the post of Section Officer in the year 1998.
- b) whether the action of the respondents in reverting the applicant is illegal on the ground that the respondents had failed to consider that during interregnum period the applicant acquired requisite period of qualifying service for promotion; and
- c) whether the subsequent DPCs are also to be reviewed before reverting the applicant ?

12. The learned counsel for the applicant submitted that name of the applicant was rightly included in the select list of 1996 as under the then existing provision of Rule 13(2) provided that if any junior to a SC/ST is being considered for promotion to the post of Section Officer

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Grade then all persons senior to him in Assistant Grade in that cadre and belonging to the SC/ST who had 4 years service are also to be considered. The counsel for the applicant also states that it is needless to mention that the name of the applicant was included in the select list of 1996 so the applicant was rightly considered.

13. In reply the counsel of the respondent referred to the seniority list and pointed out that there was no junior to the applicant who had been included in the select list of 1996. Respondents have stated on record to the extent that even from the examination of 1988 no Assistant of any cadre had been included in the select list of 1996. Thus we find that the applicant is not entitled to have the benefit of Rule 13(2) because applicant could have been considered for promotion only when if any junior to applicant being considered for inclusion of his name to the select list of 1996. Since no one junior to applicant had been considered so this proviso to Rule 13(2) could not apply in the case of applicant. We find that the name of the applicant had been erroneously included in the list so there is no question of applying the amended rule with retrospective effect. The applicant had been issued Show Cause for reversion not on the basis of amended rules, but as her name ~~was~~ inadvertently had been included in the select list since no junior to the applicant had been included in the select list of 1996.

14. On next question whether before reverting the applicant to the post of Assistant it was required to consider that the applicant had attained the essential



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qualifying service. The learned counsel for applicant had referred the judgement reported in (1979 SCC (L&S) 35) titled Ram Sarup Vs State of Haryana and Others where the Hon'ble Apex Court further observed as under:-

Labour & Service - Appointment - Qualifications - Requirement of minimum experience of holding a particular post not satisfied - Appointment irregular but would be automatically regularised on the candidate acquiring that require extent of experience while holding that post - Reversion after completion of that period would therefore be invalid - Regularisation."

The court further observed as under:

"The question then arises as to what was the effect of breach of clause (1) of Rule 4 of the Rules. Did it have the effect of rendering the appointment wholly void so as to be completely ineffective or merely irregular, so that it could be regularised as and when the appellant acquired the necessary qualifications to hold the post of Labour-cum-Conciliation Office. We are of the view that the appointment of the appellant was irregular since he did not possess one of the three requisite qualifications but as soon as he acquired the necessary qualification of five years' experience of the working of Labour Laws in any of the the three capacities mentioned in clause (1) of Rule 4 or in any higher capacity, his appointment must be regarded as having been regularised. The appellant worked as Labour-cum-Conciliation Officer from January 1, 1968 and that being a post higher than that of Labour Inspector, or Deputy Chief Inspector of Shops or Wage Inspector, the experience gained by him in the working of Labour Laws in the post of Labour-cum-Conciliation Officer must be regarded as sufficient to constitute fulfilment of the requirement of five years' experience provide in clause (1) of Rule 4. The appointment of the appellant to the post of Labour-cum-Conciliation Officer, therefore, became regular from the date when he completed five years after taking into account the period of about ten months during which he worked as Chief Inspector of Shops. Once his appointment

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became regular on the expiry of this period of five years on his fulfilling the requirements for appointment as Labour-cum-Conciliation Officer and becoming eligible for that purpose, he could not thereafter be reverted to the post of Statistical Officer. The order of reversion passed against the appellant, was, therefore, clearly illegal and it must be set aside."

15. On the same point the Learned counsel for applicant has also referred the judgement in the case of JC Yadav and Others Vs. State of Harvna and Others (1990) 2 SCC 189 stating :

"Service Law - Seniority and promotion - Promotion - Length of service - Promotion irregular on non-fulfilment of experience qualification regarding completion of required length of service in the junior grade - Promotes completing the required length service during pendency of writ petition under Article 226 filed by the person not promoted challenging the promotion - Held, the irregular services stood regularised thereby".

16. Relying upon these judgements the Learned counsel for applicant further submitted that in this case also for the sake of arguments the applicant was not having approved service of 8 years for consideration for promotion to the post of Section Officer then during the interregnum period the applicant acquired the approved service, so before reverting the applicant the case of the applicant should have been considered by holding a review DPC of future years. The applicant also submitted that during interregnum period many juniors to applicant have also been promoted as Section Officer in the SOs Grade, so the action of the respondents in reverting the applicant is too harsh . Before reverting the applicant the respondents should consider the case and review DPC held for subsequent

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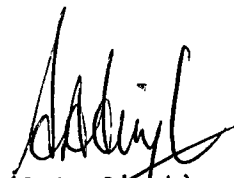
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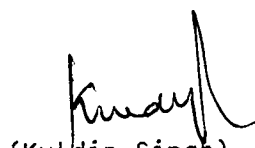
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inclusion of the name of the applicant in the select list of later years and if she had necessary approved service then she should not be reverted. We find that this is a very fair submission made by the learned counsel for the applicant and in the interest of equity and justice, we agree with the contention raised by the counsel for the applicant particularly if the juniors to the applicant had been considered for promotion during the subsequent DPC then the applicant had also right to be considered atleast along with her juniors for promotion to the post of Section Officer Grade as Section Officer.

17. Accordingly we allow the OA to the limited extent that before giving effect to the order of reversion the respondent shall review the DPC of subsequent years particularly the DPC where any immediate juniors to the applicant is promoted as Section Officers and if the applicant is found fit to be Section Officer then she shall be given promotion with effect from the date when her juniors promoted. The exercise of reviewing the DPC be completed as early as possible.

18. So in the above circumstances, the OA is disposed of.


(S.A. Singh)
Member (A)


(Kuldip Singh)
Member (J)

Patwal/