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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C)No.632/2005

Date of Decision : 19th July, 2010

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DR. K.K. SAINI Petitioner
Through : Mr. R.K. Saini, Adv.

versus

UOI & ANR Respondents
Through : Ms. Jyoti Singh, Adv.

CORAM :-

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE J.R. MIDHA

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | NO |
| 2. | To be referred to the Reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

GITA MITTAL, J. (Oral)

1. The petitioner is aggrieved by the failure of the respondents to consider him for appointment to the post of Additional Director General (Medical) in the Central Police Force despite meeting the prescribed eligibility requirements and the convening of a Departmental Promotion Committee.
2. The facts giving rise to the present writ petition are in a narrow compass and to the extent necessary, are briefly noted hereafter. The petitioner joined service with the Central Reserve Police Force (CRPF for brevity) as a Junior Medical Officer on 21st February, 1972. With effect from 2nd

January, 1997, the petitioner was promoted to the post of Director (Medical) which was equivalent to the rank of Inspector General of Police.

3. It appears that on 2nd September, 2004, the Ministry of Home Affairs sanctioned the Cadre Review cum Restructuring proposal of the Medical Cadre in the Central Police Forces similar to the pattern which was being followed in the Armed Forces. In such cadre review, the Ministry of Home Affairs had addressed creation and sanction of a post of Additional Director General (Medical) in the Central Police Forces who would head the Combined Medical Cadre. Pursuant to the said cadre review, the Ministry of Home Affairs had issued a letter dated 22nd November, 2004 conveying the sanction of the competent authority for inter alia creation of one temporary post of Additional Director General (Medical) on temporary basis in the pay scale of Rs.22,400 - Rs.24,500 in the combined medical set up of the Central Police Forces. The Ministry had further directed that the post would be governed as per provisions made in the revised scheme of medical set up in the Central Police Forces issued by the Ministry in its letter dated 2nd September, 2004. The approval of the Ministry of Finance by an order dated 17th June, 2004 and the concurrence of the integrated finance division of the Ministry of Home dated 19th November, 2004 to the said review and recommendation was

also recorded therein.

4. Before us there is no dispute that the petitioner was the senior most Director (Medical) in the Central Police Forces. Our attention is drawn to the list of the eligible Directors in the order of seniority prepared by the respondents for the purposes of consideration for appointment to the newly created post of Additional Director General (Medical). The petitioner's name appears at serial No.1 whereas one Dr. R.N. Samantray who was a Director (Medical) in ITBP is mentioned at serial No.2 and Dr. K.K. Pal, Director (Medical) S.S.B. is mentioned at serial No.3 in the order of seniority.

5. In view of the failure of the respondents to take further action pursuant to the creation of the said post, the petitioner addressed a letter dated 24th November, 2004 to the then Joint Secretary (Police) in the Ministry of Home Affairs requesting for implementation of the medical restructuring. As a result, an order dated 9th December, 2004 was passed by the competent authority deciding to hold a Departmental Promotion Committee for promotion to the post of Additional Director General (Medical) in accordance with the cadre review which had been undertaken.

6. It is admitted before us that the Departmental Promotion Committee so constituted had proposed a meeting to be convened on 15th December, 2004 to consider the eligible candidates for promotion to the said post. However, a

letter dated 9th December, 2004 was issued by the Deputy Secretary (Personnel – I) of the Ministry of Home Affairs, which has been placed on record, whereby a postponement of Departmental Promotion Committee meeting scheduled to be held on 15th December, 2004 in the Home Secretary's Chamber was communicated. It was further proposed that the meeting would be held on 16th December, 2004.

7. The respondents have submitted that the Departmental Promotion Committee was indefinitely deferred and did not meet till the petitioner unfortunately superannuated from his service on 31st December, 2004.

8. Aggrieved by the failure of the Departmental Promotion Committee to meet and consider the case of the petitioner who was eligible and placed senior most in the order of seniority for consideration and promotion to the said post of Additional Director General (Medical), the petitioner filed the present writ petitioner on 18th December, 2004 seeking the following prayers:-

- “(a) A writ of certiorari calling for the records of the case for perusal;
- (b) A writ of certiorari quashing the action of the respondent in not considering the petitioner for promotion to the post of Additional Director General, being the senior-most eligible officer and despite there being a sanctioned post, being illegal, arbitrary, vindictive, discriminatory and unjust and against the rules and regulations and the principles of equity justice and good conscience.

- (c) A writ of mandamus commanding the respondents to forthwith consider the petitioner for promotion to the post of Additional Director General, being senior-most eligible officer, with effect from 22nd November, 2004 i.e. the date on which said post was sanctioned and then take further consequential action in the matter.”

9. Notice to show cause in the writ petition was directed to be issued on 14th January, 2005. The matter has remained pending in this Court ever since. Apart from his claim premised on the above facts, the petitioner has submitted that the Departmental Promotion Committee failed to convene and consider the matter on account of prejudice of respondent No.2 who was also a member of Departmental Promotion Committee constituted against the petitioner. Even though, its combined meeting was convened by the Committee, the consideration of the eligible candidates was unwarrantedly deferred without making any recommendation on the ground that the Recruitment Rules for the post of Additional Director General (Medical) in terms of the cadre review had not been framed or notified.

10. Mr. R.K. Saini, learned counsel for the petitioner has submitted that this ground was completely baseless and was put forth with the sole intention of avoiding consideration and promotion of the petitioner to the said post. In support of this contention, reliance is placed on the order dated 26th April, 2005 whereby despite the same position subsisting,

the respondents promoted Dr. R.N. Samantray, Director (Medical), ITBP as the Additional Director General (Medical) in the Central Police Forces in the pay scale of Rs.22,400 – Rs.24,500 on ad-hoc basis with effect from the date of assumption of charge of the post till his date of superannuation on 31st January, 2006 or till further orders, whichever is earlier. The petitioner contends that even on the date of passing of the said order dated 26th April, 2005, the Recruitment Rules for promotion to the post of Additional Director General (Medical) had not been framed or notified by the respondents. The submission is that the petitioner was required to be similarly considered for promotion and appointment prior to the date of his superannuation on 31st December, 2004. Our attention is also drawn to the deposition made on behalf of the respondents to the effect that the new Recruitment Rules were sent, only on 28th July, 2006, for notification.

11. We may also notice, at this stage, that in answer to query put by this Court, Ms. Jyoti Singh, learned counsel for the respondents on instructions has submitted that Dr. R.N. Samantray who was promoted on ad-hoc basis as Additional Director General (Medical), has received his retiral benefits as well as pension premised on the pay scale of the post of Additional Director General (Medical) even though he had been appointed to the said post on ad-hoc basis.

12. The only issue which arises for consideration is as to whether the petitioner could have been denied the consideration for promotion to the post of Additional Director General (Medical) on the ground that the Recruitment Rules had not been framed. Learned counsel for the petitioner before us does not pray for a direction to appoint him to the higher post but has made a grievance to the effect that despite the order of convening the Departmental Promotion Committee, it deferred its consideration without any legally tenable justification till the petitioner had superannuated. We find substance in the grievance made by the petitioner in his challenge to the denial by the respondents in consideration of his name for the purpose of promotion on such a ground. This was unfair especially for the reason that the respondents have subsequently proceeded to consider the person who was below the petitioner and was placed at serial No.2 in the order of seniority of the eligible candidates. Such consideration has been effected despite the Recruitment Rules not having been notified. The respondents have thereafter not only effected his promotion on 26th April, 2005 but have also given him all benefits based on such promotion.

13. We also find that Shri S.K. Kapoor, Additional, DIG (Admin.) from the office of Inspector General of Police, CRPF has deposed an affidavit dated 25th April, 2006 to the effect

that till the date of retirement of the petitioner on 31st December, 2004, no officer junior to the petitioner had been appointed as the Additional Director General (Medical). It is further stated by the respondents that (even on the date of deposition of affidavit in the writ petition) since the matter was pending with the Ministry of Law for examination, as such the proposed Rules may, therefore, take further time before they are notified. The respondents have further stated that Dr. R.N. Samantray, Additional Director General (Medical) was appointed after the petitioner's retirement.

14. It is evident that the denial of the promotion to the petitioner was on specious and untenable grounds. There is, therefore, merit in the contentions of the petitioner that he was entitled to the same consideration as has been afforded to Dr. R.N. Samantray who was below him in the order of seniority. There is no denial or objection to the petitioner's eligibility for appointment to the post. The petitioner deserved to be considered for promotion to the post of Additional Director General (Medical) w.e.f. 16th December, 2004 when the consideration was deferred on the ground that Recruitment Rules were not in place. The respondents cannot possibly deny the same consideration and benefits as have been afforded to Dr. R.N. Samantray who was similarly placed as the petitioner.

In view of the above discussion, we direct the

respondents to forthwith convene a Departmental Promotion Committee for consideration of the petitioner for promotion to the post of Additional Director General (Medical) in the Central Police Forces within four weeks, having regard to the seniority and other relevant conditions as subsisted on 16th December, 2004. In case, the name of the petitioner is recommended, the consequential orders and action in the matter shall be taken expeditiously.

This writ petition is allowed in the above terms.

Dasti to parties.

GITA MITTAL, J

J.R. MIDHA, J

JULY 19, 2010
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