

\$~22

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5089/2007**

Date of decision: 16th May, 2016

INDIAN COUNCIL OF MEDICAL RESERACH & ANR..Petitioners
Through: **Mr. Vaibhav Kalra, Advocate**

versus

VIRENDER KUMAR MEHRA & ORS. Respondents
Through: **Mr. Yashpal Rangi, Advocate for**
respondent Nos.1 to 3

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA. J. (ORAL)

Indian Council of Medical Research and the Union of India have filed the present writ petition, impugning the order dated 20th March, 2007 passed by the Principal Bench, Central Administrative Tribunal, New Delhi in OA No.369/2006.

2. The issue before us is rather narrow and we would refer to the relevant facts. The dispute pertains to promotion to the post of Administrative Officer ('AO') in the Indian Council of Medical Research ('ICMR' for short). The said promotional post is to be filled from the two feeder cadres of Section Officers ('SOs') and Private Secretaries ('PSs'). As Recruitment Rules ('RRs') are yet to be framed, the procedure for promotion and eligibility requirements are governed and regulated by executive circulars. We begin by referring to the circulars.

3. The first circular is dated 26th November, 1981. The circular records that both the PSs and SOs were eligible for promotion to the post of AOs.

Further, ICMR generally follows the practice obtaining in the Central Secretariat Service ('CSS') and other sister organisations, like ICAR and CSIR. The posts designated as Under Secretaries ('USs') in CSS were filled-up from those in the grade of SOs and PS, provided the incumbent in the said grade satisfies the prescribed period of qualifying service. For the purpose of consideration for promotion to the post of US, a joint list of the persons in the two feeder cadre was prepared. For counting length of service as PS for promotion, the employee's entire service as PS and half the length of service as Senior Personal Assistant ('SPA') were taken into account. Applying the said percept, ICMR had stipulated that for promotion to the post of AO, only PSs were eligible and SPA or Personal Assistant ('PA') were not to be considered. PSs with eight years of service in the said post were eligible and for counting the period of eight years of service, entire service as PS and half the service as SPA would be counted. This circular records that the post of AOs, like the post of USs, being a group 'A' post, were to be filled by way of promotion and selection on the basis of merit with due regard to seniority by a duly constituted Departmental Promotion Committee ('DPC') in accordance with para II of the Office Memorandum No.22011/6/75/Estt. (I) dated 30th December, 1976 issued by the Department of Personnel and Administrative Reforms.

4. It is an accepted and admitted position that the method of selection, i.e., merit with due regard to seniority was struck down by the Tribunal in their order dated 17th January, 2003 in OA No.161/2002 titled Ganga Lal Sharma v. Director General, Indian Council of Medical Research & Ors., holding that for *ad hoc* promotion in the absence of Rules, the principle of seniority-cum-fitness would be applicable. The said mandate of the Tribunal has attained finality as the writ petition No.5008/2003 titled Indian Council of Medical Research v. Ganga Lal Sharma & Ors. was dismissed vide order

dated 18th September, 2003, relying upon OM dated 30th March, 1988 issued by the Department of Personnel & Training ('DoPT'), Ministry of Personnel, Public Grievances and Pensions, Government of India. Thus, to that extent, Circular dated 26th November, 1981 stands partly overridden and the criteria of merit with due regard to seniority is not applicable.

5. The stipulation for creation of a combined list of SOs/PSs underwent a modification and clarification vide circular dated 31st May, 1995, which records:

“For the purpose of promotions to grade of Administrative officers the inter-se seniority of the feeder cadres, namely, Section Officers and Private Secretaries is taken into consideration by the DPC. The question of giving such a combined list of SOs/PSs does not arise. The seniority list of these two categories per-se will continue to remain separate and distinct.”

This circular accepts that *inter se* seniority between SOs/PSs would be considered by the DPC, but rejects requirement of preparation and furnishing of a combined list of SOs/PSs.

6. Our attention was drawn to the circular dated 17/20.11.1995 which refers to promotion to the post of AOs and discussions with the Association of PSs and SOs. A demand was made to fix a ratio or quota between the two feeder cadres for filling up the posts at the level of AOs as per the CCS pattern. The suggestion was expressly rejected, observing that no such ratio should be demanded at that juncture for it would hamper the more important demand of grant of pay scales at par with CSIR pattern, which was being vigorously pursued. There was no comparison of Administrative Cadre Officers with any prevailing pattern in the CSS, for the CSIR was a research agency and not purely a government department/Central Secretariat. This Circular categorically holds that there was no ratio in the feeder cadres of

SOs and PSs. This circular accords and affirms absence of any ratio, as was the position recorded in the earlier circulars dated 26th November, 1991 and 10th August, 1988.

7. There is another circular dated 10th August, 1988. This circular refers to representation of staff to the Headquarter Office of the CSIR on the question of promotion of PSs to the post of AOs. After discussion/examination of the representation, it was held that PSs with eight years service, after including half service as SPA, were eligible for promotion to the post of AOs. SOs with eight years service were also eligible for being considered for promotion to the post of AOs. At that time, though two posts of AO had to be filled-up, but no SOs having requisite experience was eligible, whereas PSs with requisite administrative experience were available. The said circular categorically states that no quota was fixed for any cadre and only eligible candidates would be considered by the DPC for the post of AOs. This Circular dated 10th August, 1988 reiterates that there was no division or quota earmarked/demarcated between the two feeder cadres of SOs and PSs for promotion to the post of AOs.

8. Per contra, the CSIR heavily relies on the tripartite agreement dated 8th November, 2001, signed by the Management of CSIR and two associations representing SO and PS cadres. The relevant portion of the said agreement reads as under:

“1. There are/there would be eight vacant/anticipated posts/resultant vacancies of AOs/ACOs for the current financial year. The break-up of the base posts are as follows:

<i>(i) Intramural Side-</i>	<i>(a) AO</i>	<i>-</i>	<i>3 posts</i>
	<i>(b) Sr. ACO</i>	<i>-</i>	<i>1 post</i>
<i>(ii) Extramural Side-</i>	<i>(a) Sr. ACO</i>		<i>1 post</i>
	<i>(b) Sr. AO</i>		<i>1 post</i>
	<i>(c) AO</i>		<i>2 posts</i>

The feeder cadres for the post of AO are SAs and PSs and for ACO and

Sr.ACO which is an ex cadre post it is SO. There is also a proposal to create one additional post of AO in the extramural side. Of these nine posts, it was decided that following the existing procedure of promotion by selection - 7 posts would go to the cadre of SOs and 2 posts to that of PSs. The next (10th) post would also go to SO cadre.

2. Mr. Jayaraman, Ex. Addl. Secretary, Govt. of India has been entrusted with the work of preparing a document for consideration of EC regarding possibility of evolving a separate cadre for administrative, steno cadres etc. The document prepared by him would be shared with all Associations representatives. Mr. Jayaraman would be given all documents including various circulars of Govt. decision of 1991 & 1997 by ICMR and the report of the Committee of 1994. After the approval of EC, the ECs recommendations and decisions would be implemented by the Council with the approval of the competent authority.

3. The minutes of this meeting would be given to Council's LA for taking necessary action in exempting the General Secretaries of the Associations to appear in the Court against writ of injunction against various Associations.”

Learned counsel for the petitioners lays considerable emphasis on the words/expression “existing procedure” used in the aforesaid agreement to urge that the CSIR had always followed the ratio or quota of 4:1 between the cadre of PSs and SOs. However, on being specifically asked whether the said ratio of 4:1 was actually followed earlier and prior to the agreement dated 8th November, 2001, it is accepted that the said ratio was not followed or applied, except on the said occasion. We have already referred to circulars contradicting that the ratio of 4:1 was applied or followed. Eligible employees with requisite experience belonging to the feeder cadre of SOs as well as PSs were considered for promotion to the post of AOs by applying the applicable selection criteria. Thus, we have no hesitation in holding that the expression/words ‘existing procedure’ mentioned in the Memorandum dated 8th January, 2001 would not be a good ground or reason to accept the contention of the CSIR.

9. The above quotation from the tripartite agreement would reflect that the mentioned ratio distribution was for nine posts of AOs. Seven vacant posts would go to the cadre of SOs and two posts would go to the feeder cadre of PSs. The next, i.e., the 10th post, which was to be available after some time, would go to the SO cadre. We accept the finding of the Tribunal that this rotation/distribution was a one-time measure and a mutual solution to the *inter se* dispute then prevailing between the two cadres. The agreement was not to create a binding rule for the future. Particularly, no new circular at variance with or to modify the earlier circulars was issued. The quota/ratio did not get confirmation or etched in any circular or a policy decision. We also agree with the finding of the Tribunal that, without issuing a circular, the agreement which was a one-time measure would not constitute and partake character of a rule which would be applicable to all *ad hoc* future promotions.

10. The list of officers promoted to the post of AOs on or after the agreement dated 24th December, 2011 on *ad hoc* basis is on record. The said list shows that both the PSs and SOs were promoted from time to time, from 24th December, 2001 till 28th August, 2007, without following any quota rule, though the ten posts pursuant to the agreement dated 8th November, 2001 had followed the ratio as stipulated in the tripartite agreement.

11. The Recruitment Rules have not been framed and are still pending consideration.

12. For the aforesaid reasons, we do not find any merit in the aforesaid contentions raised by the petitioner, the CSIR.

13. It is pointed out that the petitioners had to conduct a review DPC in terms of the impugned order dated 20th March, 2007 within a period of three months from the date of communication of the order of the Tribunal. The

exact directions given by the Tribunal in this regard are to be found in para 35 which reads as under:

“35. In the result, for the foregoing reasons, order dated 4.8.2005 is set aside. Without disturbing the right of Ganga Lai Sharma, we direct the respondents to reconsider on review the promotion of applicants as well as other Private Secretaries and also the Section Officers strictly in accordance with their circulars issued in 1981 and 1988 and also on adoption of CSS Rules. This would further entail fixing the seniority on inter-se combined basis and thereafter on consideration of promotion, applicants would be entitled to all the consequential benefits. This shall be done within a period of three months from the date of receipt of a copy of this order.”

The quotation refers to both the circulars issued in 1981 and 1988 and the CSS Rules. It obviously means that where the circulars are not applicable and do not hold the field, CSS Rules would apply. If there is conflict between the CSS Rules and the circulars issued by the respondents, that conflict has to be resolved by applying the principle that the circulars will have to be given precedence over the CSS Rules.

14. With the aforesaid observations, we dismiss the present writ petition. However, we extend the time for conducting a review DPC. The same will be held within three months from the date a copy of this order is received by the petitioners. There will be no order as to costs.

SANJIV KHANNA, J

NAJMI WAZIRI, J

MAY 16, 2016

tp