



2023/DEC 7395-00



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: October 10, 2023

+ W.P.(C) 12144/2023 & CM APPL. 47705/2023

ALL INDIA INSTITUTE OF MEDICAL SCIENCES (AIIMS)

..... Petitioners

Through: Dr. Vikrant Narayan Vasudeva,
Mr. Sarthak Chiller and Mr. Rohit
Lochav, Advocates.

versus

PRAVESH KUMAR & ANR.

..... Respondents

Through: Ms. Aanchal Anand, Advocate.
Mr. Nirvikar Verma, SPC with
Mr. Hardik Bedi, Advocate for R-2

CORAM:**HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA****V. KAMESWAR RAO, J. (ORAL)**

1. The challenge in this writ petition is to an order dated January 06, 2023 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in OA No. 3171/2016, whereby the Tribunal has allowed the OA filed by respondent No. 1 herein by stating in paragraphs 3.1 to 5 as under:

“3.1 It is not in dispute that the applicant was considered for promotion to the post of Technician (Radiology) Grade-I by the DPCs held on 01.08.2006, 29.03.2007 and 02.03.2009 but he was not recommended fit to be promoted as he was not meeting the benchmark of ACR for the year 2004-2005. However, in the next DPC meeting held on 16.03.2010, the applicant's case was considered and the Committee recommended the department to keep one post vacant for the applicant as his ACR was in dispute.



Subsequently, in the next DPC held on 16.07.2013, the Committee recommended the name of the applicant for promotion. Accordingly, he was promoted to the post of Technician (Radiology) Grade-I, vide order dated 17.08.2013 and he assumed charge of the said post.

3.2 Perusal of the reply filed on behalf of the respondents reveals that in the meantime ACR cell provided two different copies of ACR of applicant for the year 2004-05 with two different gradings in ACRs one 'Very Good' and another 'Average'. This changed situation was brought to the notice of the concerned authorities to have their views on the ACR for the year 2004-2005, and they informed that the Reporting and the Reviewing Officer of that ACR confirmed that the ACR of 2004-2005 with 'Very Good' grading was genuine and filled by them. Accordingly, a review DPC was held on 07.08.2015 and the Committee, after re-assessing the case of the applicant, recommended him for promotion to the post of Technician (Radiology) Grade-I w.e.f. 02.03.2009.

4. In view of the facts and circumstances of the case, indisputably when the ACR for the year 2004-2005, which was to be considered for promotion of the applicant to the post of Technician (Radiology) Grade-I has been treated to be 'Very Good' as has been confirmed by the Reporting and Reviewing Officers and on the basis of which the applicant has been recommended fit for promotion, we are of the considered opinion that the case of the applicant for promotion w.e.f. 01.08.2006 needs re-consideration.

4.1 In the light of the observations made hereinabove, we dispose of the instant OA directing the respondents to reconsider the case of the applicant for ante-dating his promotion as Technician (Radiology) Grade-I from the due date i.e. 01.08.2006 in the changed circumstances as his ACR for the year 2004-2005 has been treated to be 'Very Good' for all purposes.

4.2 The exercise, as ordained above, may be completed within a period of two months from the date of receipt of a certified copy of this order.

5. No order as to costs."



2. The facts as noted from the record are that the respondent No. 1 joined AIIMS on December 30, 1994 as Technician (Radiology) Grade-II. He became entitled for the promotion to the post of Technician (Radiology) Grade-I in the year 2006. A Departmental Promotion Committee (DPC) was held for 22 posts of Technician (Radiology) Grade-I, on August 01, 2006, wherein the candidature of the respondent No. 1 along with other candidates was considered by the DPC.

3. In the minutes of the DPC of August 01, 2006, the Committee specifically observed that the candidature of the respondent No. 1 was considered but as he was not fulfilling the benchmark of 'Good' in his ACR for the period 2004-2005, he has not been recommended for promotion to the aforesaid post. The respondent No. 1 was again considered for promotion by the DPC held on March 29, 2007, wherein the DPC, after review of the ACR dossier had found that remark recorded by the authorities for the year 2004-2005 is 'Average'. Hence, his case cannot be recommended for promotion to the post of Technician (Radiology) Grade-I.

4. It is a conceded position that pursuant to the recommendation of the DPC held on July 16, 2013, the respondent No. 1 was promoted to the post of Technician (Radiology) Grade-I w.e.f. August 17, 2013. Aggrieved by the same, respondent No. 1 made various representations for ante-dating his promotion as Technician (Radiology) Grade-I w.e.f. August 01, 2006. It appears that a review DPC was held on August 07, 2015, wherein the review DPC after observing the following granted the promotion w.e.f. March 02, 2009:

“The Departmental Promotion Committee was informed that the candidature of Sh. Pravesh Kumar to the post of Technician



(Radiology) Grade-I had been considered first time in the year 2006. However, the Departmental Promotion Committee in its meetings held on 01.08.2006 and 29.03.2007 did not recommend him 'Fit' for promotion to the post of Technician (Radiology) Grade-I as he was not fulfilling Bench Mark 'Good' in his ACR for the period of 2004-05.

The Departmental Promotion Committee again considered him for the post of Technician (Radiology) Grade-I in its meeting held on 2nd March, 2009. The Departmental Promotion Committee noted that Sh. Pravesh Kumar had submitted his grievance regarding non-promotion in the last Departmental Promotion Committee. It was informed by the Member-Secretary that some mischief had been done with the ACR's of Sh. Pravesh Kumar, accordingly, it was decided that one post should be kept vacant till the matter is finalized and the name of Sh. Pravesh Kumar to be considered in the next meeting of the Departmental Promotion Committee.

Subsequently, the DPC again considered his case in its meeting held in the year 2013. Based on the recommendations of the DPC, Sh. Pravesh was promoted to the post of Technician (Radiology) Grade-I from 17.08.2013.

The Departmental Promotion Committee was informed that Sh. Pravesh Kumar has been representing continuously since long for his promotion with reference to his case considered first by DPC in 2006. While examining his representation, it was observed that in the meetings of DPC held in 2006 and 2007, DPC took into account 'Average' grading in his ACR for 2004-2005 and therefore, not recommended him for promotion keeping in view the benchmark for the post. However, in the DPC held in 2009, the same ACR was placed before the DPC with 'Very Good' grading. It was then decided to check the veracity of these ACRs. A references were made to Forensic Department also. Incidentally, the ACR of 2004-2005 with 'Average' grading could not be located anywhere. The ACR of 2004-2005 available in record presently is with 'Very Good' grading. The Reporting and the Reviewing Officer of that ACR have recently confirmed that the ACR of 2004-2005 with 'Very Good' grading is genuine and filled up by them. It was then



decided with the approval of the Competent Authority to review his case with reference to DPC held on 02.03.2009 when his case was deferred as a vacancy had been kept aside for him.

Accordingly, the DPC assessed Sh. Pravesh Kumar for promotion to the post of Technician (Radiology) Grade-I keeping in view his 05 ACRs prior to 2009 taking into account 'Very Good' grading in his ACR of 2004-2005 and recommended him Fit for promotion w.e.f. the date of DPC for the post of Technician (Radiology) Grade-I i.e. on 02.03.2009."

5. The issue before the Tribunal was whether the respondent No. 1 was entitled to ante-dated promotion w.e.f. August 01, 2006. The Tribunal for the reasons already stated above has granted the prayer as sought by respondent No. 1 herein before it.

6. The only submission made by learned counsel for the petitioner is that petitioner AIIMS has accepted the promotion of the respondent No. 1 w.e.f. March 02, 2009, for the reason as respondent No. 1 had raised the issue of his promotion one vacancy of the higher post was kept vacant, against which he was promoted w.e.f. March 02, 2009.

7. He stated, as there was no vacancy available / existing before 2009, as such, the promotion could not have been ante-dated by the Tribunal from 2006.

8. We are unable to agree with the submission made by the learned counsel for the petitioner for the simple reason when the petitioner has accepted the promotion of the respondent No. 1 for the higher post from March 02, 2009, based on the recommendations of the DPC after considering the ACR of 2004-2005, wherein he has been graded as 'Very good' (for that year), there is no reason based on the same ACR to deny him promotion



w.e.f. August 01, 2006. The plea that there was no vacancy cannot be a ground to disentitle respondent No. 1 the promotion w.e.f. August 01, 2006, which is the date of his entitlement. The Tribunal is right in saying that the case of the respondent No. 1 for promotion w.e.f. 2006 needs reconsideration.

9. In view of the aforesaid, we do not see any reason to interfere with the impugned order passed by the Tribunal. The writ petition is dismissed.

10. Since we have dismissed the writ petition, the petitioner is granted two months' time from today to comply with the order of the Tribunal.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

OCTOBER 10, 2023/R