

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).22253/2012

(From the judgement and order dated 25/01/2012 in WPC No.506/2012 of The HIGH COURT OF DELHI AT N. DELHI)

DR. MEENA GUPTA

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned Judgment and office report)

Date: 06/09/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Petitioner(s)

Mr.S.D.Singh, Adv.  
Ms. Bharti Tyagi, Adv.

For Respondent(s)

Mr.P.P.Malhotra, ASG  
Mrs.V.Mohana, Adv.  
Mr.Chetan Chawla, Adv.  
Ms. Sushma Suri, AOR

UPON hearing counsel the Court made the following  
O R D E R

This petition is directed against order dated 25.01.2012 by which the Division Bench of the Delhi High Court dismissed the writ petition filed by the petitioner and upheld the order of the Central Administrative Tribunal, which had declined to entertain her prayer for directing the respondents to promote her as Director-Professor.

The Departmental Promotion Committee, which met on 1.8.2002 considered the petitioner's case for promotion to the post of Director-Professor against the vacancies of the years 2000-2001 and 2001-2002. Some persons allegedly junior to the petitioner were recommended for promotion. Therefore, the petitioner made representations and then filed O.A. No.1618 of 2005 before the Central Administrative Tribunal, Principal Bench, New Delhi under Section 19 of the Administrative Tribunals Act. The Tribunal considered the rival pleadings, scrutinized the record of the Departmental Promotion Committee and dismissed the application vide order dated 4.9.2006, paragraphs 10 and 11 of which read as under:

"During the course of hearing, it was felt necessary to peruse the proceedings of the DPC held during the relevant years and the respondents were directed to produce the these minutes. Respondents have placed the minutes of the DPC meeting held on 1.8.2002, for vacancies for the years 2000-2001 and 2001-2002. A perusal of the minutes for the year 2001-2002 DPC shows that the applicant Dr. Meena Gupta figures at Serial No.13 of the eligibility list placed before DPC, but as the number of vacancies to be filled were seven, she, being junior, could not obviously be included in the select list. We have perused the minutes of the DPC meeting held on 9.1.2004 for vacancies for the years 2002-2003 and 2003-2004. The applicant finds place at Serial No.2 for the vacancies for 2002-2003.

After hearing the rival contentions of both the parties and going through the records as well as the cases cited by the learned counsel for applicant, we are left in no doubt that the applicant has been given promotion in accordance with the recruitment rules. It is undisputed that the requirement for promotion to the grade of Director/Professor (SAG) is three years regular service in the pay scale of Rs. 4500-5700. As the four doctors mentioned by the applicant in the OA had been promoted to the pay scale of Rs.4500-5700 w.e.f. 28.2.1990 whereas the applicant was in this pay scale from 1.12.1991 and she could obviously be considered for SAG only after she had rendered the prescribed 3 years service in that grade (Rs. 4500-5700). On the basis of record and also taking in view the submissions made by both the learned counsel, we find that no injustice has been meted out to the applicant as she has no case for ante dating of her promotion."

After almost two years of the dismissal of her application by the Tribunal, the petitioner filed Writ Petition(C) No.6275/2008.

On 27.8.2008, the Division Bench of the High Court passed the following order:

"We find that the impugned order of the Tribunal is dated 4th September, 2006. The Petitioner has approached this Court after a gap of almost two years. There is no explanation at all for the delay.

Learned counsel for the Petitioner seeks some time to file an additional affidavit indicating the reasons for delay in filing the writ petition. He may do so within four weeks"

Thereafter, the petitioner filed affidavit dated 1.12.2008 to explain the delay. On 4.12.2008, the counsel appearing for the petitioner sought adjournment to file an affidavit to show that adequate number of posts were available in 2000 and his client could have been promoted against one of the posts. However, instead of filing an additional affidavit to show the availability of posts, the petitioner's counsel made a request for permission to withdraw the writ petition with liberty to approach the Tribunal. The Division Bench of the High Court accepted the request and passed order dated 11.3.2011, the relevant portions of which are extracted below:

"After some arguments, learned counsel for the petitioner seeks to withdraw the writ petition with liberty to approach the Tribunal on the ground that on behalf of petitioner pursuant to order dated 04.12.2008 of the High Court, an affidavit was filed indicating that adequate number of posts were available for promoting the petitioner in the year 2000. He contends that these facts had not been considered by the Tribunal, while passing the impugned order.

Dismissed as withdrawn with liberty as prayed for."

Soon thereafter, the petitioner filed Review Application No.184/2011 before the Tribunal, which was dismissed vide order dated 28.7.2011. The Tribunal noted that only 7 posts were available and the petitioner was not entitled to be promoted against one of the posts because her name was shown in the eligibility list at serial No.13.

Having failed to convince the Tribunal to review its earlier order, the petitioner filed Writ Petition (C) No.506/2012. The Division Bench of the High Court noted that the question of availability of the posts/vacancies was considered even in the first round and held that the Tribunal did not commit any error by refusing to entertain the petitioner's

prayer for issue of a mandamus to the respondents to promote her as Director-Professor.

In our view, the reasons assigned by the Tribunal not to entertain the petitioner's prayer are correct and the High Court rightly refused to interfere with the order of the Tribunal.

We may add that the original application filed by the petitioner in 2005 for quashing the recommendations made by the Departmental Promotion Committee in 2002 was barred by time and without condoning delay under Section 21(3) of the Act, the Tribunal could not have entertained the application filed by the petitioner and decided her claim on merits. The High Court should also have non-suited the petitioner because she had filed the writ petition after almost two years of the dismissal of the original application.

In the result, the special leave petition is dismissed.

(Satish K.Yadav)  
Court Master

(Phoolan Wati Arora)  
Court Master

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