

**Dr. Daya Ram Haldwani Vs. Union of India (Uoi), Through the**

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**Court :** Central Administrative Tribunal CAT Delhi

**Decided On :** Jun-02-2006

**Judge :** S Raju, C A Chitra

**Appellant :** Dr. Daya Ram Haldwani

**Respondent :** Union of India (Uoi), Through the

**Judgement :**

2. By virtue of this OA an order passed on 5.1.2005 is being assailed, where the respondents on accord of reasonable opportunity of show cause notice to applicant maintained their earlier corrigendum, whereby his effective date of promotion as Associate Professor was altered from 22.2.2000 to 25.2.2001.

3. A brief factual matrix suggests that on such a corrigendum OA-2738/2002 filed by applicant was disposed of on 10.12.2003 by the Tribunal, holding that if civil consequences ensue upon a government servant prior opportunity to show cause was mandated. The corrigendum having been set aside regarding recovery, it had directed that in case applicant prefers a representation, respondents would consider the same. As a result thereof, recovery, effected from applicant, i.e., pay and allowances of the higher post drawn from 22.2.2000 till corrigendum was issued, was refunded back to him.

4. Learned Counsel appearing for applicant states that admittedly under the rules, as a relaxation, it is provided that once a specialist in the same field being junior has been considered for this time scale promotion as Associate Professor, senior

would also be considered.

5. By drawing our attention to the seniority list of Specialists (Physiology) it is contended that one Dr. M. Satya Narayan, who had been Associate Professor, was promoted in the time scale without completion of statutory two years eligibility period as Assistant Professor.

6. Learned Counsel would contend that whereas applicant belongs to an earlier batch but being posted at Pondicherry for three years for want of posting, the aforesaid period should be reckoned by way of eligibility, which qualifies him for promotion from 22.2.2000. The above aspect of the matter, having not been taken into consideration by respondents when represented to them, constitutes non-application of mind in the order passed by them.

7. On the other hand, learned Counsel appearing for respondents vehemently opposed the contentions and stated that now the order passed, which is impugned herein, is after due accord of opportunity to applicant and is in compliance of the orders passed by the Tribunal.

8. Learned Counsel would contend that whatever pleas now being taken by applicant allegedly are not raised either through representation or by other means before them, which requires consideration, as a matter of disputed facts, and the Tribunal has no jurisdiction to deal with the above issue.

9. In the light of the aforesaid position of law and the facts existing in the present case, though it is not disputed that there exists a provision in the statutory rules that in the event of a junior on non-completion of eligibility criteria having been considered for promotion in the time scale as an Associate professor, seniors would have to be given the same date of promotion.

10. As regards issue of reckoning erstwhile service rendered at Pondicherry, the matter having not been gone into by respondents, the same requires consideration.

11. In the result, for the foregoing reasons, OA stands disposed of with a direction that in the event applicant raises by way of representation his above two

grievances before the respondents, the same shall be looked into and considered by them in accordance with rules, by passing a detailed and speaking order, to be passed within a period of three months from the date of receipt of such representation.

It is also made clear that as the promotion accorded to applicant was not at all attributable to any fraud or misrepresentation played by him, recovery of any overpayment made, shall not be recovered from him.

No costs.

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