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DR. V.P. MALIK AND ORS.

v.

UNION OF INDIA

DECEMBER 8, 1995

B

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Service Law :

C *Time bound promotion—Recommendation—Committee Report—Implementation of—Delay of One year—Delay affected Petitioners financially and their seniority, and that cut off date was arbitrary and on facts resulted in discrimination between officers off the same grade—Plea of writ petitioners— Held, time lag justified and reasonable, the committee report being recommendatory in nature, decision was required to be taken—Apprehension of discrimination not real as promotion as a matter of rule can*
D *be effective only from a prospective date.*

E **Tikoo Committee report, recommending the teaching specialists to be placed in the grade of Rs. 4500-5700 after 4 years of granting of scale of Rs. 3700-5000, doing away with the distinction between the functional and non-functional grade, was submitted on 31.10.1990; office Memorandum in this regard was issued on 14.11.1991 and it was implemented on 1.12.91.**

F **In the memorandum of Settlement, Associate professors in the Scale of Rs. 3700-5000 was to be placed on scale of Rs. 4500-5700 on the completion of 6 years of regular service as Associate professor or 8 years of combined service as Assistant Professor and Associate Professor.**

G **Petitioners, members of teaching specialist sub-cadre of the central health service, filed a writ petition challenging the cut-off date as arbitrary contending that the delay in implementing the recommendation deprived them of financial benefits and their seniority, further contending that the cut off date resulted in discrimination between the officers of the same grade, apprehending that the seniors who got promoted to the "Non Functional Selection Grade" and were redesignated as Professor w.e.f. 1.12.1991, in most cases would get promotion to the post of professor after**
H **servng much longer, to the feeder grade, while those junior to the**

Petitioners considered for promotion after 1.12.1991 would get it on completion of 8 years of combined service. A

The stand of the Respondent was that office memorandum could be issued on 14.11.1991 incorporating decision of Govt. relating to various recommendations and the benefit was made available from the first date of ensuing month. B

This court in I.A. on 17.10.94 passed the order that any promotion made during the pendency of the writ petition, would abide by the result of the petition.

Dismissing the Writ Petition, this Court C

HELD : 1. The period of one year taken to finally come to a decision has to be regarded as reasonable. The time lag is not unjustified because the recommendations being many in number, invoking huge financial implications and needing sorting out of some service problems. The Tikoo Committee report being recommendatory in nature, a decision was required to be taken as to which of the recommendations could be accepted and which not. [337-F, 337-D] D

2. The cut off date of 1.12.91 is far from arbitrary and whimsical; it is really reasonable. It has not been picked out from a hat, but is founded on logic; the date having been fixed because of the issuance of the office Memorandum containing the decisions of the Government on the Tikoo Committee recommendations on 14.11.1991. [337-C] E

D.R. Nim v. Union of India, [1967] 2 SCR 325; *Union of India v. Sudhir Kumar Jaiswal*, [1994] 4 SCC 212; *Louisville Gas & Electric Company v. Cleu Coleman*, 277 US 32 and *Union of India v. Paremewan Matchwork*, [1975] 1 SCC 305, referred to. F

3. The apprehension of discrimination is more imaginary than real. The order dated 1.10.1994 adequately takes care of the apprehension. Promotion as a matter of rule can be effective only from prospective date and the recommendation of Tikoo Committee is more beneficial than the one which was part of the memorandum of settlement. [339-B, 338-E-G] G

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 683 of 1990. H

A (Under Article 32 of the Constitution of India.)

Rajinder Sachar, N.N. Goswami, Dr. A.K. Singhvi, R.P. Singh, Ajit Pudussery, shailendra Bhardwaj, T.C. Sharma; D.S. Mehra and K. Swami for the appearing parties.

B The Judgment of the Court was delivered by

C **HANSARIA, J.** The petitioners are members of the teaching specialist sub-cadre of the Central Health Service under the Ministry of Health and Family Welfare. They are engaged in teaching and doing clinical work in Lady Harding Medical College and associate hospitals at New Delhi. Their grievances are that the Tikoo Committee Report which recommended that the teaching specialists should be placed in the grade of Rs. 4,500-5,700 after four years of the granting of the scale of Rs. 3,700-5,000, and distinction between the functional grade and non-functional grade may be done away with and promotion be made to the grade of
 D Rs. 4,500-5,700 on a time bound basis on completion of 8 years as specialists have not been implemented from the date of the submission of the report (31.10.1990.), but from 1.12.1991, which date according to the petitioners is arbitrary and would have adverse effect on seniority of some. The stand of the Ministry, however, is that as the Office Memorandum could be issued only on November 14, 1991 incorporating the decisions of
 E the Government relating to the various recommendations of the Committee, the benefit was made available from the first day of the ensuing month i.e. December, 1991.

2. Dr. Singhvi learned counsel appearing for the petitioners,
 F strenuously contended that the delay in implementing the recommendation has not only deprived the petitioners of the financial benefit, but has also affected their seniority inasmuch as the higher scale of Rs. 4,500-5,700 is meant for Professors; and so, if that would have been given from 31.10.1990, the petitioners would have been deemed to have become Professors from that date. The postponing of the date to 1.12.1991 has thus
 G postponed the date of acquiring the status of Professor by the petitioners, all of whom were, earlier to that date, holding the post of Associate Professor. It is contended that the scale of Rs. 4,500-5,700 being meant only for Professors and the Tikoo Committee having recommended to do away with the distinction between the functional grade and non-functional grade
 H and having also recommended for promotion to the grade of Rs. 4,500-

5,700 on the completion of 4 years of service for which period petitioners had served by 31.10.1990, the giving of the grade w.e.f. 1.12.1991 has injuriously affected the petitioners both in terms of money and service prospect. This being for no good reason, the decision to make available the aforesaid pay from 1.12.1991 has to be regarded as arbitrary.

3. Shri Goswami, learned counsel appearing for the Ministry of Health, contends that as the recommendations of the Tikoo Committee had even to be considered by the Union Cabinet, the time lag has to be regarded as justified and the benefit having been made available from the first day of the next month in which the Officer Memorandum spelling out the decisions of the Government was issued, the petitioners' aforesaid two grievances have no merit. It has also been submitted that the petitioners' grievance qua their seniority cannot be heard in this petition inasmuch as those who would be adversely affected, if the case of the petitioners were to be accepted, are not before the Court.

4. There is enough merit in the stand taken by the Ministry of Health inasmuch as what has been contained in the Tikoo Committee Report being recommendatory in nature, a decision was required to be taken which of the recommendations could be accepted and which not. As the final decision was taken within about a year of the submission of report, we would not regard the time lag unjustified, because the recommendations being many in number involving huge financial implications and needing sorting out of some service problems, the period of about one year taken to finally come to a decision has to be regarded as reasonable.

5. As to whether the fixation of the date (1.12.1991) can be regarded as arbitrary, it may be stated that fixation of a cut-off date can be so regarded by court if the same be one about which it can be said that it has been "picked out from a hat", as stated by this Court in *D.R. Nim v. Union of India*, [1967] 2 SCR 325. A Bench of this Court to which one of us (Hansaria, J.) was a party examined the question of fixation of cut-off date on the touchstone of Article 14 in *Union of India v. Sudhir Kumar Jaiswal*, [1994] 4 SCC 212. In that case the case of *D.R. Nim* (supra) was noted in para 4, followed by reference to other important decisions on this aspect in paras 5 to 7. We do not propose to reiterate what was stated in *Jaiswal's* case. It would be enough to point out that the observation of Holmes, J in *Louisville Gas and Electric Company v. Clell Coleman*, 277 US 32, that a

A choice of cut-off date can be interfered with if the fixation be "very wide of any reasonable mark" was cited with approval by this Court in *Union of India v. Parneswaran Match Works*, [1975] 1 SCC 305. It was further added that a choice of date cannot be dubbed as arbitrary unless it is shown to be capricious or whimsical in the circumstances.

B 6. In the present case, the date 1.12.1991 having been fixed because of the issuance of the Office Memorandum containing the decisions of the Government on the Tikoo Committee recommendations on 14.11.1991, the cut-off date of 1.12.1991 is far from arbitrary and whimsical; it is really reasonable. It has not been picked out from a hat, but is founded on logic.

C 7. In the additional written submissions filed on behalf of the petitioners on November 29, 1995, another grievance made is that the fixing of cut-off date as 1.12.1991 has resulted in discrimination between officers of the same grade in that those juniors to the petitioners who were
D considered for promotion after 1.12.1991 got it on completing 8 years of combined service as Assistant Professor and Associate Professor, while the seniors who got promoted to the "Non-Functional Selection Grade" and were re-designated as Professors with effect from 1.12.1991 are being treated differently and in most cases would get promotion to the post of Professor after serving much longer in the feeder grade. This result is not
E really likely to follow, because as submitted in the written submissions on behalf of the respondents, promotion as a matter of rule can be effective only from a prospective date. This apart, those of the juniors who were promoted after the issuance of the Office Memorandum of November 14, 1991 cannot steal a march over the earlier promotees because of the order
F passed in IA No. 4 of 1993 on 17.10.1994 stating that any promotion made during the pendency of the writ petition in the teaching sub-cadre will abide by the result of the petitioners. It also deserves to be pointed out that the recommendation of the Tikoo Committee for placing of the teaching specialists in the grade of Rs. 4,500-5,700 after 4 years of the granting of the scale of Rs. 3,700-5,000, is more beneficial than the one
G which was part of the Memorandum of Settlement, according to which, Associate Professor in the scale of Rs. 3,700-5,000 was to be placed in the scale of Rs. 4,500-5,700 on completion of 6 years of regular service as Associate Professor or 8 years of combined services as Assistant Professor and Associate Professor. It may be stated that the Tikoo Committee also
H recommended promotion to the grade of Rs. 4,500-5,700 on completion of

8 years of service as specialist. It has been clarified in the written submissions of the respondents that service as lecturer cannot to be taken in account in this regard. A

8. The discrimination about which mention has been made in the additional written submissions thus seems to be more imaginary than real. In any case, the aforesaid order of 17.10.1994 adequately takes care of the apprehension. B

9. In the aforesaid premises the grievances raised by the petitioners are unfounded. The writ petition is, therefore, dismissed; but without cost.

K.K.T.

Petition dismissed. C