

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

15
O.A. No. 1456/95
T.A.No.

199

28

DATE OF DECISION 28.6.99

Dr. C.M. BhanPetitioner

Shri Ashish KaliaAdvocate for the
Petitioner(s)

VERSUS

The Secretary, Min ofRespondents
Health & Ors.

Shri V.S.R. KrishnaAdvocate for the
Respondents.

CORAM

The Hon'ble Shri S.R. Adige, Vice-Chairman (A).

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

~~The Hon'ble Smt. Lakshmi Swaminathan~~

1. To be referred to the Reporter or not? YES
2. Whether it needs to be circulated to other
Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)

Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1456/95
with
MA-1207/98

(29)

New Delhi this the **28th** day of June, 1999.

HON'BLE MR. S.R. ADIGE, VICE-CHAIRMAN (A)
HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)

Dr. C.M. Bhan,
Sr. Surgeon CGHS,
Dr. Ram Manohar Lohia Hospital,
New Delhi. ...Applicant

(By Advocate Shri Ashish Kalia)

-Versus-

1. Secretary, Ministry of Health, Government of India, Nirman Bhawan, New Delhi.
2. Dr. R.B. Mishra, Consultant in Dermatology, Safdarjung Hospital, New Delhi.
3. Dr. Miss Pushpa Saxena (since retd.), 21, Vidhut Nikanj, 112 NDMC Society, Parpargunj, Delhi.
4. Dr. D.C. Jain, Consultant in Neurology, Safdarjung Hospital, New Delhi.
5. Dr. K.P. Malik, Consultant in Ophtalmology, Safdarjung Hospital, New Delhi. ...Respondents

(By Advocate Shri V.S.R. Krishna)

O R D E R

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J):

The applicant is aggrieved that his case has been ignored for considering him for promotion to the post of Senior Administrative Grade (SAG)/Consultant, while according to him, persons junior to him have been considered and appointed.

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2. The brief facts of the case are that the applicant joined as General Duty Officer in Group 'B' post with the respondents on 6.9.67 and was placed in Group 'A' service w.e.f. 1.1.73. He was selected through UPSC to the post of non-Teaching sub-cadre Specialist Grade-II on 23.6.81 as a direct recruit under the Central Health Service Rules, 1972. Shri Ashish Kalia, learned counsel for the applicant has contended that certain junior persons to the applicant as mentioned in paragraph 4.5 of the amended OA in different specialities had been given non-functional grades while applicant was ignored for promotion. His contention is that the applicant was senior to four other Doctors who had been given functional grade earlier, namely, Dr. R.B. Mishra, Dr. (Mrs.) P. Saxena, Dr. D.C. Jain and Dr. K.P. Malik. He has submitted that in the next channel for promotion to SAG/Consultant, officers holding the posts of Specialist Functional Grade-I in non-Teaching sub cadre with three years regular service in the grade, or 17 years of service in Group 'A' Service, are eligible for consideration. Learned counsel has contended that juniors to the applicant had been allowed quick promotion over their seniors in the same non-teaching sub-cadre and he has submitted that common eligibility list of non teaching sub cadre should be prepared. He has relied on the judgement of the Supreme Court in State of Andhra Pradesh Vs. Dr. N. Rama Chandra Rao & Ors. (JT 1990 (2) SC 563). He has vehemently submitted that since the juniors to the applicant have got accelerated promotions on account of fortuitous circumstances in different specialities, he cannot be ignored for promotion to SAG/Consultant grade. His contention is that as the applicant has rendered more than 17 years of service in Group 'A' Service and merely because juniors had got quick promotions in their specialities in

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non-teaching sub-cadre they cannot steal a march over him. In the circumstances, learned counsel has submitted that a common eligibility list of the non-teaching sub-cadre of CHS should have been prepared and the applicant who had more than 17 years service in a Group 'A' post should also have been considered for promotion to the post of SAG/Consultant, which according to him the respondents have failed to do. Hence this O.A.

3. The respondents in their reply have disputed the above submissions made by the applicant. They have also submitted that his various representations have already been replied to, which were of a repetitive nature. They have stated that the applicant who joined in Specialist Grade-II post of Surgeon on 9.1.82 was placed in Specialist Grade II (NFSG) w.e.f. 26.2.90 and subsequently redesignated as Specialist Grade I officer w.e.f. 1.12.91. Redesignation has been done in accordance with the recommendation of the High Power Tikku Committee and he had been placed below the regularly appointed Specialist Grade I Officers given in paragraph 2 of their reply. They have submitted that Dr. A.N. Sinha and Dr. Dinesh Bhatnagar had been appointed as Specialist Grade I officers before 1.12.91 and the other officers from serial Nos. 3-8, including the applicant, were the redesignated Specialists Grade I officers. They have submitted that the seniority list upto the level of Specialist Grade I is maintained Speciality-wise whereas the eligibility list for consideration for promotion to floating posts of SAG/Consultant in the scale of Rs.5900-6700 (pre-revised) is required to be prepared every year depending on the number of available vacancies. According to them this eligibility list is prepared irrespective of the Specialities, by taking the

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names of eligible Specialist Grade I officers who have completed three years regular service in that Grade, failing which, those officers who are in Specialist Grade I with 17 years of service in Group 'A' on the cut off date of 1st October of the particular year in which the SAG vacancy arises. They have also submitted that the applicant cannot compare himself with the Specialist Grade-I officers appointed in other specialities because they have got promotions against the specific vacancies in their own specialities. Shri V.S.R. Krishna, learned counsel, has relied on the judgement of the Supreme Court in Union of India Vs. Dr. P. Rajaram & Ors. with connected case (JT 1992 (6) SC 131) which has been followed by the Tribunal in O.A. 2553/92, decided on 16.7.1998. Learned counsel has submitted that the CHS Rules under consideration here have been upheld by the Supreme Court in this case, including preparation of the eligibility list for promotion to the SAG/Consultant post. In the circumstances, he has submitted that there is no merit in the applicant's submissions that his seniority as a Group 'A' officer who has completed 17 years of service, should be taken into account ignoring his seniors which is contrary to the provisions of the relevant CHS Rules. He has further submitted that the earlier decision of the Supreme Court in Dr. N. Ramachandra Rao's case (supra) relied upon by the applicant is distinguishable as the Rules considered in that case were different i.e. the Special Rules for the AP Medical and Health Services, 1982 whereas in Dr. Rajaram's case (supra), the Supreme Court had upheld those very CHS Rules. In the circumstances, the respondents have prayed that the O.A. may be dismissed.

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4. We have carefully considered the pleadings and submissions made by the learned counsel for the parties.

5. In Union of India Vs. Dr. P. Rajaram & Ors. (supra), the Supreme Court has held as follows:

"Even on merits, Rule 4(10) states that the posts are to be filled up by the method of promotion and on the basis of an eligibility list. The note also lays down that the eligibility list shall be prepared with regard to the date of completion of the prescribed qualifying years of service in their respective grades, by the officers. Further clause (iii) of sub-Rule (10) adds the requirement of assessment by a Departmental Promotion Committee in regard to the suitability of each officer for holding the post while considering his case for promotion on the basis of common eligibility list..."

In this case, the relevant CHS Rules which are also applicable to the present case, have been considered in detail by the Hon'ble Supreme Court, including Rule 4 Sub-rule 6, regarding promotions to be made on the basis of a common eligibility list covering all officers in the respective sub-cadres without regard to any speciality. What the Supreme Court has held is that it requires to be carefully noted that what is talked of is a "common eligibility list" and not a seniority list which was emphasised upon. The promotion is to be made on the basis of the assessment of a duly constituted DPC in regard to the suitability of the officer for holding the higher post. The contention of Shri Ashish Kalia, learned counsel for the applicant, that because some juniors to the applicant had got accelerated promotions in their own sub-cadres earlier, they should, therefore, not figure in the common eligibility list, whereas the applicant should be considered under the failing which clause as a Group 'A' officer, is untenable as this will be contrary to the Rules themselves which have been upheld by the Supreme Court in Dr.

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Rajaram's case (supra). The earlier judgement of the Supreme Court delivered in 1990 in Dr. N. Ramachandra's case (supra) relied upon by the applicant will also not assist the applicant in view of the later judgement of the Supreme Court in Dr.P.Rajaram's case (supra) which analysis and upholds the validity of the relevant CHS Rules applicable to the present case. As the respondents have not violated the provisions of the CHS Rules, we are unable to hold that there is any merit in the submissions made by the learned counsel for the applicant.

6. For the reasons given above, O.A. is dismissed.
No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

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(S.R. Adige)
Vice Chairman (A)

'SRD'