

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 1579/95

New Delhi this the 1st day of November 1999

(6)

Hon'ble Mr. Justice V. Rajagopala Reddy, VC (J)
Hon'ble Mrs. Shanta Shastry, Member (A)

Prem Chand *Saini*
S/o Shri Deen Dayal,
R/o E-59, Foch Square,
Gole Market,
New Delhi-110 001

Applicant

(By Advocate Shri K.C. Mittal, though none
appeared)

-Versus-

1. Union of India
through
Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi-110 011.
2. The Director General,
Directorate General of Health Services,
Nirman Bhawan,
New Delhi-110 011.
3. Medical Superintendent,
Kalawati Saran Children's
Hospital, Bangla Saheb Marg,
New Delhi-110 001
4. Mr. Ram Kanwar,
S/o Shri Preet Singh,
Lab. Technician,
Kalawati Saran Children's
Hospital, New Delhi-110 001.
5. Shri T.K. Murugan,
Deputy Director Admn. (M)
Directorate General of Health Services,
Nirman Bhawan,
New Delhi.

..... Respondents

(By Advocate Shri V.S.R. Krishna, though none
appeared)

ORDER (Oral)

By Reddy, J.:-

None appears for the parties. Since the
matter is of 1995, we have proceeded to dispose
of the matter on merits.

[Signature]

(2)

2. The matter relates to the fixation of seniority in the post of Laboratory Technician in Kalawati Saran Children's Hospital, New Delhi.

(b)

3. The applicant was initially appointed in 1966 in the Lady Harding Medical College & Hospital, New Delhi as Laboratory Assistant thereafter he applied for the post of Laboratory Technician in the Kalawati Saran Children's Hospital, New Delhi and was appointed to the said post and he joined on 14.4.1966, on his relief by the Lady Harding Medical College & Hospital on the same date. Respondent No.3 i.e. Kalawati Saran Children's Hospital, New Delhi was an autonomous body in 1978 and later on was taken over by Respondent No.1 & 2. Respondent No. 4 was appointed as Laboratory Technician in Respondent No.3 Institution on 21.3.1966. Subsequently the applicant was confirmed w.e.f. 14.4.66 but the respondent No. 4 was confirmed w.e.f. 1.2.83. In the provisional seniority list circulated on 1.3.1983 the applicant was shown at Sr. No. 3 and the Respondent No.4 at Sr. No. 4. Aggrieved by the wrong fixation of seniority Respondent No.4 made a representation to Respondent No.1&2 on 12.4.83 but it was rejected. However, on subsequent representations Respondent No. 4 has been shown as senior to the applicant in the impugned order dated 21.11.94.

(d)

(3)

4. It is urged in the OA that the respondents having rejected the representation of R-4 by an order dated 9.5.83, it was not open to the respondents to have altered the seniority after a lapse of several years. It was also urged in the OA that the appointment of R-4 being a stop-gap arrangement and not made in accordance with Recruitment Rules, his appointment in 1966 cannot be reckoned for the purpose of confirmation of his service for the post of Laboratory Technician. It is further urged that the applicant had in fact received the appointment order earlier to the date of joining of R-4, hence the applicant should have been treated as senior to R-4.

5. In the reply it was stated that the applicant having joined in the post of Laboratory Technician in April 1966 and R-4 having joined on 21.3.66, respondent No. 4 is senior to the applicant. Hence he was rightly shown on the basis of the length of service as senior to the applicant in the impugned order. It was also stated that the R-4 was making representations since 1983, questioning the seniority list as he was shown junior to the applicant and the mistake was rightly corrected ultimately in the impugned order and justice done to him.

6. We have perused the Recruitment Rules for appointment to the post of Laboratory Technician. Under the rules the post of

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Laboratory Technician is a non-selection post. It is not in dispute that the applicant had joined in the post of Laboratory Technician in April 1966. It is also not in dispute that R-4 was appointed as Technician by way of direct recruitment and he joined in March 1966. Thus taking into consideration the dates of joining in service, it is clear that the R-4 is senior to the applicant. As it was shown in the seniority list of 1983 that the R-4 was junior to the applicant, R-4 had made representations to the respondent No. 1 & 2 and taking into consideration the length of service of the applicant and the R-4 the impugned order was passed, correcting the mistake committed by R-1 & 2. Thus the correct position in seniority has been restored to R-4. It is not shown how the impugned order is contrary to the Recruitment Rules. The contention that the question of the seniority has already been decided in 1983 cannot be accepted. Immediately after the seniority list has been circulated showing R-4 as junior to the applicant, Respondent No. 4 has been making representations and ultimately in the impugned order the error has been corrected. This is not a case where the impugned order was passed without notice to the applicant as he himself said in the OA that he also made representations to R.1 and R.2 that the seniority list should not be altered.

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7. It is true that the applicant was offered the appointment in March 1966 but the fact remains that he infact joined in service as Laboratory Technician in April 1966. The delay in the relief of the applicant to join in service cannot be a ground to hold that the applicant was deemed to have been appointed in March 1966. The length of service should be taken only from the date of joining in service and not from the date of receipt of the appointment order. (9)

8. We do not, therefore, find any infirmity in the impugned order. The OA, therefore, fails and accordingly dismissed. No costs.

Shanta S-
(Mrs. Shanta Shastry) *W. Rajagopala Reddy*
Member (A) Vice-Chairman (J)

cc.