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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1479/89 198
T.A. No.

DATE OF DECISION 11.1.1990

Shri V.B. Gupta Applicant (s)

Capt. Virender Kumar Advocate for the Applicant (s)

Versus
Deputy Director, C.G.H.S., Respondent (s)
Delhi.

Shri P.P. Khurana Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. To be circulated to all Benches of the Tribunal ? *No*

JUDGEMENT

(delivered by Hon'ble Shri P.K. Kartha, Vice-Chairman)

The applicant, who is a Pharmacist in the C.G.H.S. Dispensary at Aliganj, New Delhi, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that the respondents be directed to appoint him as Assistant Stores Supdt. w.e.f. 16.11.1976 on a regular basis with consequential benefits. The pleadings in the case are complete. We feel that the application could be disposed of at the admission stage itself.

2. The facts of the case in brief are that the applicant joined C.G.H.S. as a Pharmacist in Delhi in 1970. There were 4 posts of Asstt. Stores Supdt., one each in Meerut, Kanpur, Nagpur and Calcutta offices of CGHS. According to the Central Government Health Scheme, Meerut/Kanpur/Nagpur/Calcutta (Assistant Stores Supdt.) Recruitment Rules, 1974, these posts are to be filled 100 per cent by promotion through a limited departmental competitive test.

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failing which by deputation on the basis of competitive test. Six persons, ^{an} including the applicant, were declared ^{held in 1975} successful at the said test. The cadre to which they belonged and the CGHS offices to which they were first allotted were as follows:-

Name	Cadre to which he belongs	CGHS to which first allotted
1. Sh. Padhi Ram	Allahabad	Patna (Deputation)
2. Sh. P.S. Sita-ramiah	Delhi	Madras (-do-)
3. Sh. B.S. Bhandari	Allahabad	Meerut (-do-)
4. Sh. S.N. Sharma	Allahabad	Hyderabad -do-
5. Sh. R.S. Rajpal	Kanpur	Kanpur (Regular)
6. Sh. V.B. Gupta (the applicant)	Delhi	Nagpur (Deputation) and, then Jaipur

3. Recruitment Rules had not been brought into force in respect of the CGHS Offices at Patna, Madras and Hyderabad. The posts of Assistant Stores Supdt. at the said offices were also filled on the basis of the Recruitment Rules notified for the C.G.H.S. Offices at Meerut, Kanpur, Nagpur and Calcutta. The Recruitment Rules of 1974 were amended in 1987, ^{on} regulating promotion to one ^{each} post of Assistant Stores Supdt. ~~for~~ for the C.G.H.S. offices at Allahabad, Ahmedabad, Bangalore, Bombay, Delhi, Hyderabad, Jaipur, Lucknow, Patna and Pune. Before the recruitment rules were amended, another departmental examination of Assistant Stores Supdt. was also held in 1979 and persons were either appointed on regular basis or sent on deputation from the said list.

4. The applicant has stated that from the two panels of 1975 and 1979, most of the empanelled candidates have been either regularised by administrative orders or ^{those a} Court orders. All ^a included in the first panel of 1975 except the applicant, have been regularised. Shri Padhi Ram, whose name figures at Sl. No.1 and who belongs to the Allahabad Cadre, has been regularised after creation of a

post in CGHS, Allahabad in 1979. Shri P.S. Sitaramiah, who figures at Sl. No.2 of the 1975 List and who belongs to the Delhi Cadre, has moved this Tribunal for regularisation of his appointment as Assistant Stores Supdt. in CGHS Office, Madras. Shri S.N. Sharma, whose name figures at Sl. No.4 and who belongs to the Allahabad Cadre, has been absorbed on regular basis as Assistant Stores Supdt. in CGHS, Hyderabad with retrospective effect from 14.5.1979 by virtue of the order of the Hyderabad Bench of this Tribunal dated 26.11.1987. He has not indicated about the regularisation of Shri B.S. Bhandari, whose name figures at Sl. No.3. He has further averred that the cases of almost all empanelled candidates of the second batch have been taken up for regularisation in different Administrative Tribunals. He has, however, not given the full details in this regard.

5. Since a post of Assistant Stores Supdt. has been created at Delhi and the applicant is the only empanelled candidate of CGHS Cadre from the first batch who remains to be appointed, he claims that he should be appointed to the said post retrospectively. In other words, the post of Assistant Stores Supdt. created some time in 1986 for CGHS Office at Delhi, should be filled on the basis of the same recruitment rules as were in vogue in the CGHS cadres other than Delhi.

6. The applicant, who qualified in the first test in 1975, was posted to Nagpur in 1976 on deputation as there was no post of Assistant Stores Supdt. at Delhi. In 1979, he was sent to Jaipur on deputation. However, in December, 1980, he was reverted as Pharmacist and transferred to Delhi.

7. On 31.12.1980, the applicant made a representation to the Director, CGHS, praying for his regularisation in

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the post of Assistant Stores Supdt.

8. On 11.7.1985, the respondents issued an order whereby 11 officers, including the applicant, were shown as appointed as Assistant Stores Supdts. at the places indicated in the said order (Annexure A-III, p. 12 of the paper-book). In the case of the applicant, the place of posting was shown as CGHS, Calcutta. The respondents have, however, stated that the order dated 11.7.1985 was issued erroneously and the same had been corrected vide order dated 11.3.1986. They have not, however, produced a copy of the said order issued in 1986.

9. The applicant did not accept the posting at Calcutta pursuant to the order dated 11.7.1985. He submitted a representation on 17.7.1985 praying that he may either be given a posting at Jaipur from where he was reverted or that the post of Assistant Stores Supdt. may be reserved for him when it is sanctioned at Delhi. He has also stated that he was not relieved from his duty at Delhi to report at Calcutta.

10. After the post of Assistant Stores Supdt. was created in Delhi in 1986, the applicant made representations which, however, did not bear fruit.

11. The respondents have stated in their counter-affidavit that the post of Assistant Stores Supdt. at Delhi is required to be filled up in accordance with the amended recruitment rules of 1987. According to these rules, promotion will be from Store-keeper, Pharmacist Grade I, or Pharmacist-cum-Clerk with three years' regular service in Grade I on the basis of seniority-cum-fitness. They have further stated that the applicant is

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not the empanelled candidate of CGHS, Delhi Cadre from
the first batch. There is another person named P.
Sitaramiah from CGHS Cadre who is senior to the applicant
in the merit list. As regards the validity
of the panel, the respondents have contended that it
has already been operated and the applicant was appointed
as Asstt. Stores Supdt. on deputation to CGHS, Nagpur/
Jaipur, and, consequently, the question of the validity
of the panel does not arise in the instant case.

12. The respondents have stated that the posts
created in 1986 will have to be filled up in accordance
with the amended Rules, 1987. The applicant is quite
junior in the seniority list of Pharmacists. His name
stands at Sl. No.130 in the Seniority List. His claim
for appointment on the basis of the Recruitment Rules of
1974 is not justified.

13. In our opinion, the applicant has no legal right
to claim that he should be appointed as Assistant Stores
Supdt. in the Office of the CGHS at Delhi with retros-
pective effect, as prayed by him. Shri Sitaramiah, who
had also been empanelled in 1975 from the Delhi Cadre,
was, admittedly, senior to the applicant.

14. At the same time, the respondents cannot ignore
the fact that the applicant was duly empanelled in 1975
and many persons from the first panel of 1975 and the
second panel of 1979 have already been appointed on
regular basis at various places where they have offices.
The respondents are under a duty to exhaust the panel of
selected candidates before recruiting new persons.

15. As regards the validity period of the list of

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candidates prepared on the basis of direct recruitment/ departmental competitive examination, the Ministry of Home Affairs, Department of Personnel, have issued on 8th February, 1982, administrative instructions which provide, inter alia, that "Once a person is declared successful, according to the merit list of selected candidates which is based on the declared number of vacancies, the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes a change after his name has been included in the list of selected candidates. Thus, where selected candidates are awaiting appointment, recruitment should either be postponed till all the selected candidates are accommodated, or alternatively, in-take for the next recruitment reduced by the number of candidates already awaiting appointment and the candidates awaiting appointment from a fresh list from the subsequent recruitment or examination."

16. Referring to the aforesaid notification of February 8, 1982, the Supreme Court observed in Prem Prakash Vs. Union of India & Others, AIR 1984 S.C. 1831 at 1837, that "If selected candidates are available from the previous list, there should either be no further recruitment until those candidates are absorbed or, in the alternative, vacancies which are declared for the subsequent years, should take into account the number of persons who are already in the list of selected candidates who were still awaiting appointment. The notification further shows that there should be no limit on the period of validity of the list of selected

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candidates prepared to the extent of declared vacancies. Once a person is declared successful according to the merit list of selected candidates, the Appointing Authority has the responsibility to appoint him even if the number of vacancies undergoes a change after his name is included in the list of selected candidates."

17. Applying the ratio of judgement in the case of Prem Prakash, we consider it appropriate that all the persons who have been duly empanelled in 1975 and 1979 after the departmental tests, should have been appointed on regular basis at the various offices of the CGHS as and when posts were created. Such appointments should be strictly on the basis of merit. In this view of the matter, we are unable to uphold the validity of the amended Rules of 1987, which propose to give a go-by to the two panels prepared in 1975 and 1979, and provide for filling up these posts on the basis of seniority-cum-fitness.

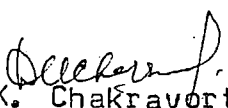
18. In the light of the foregoing, the application is disposed of at the admission stage itself with the following orders and directions:-

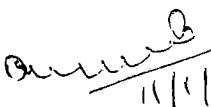
- (i) The respondents are directed to consider the appointment of persons empanelled in 1975 and 1979 on the basis of merit in the posts of Assistant Stores Supdt. at various offices as and when these posts were created there. Till the names of persons borne on the panels are exhausted, the respondents shall not resort to any other method of appointment to the posts of Assistant Stores

Supdt.;

- (ii) the respondents are restrained from operating the rules as amended in 1987 till all the empanelled candidates have been regularly appointed, as mentioned in (i) above;
- (iii) the case of the applicant for appointment on regular basis in the post of Assistant Stores Supdt. should ² ~~also~~ be considered in accordance with his position in the panel and he should also be considered for appointment to one of the posts existing at any of the offices of the CGHS from the date the post was created. In that case, he would also be entitled to consequential benefits; and
- (iv) the respondents shall comply with the above directions within a period of three months from the date of communication of this order.

There will be no order as to costs.


(D.K. Chakravorty)
Administrative Member
11/1/1990


(P.K. Kartha)
Vice-Chairman(Judl.)
11/1/90