

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

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O.A. NO. 766/1989

DATE OF DECISION : 29.1.92.

DR. (MRS.) IRA RAY

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM

SHRI I.K. RASGOTRA, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SH. A. BHATTACHARYA

FOR THE RESPONDENTS

...SH. P.H. RAMCHANDANI,  
COUNSEL FOR RESPONDENT  
NOS. 1 and 2.

...SH. S.C. GUPTA WITH  
SH. I.R. GOEL, COUNSEL  
FOR RESPONDENT NO. 3.

1. Whether Reporters of local papers may be allowed  
to see the Judgement?

2. To be referred to the Reporter or not?

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant serving in the Directorate General of Health Services, Ministry of Health and Family Welfare filed this application under Section 19 of the Administrative Tribunals Act, 1985 assailing the seniority of the Superstite Grade Officers in Central Health Services claiming seniority over respondent No.3, Dr. S.D. Sharma, Deputy Director

General (now Additional Director General), Directorate General of Health Services, New Delhi.

2. The applicant claimed the following reliefs :-

(a) Order for re-arrangement of the seniority list in the Supertime Grade in CHS dt. 3/4th April, 1989 be declared bad in law, illegal and malafide.

(b) To issue direction or order in the nature of command on respondents 1 and 2 not to give any effect in furtherance of the proposed change in the seniority of Supertime Officers in CHS.

3. The facts of the case are that the applicant was appointed in the Central Health Services in May, 1973 to the post of Bacteriologist through U.P.S.C. in the department of the Serologist and Chemical Examiner to the Government of India. She held that post till May, 1983. The post of Serologist and Chemical Examiner in CHS fell vacant in 1982 and the same was advertised by direct recruitment through the UPSC. The applicant was selected by the order dt. 21.2.1983. The inter-se-seniority of the Supertime Grade Officers was declared as on 1.1.1984 and in this seniority list, the applicant was at Sl. No. 13, while respondent No. 3 (Shri S.D. Sharma) was at Sl. No. 16. In September, 1985 another seniority list of Supertime Grade (Level-II and Level-I) Officers of the CHS was circulated. The placing of the applicant was shown at Sl. No. 19, while respondent No. 3 was placed at Sl. No. 11. The applicant by the order dt. 10.11.86

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was ordered to be adjusted against the post of Additional Director General in the Directorate General of Health Service, New Delhi. By the order dt. 9.1.1987, the applicant took charge of the post of Additional Director General (M) under CHS Rules and the guidelines issued by the Department of Personnel and Training, only period of regular service in the grade is counted for determining inter-se-seniority of the Supertime Officers. Respondent No.3 represented to respondent No.1 claiming seniority over the applicant on the ground that the ad hoc services rendered by him in the grade should be taken into consideration while determining the seniority of the Supertime Grade Officers. The applicant learnt that the representation of Dr. S.D. Sharma was rejected. However, respondent No.2, with a view to help Dr. S.D. Sharma to the prejudice of the applicant suggested to respondent No.1 to dispose of the seniority dispute of Dr. S.D. Sharma by counting the period of ad hoc service in the grade. It is also stated by the applicant, that one Shri K.B. Sharma since retired, filed OA No.596/1987 claiming seniority over respondent No.6, Dr. A.K. Mukerjee. In that respondent No.1 has filed the counter-affidavit and categorically stated that the seniority of the applicant has been correctly shown earlier, as seniority in CHS is reckoned from the date of DPG/date of recommendation of UPSC. However, contrary to the above facts and stand

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taken in the counter by respondent No.2 in OA 596/87 filed by Dr. K.B. Sharma, the seniority of the existing Supertime Grade Officers in CHS has been re-arranged and order dt. 3/4th April, 1989 has been issued. On the basis of this revised seniority list, the names have been recommended to the UPSC for selection to the post of Additional Director General, thereby the name of said Dr.S.D. Sharma would be placed above the applicant. The applicant made a representation, but to no effect, hence the present application has been filed against the said revised seniority list on the ground that the said re-arranged seniority of Supertime Grade Officers is in violation of CHS Rules and the guidelines issued in this regard.

4. Respondent Nos.1 and 2 and separately respondent No.3 filed the reply contesting the said application. In the reply by the official respondents, it is stated that the representation of the applicant dt. 22.3.1989 was rejected by the Ministry's Memorandum dt. 28.4.1989 (Annexure R1), but she did not prefer any appeal for the redressal of her grievance before coming to the Tribunal and as such, her application is liable to be rejected on the ground of not exhausting all the remedies available to her under the service rules. It is also denied that

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the applicant was given to understand that by virtue of seniority in the Supertime Grade, she would be formally appointed as Additional Director General of Central Health Services in due course. Selection for the post of Additional Director General is made by DPC and through UPSC and the appointment thereto is made after approval after appointment committee of the cabinet. It is further stated that the post of CIP, Ranchi was referred to for direct recruitment by UPSC. This was done on the recommendation of the Joint Secretary, Ministry of Health and Family Welfare and recorded a note on 23.5.1981 stating that Dr. S.D. Sharma had indicated that he was not interested in the post of Director, CIP, Ranchi. However, Dr. Sharma had denied that he had ever expressed his inability/disinterest to join the post. Later on Dr. Sharma, respondent No.3 himself desired to be considered for the said post. A proposal for filling up the post by promotion through DPC was sent to UPSC. They were, however, informed that DPC will be convened after CHS Rules were revised. After this, Dr. Sharma, respondent No.3 and few other officers were appointed on ad hoc basis to Supertime Grade as UPSC had taken the same view in respect of the Departmental Promotion Committee. The CHS Rules were finally notified on 13.11.1982. Later on Dr. Sharma was regularly appointed

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to the same post on the basis of the recommendations of regular DPC. Dr. Sharma represented in 1987 that his ad hoc services should be counted for seniority purposes. The Department of Personnel and Training advised that the ad hoc service of Dr. S.D. Sharma should be counted for seniority in view of the facts already stated above. The Ministry of Law also gave the opinion that, "The ad hoc service of Dr. Sharma, which was continuous and in a regular vacancy, should be taken into account for all service benefits, including seniority and promotion." Thus Dr. Sharma became senior to the applicant and the impugned seniority list was issued.

5. Respondent No.3 in the reply stated that the applicant was never appointed as Additional Director General (M). The applicant was Supertime Grade (Level-II) Officer of the CHS and in November, 1986 was working as Serologist and Chemical Examiner at Calcutta. On 10.11.1986, an order was issued wherein the applicant was required to be merely 'adjusted against the post of Additional Director General'. Subsequently, the Director (A & V) in DGHS, had, of his own, issued an Office Order on 9.1.1987 that the applicant, 'will be known as Additional DG (M)'. However, on 19.8.1988, DGHS issued another Office Order especially stating that the order dt. 9.1.1987, which was wrongly issued is hereby

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cancelled. Thus at no point of time, the applicant was promoted in any manner whatsoever on the post of Additional DG (M).

6. Regarding seniority, it is stated by respondent No.3 that when the post of Director, Central Institute of Psychiatry, Ranchi fell vacant and the respondent was the seniormost eligible and qualified officer for consideration for promotion to the said post, <sup>he</sup> was not considered on the basis of a note recorded by the Joint Secretary on his own <sup>that</sup> to the effect that the respondent was not interested in the said post. In fact, after occurrence of the said vacancy, the answering respondent himself in July, 1981 represented praying his claim before DGHS to be considered for the said post. Respondent No.3 was appointed as Director, CIP on 11.9.1981 and he joined the post on 2.12.1981 and was regularised subsequently on 31.3.1983 by holding a regular DPC. The delayed meeting of the DPC was due to the proposed changes in the CHS Rules. Accordingly, respondent No.3 made representations pointing out the above facts and after verifying the factual position and also after asserting legal position, the department corrected the error and gave respondent his due seniority vide seniority list issued on 19.4.1989 as corrected upto 1.3.1989. The applicant was appointed as direct recruit to the post of Serologist, which is equivalent to that of the post of DDG in February, 1983.

She could not be given promotion to the post of  
Sor ologist under the rules because she did not have  
the equivalence prescribed for the said post as laid down  
in those rules. It is further stated that the answering  
respondent is highly qualified having the following  
qualifications :-

- MBBS
- MD
- DPM
- FRC Psychiat (Lond)
- FRANZCP (Australia)
- Fellow of many national and international  
scientific organisations
- Recipient of Dr.B.C. Roy National Award.

The applicant has been working as a Professor since 1968  
and Director, CIP, Ranchi since 1981. Thus in all respects,  
the respondent is senior to the applicant in profession  
as well as in experience, both as a Teacher and a Research  
Worker and is well known both nationally and internationally.  
Thus it is said that the application has no merit and be  
dismissed.

7. We have heard the learned counsel for the parties at  
length and gone through the record of the case. There is no  
doubt that in the earlier seniority list issued by the  
respondents in 1984 and 1985, respondent No.3 is shown  
junior to the applicant. However, the facts go to show  
that the applicant is a direct recruit and was recommended  
for appointment by the order dt. 21.2.1983, but she actually  
joined the post on 7.5.1983. While the applicant has been

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working in the grade, though firstly on ad hoc basis from 2.12.1981 in the supertime grade, but regularised by the DPC on 31.3.1983. In any view of the matter, since the applicant has come by way of direct recruitment, she cannot tag any period prior to it on the earlier post of Supertime Grade (Level-II). Since the applicant has joined the post after the regularisation of the respondent No.3 on 31.3.1983, she cannot in any view of the matter count the period earlier to the date of joining, i.e., 7.5.1983 to the length of her service in Supertime Grade (Level-I).

8. However, taking certain aspects pointed out by the learned counsel for the applicant, it is to be seen that in 1981, the rules of CHS were under restructuring and revision and the rules were published only in November, 1982. A post fell vacant in 1981 of Supertime Grade (Level-I). It is admitted by respondent Nos.1 and 2 that Joint Secretary made a wrong noting that Dr. Sharma is not interested in joining as Director, CIP, Ranchi. However, subsequently when Dr. Sharma asserted his right, he was considered and promoted, though on ad hoc basis because the UPSC deferred the matter till the revised rules of CHS are published. The applicant has been duly promoted, though on ad hoc basis in a vacancy which had existed prior to November, 1982 revised rules. At that time, the applicant was

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working in the Specialist Grade-I of the CHS as Professor of Psychiatry, Goa Medical College, Panaji and was selected for appointment as Director and Medical Superintendent, CIP, Ranchi on ad hoc basis on 21.8.1981. The applicant was relieved of his duties from Panaji on 30.11.1981 to join at Ranchi in CIP. It is also evident from the departmental file that by the order dt. 11.1.1982, the applicant was appointed to Supertime Grade-I of the CHS w.e.f. 2.12.1981, though on ad hoc basis. This post of Director and Medical Superintendent, CIP, Ranchi fell vacant on account of the resignation of Dr.Pandey w.e.f. 30.6.1981. Thus this post of Director and Medical Superintendent, CIP, Ranchi was in existence at a time when the new revised Recruitment Rules had not come into force and the promotion had been effected on ad hoc basis. Rule 7(a)(2) of the CHS Amendment Rules, 1962 lays down, "Vacancies in each category shall be filled by the appointment of departmental candidates selected under Sub Rule (1) and in the event of non availability of suitable departmental candidates for filling a vacancy, such vacancy may be filled by direct recruitment through the Commission." This vacancy was available on regular basis, so it was also not a case where only stop gap arrangement was called for nor it was a fortutious vacancy, in which case application of executive instructions might have been justified.

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9. In a number of decisions\*, relied by the learned  
counsel for the applicant, it has been held that  
when a person is already appointed and is subsequently regularised according to  
rules, then his ad hoc service cannot be ignored.

10. In the case of Direct Recruits Class-II Engineering  
Officers' Association & Ors. Vs. State of Maharashtra & Ors.,  
JT 1990(2) SC 64, the Constitution Bench has held summarising  
the whole ratio in para 47 and to the present case, it is  
covered by sub clause (B) of para 47, which is reproduced below:

"If the initial appointment is not made by following  
the procedure laid down by the Rules, but the appointee  
continues in the post uninterruptedly till the  
regularisation of his service in accordance with the  
Rules, the period of officiating service will be counted."

11. During the course of the arguments, it has also been  
pointed out by the learned counsel for the applicant that

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1. K.Madhavan Vs. Union of India,  
AIR 1987 SC 2291 at p-2296
2. Narendra Chadda Vs. Union of India,  
AIR 1986 SC 638
3. Ashok Gulathy Vs. B.S. Jain,  
AIR 1987 SC 424
4. Nirmal Kumar Choudhary Vs. State of Bihar,  
AIR 1988 SC 394
5. A.Janardan Vs. Union of India,  
AIR 1983 SC 769 at p-781.

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in fact the applicant was recruited on 21.2.1983. but she joined in Supertime Grade-I only on 7.5.1983 as is evident by the averment made at p-6 of the application. The applicant, however, already stood regularised according to new rules on 31.3.1983. In that event also, if the length of service is to be counted from the date of joining, Dr.Sharma is senior to the applicant and the applicant cannot have a march to the date earlier to her birth in the Supertime Grade-I effective by the date of joining.

12. The learned counsel for the applicant also argued that the applicant has been shown senior in the earlier seniority lists of 1984, 1985-86, but it is open for the department to correct the seniority list according to rules and the principle of delay and laches will not apply when the matter is taken up administratively by the department concerned. The question of delay and laches arises only when it is filed for adjudication before a Court of law. The respondents have amended the seniority list by the impugned order and there is nothing on record to show that the said revised seniority list is against the ratio of any of the decided case of the Hon'ble Supreme Court or by the Tribunal or is against the rules.

13. In view of the above facts, we find that the present

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application is devoid of merits and is dismissed leaving the parties to bear their own costs.

*J. P. Sharma*

(J. P. SHARMA) 29.1.72

MEMBER (J)

*I. K. Rasgotra*

(I. K. RASGOTRA)  
MEMBER (A)