

For Reprint

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

D.A. No. 1088/88

Dated: 5.10.1993

Mange Ram

Applicant

Vs.

Delhi Administration & Ors.

Respondents.

Shri B.B. Sharma, Counsel for the Applicant

Shri B.R. Parashar, Counsel for the Respondents.

CORAM

1. Hon'ble Mr. J.P. Sharma, Member (J)
2. Hon'ble Mr. B.K. Singh, Member (A)

JUDGMENT (ORAL)

(Delivered by Hon'ble Mr. J.P. Sharma, Member (J))

The applicant has been working as Lab. Assistant in the Micro Biology Department, Maulana Azad Medical College, New Delhi when he filed this application regarding his grievance that by the order dated 6.7.1987 passed by the Estate Officer (Technical Recruitment Cell), Maulana Azad Medical College, New Delhi promoting one Shri Om Prakash to the post of Lab Technician while the applicant was senior to the said Om Prakash and was not considered for the promotional post. He has prayed for grant of the relief that the promotion of Respondent No. 4, Om Prakash by the order dated 6.7.87 be set aside and the applicant be given promotion w.e.f. from the same date i.e. 6.7.87 with all consequential benefits of pay etc.

2. A notice was issued to the respondents to file their reply and contested the application but admitting that the applicant

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was considered by the DPC in 1988 and on the recommendation of the DPC the applicant has been given the promotion to the post of Lab Technician w.e.f. 5.10.1988. It is further stated that in the seniority list circulated by the Department in September 1985 the name of the applicant was not entered inadvertently though in the draft seniority list issued in March 1985 the objections were invited from the aggrieved staff members and the applicant is also at fault in not making any representation at the proper time inasmuch as he made representation in April 1986 after the aforesaid seniority list of Lab. Assistants became final and published on 23.9.85. The applicant has no case and the application ^{is} dismissed.

3. We have heard the learned counsel of both the parties at length and perused the records. The order dated 10.9.87 passed by the Technical Recruitment Cell, M.A.M.C. goes to show that the aforesaid seniority list of Lab. Assistants of September 1985 was subsequently amended and the name of the applicant, Shri Mange Ram was added at Sl. No. marked 58-A between Sl. No. 58 where the name of Smt. Durga Devi is shown and Sl. No. 59 where name of Shri Om Prakash, respondent No.4 is shown. After this correction was effected the DPC in its meeting held subsequently found the applicant fit for promotion to the post of Lab. Technician and the promotion was given w.e.f. from that date. The learned counsel for the applicant argued that since the respondents have corrected the seniority list earlier to his promotion by the DPC held thereafter, he should be given the same benefit of promotion from the date when his junior at Sl. No. 59 i.e. Shri Om Prakash was given promotion w.e.f. July 6, 1987. The contention of the learned counsel is that the applicant should ^{not} be made to suffer monitorily for

no fault of his own. We have given it a careful consideration and found that the applicant has not been considered in the DPC held in 1987 only because in the seniority list of Lab. Assistants his name was omitted from its proper place. The averments of the respondents in the reply that since the applicant did not make his representation against the tentative seniority list of Lab. Assistants in time, before the said list became final in the September 1985, the applicant is equally to blame and he cannot aspire to get the benefit. However, the fact remains that in the rejoinder there is a clear mention of the fact that the applicant has made representation in the office of the Respondents and the same has been reiterated by the learned counsel for the applicant during the course of hearing. The respondents have not categorically rebutted this averment in that rejoinder nor placed any documents from the Department records that the representation against the tentative seniority list was not filed by the applicant in time. Even accepting the contention of the respondents' counsel, it does not stand to reason that a person who has already been working in the Department on the post of Lab. Assistant, his name is totally omitted from the seniority list of the persons working in that cadre. This is administrative lapse for which the applicant cannot be blamed. Promotion in service is one of the aspirations of an employee and if he is working efficiently to the entire satisfaction of his superiors and if his junior is given promotion in preference to him to the higher post, such a person is demoralised and in fact he has been punished without his fault. Certain monetary benefits to the applicant would fully compensate him, though the wrong done to him by now allowing him promotion till October 1988 cannot be compensated even by these monetary benefits.

4. In view of the, it is made clear by the respondents themselves that the applicant is senior to the said Om Prakash, respondent No.4. When this position has been admitted without reservation then the name of the applicant should have been considered for promotion with respect of the DPC held in 1987. Though the applicant has become before the Tribunal in June 1988 but the respondents have corrected the omission by inserting the name of the ~~xx~~ applicant at the proper place in September 1987, and gave actual promotion to the applicant on the recommendation of the DPC held in 1988. This recommendation should have been given effect to from the date when the next junior, Om Prakash, respondent No.4 was given promotion as Lab. Technician. This is desired by equity and any other action will be arbitrary, unjust and unfair.

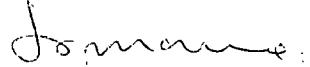
5. The contention of the learned counsel for the respondents that there was certain relaxation of rules but that does not seem to be individual to the Lab. Assistant and it was a general relaxation regarding certain eligibility for promotion to the post of Lab. Technician. Whether the applicant could not fulfil the eligibility or was not found fit for relaxation of the rules is not projected in the counter filed by the respondents. Rather it is not the case of the respondents.

6. In view of the facts and circumstances the application is allowed to the extent that the promotion of the applicant to the post of Lab. Technician will date back to July 1987 i.e. the date when his next junior, Shri Om Prakash, respondent N.4, was promoted, and

as consequences thereof the applicant shall be entitled to refixation of pay in the said scale from that date. Regarding his relief for quashing the promotion of respondent No. 4, the same is disallowed. The respondents should comply to the directions within 4 months from the receipt of this judgment.

No costs.


(B.K. Singh)
Member (A)


(J.P. Sharma) S-1075
Member (J)

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