

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
TxxxxNo.

384

1986

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DATE OF DECISION 10-3-1987.

Dr. S.H. Sidhuani Petitioner

Shri N.L. Duggal Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri M.L. Verma Advocate for the Respondent(s)

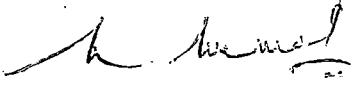
CORAM :

The Hon'ble Mr. Kaushal Kumar, Member (A)

The Hon'ble Mr. G.Sreedharan Nair, Member (J)

1. ✗ Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ?
3. ✗ Whether their Lordships wish to see the fair copy of the Judgement ?


(G. Sreedharan Nair)
Member (J)
10-3-1987.


(Kaushal Kumar)
Member (A)
10-3-1987.

CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

D.A. No. 384 of 1986.

10th March 1987.

Dr. G. H. Gidwani

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Applicant.

vs.

Union of India thro'
Secretary to the Govt of
India, Deptt. of Health and
F.W. Nirman Bhawan, New Delhi

Respondent.

For applicant:

Shri N. L. Duggal, counsel.

For respondent:

Shri M. L. Verma, counsel.

Coram:

The Hon'ble Mr. Kaushal Kumar, Member (A)
The Hon'ble Mr. G. Sreedharan Nair, Member (J)

(The Judgment of the Tribunal delivered by
The Hon'ble Mr. G. Sreedharan Nair, Member (J))

The relief that is claimed in this application filed by a Chief Medical Officer is for granting him the Selection Grade pay in the cadre of Chief Medical Officer with effect from 1-1-1983. It is admitted that he was promoted to the Selection Grade with effect from 1-6-1985. It is alleged by him that as on 1-1-1983, a vacancy in the Selection Grade was available and that he had fulfilled the eligibility conditions for promotion to the Selection Grade as prescribed in the Central Health Services Rules, 1982, for short ~~the Rules~~.

2. The respondent contends that though the applicant fulfilled the conditions of stagnation for promotion to the Selection Grade, on 1-1-1983, as Dr. S. B. Roy Choudhury, senior to the applicant as Chief Medical Officer was appointed to the Selection

Grade only with effect from 1-6-1985, the applicant was also appointed to that grade ~~only~~ with effect from that date.

3. After hearing counsel on either side, we are satisfied that the claim of the applicant is well-founded. The Rules provide for the manner of ~~the~~ appointment to the Selection Grade. It is contained in Clause (ii) of Sub-rule (8) of Rule 4 of the Rules. It is as follows:-

"The appointment against the post of Chief Medical Officer Non-functional Selection Grade shall be made on non-selection basis if the officer in the post of Chief Medical Officer (Rs.1500-2000) has reached maximum of the scale and has stagnated for not less than two years after regular appointment to the post."

It is clear from the Rules that the appointment against the post of Chief Medical Officer, Non-functional Selection Grade, is to be made on non-selection basis and that the two eligibility conditions are that the officer should have reached the maximum of the scale of pay of Chief Medical Officer, namely Rs.1500-2000, and should have stagnated for not less than two years after regular appointment to the post. It is admitted in the reply of the respondent itself that the condition regarding stagnation is fulfilled by the applicant with effect from 1-1-1983. That the applicant reached the maximum of the pay scale i.e., Rs.2000/- on 1-1-1981 is also admitted in paragraph 6(7) of the reply. That there was a

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Official Memorandum that the inter-se seniority of Officers shall not be changed as a result of their appointment to the Non-functional Selection Grade. The said clause clearly gives the indication that the non-promotion of an ineligible senior shall not stand in the way of the qualified junior being considered and promoted to the Selection Grade.

5. In this context, we would also refer to the decision of the Principal Bench of the Tribunal in Ravish Gupta vs. Secretary, Ministry of Personnel & Training & Ors. (A.T.R.1986 C.A.T. 22) wherein it has been held that even the senior-most must possess prescribed qualification before he can be considered eligible for appointment failing which he must give way to his juniors who are eligible. Seniority would be relevant only among persons eligible; it cannot be a substitute for eligibility, much less can it override it in the matter of appointment to the next higher cadre.

6. It follows that the applicant is entitled to be promoted to the post of Chief Medical Officer Non-functional Selection Grade with effect from 1-1-1983 and for the consequential benefits. As *he has to be given notional promotion accordingly, and the applicant has since retired from service, his pension and other* terminal benefits are to be re-calculated on the basis of the above. We direct the respondent to do so.

vacancy as on 1-1-1983 is also not in dispute. The question is

whether in these circumstances on the mere ground that

Dr. S. B. Roy Choudhury who, according to the seniority list, is

above the applicant was not promoted to the Selection Grade before

1-6-1985, the applicant can be deprived of his right for

consideration for promotion and award of the same. There is

nothing in the Rules to warrant such a contention. No doubt,

the mode of appointment is by non-selection basis. From that

it cannot be said that merely because one who is senior has not been

promoted to the Selection Grade, on grounds of ineligibility, the

junior, who admittedly fulfills the eligibility conditions is not

to be considered and promoted.

4. Counsel of the respondent invited our attention to the Office Memorandum dated 31-7-1982 issued by the Department of Personnel and Administrative Reforms. We do not find anything therein contrary to the Rules, especially to clause (ii) of Sub-rule (8) of Rule 4 of the Rules. Actually, the said Office Memorandum has been issued by way of guidelines for the introduction of Non-functional Selection Grade in Group 'A' Central Services. Evidently, it is on the basis of the same that the statutory Rules have been issued on 13-11-1982. Clauses (d) and (e) of paragraph 3 of the Office Memorandum have actually been incorporated in clause (2) of Sub-rule (8) of Rule 4 of the Rules. Further, it is provided in clause (g) of the

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7. The application is allowed as above. There will be
no order as to costs.

G. Sreedharan Nair
(G. Sreedharan Nair)
Member (J)
10-3-1987.

K. Kumar
(Kaushal Kumar)
Member (A)
10-3-1987.