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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. Nos. 129/87 and 268/1987
T.A. No.

DATE OF DECISION 29.6.87

Dr. Pankaj Sharma

Petitioner

Dr. C.S. Aggarwal

Mr. Swantantar Kumar for Petr. 1

Advocate for the Petitioner(s)

Mr. C.S. Bhandari for Petr. 2

Versus

Union of India and others

Respondent

Mr. N.S. Mehta

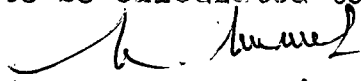
Advocate for the Respondent(s)


CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman

The Hon'ble Mr. Kaushal Kumar, 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. Whether to be circulated to all the Benches ? No


(Kaushal Kumar)
Administrative Member


(K. Madhava Reddy)
Chairman

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Versus

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For Petitioners: Mr. Swantantar Kumar for Petitioner in
OA. 129/87

Mr. C.S. Bhandari for Petitioner in
OA 268/87

For Respondents: Mr. N.S. Mehta, Advocate (Standing Counsel)

CORAM: HON'BLE MR. JUSTICE K.MADHAVA REDDY, CHAIRMAN
HON'BLE MR. KAUSHAL KUMAR, ADMINISTRATIVE MEMBER

JUDGMENT:

These are two applications under Section 19 of the Administrative Tribunals Act, 1985. They relate to the appointment of Senior Residents in General Surgery in the Safdarjang Hospital, New Delhi. Though the reliefs claimed in these two petitions are somewhat at variance, inasmuch as both these petitions relate to the validity of the interviews held and selections made for the posts of Senior Residents in Safdarjang Hospital on 28.1.87 and 29.1.87, which are under challenge, they can be conveniently disposed of by a common order.

2. Dr. Pankaj Sharma, applicant in O.A.129/87, was selected and appointed against the vacancy in the Cardiothoracic Surgery Department of the Safdarjang Hospital in 1985 and is working as Senior Resident in that department.

3. Pursuant to the notice in the Employment News



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dated 29.11.86 published by the Ministry of Labour (D.G.E.&T.) New Delhi, he applied for the post of Senior Resident (General Surgery). Dr. C.S. Aggarwal, the applicant in the other O.A.No.268/87 is also working as Senior Resident in Safdarjang Hospital and is one of the applicants for ^{the} three posts of Senior Residents in General Surgery. Interviews for recruitment to that post were scheduled to be held on 28th and 29th January 1987. Dr. Pankaj Sharma received a letter on 15.1.87 requiring him to attend the interview on 28.1.87. It is the specific case of Dr. Pankaj Sharma that he fared well in the interview and having regard to his qualifications and to the best of his knowledge was able to answer all the questions put to him and expected to be selected. However, when it came to his notice that the doctors working in the same hospital would not be considered for the post, he made a representation on 30.1.87 and went to the Medical Superintendent, 2nd respondent herein, to submit his representation. The 2nd respondent was annoyed by that representation and threatened to terminate the petitioner's services. However, after some heated arguments, the Medical Superintendent asked the petitioner to withdraw the representation in writing and only then, he would consider the case of the petitioner for appointment. The petitioner by his letter dated 30.1.87 withdrew his representation. The petitioner states that he came to know that the 2nd respondent had passed an order on 29.1.87 declaring that the doctors from the Safdarjang Hospital should not be considered for appointment. He alleges that the panel prepared by the Selection

contd....

Committee of which the 3rd respondent was the Chairman, excluded the petitioner from consideration on the basis of the order dated 29.1.87 allegedly passed by the 2nd respondent and seeks a declaration that that order is illegal. It is also averred that Dr.C.S. Aggarwal, the other applicant herein was not called to take the interview either on 28.1.87 or 29.1.87. On making inquiries, Dr. Aggarwal was informed by the administration of the Hospital that the doctors working in the same hospital will not be permitted to appear and will not be considered for filling the three vacancies advertised. Dr. Aggarwal is aggrieved that while Dr. Pankaj Sharma, who is also serving in the Safdarjang Hospital was called for the interview on 28.1.87, he was not given any call. He, therefore, made a representation on 27.1.87 to the 2nd respondent. Thereafter, he met the Deputy Medical Superintendent and he was told to appear for interview on 28.1.87. However, on 28.1.87 he was not interviewed and was asked to come on the following day. Although his name was put at S.No.2 in the list of candidates to be interviewed on 29.1.87, respondents 3 and 4 interviewed the other candidates on 28.1.87 and 29.1.87, but did not interview the applicant. He alleges that while respondent No.2 was sympathetic to the petitioner, respondent No.4 who is the head of the department of General Surgery was opposed to calling the petitioner for interview. He, therefore, seeks a direction from the Tribunal against the respondents to interview him for the post of Senior Resident in General Surgery as advertised in the Employment News and to consider him along with others for one of




the three posts of Senior Residents in General Surgery.

4. The case of the respondents 1 and 2, i.e., Union of India and ^{the} Medical Superintendent, Safdarjang Hospital New Delhi is that the Committee which interviewed the candidates on 28.1.37 and 29.1.37 for the posts of Senior Resident in General Surgery was not duly constituted. According to them as per the Government of India's instructions No.11014/35-75/ME/PG/26.4.74 (Annexure-R-I), the Board should have comprised the -

1. Director General of Health Services.
2. Director/Principal of the Institution/Hospital
3. Professor/Specialist of the concerned speciality.

But actually, the Board in question comprised the nominee of respondent No.2, Dr.C.P. Bahl and Specialist of the Speciality concerned who in the case of General Surgery happens to be Dr. S.M. Singh. Although the Director General of Health Services was requested on 29.1.37 to depute his representative ^{sit on} to the Board, none was deputed. In the result, only two of the three members who constituted the Board, held the interviews. It is also their further case that one of the posts was reserved for Scheduled Caste candidate. As per O.M.No.41013/16/80-Estt/SCT) dated 10.3.81 (Annexure R-2 of the Department of Personnel and A.R., one officer belonging to the Scheduled Caste should have been on the Selection Board. According to them, the selections made by the Board without a representative of the Director General of Health Services and without an officer belonging to the Scheduled Caste were vitiated and could not be acted upon. They had, therefore, no option but to constitute a fresh Selection Board and have the interviews held again. The Employment Exchange had ~~xxxxxx~~ advertised the posts on 29.11.36

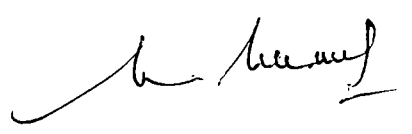


vide Advertisement No.48/86 and the last^{date}/for receiving applications was 15.12.36. The Employment Exchange sponsored 53 candidates including two SC candidates. All were called for interview on two dates, i.e., 28.1.37 and 29.1.37. 15 Candidates appeared for interview on 28.1.37 and 20 candidates including one Scheduled Caste candidate appeared for interview on 29.1.37. It is stated that since Dr. C.S. Aggarwal is working in the Cardio Thoracic Department in the same grade on^a regular basis and had applied directly for the post of Sr. Resident in Surgery and his name was not sponsored by the Employment Exchange, he was not called for interview. They denied that any order was passed on 29.1.37 as alleged by the petitioner. They further stated that if the applicants file applications afresh, they will be considered along with other candidates after interviewing them. In regard to Dr. C.S. Aggarwal, it was specifically pleaded whether he is an Indian citizen or not and whether he is eligible for the post of Sr. Resident in General Surgery or not would be considered in the light of the Rules governing such persons.

5. The Government of India in its letter dated 26th April, 1974 (Annexure R-1) communicated to the Director General of Health Services that the appointments to the posts of Sr. Residents in respect of Central Government Hospitals/Institutions directly under the control of ^{General} Director/Health Services will be made by the Selection Committee consisting of the following:

1. Director General of Health Services.
2. Director/Principal of the Institution/Hospital
3. Professor/Specialist of the concerned speciality

It specially directed that all future selections inter



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alia in respect of Sr. Residents shall be made by the above mentioned Selection Committee. The appointment to the post of Senior Resident in General Surgery in Safdarjang Hospital at New Delhi has to be done in accordance with Annexure R-1. It is not disputed that the Director General of Health Services did not participate in the selection. In fact he was not sent a notice to sit on the Selection Board meeting to interview the candidates on 28th and 29th January, 1987. He was only asked to send his representative. There was no provision to substitute a representative of the Director General in the place of ^{the} Director General himself. In fact neither the Director General Health Services nor even his representative participated in making the selections on those two days. It is also further admitted by both sides that there is no Director or Principal of the Safdarjang Hospital and consequently no such person could sit ^{as} a member on the Selection Board. It is, however, contended on behalf of Dr. Pankaj Sharma that the Medical Superintendent was the officer who holds the post corresponding to that of the Director/Principal for he administers the Safdarjang Hospital. We are afraid that in the face of the specific direction that a Director/Principal of the Hospital/Institution shall be one of the members of the Selection Committee, any person who holds an equivalent post and discharges the same duties and responsibilities cannot act as his substitute on a Selection Board. The result was that the specialist of the speciality of General Surgery was the only ^{competent} person on the Board which held the interviews on 28.1.87 and 29.1.87. Such a Board was not competent



to hold the interviews and select candidates for the posts of Senior Residents. The interviews not having been held in conformity with the directions contained in the above letter of Government of India cannot be acted upon and no directions can be given to make the appointments in accordance with the selections made by that Board.

6. It is, however, argued that as there is no Director or Principal ^{of} the Safdarjang Hospital, no such committee could ever be constituted in conformity with the directions contained in the letter dated 26th April, 1974. It is also pointed out that ever since the system of appointing Sr. Residents was introduced it was the Medical Superintendent of the Hospital and Professor or Specialist of the concerned Speciality who were sitting on the Selection Board and making the selections. If it were to be held that such a Board was not duly constituted, then all the selections made during the past several years should be declared invalid. It is unnecessary to go into the validity of the past selections for they do not form the subject matter of the present applications. The validity of those appointments cannot be assailed now in these applications. But that is no ground to hold that the present selections made by a Board which is not constituted in terms of the directions of Government of India in Annexure-R are valid and to direct the Government of India to make appointments based on such a selection. By being selected by a Board not duly constituted the candidates do not acquire a legal right to be appointed to the post. When it is

[Signature]

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clear from the facts of this case that the interviews on 28.1.37 and 29.1.37 were not held by a duly constituted Committee, selections made by that Committee do not vest any enforceable right to appointment. The respondents having found that the selections made are not legally valid have rightly quashed the proceedings of the Selection Board and taken a decision to make the selections afresh. The course sought to be adopted by the respondents is not only proper but the only course open to them.

7. It is the case of the petitioner that the Medical Superintendent, Dr. S.D. Sharma, passed an order on the 29.1.37 to the effect that the doctors from Safdarjang Hospital should not be considered. Although in the reply filed on behalf of respondents 1 and 2 signed by Dr. S.D. Sharma, Medical Superintendent, Respondent No.2 had stated that there is no such order, we were shown an endorsement under the signature of Shri V.P. Varshney, Deputy Medical Superintendent and Dr. C.P. Bahl which contained the following endorsement:

"It has been decided that person holding regular post after proper selection need not be considered as this will cause dislocation of Hospital Services of such frequent changes. This fact was brought to the notice at the beginning of the interview."

This was marked to the Chief Administrative Officer (CAO). On behalf of the applicant, ^(Dr. Pankaj Sharma) the learned counsel has filed a photostat copy of an endorsement said to have been made by Dr. S.D. Sharma, Medical Superintendent on 29.1.37 on a note dated 29.1.37 submitted to him. The photostat copy is filed under the signatures of the counsel for Dr. Pankaj Sharma:-

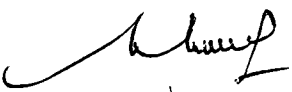
"Swatanter Kumar & Associates, Advocates
256, Lawyers Chambers, New Delhi".



That endorsement of Dr. S.D. Sharma reads as follows:-

"Persons holding regular posts after proper selection need not be considered as this will cause dislocation of hospital services by such frequent changes".

In the Advertisement No.48 of 1987 in Employments News calling for applications for the three posts of Sr. Residents in General Surgery, there was no such stipulation. Once applications are received in pursuance of that advertisement, none of the qualified applicants could be excluded from consideration on the ground that they are already holding posts in ^{the} Safdarjang Hospital. The qualifications notified could not ^{be} altered to the disadvantage of the applicants after the last date of the applications; muchless could they be altered after the interviews had commenced. The interviews were held on 28.1.87 and 29.1.87. On the second day of the interviews a decision such as the one above which disqualifies some of the applicants could not have been unilaterally taken by the Medical Superintendent, Respondent No.2. The applicant, Dr. C.S. Aggarwal, was serving in Safdarjang Hospital and presumably for that reason, he was not interviewed. Although Dr. Pankaj Sharma was also similarly serving in Safdarjang Hospital, he was interviewed. This itself is discriminatory which renders the selection bad and unsustainable. May be after 29.1.87, it was suspected that Dr. C.S. Aggarwal was a Nepali national and may not be eligible for consideration. But that does not appear to be the reason for not interviewing him. Whether Dr. C.S. Aggarwal was eligible to apply or not may be a matter for inquiry and in any such inquiry which the respondents may hold Dr. C.S. Aggarwal is undoubtedly



entitled to prove that he is eligible to apply and to be considered for appointment. We express no opinion as to his eligibility for that will depend upon several factors. So far as the application and advertisement go, while the applicant is required to give his nationality, nowhere does it say that Indian Nationals alone are eligible for appointment. We ^{not} do wish to say anything more on the question whether Dr. C.S. Aggarwal, being a Nepali citizen, is eligible to apply for the post or not. We are also not inclined to express our opinion whether he is a Nepali citizen or an Indian Citizen. That would be a matter for inquiry to be determined in accordance with the law by the competent authority. However, neither Dr. C.S. Aggarwal nor Dr. Pankaj Sharma or any of the candidates can be omitted from consideration merely because they are already holding a post ^{the} in Safdarjang Hospital since there was no such stipulation in the advertisement.

8. In view of the above discussion, there can be no direction to give effect to the selections made by the Selection Board which met on 28.1.87 and 29.1.87 and make appointments in accordance with the selections. On the other hand, a direction to constitute a Committee in terms of the letter dated 26th April, 1974 (Annexure R-1) and to hold the interviews for appointments to the posts of Sr. Residents in General Surgery shall issue. If there is no Director or Principal ^{the} in Safdarjang Hospital, the instructions will have to be duly amended and Committee constituted in accordance with the amended instructions so that selections may be made afresh ~~xxxxx~~ by a duly constituted Committee.

9. Before parting with this case we must observe that some very unhealthy features in the matter of selection of Senior Residents have come to light.

h. Kumar

Apart from the fact that due care was not taken to constitute the Committee in accordance with the standing instructions of the Government, the selections too were sought to be interfered with by the Medical Superintendent by stipulating fresh criteria after the interviews commenced. Though initially it was denied that any order dated 29.1.87 was made and an affidavit to that effect was filed; that statement on oath is falsified by what is evidenced by the photostat copy and the note made on 29.1.87 under the signatures of ^{the} 3rd respondent and the Member Secretary. It is now clearly established, that an order was made on 29.1.87 that persons holding regular posts after proper selection need not be considered! Unfortunately there were conflicting versions by responsible doctors, Dr. C.P. Bahl and Dr. S.D. Sharma, in this behalf; we had ^{to} therefore direct the records to be produced and affidavits to be filed in this regard.

10. In the reply filed on 24.4.1987 on behalf of the Union of India and the Medical Superintendent, Safdarjang Hospital, New Delhi, Respondents 1 and 2 herein, under the signatures of Dr. S.D. Sharma, Medical Superintendent Safdarjang Hospital, it was categorically asserted that "there is no order dated 29.1.1987 and therefore all ~~the~~ allegations with respect to the said order are un-called for". It was further averred by him that "the Employment Exchange sponsored 53 candidates including two S.C. candidates. All were called for interview on two dates, i.e., 28.1.1987 and 29.1.1987.....
Dr.C.S. Aggarwal is working in Cardio Thoracic Department in the same grade as Senior Resident. He was selected for Cardio Thoracic Department on regular basis duly sponsored



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by the Exchange through regular interview held on 3.9.1986. Since he is holding the post of Senior Resident in the same grade on regular and his name was not sponsored by the Employment Exchange, he was not called for interview when he applied directly for the post of Senior Resident in Surgery.. . . . In fact, Dr. Pankaj Sharma was permitted to appear for interview and no discrimination was made in the matter of interview".


11. In pursuance of the subsequent directions of the Tribunal, affidavits of Sri P.S. Srinivasan, Chief Administrative Officer, Dr.S.D. Sharma, Medical Superintendent and Dr. C.P. Bahl, Additional Medical Superintendent of Safdarjang Hospital were filed. Sri S.D. Sharma in an attempt to wriggle out of his earlier statement that he had not made any order which is obviously not true has changed his version.

12. Dr. S.D. Sharma now comes forward to state "while I remember ~~that~~ I had made some noting in this regard, I do not recollect the exact contents or its date and it is not traceable now". He ^{has} further stated that "Dr. C.P. Bahl, Additional Medical Superintendent and Dr. V.P. Varshney, D.M.S., discussed before interview in my room about the persons holding regular posts as Senior Residents in the same grade and same scale in allied Branches like Neurosurgery, Cardio-thoracic Surgery etc. since this would cause dislocation of hospital services by such frequent changes it was felt not desirable to consider such candidates for appointment but no order in that regard was issued."



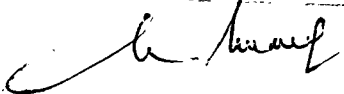
"Dr. Chandra Sekhar Agarwal, Sr. Resident in Cardio-thoracic Surgery brought to my notice on 29th that he was not given an interview for consideration for the post of Sr. Resident in General Surgery whereas Dr. Pankaj Sharma who was holding regular post in the same department has been interviewed on 28.1.1987. I referred to Addl. M.S. and D.M.S., for comments. The comments given by them reads that "it has been decided that person holding regular post after proper selection need not be considered as this will cause dislocation of hospital services on such frequent changes. This fact was brought to the notice at the beginning of the interview".

13. The sequence of events now mentioned by Dr. S.D. Sharma obviously cannot be correct for if that comment was made by the Additional M.S., and D.M.S. on the matter being referred by Dr. S.D. Sharma on the representation of Dr. C.S. Aggarwal that on 29.1.1987 as he was not given interview while Dr. Pankaj Sharma was interviewed the previous day, i.e., 28.1.1987 any comment could have been made only on 29.1.87. The original file produced before us also shows that the comment made by the Additional M.S., and D.M.S. is dated 29.1.1987. Obviously any such decision was taken only after Dr. C.S. Aggarwal made a representation and not earlier ~~to Dr. S.D. Sharma~~ which according to Dr. S.D. Sharma himself was made on 28.1.87. As such the order was recorded on 29.1.1987. On the note submitted on 27.1.87 on the representation of Dr. C.S. Aggarwal also, photostat copy of which is filed before us, it is clear that the order was made on 29.1.87. The decision not to interview those already ^{in the} serving/Safdarjang Hospital was taken after the interviews



commenced on 28.1.87. That is also further fortified by the affidavit of Dr. C.P. Bahl. He categorically stated in his affidavit filed on 8.5.1987 that "when the file relating to the selection of candidates was produced before the Selection Committee on 28.1.87 by the Dealing Assistant Shri Lakh Raj, there was no order to the above effect". He further stated that "on the next following day i.e., 29.1.1987 the file was again produced before the Selection Committee by Shri Lakh Raj, ibid, containing two orders passed by the Medical Superintendent, Respondent No.2 dated 29th January, 1987". This falsifies the assertion of Dr. S.D. Sharma that there was no order at all. It also falsifies the further assertion that this decision was taken and comments were made before the commencement of the interviews. If such a decision was taken on 28.1.87 when the interviews admittedly commenced, Dr. Pankaj Sharma who was also employed in Safdarjang Hospital would not have been interviewed on 28.1.87. As rightly stated by Dr. C.P. Bahl in his comments dated 5.2.1987 that "as per Clause 2 of the advertisement in the Employment News 'Departmental candidates belonging to the same Ministry/ Department fulfilling the qualifications, experience etc. laid down for the post may apply direct to the employer and need not send their applications through local employment exchange".

15. It would appear that Dr. S.D. Sharma, M.S., realised that he could no longer deny that he made an order because Sri P. Srinivasan, Chief Administrative Officer, Safdarjang Hospital stated that "I have not seen any orders dated 29.1.1987 passed by the Medical Superintendent from the records handed over to me by the Medical Superintendent or otherwise. However, I have seen a note given by Dr. V.P. Varshney, D.M.S.,



on visitor's slip of Dr. C.S. Aggarwal as below:

"It has been decided that person holding regular post after proper selection need not be considered as this will cause dislocation of Hospital services of such frequent changes. This fact was brought to the notice at the beginning of the interview".

It is very unfortunate that such contradictory statements should have been made and the process of interview interfered with while it was in progress.

16. Dr. C.P. Bahl has filed an affidavit in which he states "that the Dy. Medical Superintendent has himself recommended on 27.1.87 that unless sponsored by the Employment Exchange, it is not possible to call Dr. C.S. Aggarwal for interview on 29.1.87. I do not know the circumstances under which he made a volte face and assured the respondent on same day, i.e. on 27.1.87 to give interview on 28.1.87 and 29.1.87." Dr. Bahl who was the Chairman of the Committee on 28.1.87 and 29.1.87 further states that when they met on 28.1.87, no instructions were given and no recruitment rules were placed before them under which the candidates from the Safdarjang Hospital were to be excluded. On 28.1.87, they interviewed a number of candidates including four or five candidates from the Safdarjang Hospital and the petitioner (Dr. Pankaj Sharma) was also interviewed on 28th January, 1987. It was on 29.1.87 that instructions were issued by the Medical Superintendent to interview one Dr. Subodh Kumar Gupta, whose services were terminated on 13.12.86. It was also pointed out that the services of Dr. Gupta were terminated for suppression of information relating to his previous appointment. They had made inquiries whether he should or should not be interviewed. Medical Supdt.

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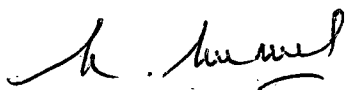
ordered that he should be considered by the Committee. He also passed an order that the persons holding regular posts after proper selection in the Safdarjang Hospital need not be considered. Dr. Aggarwal approached them for interview. In view of the directions of the Medical Superintendent to exclude doctors holding regular posts after proper selection, they did not interview Dr. C.S. Aggarwal. On the other hand, Dr. Singh, Head of the Department of Surgery, who was added as respondent No.4 states that an order dated 29.1.87 was passed which justified their action of not interviewing Dr. C.S. Aggarwal and says that after interview a panel was drawn up by the Selection Committee. In the state in which these records were found when produced before the Tribunal, it is evident that they are not duly maintained. It is also clear that the order was made on 29.1.87 prohibiting interview of candidates holding regular post in the same scale in the same hospital. From the record placed before us and from the fact that Dr. Pankaj Sharma who was working in the Safdarjang Hospital was interviewed on 28.1.87 it is obvious that this decision was taken either the same day after the interview or on the second day of the interview i.e., 29.1.87. That would amount to changing the Rules of Recruitment midway. The interest taken at least by the two members of the Committee during the proceedings before the Tribunal and the state of records leaves an impression that the functioning of the Hospital is plagued by inter-departmental rivalries and personal jealousies. Even the criteria for selection seems

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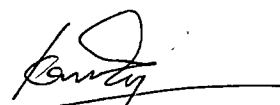
to have been altered on subjective considerations. We were also pained to notice that atleast three individuals connected with the interviews in question had taken divergent positions in regard to the selections. All does not seem to be well with the working of the administrative set up of this Hospital atleast in the matter of selection of Senior Residents, and particularly, this Selection Board and the manner it went about the selections. It leaves much to be desired ^{and} urgent remedial measures in this premier Hospital of the metropolis seem to be called for.

17. In the result, while dismissing O.A.No.129/87, we direct that a fresh selection committee should be constituted in the light of this judgment and selections held afresh. In O.A.268/87, there shall be a direction to the respondents to consider the eligibility of Dr. C.S. Aggarwal in the light of this judgment and if found eligible, both Dr. Pankaj Sharma and Dr. C.S. Aggarwal shall be interviewed along with others and shall be duly considered for appointment. They shall not be denied interview or appointment merely on the ground that they are serving in Safdarjang Hospital. Appointments to these posts shall be made after holding an interview in the light of this judgment. Both the petitions are disposed off accordingly. There will be no order as to costs.

We also direct that a copy of this judgment be forwarded to D.G.H.S. and the ^{Secretary,} Government of India ^{of} for such action Ministry/Health & Family Welfare/as they deem fit.



(Kaushal Kumar)
Member



(K.Madhava Reddy)
Chairman