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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. O.A. 1431/87.

DATE OF DECISION: 08.2.1993

S.K. Chaudhary.

... Petitioner.

Versus

Union of India & Ors.

... Respondents.

CORAM: THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. S.R. ADIGE, MEMBER(A).

For the Petitioner.

... Shri D.D. Chaufla,
Counsel.

For the Respondents 1 and 2.

... Shri P.P. Khurana,
Counsel.

For the Respondents 3 and 4.

... None.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath,
Chairman)

The petitioner, Shri S.K. Chaudhary, was holding the post of Medical Record Assistant (for short 'MRA') in Dr. Ram Manohar Lohia Hospital. A provisional seniority list of MRAs and Receptionists was made on 11.3.1982 and objections to the same were invited. The petitioner's name is at Serial No. 3 in the said list. On 14.9.1984, a separate provisional seniority list of MRAs and Receptionists was prepared. In the list of MRAs, the petitioner's rank is at Serial No. 2. Two posts of Medical Record Technician (for short 'MRT') were sanctioned in the year 1985. Those two posts were filled up on ad hoc basis by promoting Shri Phul Singh, Receptionist, on 24.4.1985 and promoting on 7.5.1985 another Receptionist by the name Shri Kuldip Kumar as well. Shri Phul Singh as well as Shri Kuldip Kumar had their services regularised vide

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order dated 30.7.1987 w.e.f. 8.4.1986. It is necessary to point out that the Rules were framed under the proviso to Article 309 of the Constitution under Notification dated 8.4.1986, published on 3.5.1986 titled "Dr. Ram Manohar Lohia Hospital, New Delhi (Group 'C') Recruitment Rules, 1986" (hereinafter referred to as 'the Rules'). They provided for filling up the posts of MRTs by promotion from the cadre of MRAs. It is in this background that the petitioner has approached this Tribunal for relief. The contention of the petitioner is that the post of MRT could not have been filled up on regular basis by promoting Shri Phual Singh and Kuldeep Kumar, who have been impleaded as Respondent No.3 and 4 in this case, as they were not in the feeder cadre of MRAs.

2. Respondents 3 and 4 though they have filed their counter affidavit opposing the application, none appeared for them. A reply has been filed on behalf of the respondents 1 and 2 as well and we have heard Shri P.P. Khurana, Counsel, in support of the case.

3. The facts are virtually admitted as is clear from the stand taken by Respondents 1 and 2 in the reply in regard to the Rules or orders. So far as their being operated upon and the factual position is concerned, we ought to give more weight to the disinterested version of the authorities, namely Respondents 1 and 2 who can be regarded as repository of the relevant information in this ^{case} /in preference to the statement made by Respondents 3 and 4. None of the Respondents have produced before us any material in regard to the rules or executive orders or practice that was being consistently followed in the matter of filling up the posts

of MRTs before the rules actually came into force on 3.5.1986. The stand taken by the petitioner is that at any rate when separate lists were prepared though on provisional basis on 14.9.1984 for MRAs and Receptionists, it was for the reason that promotions to the post of MRTs were decided to be made only from the cadre of MRAs. It is also necessary to bear in mind that Respondents 3 and 4 were promoted as MRTs in the year 1985. That promotion was only on ad hoc basis and regular promotion was made in their favour on 30.7.1987 long after the statutory rules came into force.

3. Shri Khurana, learned counsel for the respondents 1 and 2, is right in maintaining that the validity of promotion of Respondents 3 and 4 should be judged with reference to the rules or orders governing such promotions as on the date on which the vacancies occurred. As none of the parties have produced any orders of the department bearing on the question, we are left only with the pleadings. We shall advert to what Respondents 1 and 2 have stated in paragraph 6(v) of the reply. For the sake of convenience, we shall extract the same:

"It is denied. The post of MRT was filled up by promotion from MRA and Receptionist on the basis of proposed RRs. Two post of MRT were filled up on adhoc basis w.e.f. 12.4.85 by appointment of S/Shri Phool Singh and Sh. Kuldip Kumar; pending notification of RRs. for the post. The Deptt. of Personnel and Training did not agree to the proposal regarding joint feeder cadre viz. MRA & Receptionist and finally approved the RRs for the post of MRT to be filled up from MRA only by promotion vide GSR Notification dated 8.4.86. In the

circumstances, separate seniority lists for MRA as well as Receptionist were circulated on 14.9.84th.

This statement in the reply of Respondents 1 and 2 is worthy of being relied upon. As already stated, it comes from the departmental authorities who are not expected to be interested in advancing the unjustly/cause of the petitioner or Respondents 3 and 4. It is clear from the statement in the reply that when two posts of MRTs were sanctioned, Respondents 3 and 4 were appointed pending recruitment rules for the post. That is the reason why ad hoc promotions were made. The ad hoc promotion in the context of the stand taken by Respondents 1 and 2 was made pending recruitment rules. It is implicit in the statement in paragraph 6(v) that the department had proposed the combined cadre of MRAs and Receptionists as a Feeder Cadre for MRTs. Hoping that the rules will be framed as proposed, Respondents 3 and 4 were given ad hoc promotion pending recruitment rules. But, it is stated that the Department of Personnel did not agree to the proposal regarding joint feeder cadre and approved finally the recruitment rules for the post of MRT to be filled up from MRAs only vide Notification dated 8.4.1986. Thus, it becomes very clear that the department proposed a combined cadre of MRAs and Receptionists for promotion to the post of MRTs and in anticipation of promulgation of rules as proposed, ad hoc promotions of Respondents 3 and 4 were made to be reviewed or to be brought in tune with recruitment rules as and when made.

But the recruitment rules as proposed were not accepted by the Government and they instead promulgated rules making MRAs alone as the feeder cadre for the MRTs. That being the position, promotions of Respondents 3 and 4 made pending recruitment rules, meant that the same were to be regularised in accordance with the recruitment rules. Once the recruitment rules were made, any further action which the Respondents should have taken, was to make regular promotion in accordance with the rules as promulgated. Instead of doing that they took the step to pass an order on 30.7.1987 to regularise the services of Respondents 3 and 4 with retrospective effect from 8.4.1986. Thus, it is obvious that it was contrary to the rules. We have, therefore, no hesitation in holding that when the separate lists were prepared as per the direction of the Department of Personnel on 14.7.1984, it was precisely for the purpose of providing promotion exclusively from the MRAs to the cadre of MRTs. The department should have acted in consistence with these rules that were framed on 3.5.1986 and filled these two vacancies rather than regularising the services of Respondents 3 and 4 as MRTs. Hence, regular promotion cannot, therefore, be sustained.

4. For the reasons stated above, this petition is allowed. Regular promotion accorded to Respondents 3 and 4 is hereby quashed. We direct the respondents 1 and 2 to consider the case of the petitioner for promotion to the cadre of MRTs w.e.f. the date on which the rules came into force in accordance with the

separate seniority of MRAs and in accordance with the said rules.

If the petitioner is found fit and suitable for promotion, he shall be entitled to all consequential benefits including monetary benefits flowing from such promotion. We grant four month's time from the date of communication of this order for due compliance.

No costs.

S.R. Adige
(S.R. ADIGE)
MEMBER(A)

Malimath

(V.S. MALIMATH)
CHAIRMAN

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