

(29)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. NO. 1721/87

DECIDED ON : 31.5.1993

SURENDER NATH

...

PETITIONER

VS.

UNION OF INDIA & ORS.

...

RESPONDENTS

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN  
THE HON'BLE MR. B. N. DHOUNDIYAL, MEMBER (A)

Shri K. L. Bhatia, counsel for the Petitioner  
Shri P. P. Khurana, Counsel for the Respondents

J U D G M E N T (ORAL)

Hon'ble Mr. Justice V. S. Malimath, Chairman :

The petitioner started his career as Radiographer. In the course of time, he was promoted as Senior Radiographer/CT Scanner on 1.5.1986. Respondent No.3, Shri M. L. Bajaj, was promoted and appointed as Radiographer Supervisor vide order dated 4.11.1987. The petitioner's representation against the said order was to the effect that he being senior to Shri Bajaj, in the absence of any rules or executive orders governing the promotion and appointment to the post in question, he had a better claim for promotion than respondent No.3. As there was no response to his representation, he has approached this Tribunal.

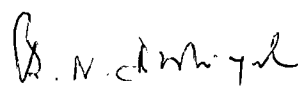
2. Shri Bhatia, learned counsel for the petitioner, maintained that there being no statutory rules or executive orders governing recruitment to the post of Radiographer Supervisor, as the appointment of respondent No.3 was made on ad-hoc basis, ~~it was maintained~~ that what was relevant was

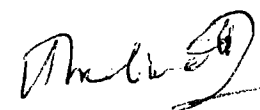
only the seniority in the lower cadre. The seniority list, copy of which has been annexed to the petition, shows that whereas the petitioner is placed at sl. No. 1, respondent No.3 has been shown at sl. No.4 in the cadre of Radiographers. There cannot, therefore, be any doubt that the petitioner is senior to respondent No.3 in the cadre of Radiographers. But the respondents have chosen to promote and appoint junior to the petitioner, Shri Bajaj. The question for consideration is as to whether this action of the respondents is violative of Articles 14 and 16 of the Constitution being arbitrary.

3. Shri Khurana, learned counsel appearing for the respondents, submitted that for the first time, the post of Radiographer Supervisor came to be created and, therefore, there is no question of a practice being followed for promoting the seniormost among the Radiographers. He further submitted that draft cadre recruitment rules have been formulated and sent for approval which prescribe certain educational qualification such as diploma in Radiography for appointment to the post of Radiographer Supervisor. It is also asserted in the reply that the DPC considered the cases of the petitioner as well as respondent No.3 and other similarly situate. It is stated that the DPC selected respondent No.3 in preference to the petitioner primarily for the reasons that respondent No.3 possesses the qualification prescribed in the draft recruitment rules. Learned counsel for the petitioner maintains that when the rules have not come into force and when the appointment is made on ad-hoc basis what should have been taken into consideration is only

seniority. When an action is challenged as arbitrary in the absence of rules or executive orders governing the appointment, what is to be examined is as to whether the decision to prefer respondent No. 3 to the petitioner can be regarded as arbitrary. The object of making a selection for a higher post is to secure the best person for the said job. If as ascertained by the respondents the draft recruitment rules prescribe certain educational qualifications and the DPC <sup>has</sup> taken those into account in the matter of making selection, it is obvious that the DPC has acted in the best interest of the administration in trying to find out the most competent among the available persons for the job. When such is the procedure followed to secure the best talent for the job, it is not possible to characterise the decision as arbitrary. As these are all jobs which require technical skills it cannot be said that the prescription of a particular diploma in the subject is irrelevant or arbitrary. We have, therefore, no hesitation in holding that the promotion and appointment of respondent No. 3 cannot be regarded as arbitrary. It is also necessary to note the statement of the respondents that the recruitment rules as prevail in the sister Hospitals like Safdarjung Hospital the qualifications prescribed in the draft recruitment rules are the very qualifications prescribed in the recruitment rules prevailing in that Hospital.

4. For the reasons stated above, this petition fails and the same is accordingly dismissed. No costs.

  
( B. N. Dhoundiyal )  
Member (A)

  
( V. S. Malimath )  
Chairman