

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

O.A. No. 1856/87

Date of decision:

1.10.95

Shri Amrik Singh

Petitioner

Vs

Union of India & Ors

Respondents

Coram:

Hon'ble Shri J.P. Sharma Member (J)

Hon'ble Shri B.K. Singh Member (A)

For the petitioner

Shri B.S. Mainee, Counsel.

For the Official Respondent

Shri M.L. Verma, Counsel.

For the Private Respondents

Shri T.K. Sinha, Counsel.

J U D G M E N T

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

The applicant was appointed as Radiographer in the Safdarjung Hospital, New Delhi, in 1973. The applicant was confirmed in appointment in 1980. In the Department of Radiography some consideration was going on for maintenance of separate seniority list of radiography working in radio/graphy and radio/logy department. The Ministry of Health and Family Welfare issued a Memorandum dated 6.12.1986 by which in the Safdarjung Hospital, New Delhi, there has been a change of designation of radiographers working in the Radio/therapy department in the hospital as radiotherapy technicians. On

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the basis of the about letter it was ordered that all those who are working on the basis of radiographers in the radiography department of Safdarjung Hospital would be redesignated as radiotherapy technicians in the same pay scale. The applicant Shri Amrik Singh was transferred from the radiography to radiology department with immediate effect by the order dated 13th November 1986. Since then he was working in the radiotherapy department. By the order dated 25.2.1987 Shri Amrik Singh was transferred back to radiology department with immediate effect by the same order. Shri M.C. Saini, the Technical Assistant was continued in the radiotherapy department.

The grievance of the applicant is that a person junior to him Respondent No. 1 Shri Daljit Singh who is now dead have been promoted as senior radiotherapy technician with effect from 22.9.1987 (Annexure A 12). He has also the grievance that the seniority list issued on 15.1.1987 of the radiotherapy technicians did not contain his name though persons juniors to him has shown. He also made representations against the same but to no effect. In this application the applicant has prayed for the grant of relief that the order dated 17.10.1987 promoting Shri D.S. Bedi, Respondent No. 4 as a Senior radiotherapy technician with effect from 22.9.1987 and seniority list dated 15.1.1987 whereby the seniority of the applicant has been superseded as against the juniors be quashed. A notice was issued to the respondent. Shri M.C. Saini, Shri Bhaskar, Shri J.C. George, Shri Harish Kumar, Shri Rajesh Ahuja were also impleaded as Respondent Nos 5 to 9. They have also filed their reply contesting the application. The official respondents in the reply stated that a policy decision was taken by the Order dated December 8, 1986 changing the

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designation of Radiographer working in the Radiotherapy Department, and a revised seniority list was issued inviting objections upto February 2, 1987. Respondent No. 4 Shri Balbir Singh Bedi was placed at appropriate place. It is admitted to respondents in reply to para 6(I) that Shri Balbir Singh Bedi was junior to the applicant in the common seniority list. The matter has been referred by the hospital authorities regarding combined seniority list to the Government in September 1987 and the reply is still awaited.

The private respondents in their replies have stated that the seniority list of radiotherapy technicians was separate by the order dated December 8, 1986 and the same was circulated by the circular dated 15.1.1987. The applicant Shri Amrik Singh was transferred to radiotherapy department on November 30, 1986 expressed his inability to work in the radiotherapy department and declined to take charge of the duties and also equipment and instruments connected therewith. On account of this the Head of the Department on account of his unwillingness to work in the radiotherapy department requested for his retransfer from the radiotherapy department to radiology department. He was therefore transferred to the Radiology department as a Radiographer by the order dated 25.2.1987. Now the separate recruitment rules for Radiotherapy Technicians have been framed by the Ministry of Health and Family Welfare in September 1989. The applicant therefore has no case for combined seniority list and has no claim for promotion in the Radiotherapy section.

We have heard the learned counsel for the parties at length

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Ministry of Health and Family Welfare by the Office Memorandum dated September 13, 1989 (R-6) framed the rules for the recruitment to the post of radiotherapy technicians and the post is to be filled by direct recruitment. Earlier to 1989 the Radiographers working in the Radiotherapy Department of Safdarjung Hospital were redesignated as Radiotherapy Technicians irrespective of their qualifications or experience in any branch of Radiotherapy. Earlier to this there was only one cadre of radiographer some of them were working in Radiology Section and the others were working in the Radiotherapy Department. A seniority list of the Radiographers as on December 1, 1981 of the Safdarjung Hospital has been filed by the applicant annexed with the application (Annexure A3). The name of the applicant in this seniority list of Radiographer is at Serial No. 15 that of Respondent Daljit Singh, Respondent NHO. 4 is at Serial No. 16. The name of the Respondent No. 5 M.C. Saini is at Serial No. 11 and the name the name of Respondent Nos. 6 to 9 is not in the seniority list of 1981 obviously they joined subsequently after 1983. It is undisputed that the applicant Amrik Singh was transferred from Radiology Department to Radiotherapy Department on November 13, 1986 the O.M. changing the designation of Radiographers working in the Radiotherapy Department was issued on December 13, 1986. The contents of that O.M. clearly shows the sanction of the President for the redesignation of the posts of Radiographers working in the Radiotherapy Department of Safdarjung Hospital as Radiotherapy Technicians. This letter was issued by Ministry of Health and Family Welfare with the approval of the Finance

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Division and was addressed to Director General of Health Services, New Delhi. This administrative instruction therefore entitles all those Radiographers working on that day in the Radiotherapy Department to be designated as Radiotherapy Technicians instead of Radiographers. The moment they are so designated then any seniority list issued in January 1987 by the Safdarjung Hospital under the signature of Chief Administrative Officer shall also include the name of the applicant at the proper place corresponding to the seniority list of Radiographers of 1981 (Annexure A3). The omission of the name of the applicant Anu il Singh and the placement of M.C. Saini and Daljijt Singh Bedi were also appointed as Radiographers in Radiology Department would be arbitrary and unjust the contention of the official respondents is that the applicant has joined but he was subsequently retransferred to Radiology Department on February 25, 1987. The retransfer of Amrik Singh to Radiology Department would not divert him of the designation vested in him of Radiotherapy Technician. The contention of the respondents that the applicant did not work to the satisfaction of the Head of the Department Dr. A.K. Grover and in fact he did not took charge of the post of Radiotherapy Department is not substantiated by the records. The record only goes to show that the applicant Amrit Singh refused to take the charge of certain stores when he was posted in the Radiotherapy Department. He has, therefore, requested the Head of the Department that the charge of certain instruments etc. not considered relevant to the office of Radiotherapy Technician should

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be given to the Storekeeper. In view of the above facts it is established from the record that the applicant has been discriminated by omission on his name from the seniority list of January 15, 1987. A person cannot be deprived of the right which is vested in him. The matter may have been different had Amrik Singh been proceeded with departmentally and reverted on account of inefficient, dereliction of duties or for not joining the duties. When this is not so the applicant has a right to be placed in the seniority list of Radiotherapy Technician issued in January 1987 when he was very much in the Radiotherapy Department of Safdarjung Hospital. He was transferred from there only in February 1987. His transfer, therefore, would be to Radiology Department as Radiotherapy Technician and not as Radiographer and for all purposes he should be called Radiotherapy Technician irrespective of his place of working either in Radiology Department or Radiotherapy Section. Under the rules of 1989 he shall also be called as Radiotherapy Technician as he was so designated at the time of the enforcement of the new recruitment rules. All those who have been recruited after under the new recruitment rules shall remain the junior to him because the applicant was already Radiotherapy Technician at the time of initial constitution of the rules under the new recruitment rules.

In view of the above facts and circumstances the applicant become senior to Daljit Singh Bedi Respondent No. 4 and he should have been considered for promotion

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for the post of Senior Radiotherapy Technician to which Respondent No. 4 was promoted with effect from September 22, 1987 on Adhoc basis. Daljit Singh Bedi has since died and it is not evident from the record whether before his death he was regularised on the post or not. In any case the applicant has a claim to be considered for the post of senior Radiotherapy Technician from the date his juniors have been promoted and if found fit he has to be given promotion from that date. As a consequence the seniority list of January 1987 has also to be revised by the respondents and the name of Amrik Singh has to be placed after M.C. Saini and above Daljit Singh Bedi in the said seniority list of Radiotherapy Technician.

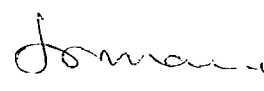
The application is, therefore, partly allowed with the direction to the respondents to revise the seniority list of Radiotherapy Technician dated January 15, 1987 (Annexure A5) issued under O.M. No. 10-10/85-Admn. II and the name of Amrik Singh be added after M.C. Saini at Serial No.1 and above Daljit Singh Bedi who is at Serial No. 2. The respondents have to consider the case of promotion of the applicant Amrik Singh to the post of senior Radiotherapy Technician by constituting a review DPC according to the rules extant at the time in 1987 when Daljit Singh Bedi, Respondent No.4 given adhoc promotion. In case the applicant is found suitable, he should also be given the promotion from that date and shall also be entitled to all consequential

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benefits of pay and allowance. The respondents to comply with the direction within a period of six months from the receipt of the copy of the judgement. Parties to bear their own costs.

  
(B.K. Singh)  
Member (A)

  
(J.P. Sharma) 1.10.93  
Member (J)

\*Mittal\*