

In the Central Administrative Tribunal
Principal Bench, New Delhi

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Date: 15.1.1993.

Regn. Nos.:

1. OA-288/87

Shri Om Prakash Verma Applicant

Versus

Delhi Administration & Ors. Respondents

2. OA-384/87

Shri Raj Kumar Applicant

Versus

Union of India through
Lt. Governor & Others Respondents

For Applicant in 1 above Shri J.C. Madan, Advocate

For Respondents 1-3 in 1 above.... Shri B.R. Prashar, Advocate

For Respondent No.4 in 1 above.... Shri B.B. Srivastava, Advocate

For Applicant 2 above Shri B.B. Srivastava, Advocate

For respondents 1-3 in 2 above.... Shri B.R. Prashar, Advocate

For respondent 5 in 2 above Shri J.C. Madan, Advocate

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Mr. B.N. Dheundiyal, 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*

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

As the issues involved in these two applications are
inter-connected, it is proposed to deal with them in a common
judgement.

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2. We have gone through the records of the case carefully and have heard the learned counsel for both the parties. The respondents have also placed before us the relevant files which we have carefully perused. In OA-288/87, the applicant has challenged the appointment of Shri Raj Kumar (respondent No.4) as Senior Dental Mechanic, overlooking his claims. In OA-384/87, Shri Raj Kumar, who is the applicant, has challenged the appointment of Shri R.L. Ojha (respondent No.4 therein) to the post of Senior Dental Hygienist, ignoring his claim.

3. At the outset, it may be stated that Shri Verma, who is the applicant in OA-288/87, voluntarily retired from Government service during the pendency of the application w.e.f. 5.6.1992 while working in the post of Dental Mechanic.

4. Shri Verma, who is the applicant in OA-288/87, had worked as Dental Technician in Medical and Health Services, Rajasthan, from 1960 to 1975. He applied for the post of Dental Mechanic in the Irwin Hospital, Delhi (which was re-named as Lek Nayak Jai Prakash Narain Hospital) and was appointed on an ad hoc basis as Dental Mechanic on 7.5.1975. He was confirmed in the said post w.e.f. 4.8.78. One post of Senior Mechanic was created in 1986 in the Maulana Azad Medical College, New Delhi, and recruitment rules for the said post were notified on 3.7.1986. According to the recruitment rules, it is a selection post and it is

to be filled by promotion, failing which, by direct recruitment. Dental Mechanics having five years' regular service in the grade, are eligible for promotion. The applicant fulfilled the educational and other qualifications prescribed for the post of Senior Dental Mechanic.

According to the seniority list of Dental Mechanics

published in 1986, Shri Ram Dass Malhotra is at serial No. 1, Shri ~~Satya~~ Prakash at serial No. 2,

~~✓ Satyarth Prakash ✓~~

at serial No. 3. Shri Malhotra did not possess the minimum educational qualifications prescribed for the post of

Senior Dental Mechanic, which is matriculation with Science ✓
from a recognised Board. He is a non-matric. Shri ~~Satya~~

Prakash and the applicant are eligible for promotion to the post of Senior Dental Mechanic. The grievance of the applicant is that when the D.P.C. met on 23.1.1987 to consider the suitability of a person for promotion to the

post of Senior Dental Mechanic, he was overlooked by the

D.P.C. which recommended the appointment of Shri Raj Kumar

(respondent No. 4 in OA-288/87) and the applicant in OA-384/87)

for ad hoc promotion to the post of Senior Dental Mechanic.

According to the applicant, the name of Shri Raj Kumar

does not figure in the seniority list of Dental Mechanics.

His name figures in the seniority list of Dental Hygienists prepared by the respondents. In view of this, Shri Verma

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has called in question the selection of Shri Raj Kumar to the post of Senior Dental Mechanic as he was not in the line of promotion to the said post.

5. One post of Senior Dental Hygienist was also created by the respondents in 1986 and the recruitment rules were notified on 12.6.1986. It is a selection post. The post is to be filled by promotion, failing which, by direct recruitment. Dental Hygienists having five years' regular in the grade, is eligible for promotion.

6. Shri Raj Kumar (applicant in OA-384/87) was appointed as a Dental Hygienist on 7.9.1968 in the Irwin Hospital (LNJP Hospital). Shri R.L. Ojha (respondent No.4 in OA-384/87) was also appointed as Dental Hygienist in the said Hospital on 10.8.1971. According to the seniority list published by the respondents, the applicant figured at serial No.1 and Shri Ojha figured at serial No.2. There were only ^{two} ~~two~~ Dental Hygienists in the Hospital. Shri Raj Kumar fulfills the educational and other qualifications required for promotion to the post of Senior Dental Hygienist as he possesses matriculation with Science from a recognised Board and has undergone Dental Hygienist Course from a recognised institution. However, when the D.P.C. met in 1986 to consider the suitability of a person to be appointed to the post of Senior Dental Hygienist, Shri Ojha (respondent No.4) was selected

for appointment in preference to Shri Raj Kumar. The D.P.C., however, observed that Shri Raj Kumar had been working as a Dental Mechanic since 7.9.1968, that he had passed the Dental Mechanic Course, and that he might appropriately be assigned inter se seniority against the Dental Mechanics and not amongst the Dental Hygienists. In DA-384/87, Shri Raj Kumar has challenged the appointment to the post of Senior Dental Hygienist of Shri Ojha, who was junior to him in the seniority list.

7. It is pertinent to mention that there is only one post of Senior Dental Mechanic and one post of Senior Dental Hygienist to which the persons belonging to the feeder cadre can look forward to by way of promotion. In the instant case, when these two posts were created in 1986, both of them have gone to the officers who are borne on the seniority list of Dental Hygienists.

8. The learned counsel for the applicant in DA-288/87 submitted that the D.P.C. deliberately favoured Shri Raj Kumar and Shri Ojha, who belonged to the stream of Dental Hygienists and ignored the stream of Dental Mechanics, to which Shri Verma belonged. He submitted that out of sheer frustration, he sought voluntary retirement.

9. As against the above, the learned counsel for the applicant in DA-384/87 argued that Shri Raj Kumar had, in fact,

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worked as a Dental Mechanic right from the very inception in 1968, when he joined the Hospital though his name figures in the seniority list of Dental Hygienists. According to him, the selection of Shri Raj Kumar by the D.P.C. was valid as he fulfilled the qualifications and experience prescribed for the post of Senior Dental Mechanic.

10. Apart from the assertions made by Shri Raj Kumar in his application and the respondents in the counter-affidavits filed in these cases, there is nothing on record to indicate that Shri Raj Kumar was, in fact, assigned the work of Dental Mechanic from 1968 onwards. The D.P.C. for the post of Senior Dental Mechanic and Senior Dental Hygienist met on the same day (23.1.1987) and both S/Shri Raj Kumar and Ojha, belonging to the stream of Dental Hygienists were selected for appointment to the promotional posts. The minutes of the D.P.C. relating to the post of Senior Dental Mechanic indicate that the D.P.C. proceeded on the basis that the suitability has to be adjudged on the non-selection method. The D.P.C. had before it the particulars of the three seniormost departmental candidates working as Dental Mechanics, including that of the applicant. It had also before it the name of Shri Raj Kumar. The D.P.C. found that the seniormost amongst the Dental Mechanics was not suitable and did not possess the other requisite qualifications prescribed for the post of Senior Dental Mechanic. After scrutinising the

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C.R. dossier, the D.P.C. recommended Shri Raj Kumar for promotion to the post of Senior Dental Mechanic. The D.P.C. did not state that on a comparative assessment of the confidential reports, Shri Raj Kumar was to be given higher grading over the other departmental candidates belonging to the stream of Dental Mechanics.

11. That apart, the D.P.C. had no competence to fix the inter se seniority among the Dental Mechanics by interpolating therein the name of Shri Raj Kumar, whose name figures only in the seniority list of Dental Hygienists, on the ground that he had worked as a Dental Mechanic from 1968. Any revision of seniority without giving an opportunity to the Dental Mechanics to make representation or objection, will not be legally sustainable.

12. In the conspectus of the facts and circumstances of the case, we are of the opinion that the D.P.C. proceedings dated 23.1.1987 relating to the consideration of persons for promotion to the posts of Senior Dental Mechanic and Senior Dental Hygienist, are liable to be quashed. In the case of Senior Dental Mechanics, the D.P.C. had wrongly considered the name of Shri ~~Raj~~ ^{as Raj as} Kumar by interpolating him in the seniority list of Dental Mechanics. In the case of Senior Dental Hygienists, the D.P.C. had wrongly ignored considering Shri Raj Kumar for the said post on the ground that he will

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be appointed as Senior Dental Mechanic.

13. Even though the strict legal position is what is stated above, we do not consider it appropriate at this stage to set aside and quash the proceedings of the D.P.C. as Shri Verma, the applicant in OA-288/87, has already retired from Government service voluntarily. The interest of justice and equity would require to give him the benefit of notional promotion from 23.1.1987, when ^{as ^ as Ref ^} the D.P.C. approved ~~and~~ Shri ~~R~~ Kumar and Shri Ojha for the posts of Senior Dental Mechanic and Senior Dental Hygienist, respectively. In the facts and circumstances, we do not, however, consider it appropriate to give to Shri Verma the difference in pay and allowances from 23.1.1987 to 5.6.1992, when he voluntarily retired from Government service. However, his pay and allowances should be notionally fixed in the scale of Senior Dental Mechanic, including the increments that he would have drawn during the said period, had he continued in service. On that basis, the respondents shall refix the pension and the other retirement benefits admissible to Shri Verma, the applicant in OA-288/87 and issue necessary orders in this behalf expeditiously and preferably within a period of three months from the date of receipt of this order. OA-288/87 and OA-384/87 are disposed of accordingly. There will be no order as to costs.

Let a copy of this order be placed in both the case file.

B. N. Dhadial
(B.N. Dhadial)
Administrative Member

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(P.K. Kartha)
Vice-Chairman(Judl.)