

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 42 of 1985
~~TAX No.~~

DATE OF DECISION 9.10.86

Shri Balbir Singh Badi Petitioner

Shri B.S. Bindra Advocate for the Petitioner(s)

Versus

Medical Supdt., Safdarjang Hospital Respondent

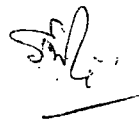
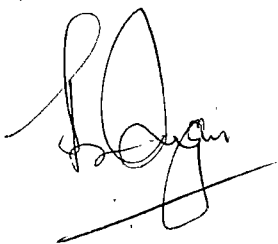
Shri M.L. Verma Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. H.P. BAGCHI, JUDICIAL 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



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(9)

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DATE OF DECISION:

Shri Balbir Singh Bedi

Petitioner

Shri B.S. Bindra

Advocate for the petitioner

VERSUS

Medical Supdt.,
Safdarjang Hospital

Respondents

Shri M.L. Verma

Advocate for the Respondents

COARM:

The Hon'ble Mr. S.P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. H.P. BAGCHI, JUDICIAL MEMBER

JUDGEMENT

The Petitioner who is a Radiographer in the Safdarjang Hospital, New Delhi, has moved the Tribunal under Section 19 of the Administrative Tribunals Act through his application dated 17.12.1985 praying that the impugned order dated 9.10.84 promoting some of his alleged juniors to the Selection Grade of Radiographer excluding him should be quashed. The petitioner retired on 31.12.1985.

2. The brief facts of the case which are not in dispute can be summarised as follows. The petitioner was originally recruited in the Class IV grade as Dark Room Assistant and then appointed as X-ray Assist-ant. Posts of Radiographers were advertised on 22.12.1961 with minimum essential qualifications being F.Sc and Diploma in Radiology.

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Departmental candidates were also to be considered. The petitioner admittedly did not possess any of the two essential qualifications. However he was considered along with other candidates and the DPC selected four candidates including the petitioner who was placed at no.4 even though he and one more candidate at sl.no.3 did not possess the requisite qualification. In March 1963 the Director General Health Services approved relaxation of the qualifications and subsequently the petitioner was confirmed on 1.7.1965 and respondent no.4 who had been placed as no.2 by the Selection Board was confirmed with effect from 1.7.1967. It is admitted that in the three seniority lists of Radiographers issued on 31.7.1970, 31.10.1978 and 1.12.1981 the petitioner had been shown consistently at sl.n. 4 whereas the respondent no.4 was shown consistently below him at sl.no.5, sl.no.7 and sl.no.7 in the three seniority lists respectively. It is also admitted that the interse seniority between the petitioner and respondent no.4 which had been challenged by the latter had not been changed so far. The DPC met on 24.9.84 and considered the entire seniority list of Radiographers as on 1.12.1981 and recommended three candidates on

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the basis of the original merit list prepared by the Selection Board at the time of recruitment in 1961. Respondent no.4 was included in the list of three candidates to be promoted to the Selection Grade from 1.8.1976.

As regards the petitioner the DPC recommended that his case may be considered for promotion wef 1.4.1983 'after the receipt of the records from the CGHS office'. The DPC met again on 11.12.1984 and recommended that the petitioner should be promoted to the Selection Grade wef 1.4.1983. The petitioner claimed that he should be promoted to the Selection Grade wef 1.8.1976.

3. We have heard the arguments of the learned counsel for the both parties and gone through the documents very carefully. In accordance with para 4 of the Deptt. of personnel & Administrative Reforms OM of 13.2.1986 attached as Annexure 'F' to the amended petition the following has been laid down as regards the mode of promotion to the Selection Grade.

' It is possible that in certain cases appointment to the Selection Grade has been made on the basis of seniority cum merit prior to the issue of this department O.M. No.22011/5/77/Estt(D) dt. 30.12.1977.

Such appointment wherever made should be allowed to continue and should not be reviewed. Appointments made to the Selection Grade on or after 30.12.1977

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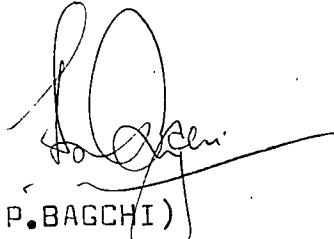
should be on the basis of seniority subject to the rejection of the unfit. Where however no appointment to the selection grade have been made till 30.12.1977 and appointments are to be made on the basis of seniority subject to rejection of the unfit."

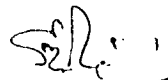
4. From the aforesaid para it is crystal clear that the promotion to the Selection Grade after 30.12.1977 has to be made on the basis of seniority subject to rejection of the unfit. Since the petitioner is admittedly senior to respondent no.4 and has been shown as such consistently in all the three seniority lists including the seniority list of 1.12.1981 which was considered by the DPC on 24.9.1984 and that seniority has not been amended, in accordance with the OM cited above the petitioner has got prior claim to the Selection Grade of Radiographers over his junior Shri M.L. Sharma who is respondent no.4. It cannot be stated that petitioner was unfit for promotion to the Selection Grade, because the DPC which met on 24.9.1984 recommended that the petitioner should be considered after receipt of the records from the CGHS office and the DPC which met less than three months thereafter on 11.12.1984 ^{on} ~~in~~ receipt of his records, recommended that the petitioner should be promoted wef 1.4.1983.

5. In the above context we are convinced that the petitioner has ^{to} ~~be~~ be given Selection Grade wef 1.8.1976 that is the date from which his immediate junior Shri M.L. Sharma respondent no.4 was given Selection Grade.

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5. In the facts and circumstances discussed above we allow the petition and direct that the petitioner should be given the Selection Grade of Rs.425-640 as Radiographer wef 1.8.1976. Since he has already retired on 31.12.1985 he should be given arrears of pay and his pension and other retirement benefits should be recalculated on the basis of the pay that he would have got on the date of his retirement consequent upon his promotion to the Selection Grade of Radiographer wef 1.8.1976. There will be no order as to costs.


(H.P.BAGCHI)


(S.P.MUKERJI) 9.12.86