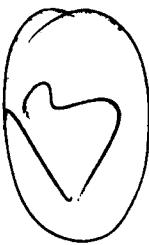


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.



O.A.No. 936/92

Date of decision: 29.01.1993.

Sh. K.S. Sethi Applicant

Versus

Union of India & Ors. Respondents

Coram:-

The Hon`ble Mr. P.C. Jain, Member(A)

The Hon`ble Mr. J.P. Sharma, Member(J)

For the applicant : Sh. B.S. Charya, counsel

For the respondents : Ms. Jasvinder Kaur, proxy
counsel for Sh.Jog Singh,
counsel for Respondents Nos.1 to 3.
Sh. D.R. Gupta for Respondent No.4.

JUDGEMENT(ORAL)

(delivered by Hon`ble Sh. P.C. Jain, Member(A)

The applicant was working as Asstt. Administrative Officer w.e.f. 28.1.1987 in the Safdarjang Hospital, New Delhi. Three posts of Administrative Officers were created in 1992 in that hospital. The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 for appointment to the post of Administrative Officer in the scale of Rs.2375-3500/-. It is alleged that S/Sh. Milap Chand, Asstt. Administrative Officer and Hari Bilas Balodhi, Sr. Personal Asstt. are

being considered and sought to be promoted as Administrative Officer and that the contemplated action of the respondents in denying the promotion to the applicant to the post of Administrative Officer is malafide, vindictive, capricious and untenable. He has prayed for the following relief:-

"(a) hold that the applicant is entitled to be considered and promoted to the post of Administrative officer on the basis of the proposed/draft recruitment rules after he has put in five years regular service as Assistant Administrative Officer since 28.1.1987;

(b) call upon the respondents to act according to the draft/proposed recruitment rules for promotion to the post of Administrative Officer and adhere to the ratio as prescribed therein for promotion to the post of Administrative Officer viz. 3 : 1 (75% for Assistant Administrative Officer and 25% for Sr.P.As);

(c) hold that inclusion of category of Sr.P.A. for promotion to the post of Administrative Officer is wholly arbitrary, unjust and improper;

C.



(d) cost of the proceedings may also be awarded to the applicant.

2. By an order passed by the Tribunal on 3.4.1992, as an interim measure, the respondents were directed to provisionally consider the applicant also for promotion to the post of Administrative Officer even though he has not completed 6 years' of service but fulfils the qualification prescribed in the Recruitment Rules of 5 years service but the result of the selection should not be published without further directions of the Tribunal. Respondents No.1 to 3 contested the O.A. by filing their reply to which rejoinder has also been filed by the applicant. One Sh. O.P. Oberoi filed M.P.No.1366/92 for being impleaded as a party respondent and M.P. was allowed and he was arrayed as Respondent No.4. He has also filed his reply to which also rejoinder has been filed by the applicant.

3. As the pleadings in this case are complete, this O.A. is being finally disposed of at the admission stage itself. Accordingly, we have perused the material on record and also heard the learned counsel for the applicant and also the learned proxy counsel for Respondents No.1 to 3 and the learned counsel for Respondent No.4.

4. The whole case of the applicant is based on the draft of the Recruitment Rules for the post of Administrative Officer in Safdarjang Hospital which was sent by the office of Medical Superintendent, Safdarjang Hospital, New Delhi to

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the Director General of Health Services ^{vide} in letter dt. 9.1.1992 (Annexure P-1). The suggestion in these draft Rules was that 75% posts of Administrative Officer in the hospital be filled by promotion from Assistant Administrative Officer/Assistant Accounts Officer and the balance 25% by promotion from Sr. Personnel Assistant in the scale of Rs. 200-3200, and failing ^{which} ~~which~~ by transfer on deputation/transfer. The applicant has placed ^{as} Annexure P-3 seniority list of persons working ^{as} Sr. P.As. purely on ad hoc basis as on 1.1.1992 and also of Asstt. Administrative Officers (Permanent). According to this annexure Respondent No.4 was appointed to the post of Sr. P.A. on 27.1.1988; Sh. Milap Chand was appointed as Asstt. Administrative Officer on 15.4.1986 and the applicant was appointed as Asstt. Administrative Officer on 28.1.1987. It was accordingly argued by the learned counsel for the applicant that from the three posts of Administrative Officers required to be filled up, atleast two would fall to the category of Asstt. Administrative Officer and one of the three posts being ^a ~~a~~ reserved post, Sh. Milap Chand being a scheduled caste officer can be appointed to one of the two posts available to the quota of Asstt. Administrative Officer. For the second post the applicant alone is competent to be considered and appointed. It is not in dispute ^{that} by the Rules enclosed to Annexure P-1 only a draft of the Rules suggested by the Safdarjang Hospital Administration. It is also confirmed by letter dt. 14.9.1992 from the Directorate General of Health Services (Recruitment Rules Cell) addressed

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to the Medical Superintendent Safdarjang Hospital, a copy of which has been annexed by the applicant to his rejoinder to the counter filed by Respondent No.4. Any relief prayed for on the basis of draft Recruitment Rules is legally not sustainable and these draft rules cannot be held to give any cause of action to seek the relief prayed for by the applicant in this case.

5. The learned counsel of Respondent No.4 has brought on record a copy of the Schedule to the Recruitment Rules ~~in~~ the various non-medical (gazetted post) in the Safdarjang Hospital and Willingdon Hospital. According to these rules, the post of Administrative Officer as aforesaid is to be filled up by method of transfer on deputation, officers under the Central Govt. holding analogous post ~~in~~ ^{with} ~~in~~ ^{or} ~~at least~~ 5/8 years ^{in service} in the post in the scale of Rs.650-1300/580-900 ~~are~~ ^{or} equivalent respectively and having experience of establishment work being eligible for selection by transfer on deputation. The learned proxy counsel for Respondents No.1 to 3 stated at the bar that these Rules of 1977 have not been repealed or modified and that these are still applicable. The same is the stand taken by Respondent No.4. However, the learned counsel for the applicant submitted that the aforesaid Rules of 1977 were acted upon by the government only once prior to 1979 when one post of Administrative Officer was available in Safdarjāng Hospital but after that no post of Administrative Officer was available and as such the Rules of 1977 became redundant,

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and, according to him, are not in existence or are applicable for filling up the post of Administrative Officer created in 1992 in Safdarjang Hospital, New Delhi. The learned counsel for the applicant has neither placed any material on record nor shown to us at the time of oral hearing of the case that the Rules of 1977 have ^(c)neither been repealed or modified or that even otherwise they are not legally applicable. Thus, it is clear that statutory rules for filling up the post of Administrative Officer in Safdarjang Hospital still exists ^(c) and in view of this any reliance on the proposed draft Recruitment Rules is misconceived.

6. The learned counsel for the applicant also contended that if in fact the respondents wish to fill up the newly created posts ^(c) of Administrative Officer in the ^(c) Safdarjang Hospital by following a process of selection ^(c) transfer on deputation, the applicant has also the right to be considered for such a selection. As the applicant has not prayed in this O.A. that he should also be considered for selection by transfer in accordance with the Rules of 1977, we are neither required nor inclined to give a legal direction to that effect. ^(c) However, we have no hesitation in observing that if the posts are filled up by the competent authority in accordance with the provisions of 1977 Rules, the Competent Authority should follow the method of selection prescribed in those Rules and all those who are eligible for consideration in accordance with ^(c) these Rules should be given ^(c) an opportunity to apply for the same and if eligible for being considered for selection, ^(c) should be considered.

7. Subject to the above observation, the O.A. is dismissed as devoid of merit, leaving the parties to bear their own costs.

J. P. Sharma
(J.P. Sharma)

Member(J)

29.01.93

C. C. Jain
(P.C. Jain)

Member(A)

29.01.93