

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

O.A. No. 61/764/2021



This the 06th day of May, 2021

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MR. ANAND MATHUR, MEMBER (A)

Hasmat Chowdhary, age 45 years, W/o Umran Chowdhary, R/o Village Darsopur, Miran Sahib, Tehsil R.S. Pura, District Jammu.

.....Applicant

(Advocate:- Mr. Sudershan Sharma)

Versus

1. Union Territory of Jammu & Kashmir through Commissioner/Secretary to Govt., General Administration Department, Civil Secretariat, Jammu/Srinagar-180001.
2. Principal Secretary to Govt., Animal/Sheep Husbandry Department, J&K, Govt., Civil Secretariat, Jammu/Srinagar-180001.
3. Director, Animal Husbandry Department, Jammu/Srinagar-180003
4. Dr. Abdul Majid, I/C Poultry Development Officer, Poonch-185101.

.....Respondents

(Advocate: Mr. Amit Gupta, learned A.A.G.)

O R D E R
[O R A L]

(Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member-J)

The applicant Hasmat Chowdhary was appointed as Veterinary Assistant Surgeon (VAS) in the year 2004. In the year 2013, a final seniority list of VAS was issued by the respondents in which the applicant was shown to be figuring at serial no. 429, below the private respondent. Being aggrieved of the aforesaid seniority list dated 27.02.2013, the applicant filed a representation dated 09.03.2013, requesting therein to re-fix the seniority position by bringing into the knowledge of Respondent No. 2 that the private respondent is junior to the applicant in respect of merit affixed by the Public Service Commission. On receipt of the aforesaid representation, the Respondent No. 2 re-fixed the seniority of the applicant in view of her merit position at Serial No. 426-A i.e., below Dr. Ravi Manhas and above Dr. Azhar Agar Bichoo (S. No. 427), RBA and Dr. Abdul Majid (S.



No. 428), ST, i.e., private respondent. In the year 2013, the applicant was promoted to the post of Livestock Development Officer and was posted as I/C Assistant Poultry Nutritionist, Jammu. A tentative seniority list of Veterinary Assistant Surgeon was again issued in the year 2017, in that seniority list, the applicant was shown at serial no. 365, below the private respondent and being aggrieved of the same, the applicant filed a representation dated 06.10.2017. After the receipt of the representation, the Respondent no. 2 vide order dated 29.10.2020 issued a final seniority list of VAS in which the name of the applicant is figuring at serial no. 248 whereas the name of the private respondent is figuring at serial no. 250. The grievance of the applicant is that she is senior in terms of merit position determined by the Public Service Commission, thus the applicant is having the right of preference over the private respondent at the time of promotion, but the Respondent no. 2 vide order dated 29.04.2021 issued transfers/posting and assignment of charges order in which the private respondent who is junior than the applicant has been promoted as Incharge Superintending CVH Jammu after the retirement of Dr. Davinder Singh on 30.04.2021.

2. We have heard Mr. Sudershan Sharma, learned counsel for the applicant and Mr. Amit Gupta, learned A.A.G. for the respondents and perused the records.

3. It is well settled in law that even while making temporary/adhoc promotion or while officiating persons in promotional posts the same would be based on seniority unless the promotions are to be made by selection on merit. The said position is made clear by Hon'ble the Supreme Court in the decision reported in **2013 (5) LNN 413 (SC) (State of Uttranchal and anr v. Shiv Charan Singh Bhandari and ors)**. In paragraph 12 it is held thus:-

" 12. It can be stated with certitude that when a junior in the cadre is conferred with the benefit of promotion ignoring the seniority of an employee without any rational basis the person aggrieved can always challenge the same in an appropriate forum, for he has a right to be considered even for ad hoc promotion and a junior cannot be allowed to march over him solely on the ground that the promotion granted is ad hoc in nature. Needless to emphasise that if the senior is found unfit for some

reason or other, the matter would be quite different. But, if senior incumbents are eligible as per the rules and there is no legal justification to ignore them, the employer cannot extend the promotional benefit to a junior on ad hoc basis at his whim or caprice. That is not permissible."



4. So, it is well settled by the Hon'ble Apex Court that even while making ad hoc or Incharge appointments to a higher post, the concerned authority shall be under an obligation to take into account the seniority in the lower category. It is only when the regular promotions are made, that the DPC can select the candidates and in the process, the senior can also be overlooked. Once, there is no selection process involved, the seniority deserves to be respected. Of course, it is also a settled law that an adjustment on ad hoc or Incharge basis against such post by an officer who did not possess requisite qualification for holding the post would be illegal and is to be taken into consideration while ordering such temporary adjustments.
5. Looking to the facts and circumstances of the case, we are of the view that the O.A. can be disposed of by directing the respondents to take a decision with regard to grievance of the applicant. Accordingly, we dispose of the O.A. with direction to the respondents to consider prayer of the applicant to promote him as I/C Superintendent, CVH, Jammu in light of the legal position as stated in the preceding paras and further subject to the condition that the applicant does not suffer from any impediment or disqualification and is eligible to be considered for the post in question. A decision in this regard be taken and communicated to the applicant within a period of two months from the date of receipt of certified copy of this order.
6. It is made clear that we have not entered in to the merits of the case.
7. There shall be no orders as to cost.

(ANAND MATHUR)
MEMBER (A)

Arun

(RAKESH SAGAR JAIN)
MEMBER (J)