

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD.

T.A. No.1155/86

(C.A.223/83)

Union of India & Others :::: Applicants

vs.

P.N. Banerjee :::: Respondent

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon. Mr. K. Obayya, A.M.

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

This is a transfer application under section 29 of the Administrative Tribunals Act, 1985. The applicant filed a suit in the Court of Munsif, Gorakhpur, on 26-8-81 which was subsequently amended in the month of January, 1982. He prayed that he may be declared as senior than Dr. J.K. Chaudhry, Addl. Chief Medical Officer, Northern Railway, Central Hospital, New Delhi, and Dr. M.S. Ghosh, Addl. Chief Medical Officer, Eastern Railway, Howrah, and a decree for permanent injunction be passed against the defendant and ~~he~~ may be restrained from disturbing the seniority of the applicant as published by the Railway Board, vide letter dt. 5-10-76. Subsequently he prayed that a mandatory injunction in favour of the applicant and against the defendant No. 1 & 2 be issued and the respondents be directed to promote the plaintiff to the post of Chief Supdt. from 1981 and the difference of emoluments also be paid. The applicant came forward with the allegation that he joined the Railway Medical Service in the year 1962 directly as Divisional Medical Officer.

It is not necessary to make reference to the facts including the period during which the applicant was sent to Canada by the Government. Vide Railway Board's letter dated 5-10-1976 one seniority list was published in that year and in that seniority list the applicant's position was shown at Sr.No.7 and the seniority of Dr.J.K.Chaudhry was shown at Sr.No.10. Thus in that list the applicant was senior to Dr.J.K.Chaudhry, who, according to him, even otherwise was junior to the applicant as the applicant has joined the Railway Medical service as D.M.O. in the year 1962. Coming to learn that his seniority is being disturbed, the applicant made correspondence in this behalf. Even then the seniority of the applicant was disturbed and a promotion order to the senior post was issued to Dr.Chaudhry and Dr. M.S. Ghosh, with the result the applicant was left with no option but to file a Suit. As the promotions were already made, the applicant prayed that he may be promoted to the post of Chief Hospital Supdt. with effect from 27-8-81 as was done in the case of others as mentioned above.

2. The respondents admitted that in the seniority list of 1976 the applicant was at Sr.No.7 and Dr.Chaudhry's position was at Sr.No.10. It was stated that subsequent promotions to next higher grades are merely on the basis of selection and mere seniority on the basis of appointment on the post of D.M.O. does not confer any right. Though the applicant was promoted to the post of J.A. earlier than Dr.Chaudhry, but from the grade of J.A. to senior Administrative Grade II, Dr.Chaudhry secured higher position earlier than the applicant. According to the Railway Administration Dr.Ghosh was

directly recruited to the said ex-cadre post of J.A. Grade through U.P.S.C. in 1969 when Dr. Banerjee was merely holding the post of D.M.O. and as such Dr. Ghosh is said to be senior to Dr. Banerjee notwithstanding the fact that the applicant entered into the service earlier, though on some other post. The applicant filed a replication refuting the statements made by the respondents, who claimed that Dr. J. K. Chaudhry was promoted to the level-II post earlier than the applicant and that is why he got promotion to the higher post.

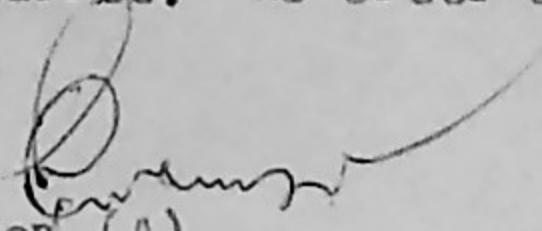
3. It has been admitted that after 5-10-76 no seniority list was published. The applicant has denied the allegation of preparation of any panel in consideration of his claim for promotion to the post of Level-II and thereafter from level-II to Level-I. The Trial Court, after taking into consideration the plea of the parties, has recorded the finding that there was no evidence on records that any departmental selection committee was constituted for any promotional post and it appears that without following any proper procedure Dr. Chaudhry and ^{Dr.} Ghosh were promoted to the higher post and that is why they got promotion to the higher post earlier than the applicant and the applicant was passed over.

4. Feeling dissatisfied with the said decision, the Union of India, respondents, filed this appeal. In the grounds of appeal, as initially filed, no definite plea was taken apart from general plea and the finding which was recorded by the Trial Court has not been challenged specifically. But when the matter came up before the Tribunal the respondents

tried to prove the matter by filing application and affidavit. In the affidavit it has been stated that the case of Dr. Chaudhry and the applicant was considered in 1977 by the D.P.C. consisting of 5 members of the Railway Board for promotion to Level-II post in Addl. Chief Medical Officers Grade and that the respondent No.2 was promoted by virtue selection. It has been further stated that under the Trial Court some misapprehension/has held that the selection for promotion to Level-II post was not held in accordance with Chapter II P.7 & 9 of Indian Railway Establishment Manual and thus the Trial Court has quashed the order issued by the Railway Board on 27-8-81 on misapprehension and thus directed the plaintiff respondent No.1 should be treated as senior to defendant respondent No.2.

4. It has further been stated that Chapter II, p.7 & 9 of the Railway Establishment Manual deals with rules for promotion to the selection and non-selection post of non-gazetted. The promotion policy in the administrative grades as applicable in the present case is governed by Annexure-I to the affidavit and not by Chapter II, page 7 & 9 of Railway Establishment Manual. The Annexures which have been so filed states that so far as the promotion to the post of Level-II and higher post is concerned, the criteria appears to be seniority-cum-suitability. As the seniority was given precedence, if the senior was found unsuitable then only the junior could have superseded him even if he ranked lower in the merit and in case he is not found unfit the seniority should have been given effect to. It appears that in the present case the Railway Administration has reversed the process

and given precedence to the suitability adjudged by them and not to the seniority and that is why Dr. Chaudhry was promoted earlier although the applicant should have been promoted earlier than Dr. Chaudhry. As such the decision of the Trial Court appears to be correct. Accordingly the application filed by the Union of India is dismissed. The applicant-respondent is entitled for national promotion in the year 1981 and actual promotion with effect from the year 1982 with all consequential benefits as if he was actually promoted in the year 1981. With the above observations the appeal is dismissed. No order as to the cost.


Member (A)


Vice-Chairman

Dated: 28th Sept., 1992, Allahabad.

(tgk)