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CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
XXXXXX XXXXXXXX XXXXXXXX

O.A. No. 159 OF 1988.
ExAxxNo.

DATE OF DECISION 2.2.1990.

DR. P.C. GOKLANI

Petitioner

MR. J.J. YAGNIK

Advocate for the Petitioner(s)

Versus

UNION OF INDIA

Respondent

MR. J.D. AJMERA

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. A.V. HARIDASAN, JUDICIAL MEMBER.

The Hon'ble Mr. M.M. SINGH, ADMINISTRATIVE MEMBER.

- Ys* 1. Whether Reporters of local papers may be allowed to see the Judgement?
- Ys* 2. To be referred to the Reporter or not?
- No* 3. Whether their Lordships wish to see the fair copy of the Judgement?
- No* 4. Whether it needs to be circulated to other Benches of the Tribunal?

Dr. P.C. Goklani,
Medical Officer,
P & T Dispensary,
residing at 1, Shahibaug Post Office,
Ahmedabad - 380 003. Petitioner.

(Advocate: Mr. J.J. Yagnik)

Versus.

Union of India,
(to be served through the
Secretary, Ministry of Health
and Family Welfare,
Nirma Bhavan, New Delhi.) Respondent.

(Advocate: Mr. J.D. Ajmera)

J U D G M E N T

O.A. No. 159 OF 1988

Date: 2.2.1990.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

The applicant, a member of the Central Health Service in the rank of Junior Class I, presently posted as Medical Officer, P & T Dispensary, Ahmedabad, filed this application under section 19 of the Administrative Tribunals Act to challenge the action of the respondents in promoting his juniors to the post of Senior Medical Officer by superseding him.

2. The applicant's claim is that his service record is unblemished with no adverse remarks and he was allowed to cross the efficiency bar from the due date; that the criteria for promotion from the rank of Junior Medical Officer to Senior Medical Officer is seniority-cum-merit and five years service in the rank of Junior Medical Officer; that the applicant has rightful claim to revision of his seniority on ground that by a judgment the Supreme Court of India has directed to grant seniority to Medical Officers with effect from the date of their original appointment (2.7.1973 in

case of the applicant) reckoning the earlier services whereas the applicant has been given seniority on the basis of his regular appointment by UPSC with effect from 25.10.1979; that even on the basis of his position in seniority list given from the date of regular appointment by UPSC with effect from 25.10.1979 (Annexure A-4) he meets the criteria for promotion; and that he has been, vide order dated 21st August, 1987 (Annexure A-5), wrongly superseded by his junior in the seniority list as on 1.1.1983 in which he figures at No. 1064 and his immediate junior Dr. S.K. Mishra who superseded him figures at No. 1065 and other juniors who superseded him figure after No. 1065.

3. The respondents have contested the application on various grounds including not joining necessary parties as respondents; not exhausting other remedies; limitation, in case the applicant's claim for deemed date of seniority is to be counted as from 2.7.73; that the applicant merely has right to be considered for promotion but no right to promotion unless found fit; that the D.P.C. had met on 19.8.1987 and had considered the case of the applicant and found him unfit; that the applicant's claim to unblemished service record with no adverse remarks is not correct; that the applicant's case for crossing efficiency bar was kept by the D.P.C. which met on 29.1.1985 in sealed cover as a charge for departmental enquiry had been served on the applicant; and that it was only after the charge was finalised, the sealed cover was opened and the applicant was allowed to cross the efficiency bar from 1st October 1980, the due date.

4. We have carefully perused and considered the copious records, heard the advocates for the parties and taken into consideration their written submissions.

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5. It is necessary to first dispose of the grievance of the applicant about deemed date of seniority and relief on that score figured out from the judgment of Supreme Court which has been contested by the respondents. This grievance is out of place in this application. Firstly, granting of deemed date of seniority on the basis of claim of appointment from 2.7.1973 is bound to disturb the seniority of many others which cannot be done unless they are joined as party respondents by the applicant whose present seniority is reckoned with 25.10.79 as the date of his appointment. Secondly, objection on grounds of limitation to such claim can also be reasonably advanced. Thirdly, Rule 10 of CAT (Procedure) Rules, 1987, which lays down that an application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another rules out relief of deemed date of seniority when the order under challenge is that of supersession of the applicant figuring in seniority list dated 10.5.1979 (Annexure A-4) in which date of appointment of the applicant to the grade has been shown as 25.10.79 and his place worked out on that basis.

6. There is no dispute between the parties that the applicant is eligible for consideration for promotion. There is also no dispute that the applicant's case was considered by the D.P.C. which met on 19.8.87 which assessed the service record of the applicant and recommended him as "unfit" (for promotion) which led to his supersession by his junior who came to be promoted as they were found fit. The only issue for consideration is whether the proceedings of the departmental promotion committee which met on 19.8.87 are, vis-a-vis the applicant, proper.

7. The respondents produced required record for our inspection as was directed, including a zerox extract copy of recommendations of the D.P.C. which was held on 19.8.87.

8. We are duly conscious of the fact that when promotion to a post is based on seniority-cum-merit, inspite of one's seniority, officers' juniors could be promoted if one was unfit to discharge the duties of the post for which he was being considered for promotion. Such a rule implies that promotion could not be claimed as a matter of right by virtue of seniority alone. However, the record must satisfy that the committee which went into the records of various officers had examined the same with due diligence and application of mind to the service record of each officer. Our impression in this regard, as will be seen from what follows, is that the D.P.C. left much to be desired.

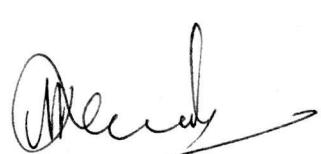
9. The proforma of the D.P.C. in this case consists of five columns, the first being S.No., the second being Sr.No. in the Civil list, the third being the name of the officer, the fourth being the recommendation of the D.P.C. and the fifth being remarks. While we may take as proper the information required in columns No.1, 2, 3 & 5 being typed out and put up before the Committee for it for entering the remarks of the Committee in column 4, surprising it is that even remarks in column No. 4 have been typed out as if along with the information in the other column against most but very few names. The D.P.C. proceedings record thus does not inspite confidence that its members applied mind to the service record of each one figuring in the list for had that been the case it will not be that while in most cases 'fit' has been typed in the remarks column apparently along with information typed in the

rest of the columns of the proforma, in very few cases to be the remarks will come/written by hand without giving any reason as to why a candidate has been considered unfit. In cases of promotion on criterion of seniority-cum-merit remark "unfit" obviously gives no proper idea as to what grounds weighed with the D.P.C. to mark a Government servant 'unfit'. To these extents the proceedings of the D.P.C. with regard to the applicant must be struck down as suffering from lacking on basic requirements and therefore liable to be declared as null and void at least so far as the applicant's case is concerned.

10. In view of our above observations, we declare as null and void the recommendation of the D.P.C. in case of the applicant and hereby direct that the D.P.C. should be reconstituted within a period of three months from the date of this order to consider the case of the applicant afresh in accordance with law and the respondents to take a decision on the recommendation within four months from the date of this order. The parties to bear their own costs.

M M S.

(M.M. SINGH)
ADMINISTRATIVE MEMBER.



(A.V. HARIDASAN)
JUDICIAL MEMBER