

(16) (11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No.
~~T.A. No.~~

700 of 1988

DATE OF DECISION 18/08/1993.

Shri D.S.Makwana, Petitioner

Shri S.V.Raju Advocate for the Petitioner(s)

Versus

Union of India and Ors. Respondent

Shri Akil Kureshi for respondents Advocate for the Respondent(s)

no.1, 2 & 3,
Shri Joy Mathew for Shri Girish Patel

for resp. no.4,

Shri Pandya for resp. 5, 6, & 7.

CORAM :

The Hon'ble Mr. R.C.Bhatt : Member (A)

The Hon'ble Mr. M.R.Kolhatkar : Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✗
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✗
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✗



Shri .D.S.Makwana,
Pharmacist, Gr.I.,
Central Govt. Health Scheme,
Shalimar Co-op. Housing Socy.,
Near Embassy Market,
Ashram Road,
Ahmedabad.

...Applicant.

Advocate : Mr.S.V.Raju)

Versus

1. Union of India
Notice to be served on
Secretary,
Ministry of Health and Family Welfare,
New Delhi.
2. Director (CGHS),
Nirman Bhavan,
New Delhi.
3. Deputy Director,
Central Govt. Health Scheme,
Shalimar Co-op. Housing Socy.,
Near Embassy Market,
Ashram Road,
Ahmedabad.
4. H.K.Bavsar,
5. A.J.Trivedi,
6. D.M.Solanki,

Nos. 4, 5 and 6 working
as Pharmacist Gr.I.,
Central Government Health Scheme,
Shalimar Co.op. Housing Society,
Near Embassy Market,
Ashram Road,
Ahmedabad.

...Respondents.

(Advocates : Mr.Akil Kureshi for resp.1,2, & 3,
Mr.Joy Mathew for Mr.Girish
Patel, for resp.no.4,
Mr.Pandya for resp.no.5,6 & 7).

ORAL JUDGMENT

O.A. 700. of 1988.

Dated : 18/08/1993.

Per : Hon'ble Mr.M.R.Kolhatkar : Member (A)

Mr.C.Prajapati for Mr.Mr.S.V.Raju for the applicant,
Mr.Joy Mathew for Mr.Girish Patel for the respondent
no.4, Mr.Akil Kureshi for the respondent no.1,2,&3,
and Mr.Pandya for Mr.Trivedi for respondent no.5,
6, and 7, served.

This is an application under Section 19 of the
Administrative Tribunals Act, 1985, challenging the
seniority list of the Pharmacist, Gr.I, in the office of the
Chief Medical Officer, CGHS, Ahmedabad published on 19.5.1987,
at Annexure-A-7, in which the applicant is shown at Sl.no.4,
and the respondent no.4, 5, and 6 have been shown at
Sl.No. 1, 2, and 3, respectively. The contention of the
applicant is that in the seniority list earlier published
namely on 31.12.1985, at Annexure-A/6, he was rightly
shown at Sl.No.1, that between 31.12.1985 and 19.5.1987,
the seniority list has been changed without giving any
reasons or without affording to him any opportunity of
being heard as to the change in his seniority. He has
further stated that he was a confirmed employee of the
Office of Assistant Director General, CGHS, Bombay since
1972 onwards, whereas the respondents no.4, 5 and 6, were
recruited in service only on 22.3.1979 and 23.3.1979
respectively and that he was transferred from Bombay to
Ahmedabad not on the ground of request, but on the ground
of option exercised by him when a new office of the CGHS
was opened at Ahmedabad.

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2. The respondents no.1, 2, and 3, have filed a reply, in which they have contended that the applicant was transferred from Bombay to Ahmedabad at his own request from the post of Pharmacist, Gr.I of the local cadre at Bombay, foregoing his local seniority there, though his pay was protected. He joined at CGHS, Ahmedabad on 22.3.1979. The DPC was constituted at Ahmedabad on 20.3.1979 for selection of Pharmacists Gr.I, belonging to Ahmedabad local cadre. Since the applicant's services were not on All India Cadre, his seniority was counted only after his joining at Ahmedabad on 22.3.1979, after the seniority list of candidates recommended by the DPC on 20.3.1979. It is stated that Ahmedabad Office being a new one and being in the process of establishment, through oversight and erroneously the applicant and others were given a wrong place in the old seniority list, as per Annexure-A/6, dated 31.12.1985. It is contended that a new DPC was constituted to rectify the injustice, if done to any member. The DPC recommended the final seniority list as on 19th May, 1987, which is in consonance with the Department of Personnel and Training, New Delhi, Office Memo No.22011/7/86-Estt-D, dated 03.07.1986, in terms of para-3.3. whereof it was envisaged that the trans^ferees would rank below all direct recruits or promotees, as the case may be, selected on the same occasion.

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3. The respondent no.5, in his reply has stated that he had represented against the seniority list dated 31-5-1985, by his representation dated 1-4-1987. Consequently the Departmental Promotion Committee determined the seniority of Pharmacist Gr. I and the office order dated 19th May, 1987, was issued by the competent authority, viz, Chief Medical Officer. It is a correct seniority list. Respondent no.4, in his reply has stated that a representation was made by CGHS Association, objecting to the placement of the applicant at Sr. No.1 in the seniority list on the ground that the applicant's length of service in Bombay Office was wrongly taken into account while preparing seniority list of 31-12-1985 and the Chief Medical Officer, CGHS, Ahmedabad who is the head of the department, considered the representation and recognised the mistake committed in the seniority list of 31-12-1985 and the said mistake was rectified in the seniority list dated 19-5-1987.

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4. We have heard the advocates for the parties. We had requested the respondents and also the applicant to produce the copy of the Recruitment Rules for the post of Pharm^acist, Gr. I in the local cadre of the Chief Medical Officer, CGHS, Ahmedabad. They were not, however, able to produce these Recruitment Rules. The respondent no.1, 2, and 3 produced the Recruitment Rules for the post of Assistant Store Supdt. which are not of any use. The Recruitment Rules were required to clear up one point conclusively viz, whether Government orders relating ^{to} the _n

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transferees dated 3-7-86 in terms apply to a transferee as in the case of the applicant who was not a transferee from a subordinate office or other departments of the Central Government or State Government but was a transferee from a Branch Office of the Central Government health organisation and who had w.e.f. 4th November 1972, vide office order dated 24th November 1972, Annexure A 2 held the post of Pharmacist Gr I in Bombay Local Office to which post the respondents no. 4, 5, and 6 were appointed as local cadre direct recruits in Ahmedabad only from 22/23rd March, 1979. The case has also become complicated because coincidentally the date of joining by respondent no. 4 and 5 is the same as the date of the transfer of the applicant from Bombay namely 22-3-79 and there could be a plausible reason for the Chief Medical Officer, Ahmedabad, to place the applicant at Sr. No. 1 on the Seniority list dated 31-12-1985, vide Annexure A-6 especially when the office order dated 20th March 1979 vide Annexure A-3 clearly stated that his seniority at Ahmedabad will be counted from the date of joining at CGHS Ahmedabad. In the absence of Recruitment Rules we are not able to interpret the applicability of the term "transfer" in the said Government orders dated 3-7-1986. However, without deciding the interpretation this O.A. can be disposed of on the short point of whether the applicant was entitled to being heard in accordance with the principles of natural justice and if he was so

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entitled whether the revised seniority list dated 19th May, 1987 Annexure A-7 was issued after following the principles of natural justice. It was argued by the respondent no.5 that the Departmental Promotion Committee is the final and empowered body for deciding the seniority of the Government servants and that when the Departmental Promotion Committee formulates the seniority list, it does so after taking into account all the circumstances and the rules and therefore, there was no need for giving a hearing before issuing the seniority list dated 19th May 1987. We do not accept this contention. It is a matter of record that the applicant had come to Ahmedabad on transfer, that the transfer was ordered at his own request and his seniority at CGHS Ahmedabad was to be counted from the date of his joining at Ahmedabad. While, therefore, we do not accept the contention of the applicant that his transfer to Ahmedabad was not on his own request but it was on terms of an option, the fact remains that in the Seniority list of Pharmacist Gr. I issued on 31-12-1985 the name of the applicant was shown at Sr. No. 1 and remarks against his name were that "his date of joining was 22-3-1979" and therefore, logically he is shown at Sr. No.1 Against Sr. No.2,3 and 4 it is indicated that the seniority list was based on ^{merit in} ~~xx minutes~~ initial appointment. There can also be no doubt that the seniority of the respondents ^Nno 4,5, and 6 cannot count from 20-3-1979, the date of selection

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by D.P.C. but only from the date of joining namely from 22-3-1979, ~~On~~ 23-3-1979, when there was a transferee of a local office viz office of the Assistant Director General Bombay who joined at Ahmedabad in terms of office order dated 22-3-1979 Annexure A-3, it was plausible to place the applicant at Sl. no.1. When on receipt of representation from CGHS Association and also from an individual (respondent no.5) it was decided by the Chief Medical Officer to call a D.P.C. and the D.P.C. took a decision as incorporated in seniority list dated 19th May, 1987 which adversely affected the applicant, there is no **doubt** at all that the applicant ought to have been given notice of the proposed ^{change} ~~hearing~~ and ought to have been heard regarding the same and the final seniority list ought to have been published only thereafter. The ^{||}audi alteram partem^{||} rule is an integral part of the principles of natural justice and it applies to administrative actions and orders as much as to quasi-judicial orders. The position is so well settled that it is hardly necessary to cite specific case law. Since the department did not follow the rules of natural justice and failed to give a hearing before adversely affecting the seniority of the applicant, the ~~impugned~~ order at Annexure A-7 dated 19th May 1987, is undoubtedly vitiated and deserves to be quashed. We therefore pass the following order;

ORDER

" The application is partly allowed. The ~~impugned~~ ^g

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order Annexure A-7 dated 19-5-1987 incorporating the revised seniority list, is hereby quashed and set aside. Respondent no.3 is directed to give a hearing to the applicant regarding the change in his seniority and after giving him a hearing, to pass a speaking order. It is open to the department to constitute a Review D.P.C. and to place the matter regarding the seniority list of Pharmacist Gr. I, in Ahmedabad local office of CGHS for its reconsideration, keeping in view the say of the applicant. Respondent no.3 to abide by this direction and to take a decision about the seniority and to communicate the same to the parties within a period of four months."

M R Kolhatkar
(M.R. Kolhatkar)
Member (A)

R.C. Bhatt
(R.C. Bhatt)
Member (Judicial)

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