

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 360 of 1987

Date of decision: May 3, 1991.

Narayan Chandra Rakhit ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s. B. Pal,
S. C. Parija,
O. N. Ghosh, Advocates.

For the respondents ... Mr. Tahali Dalai,
Addl. Standing Counsel (Central)

C O R A M:

THE HONOURABLE MR. B. R. PATEL, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? *Yes*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

J U D G M E N T

N. SENGUPTA, MEMBER (J) In this application, the prayer is for a direction to the respondents to promote the applicant to the grade of Pharmacist with effect from 14.12.1987, the date on which one Shyamali Haldar was promoted to that grade.

2. The applicant's case is that he was appointed as a General Duty Assistant in a Hospital under the Dandakaranya Project in 1968. This post was redesignated as Nursing Assistant. He made an application to the Chief Administrator, Dandakaranya Development Authority (D.D.A.) for allowing him

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to appear at a test for the appointment of Pharmacist and permission was accorded. He obtained a certificate of registration as a Pharmacist from West Bengal Pharmacy Council in February, 1979. After that he represented to Respondent No.2, to consider him for promotion to the post of Pharmacist under the Dandakaranya Development Project, this representation was made in March, 1979. As Respondent No.2 in ^{spite} ~~stead~~ of several reminders did not answer, he (the applicant) finally made a representation to Respondent No.1 i.e. Secretary to Government of India, Ministry of Home Affairs (Rehabilitation Wing). In March, 1980 the Respondent No.2 sent a reply that he (the applicant) not being qualified Pharmacist, his representation could not be considered. In 1981 applications for appointment as Pharmacist under the D.D.A. were invited but his application for the post was not entertained as he is a Non-matriculate. Subsequently, he made representations and also brought to the notice of the respondents the fact that one Shyamali Halder who is a non-matriculate was appointed as a Pharmacist therefore, he should have been appointed as Pharmacist.

3. The respondents in their reply have averred that the rules for recruitment as Pharmacist provided that the persons should not only be a diploma or degree holder in Pharmacy but at least be a Matriculate and as the applicant admittedly is not a Matriculate, he could not be appointed. With regard to the appointment of Shyamali Halder, it has been stated that she belongs to a Scheduled Caste and that the appointment was ^{really} not strictly according to the Rules but that cannot clothe the applicant with any

Ms. Gupta

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right. Besides these facts the respondents in their reply have taken the plea of limitation.

4. We have heard Mr.B.Pal, learned counsel for the applicant and Mr.Tahali Dalai, learned Additional Standing Counsel(Central) for the respondents. So far as the question of limitation is concerned, the plea taken by the respondents cannot be said to be ill-founded, because the grievance of the applicant arose in 1981 when finally he was refused appointment and this application was filed almost 7 years thereafter. But, however, as applicant made application for being appointed as Pharmacist on subsequent occasions we have heard on merits as well.

5. As indicated above, the respondents have not refuted the allegation of the applicant that one Shyamali Halder is a non-matriculate and she is functioning as a Pharmacist. But this appointment of Shyamali cannot give the applicant a right to be appointed as a Pharmacist. The respondents have filed an extract of the rules framed under the Indian Pharmacy Act, 1948 and that forms Annexure-R/9 to the counter filed by the respondents. From the Rules it would be found that no person who is not a Matriculate is entitled to be registered as a Pharmacist. Admittedly, the applicant is not a Matriculate. Therefore, he cannot be registered as a Pharmacist. Initially, Matriculation was prescribed as a desirable qualification but subsequently on discovery of the provisions of the rules under the Pharmacy Act, educational qualification of Matriculation was insisted upon. Therefore, non-appointment of the applicant as a Pharmacist cannot be

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questioned. Merely because under a mistake somebody else got an appointment, that will not give rise to a right for the applicant to be appointed as a Pharmacist.

6. As stated above, the applicant is not entitled to any relief and the case stands dismissed but however without costs.

Bmshel
.....3.5-91
Vice-Chairman



Hee Singh
.....B. 2.8.91
Member (Judicial)

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
May 3, 1991/Saranghi.