

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 128/1999

F.A.-No.

199

DATE OF DECISION : 25.02.2000.

Devki Nandan Gupta,

Petitioner

Mr. J.K. Kaushik,

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent(s)

Mr. Kamal Dave,

Advocate for the Respondent (s)
1 to 3.

Mr. S.K. Malik, Adv., for Respondent No.4



The Hon'ble Mr. A.K. Misra, Judicial Member

 The Hon'ble Mr. Gopal Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? NO
2. To be referred to the Reporter or not? Yes
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? NO

Copy of
(Gopal Singh)
Adm. Member

AM
(A.K. Misra)
Judl. Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 25.02.2000

O.A. No. 128/99

Devki Nandan Gupta, son of late Radhey Shyam Gupta, aged about 50 years resident of Qtr. No. M-40-A, Northern Railway Hospital, Jodhpur, at present employed on the post of Chief Pharmacist Gd-II, in the office of Chief Medical Superintendent and Railway Hospital, Jodhpur, Northern Railway.

... Applicant.

v e r s u s

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Chief Medical Superintendent and Railway Hospital, Jodhpur Division, Jodhpur, Northern Railway.
3. Divisional Personnel Officer, Northern Railway, Jodhpur Division, Jodhpur.
4. Shri Manohar Lal, Chief Pharmacist Gd.II, through Chief Medical Superintendent and Railway Hospital, Jodhpur, Northern Railway.

... Respondents.

Mr. J.K. Kaushik, Counsel for the applicant.

Mr. Kamal Dave, Counsel for the respondents Nos. 1 to 3.

Mr. S.K. Malik, Counsel for the respondent No. 4.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

O R D E R
(Per Hon'ble Mr. Gopal Singh)

Applicant, Devki Nandan Gupta, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for a direction to the respondents to treat the applicant as senior

copies of

(a)

to the respondent No. 4 on the post of Chief Pharmacist Gd-II and consider his case for promotion to the post of Chief Pharmacist Gd-I with all consequential benefits.

2. By way of interim relief, the applicant has prayed for a direction to the respondents to keep the promotional post of Chief Pharmacist Gd-I as vacant or else if any promotion is made to the post of Chief Pharmacist Gd-I, the same may be made provisional subject to the result of this O.A.

3. Applicant's case is that he was initially appointed on the post of Pharmacist Grade-III in scale of Rs. 330-560 on 24.12.76. He was promoted to the post of Pharmacist scale Rs. 455-700 on 4.8.87 and further promoted to the scale of Rs. 1640-2600 on 18.9.92 and to the post of Chief Pharmacist Grade-II in scale Rs. 6500-10500 with effect from 10.5.98. It has been averred by the applicant that the respondent No.4 was initially appointed on 26.1.77 and under the reststructuring scheme, he was given upgraded scale Rs.455-700 with effect from 1.1.84. He was further promoted to the posts of Pharmacists scale Rs. 1640-2900 and Chief Pharmacist Grade-II in scale Rs. 6500-10500 with effect from 18.9.92 and 10.5.98 respectively, alongwith the applicant. The respondent No.4 is a reserved category candidate and it is the contention of the applicant that accelerated promotion given to the respondent No. 4 with effect from 1.1.84 to the scale of Rs.455-700 should not bestow the seniority on the respondent No. 4 over the applicant in terms of various judgements of Hon'ble the Supreme Court.

4. By our interim order dated 7.5.99, the respondents were directed to treat the promotion, if any, on the post of Chief Pharmacist. Grade-I given on the basis of the proceedings of the D.P.C. likely to be held on 10.5.1999 as provisional, till finalisation of this O.A.

5. Notices were issued to the respondents. The official respondents have submitted that the seniority in question has been fixed in terms of Railway Board's directions following the judgement of Hon'ble the Supreme Court in Veerpal Singh Chouhan's case and it has been averred on behalf of the official respondent that in view of the above mentioned judgement of Hon'ble the

Leopold J.

Supreme Court, the seniority acquired by a reserved category candidate prior to 10.2.95 cannot be disturbed. Since the respondent No. 4 was promoted to the scale of Rs. 455-700 on 1.1.84 prior to the applicant, the respondent No. 4 would remain senior to the applicant. The respondent No. 4 in his reply has asserted that the applicant was not entitled to be given the scale of Rs. 330-560 on his initial appointment as he did not have the requisite qualification prescribed under sub-Section 31 of the Pharmacist Act, 1948. It is pointed out here that the applicant was appointed as Pharmacist in the scale of Rs. 330-560 on 25.4.76 and the respondent No. 4 was appointed on the said post on 26.1.77 and thus the applicant was senior to the respondent No.4. The question of not having the requisite qualification for the post of Pharmacist in the grade of Rs. 330-550 was not at all raised by the respondent No. 4 earlier. It was only after the present application has been filed that the respondent No. 4 has come up with this argument, i.e., after more than 20 years of the appointment of the applicant. Thus, the argument adduced by the respondent No.4 in regard to his seniority over the applicant cannot be entertained at this stage. It is a fact that the respondent No. 4 was given upgraded scale Rs.455-700 with effect from 1.1.84 on reserve point, prior to the applicant, who is a general category candidate. In their latest judgement in the case of Ajit Singh and Others (II) vs. State of Punjab and Others, 1999 SCC (L&S) 1239, the Hon'ble Supreme Court has held that the seniority acquired by a reserved category candidate on promotion to the higher grade under reservation roster would be modified if a senior general category candidate is promoted to that higher grade unless the reserved category candidate has been further promoted to the next higher grade. In the instant case, the respondent No. 4 was promoted with effect from 1.1.84 and the applicant was promoted with effect from 4.8.87, before the respondent No. 4 was promoted to the next higher grade. Thus, the applicant would acquire seniority over the respondent No.4 in the grade of Rs. 455-700. Since both the applicant and the respondent No. 4 were simultaneously promoted to the still higher grades on the same date, the applicant would continue to be senior to the respondent No.4. The post of Chief Pharmacist Grade-I is required to be filled up on the basis of seniority-cum-suitability and as per the averments of the respondents, the Railway Board has extended one time relaxation to be applied only for filling up the additional posts becoming available in the higher grade as a result of Vth Pay Commission. The benefit of relaxation is available only

Leopold

to the employees who are having not less than 4 years total service in the grade of Rs. 6500-10500 and 5500-9000. The employees falling in these categories can be considered even if they are having 1 year's service in the feeder cadre of grade Rs.6500-10500.

6. In the light of above discussions, we are of the view that the applicant, besides being senior to respondent No. 4, also fulfils the eligibility criteria (relaxed) for appointment to the post of Chief Pharmacist Grade-I. The O.A., therefore, has merit and deserves to be allowed.

7. The O.A. is accordingly allowed with the direction to the respondents to modify the seniority list of Chief Pharmacist Grade-II by placing the applicant above respondent No.4 and further to consider the applicant for promotion to the post of Chief Pharmacist Grade-I as per the relaxed standard.

8. Parties are left to bear their own costs.

Copied by

(GOPAL SINGH)
Adm. Member

25/7/2000
(A.K. MISRA)
Judl. Member

cvr.

Part I and (Carb)

are given

(D: N. (initials))

28/12/2006

(Captain)

Copy.

Recky

28/12

(R. S. (initials))

on behalf of

Govt. of India

on behalf of

Govt. of India

Recd.

Ans

S. K. (initials)

Adv.

1/3/2006

Part II and III destroyed
in my presence on 27-9-2006
under the supervision of
Section Officer () as per
order dated 23/12/2006

Section Officer (Record)

Liberty

DL 982