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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

\* \* \*

Date of Decision: 5.12.01

OA 113/2001

R.L.Sisodia, Sr.Pharmacist O/o Railway Hospital, N/Rly, Jodhpur.

... Applicant

Versus

1. Union of India through General Manager, N/Rly, Baroda House, New Delhi.
2. Divisional Personnel Officer, N/Rly, Jodhpur Division, Jodhpur.
3. Divisional Rly Manager, N/Rly, Jodhpur Division, Jodhpur.
4. Shri Manohar Lal, Sr.Pharmacist, Railway Hospital, N/Rly, Jodhpur.

... Respondents

**CORAM:**

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

For the applicant

... Mr.B.Khan

For Respondents No.1to3

... Mr.Manoj Bhandari

For Respondent No.4

... Mr.Vijay Mehta

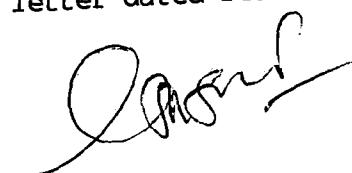
**O R D E R**

PER MR.JUSTICE G.L.GUPTA

The reliefs claimed in this OA are these :

"That the impugned order dated 1.8.2000 (Ann.A/1), seniority list for the post of Pharmacists, assignment of seniority to the applicant by deducting 10 years service, order dated 7.3.2001 (Ann.A/2), 10.4.2001 (Ann.A/3) and 25.1.2001 (Ann.A/4), rejecting the representations, may be declared illegal and the same may be quashed. Further, the respondents may be assign the due seniority to the applicant as per his merit in the RSC and place him above respondent No.4 in the impugned seniority and the applicant allowed all consequential benefits."

2. That the applicant after passing Higher Secondary Examination in the year 1967 was registered as Pharmacist under Section 31(d) of the Pharmacist Act, 1948 (for short, the Act, 1948). Applications for the post of Pharmacists in the pay scale of Rs.330-560 were invited vide Employment Notice No.1/75-76, The applicant applied for the same and he was selected. He was issued an offer of appointment for the said post in the scale of Rs.330-560 vide letter dated 1/9.4.76 (Ann.A/8). After the applicant accepted the offer, vide letter (Ann.A/9) he was given the appointment to the post of Pharmacist in the scale of Rs.330-480 with the stipulation of grant of higher scale of Rs.330-560 as per the provisions of the Act, 1948. The applicant was allowed the scale of Rs.330-560 vide letter dated 14.4.86 (Ann.A/10). He has been given further promotions to



the posts of Pharmacist Grade-II and Pharmacist Grade-I w.e.f. 10.5.91 and 17.12.93.

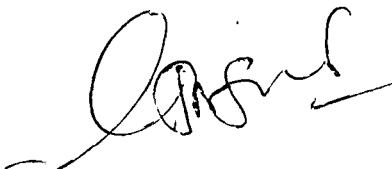
The applicant was assigned seniority at S.No.112 on the post of Pharmacist vide seniority list dated 19.7.85, showing him above Shri Manohar Lal (Respondent No.4). However, when respondent No.2 issued the seniority list vide letter dated 20.7.87, the position of the applicant was brought down and he was placed at S.No.21 and the respondent No.4 was placed at S.No.13.

Aggrieved with that decision of the official respondents, the applicant filed OA 313/87, which was disposed of vide order dated 3.3.93 quashing the seniority position of the applicant and directing the respondents to pass appropriate order after issuing show-cause notice to the applicant. Thereafter, the respondents issued show-cause notice to the applicant and the applicant filed his reply. Respondent No.2 rejected the representation of the applicant vide order dated 20.5.93 (Ann.A/21).

The Respondent No. 2 has issued the revised seniority list on 01.08.2000, in which the name of the applicant was shown at Sl. No. 8 and that of respondent No. 4 at Sl. No. 2. The applicant filed representation against the said seniority list but his representation was rejected vide communications dated 07.03.2001, 10.04.2001 and 25.04.2001. Hence this application.

3. The official respondents in the counter state that the seniority of the applicant has been fixed in accordance with the rules. It is stated that the applicant was not a qualified person so he was allowed the lower scale of Rs. 330-480, whereas respondent No. 4 being qualified was allowed higher seniority from the very beginning and the applicant cannot claim seniority over respondent No.4. It is stated that no legal right of the applicant has been infringed and the application is liable to be dismissed on the ground of latches. It is further stated that the period, the applicant remained unqualified, cannot be counted for the purpose of consideration for promotion and he has been rightly assigned seniority below respondent No.4.

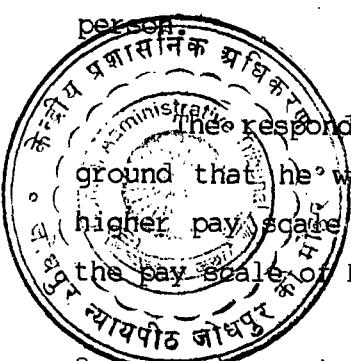
4. The private respondent No.4 in his reply also resists the claim of the applicant on the grounds stated by the official respondents in their reply.



5. The applicant filed a rejoinder reiterating the facts stated in the OA.

6. We have heard the learned counsel for the parties and perused the documents placed on the record.

7. The claim of the applicant for higher seniority is based on the documents Ann.A/6 & Ann.A/8 that he was offered appointment in the scale of Rs. 330-560 and, therefore, his seniority should be fixed on the basis of that pay scale irrespective of the fact that he was not a qualified person.



The respondents have traversed the claim of the applicant on the ground that he was not a qualified person and was not entitled to the higher pay scale of Rs.330-560 even if in the letters (Annex.A/6 & A/8) the pay scale of Rs.330-560 was mentioned.

8. We have given the matter our thoughtful consideration.

9. It is evident from the order of appointment (Annexure A-9) that the applicant was given appointment in the pay scale of Rs.330-480. True it is, in the said order there was mention of both the pay scales, but it is clear from the order that the higher pay scale of Rs.330-560 was subject to the condition that the applicant was eligible under Section 31 and 32 of the Act, 1948. It may be that in the call letter for the interview and the offer of appointment the pay scale of Rs.330-560 was mentioned but it did not entitle the applicant the said pay scale because in the appointment order it was clearly stated that the higher pay scale was payable on satisfying the conditions under Section 31 and 32 of the Act, 1948. If the applicant was aggrieved with the appointment order granting him lower pay scale, he should have challenged the action of the respondents at that time. Having not done at that time, he cannot agitate this point in 2000 i.e. after 24 years.

10. It is admitted position that the applicant was not a qualified Pharmacist when appointed vide order Annx.A/9 as he is neither a degree holder nor a diploma holder.

11. The Supreme Court in the case of Shyam Babu verma and others vs. Union of India and Others, (1994) 2 SCC 521, has upheld the decision of the Government in implementing the recommendations of the Third Pay Commission providing two different pay scales to the Pharmacists. It was

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clearly held in the said judgement that the Pharmacist who was not fully qualified was entitled to the pay scale of Rs.330-480 only and if the qualified Pharmacist get higher pay scale of Rs.330-560, the equality clause was not infringed.

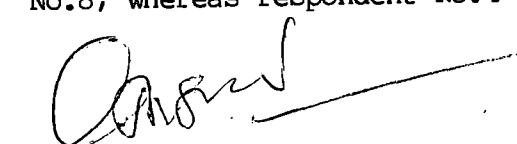
12. Once it is found that the applicant was rightly given the pay scale of Rs.330-480 and the respondent No.4, who was a qualified Pharmacist, got the higher pay scale of Rs. 330-560, it has to be held that in the seniority list of the Pharmacists respondent No.4 could not be placed below the applicant.

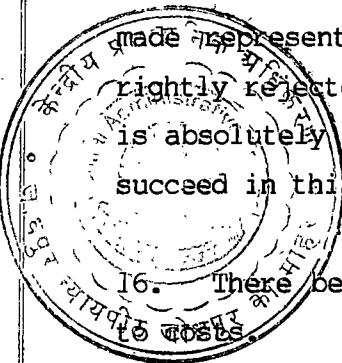
13. It may be that in the seniority list (Annex. A-12), the name of the applicant was shown above respondent No.4 but that seniority list does not survive because thereafter the position of the applicant was changed placing respondent No.4 at Sl. No. 13 and that applicant at Sl. No. 21. The applicant filed OA against downgrading his seniority. The Tribunal had allowed the OA only on the ground that the seniority position was changed without following the principles of natural justice. The official respondents thereafter issued a show cause notice to the applicant and informed him vide communication dated 20.05.1993 that the seniority position of the applicant shown in the seniority list dated 20.12.1985/01.01.1986 was erroneous and the position shown in the seniority list dated 20.07.1987 was correct.

It is not pointed out that the applicant challenged the said communication dated 20.05.1993 (Annex.A/21) by filing OA. Therefore, the seniority position of the applicant attained finality in May, 1993. The applicant now cannot be heard to say that he was not given proper position in the seniority list.

14. It is not in dispute that as per the directions contained in the Railway Board's letter dated 12.08.1975, the applicant has been granted higher pay scale of Rs.330-560 on completion of ten years of service. It is natural that in the seniority list of Pharmacists with the pay scale of Rs.330-560 the applicant will be below respondent No.4 because the respondent No.4 was already a qualified person and he had got the pay scale of Rs.330-560 from the date of his appointment.

15. The respondents have issued the seniority list of the Pharmacists holding the pay scale of Rs.5500-9000 (old pay scale Rs.330-560) as on 31.07.2000, in which the name of the applicant has been shown at Sl. No.8, whereas respondent No.4 has been shown at Sl. No.2. The applicant



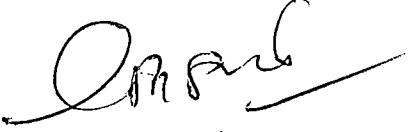


made representation against the said seniority list but the same was rightly rejected vide communication dated 10.04.2001 (Annex. A-3). There is absolutely no circumstance in favour of the applicant on which he can succeed in this OA.

16. There being no merit in this OA, it is dismissed with no order as

  
(A.P. NAGRATH)

MEMBER (A)

  
(G.L. GUPTA)

VICE CHAIRMAN