

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 875 of 1997.

Date of Order : 01.05.2003

present : Hon'ble Mr. S. Biswas, Administrative Member

Hon'ble Mr. A. Sathath Khan, Judicial Member

Dr. Bharata Chandra Pati, Sr. Medicinal Officer,
Special Service Bureau (SSB) posted at Group
Centre, Barasat, District North 24-parganas,
West Bengal.

.....Applicant.

- Versus -

1. The Union of India, through the Secretary, Cabinet Secretariat, Bikanir House Annexie, New Delhi.
2. The Secretary, Dept. of Cabinet Affairs Govt. of India, Bikanir House Annexie, New Delhi-1.
3. The Director, S.S.B. East Block (V), R.K. Puram, New Delhi.
4. Mr. K.K. Luthra, Joint Deputy Director, S.S.B. East Block (V), R.K. Puram, New Delhi-66.
5. The Divisional Organiser, S.S.B. South Bengal Division, 1, Hazi Md. Hussain Square, Calcutta-17.
6. Dr. B.B. Gurnik, Service through Divisional Organiser, North Bengal, Siliguri, Darjeeling.
7. Dr. M.L. Bhuyan, Service through Divisional Organiser, S.S.B. Manipur, Imphal.
8. Commandant, Group Centre, Barasat, District 24-Parganas (North).

For the applicant : Mr. S.K. Mukhopadhyay, Counsel

for the respondents : Mr. M.S. Banerjee, Counsel.

ORDER

MR. A. SATHATH KHAN, JM:

Aggrieved by the impugned seniority list dated 23.09.1987,

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the applicant has approached this Tribunal to quash the said seniority list dated 23.09.1987 and to direct the respondents to restore the seniority as per the seniority list dated 07.04.1975.

2. The case of the applicant is that he was appointed as Medical Officer CAS(Grade-I) and he joined on 30.10.1974, that the seniority list of CAS (Grade-I) as on 31.03.1975 was forwarded by letter dated 07.04.1975, wherein it was clarified that the order of merit assigned to them at the time of selection was the criteria for fixing seniority, that the applicant was at serial no. 29 and the respondents 6 & 7 were at serial no. 30 & 34 respectively, that the S.S.B. (Medical) Service Rules 1977 were framed under Article 309 of the Constitution of India w.e.f.01.03.1977, that the respondents by mis-interpreting Rule 6(2) of the S.S.B. (Medical) Services Rules 1977 down graded the position of the applicant in the seniority list dated 23.09.1987 by showing respondents 6 & 7 at serial no. 14 & 15 respectively and the applicant at serial no. 17, that the applicant made a representation against the said fixation of seniority but the respondents by letter dated 20.01.1988 informed the applicant that the fixation of the said seniority was on the basis of date of joining as per Rule 6(2) and 7 of the S.S.B. (Medical) Services Rules 1977, that the applicant again made a representation dated 27.07.1994, that in the meanwhile the respondent no. 7 was promoted on the basis of the impugned seniority list, that the impugned seniority list is illegal and the action of the respondents in promoting respondent no. 7 on the basis of impugned seniority list is illegal. Hence, the applicant has filed the above O.A.

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3. The respondents contended that the applicant and the respondents 6 & 7 were selected as CAS(Grade-I) by direct recruitment, that their seniority was fixed in the order of merit drawn by the selection committee and the applicant was shown senior to respondent 6&7 as per the instructions of the Ministry of Home Affairs in O.M.9/11/55 - RPS dated 22.12.1959, that the S.S.B. (Medical) Service Rules, 1977 were framed under the Article 309 of the Constitution of India, that as per Rules 6(2) of the said Rules, the screening committee should prepre list of persons considered suitable for appointment to the said service in the order of seniority based on the date of continuous appointment, that every person considered suitable should be given opportunity to express his willingness to be absorbed and appointed to the post, that the option once exercised shall be final, that the applicant was given such an opportunity and the applicant submitted his willingness in writing for permanent absorbtion and determination of seniority in accordance with the said rules, that the respondents 6 & 7 were also found suitable for appointment to the said service, that the seniority of the applicant and the respondent 6 & 7 was refixed in accordance with rule 6(2) which provided for fixation of seniority on the basis of continuous appointment in the grade, that the applicant who had joined on 30.10.1974 became junior to the respondent 6 & 7 who had joined on 15.09.1974 and 16.09.1974 respectively, that the seniority of the applicant has been correctly refixed in accordance with the 1977 Rules, that the applicant having exercised his option for permanent absorbtion and determination of seniority in accordance with the 1977 Rules is barred from challenging the seniority list dated 23.09.1987 prepared on the basis of said 1977 Rules and that there are no merits in the O.A. Hence, the respondents prayed for the dismissal of the O.A.

4. Heard the Ld. Counsel for the applicant and the respondents and considered all the pleadings and the relevant records of the case.

5. The point for consideration in this case is whether the impugned seniority list dated 23.09.1987 is valid or not and whether the applicant is entitled to restoration of his seniority as per the seniority list dated 07.04.1975. It is not disputed by the respondents that the applicant was senior in the seniority list of 07.04.1975 which was prepared on the basis of the Ministry of Home O.M. dated 22.12.1959. But the contention of the Ld. Counsel for the respondents is that after coming into the force of S. S. B. (Medical) Services Rules, 1977, the seniority was refixed in accordance with Rule 6 (2) of the said Rules after the applicant exercised the option in writing for permanent absorption and determination of seniority in accordance with 1977 Rules. The Ld. Counsel for the applicant admits that the applicant had exercised such an option. The applicant was shown senior to respondent 6 & 7 in the seniority list of 07.04.1975 on the basis of merit position in the select list in accordance with the Ministry of Home O.M. dated 22-12-1959 but the applicant was shown as junior to respondent no. 6 & 7 on the basis of date of joining in accordance with 1977 Rules. Having exercised such an option in writing, the applicant cannot object to the re-fixation of his seniority in accordance with 1977 Rules. Under these circumstances we hold that the seniority list dated 23.09.1987 prepared in accordance with 1977 Rules is valid.

6. In the result, the O.M. is dismissed with no order as to costs.

MEMBER (J)

1/5/2003

ASVS

S. B. M.
MEMBER (A)