

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION: 1178/1997
DATED THE 10TH DAY OF JAN, 2003

CORAM: HON'BLE SHRI JUSTICE D.N.CHOWDHARY, VICE CHAIRMAN
HON'BLE SMT.SHANTA SHAstry, MEMBER(A)

Dr. (Mrs) Krishna Ray,
working at Ammunition Factory,
Ordnance Factories Hospital,
Khadki, Pune - 411 003.

... Applicant

By Advocate Shri R.C.Ravlani

V/s.

1. Union of India
through
The Secretary,
Ministry of Defence,
South Block, New Delhi-110 011.
2. The Chairman
Ordnance Factory Board,
10-A, Khudli Ram Bose Road,
Calcutta - 700 001.
3. The General Manager,
Ammunition Factory,
Khadki, Pune-411 003.
4. Dr.D.R.Waghmare,
Principal Medical Officer,
H.E.Factory, Khadki,
Pune - 411 003.
5. Dr.S.S.V.Rao,
Principal Medical Officer,
O.F.Tiruchirapally (Tamil Nadu).
6. Dr.J.C.Boro,
Principal Medical Officer,
Gun & Shell Factory,
Cossipore (Calcutta).
7. Dr.C.N.Khadgi,
Principal Medical Officer,
Ordnance Factory, Ambajhari,
Nagpur (Maharashtra)

... Respondents

By Advocate Shri R.R.Shetty for
Shri R.K.Shetty

(ORAL)(ORDER)

Per Smt. Shanta Shastry, Member(A)

The applicant ~~who~~ was initially posted as Assistant Medical Officer at Ordnance Factory Dum Dum on 28/7/1980 and got promoted as Senior Medical Officer on 12/1/1989 and was further promoted as Principal Medical Officer on 31/10/1995. The applicant was at Serial no.170 in the seniority list of Assistant Medical Officers. There were some junior doctors to the applicant who were appointed on 8/2/1981, 7/8/1980, 1/8/1980 and 1/10/1981 i.e. respondent nos.4,5,6 and 7. On account of their belonging to the reserved category they got accelerated promotion as Senior Medical Officer with effect from 20/4/1987, 11/5/1987, 29/4/1987 and 25/5/1987. ^{respectively} As compared to the applicant's seniority of 58 in the list of Senior Medical Officers these respondents four to seven were placed at serial no.52,53,54 and 55 thus stealing a march over the applicant. Thereafter all the four respondents were also promoted to the post of Principal Medical Officer on 31/10/1995 i.e. on the same day on which the applicant was promoted. Again they were shown senior to the applicant as Principal Medical Officer.

2. The relief sought by the applicant in the OA is for restoring his seniority over the respondents 4 to 7 in the post of Senior Medical Officer with consequential benefits like seniority, consideration for next promotion, pay fixation and arrears of pay and allowances, etc.

3. It is the contention of the applicant that in view of the judgement in the case of Union of India & Ors V/s. Virpal Singh ^{Chauhan} & Ors 1995 31 ATC 813, the seniority of the general candidate is

required to be restored to their basic grade seniority with effect from 10/2/1995 and since the applicant was originally senior to the respondents 4 to 7 his original seniority in the post of Assistant Medical Officer ought to have been restored even in the position of Senior Medical Officer.

4. The applicant has further contended that although the Government of India issued OM dated 30/1/1997, giving effect to the judgement in the case of Virpal Singh Chauhan, the actual cut off date has to be 10/2/1995 and therefore also, as in 1995, the applicant ought to have been shown senior to the respondents 4 to 7.

5. The applicant submits that she made representation to the respondents i.e. Ordnance Factory Board, through the General Manager in regard to the seniority position of the applicant. A further representation was submitted on 19/8/1997. However, the representation has not been considered by the respondents.

6. The respondents have also filed their written statement and have opposed the prayer. According to the respondents the applicant is relying on the decision of the Hon'ble Supreme Court in the case of Virpal Singh (supra) wherein it was laid down that even if SC/ST candidate is promoted earlier by virtue of reservation, and the senior general candidate is promoted later to the same higher post, then the general candidate shall rank senior by over such SC/ST candidate promoted earlier. The earlier promotion of SC/ST candidate in such a situation does not confer upon him seniority over the general candidate even though the General candidate may have been promoted at a later date to that category and this decision was sought to be implemented by

Government of India through the OM dated 30/1/1997. The respondents submit that the law laid down in Virpal Singh Chauhan(^{supra}) is no longer good in that ^{fact} 85th Constitutional Amendment has come about vide notification dated 4/1/2002 by which amendment the judgement of Virpal Singh Chauhan has been nullified. It is no longer necessary to restore the seniority of the general candidate over that of the reserved category ^{who} got accelerated promotion. The constitutional amendment has come into force from 17/6/1995. In view of this position and since the applicant and the respondents were promoted as on 31/10/1995 ^{to the post of Principal Medical Officer} the prayer of the applicant for restoring her seniority in the post of Senior Medical Officer does not survive. The learned counsel for the respondents has further pointed out that the judgement in the case of Virpal Singh Chauhan and Ors related to Railway Rules and the directions were with specific direction to the Railway Authorities and the date of 10/2/1995 was also specific to the Railways because the Government of India thereafter issued instructions on 30/1/1997 thus barring the Railway employees, the judgements in the case of Shri R.K.Sabharwal and Virpal Singh Chauhan ^{and} is applicable only from the date of issue of OM dated 30/1/1997 of the Government of India and since as on 30/1/1997, the constitutional amendment has already taken effect from 17/6/1995, the applicant cannot have any claim for restoration of her seniority over that of the alleged junior reserved candidates i.e. respondents 4 to 7.

7. We have heard the learned counsel for the applicant as well as the respondents. In our considered view since the applicant was promoted to the post of Principal Medical Officer

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on 31/10/1995 alongwith respondents 4 to 7 by which date the 85th Constitutional Amendment had already come into force i.e. on 17/6/1995, the applicant is not entitled to regain her seniority over the private respondents. The applicant is praying for regaining of seniority with reference to the post of Senior Medical Officer. In our considered view the private respondents were promoted in 1987 to the post of Senior Medical Officer and the applicant in 1989, the seniority cannot now be unsettled after such a long lapse of period. That was also not the intention of the Hon'ble Supreme Court. The idea was that the seniority of general candidate should be restored when considering for the next level of promotion. In this case next level was that of Principal Medical Officer and the applicant really did not lose on account of seniority when it came to the promotion to the post of Principal Medical Officer because she was also promoted on the same date as respondents 4 to 7. No injustice has been done in our considered view in this matter.

8. In the facts and circumstances of the case and for the reasons recorded above, the applicant has no case. The OA fails and is dismissed accordingly dismissed without any order as to costs.

Shanta Shastray

(SMT. SHANTA SHAstry)
MEMBER(A)


(D.N. CHOWDHARY)
VICE CHAIRMAN

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