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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI-5.

O.A. NO. 182 of 1994
T.A. NO.

DATE OF DECISION 16.3.1998

Dr L.N. Phukan

(PETITIONER(S))

Mr B.K. Sharma

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India and others

RESPONDENT (S)

Mr A.K. Choudhury, Addl. C.G.S.C.

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE MR JUSTICE D.N. BARUAH, VICE-CHAIRMAN

THE HON'BLE MR G.L. SANGLYINE, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.182 of 1994

Date of decision: This the 16th day of March 1998

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

Dr (Shri) L.N. Phukan,
Chief Medical Officer,
P&T Department, Dispur,
Guwahati.

.....Applicant

By Advocate Mr B.K. Sharma.

- versus -

1. Union of India, represented by the Secretary, Government of India, Ministry of Health & Family Welfare, New Delhi.
2. The Secretary, Government of India, Ministry of Communications (Department of Posts), New Delhi.
3. The Chief Postmaster General, Assam Circle, Guwahati,

and 61 others.Respondents

By Advocate Mr A.K. Choudhury, Addl. C.G.S.C.

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O R D E R

BARUAH.J. (V.C.)

In this application the applicant has challenged the Annexure H Seniority List of Chief Medical Officers (Non Functional Selection Grade) (NFSG for short) of the Central Health Service under Ministry of Health and Family Welfare.

2. The case of the applicant is that at the material time he was serving as Chief Medical Officer. The applicant was superseded by his juniors as will be evident from Annexure A/1 Civil List of Chief Medical

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Officers as on 1.1.1992. These junior Doctors had been promoted with effect from 1.3.1990 to the post of Chief Medical Officer (NFSG). Thereafter by Annexure E Order dated 18.6.1992 the applicant was also promoted with retrospective effect from the same date on which the Doctors junior to the applicant had been promoted. After the Annexure E order was passed, Annexure B/l Civil List of Chief Medical Officer (NFSG) was published whereby the applicant's position was pushed down below the junior Doctors who had been promoted earlier to the applicant even though on a subsequent date he was also promoted with retrospective effect. Being aggrieved, the applicant filed Annexure C representation dated 18.5.1993. In para 4 of the said representation the applicant challenged the Annexure B/l Seniority List. We quote para 4.

"4. That I have gone through the Civil List thoroughly and find that there are anomalies in respect of me, the particulars of which are as under:

- a) In the Civil List under reference my name has been shown against Sl.No.140, which is not correct. In this connection a reference is invited to Ministry of Health & Family Welfare letter No.A.46011/5/92 CHS.II dtd. 22/10/92, wherein my position has been shown at Sl.No.89 i.e. I was placed just after Dr. M.K. Dey, who has been now placed at Sl.**78. So, naturally, my name should have appeared against Sl.No.79.
- b) My place of posting has been shown as Delhi Administration which is totally incorrect. Thus the same may be corrected.
- c) While, my actual date of entry into CHS is 09/08/68, but my date of entry in CHS in the Civil List under reference has been shown as 17/11/67. This may also be corrected.
- d) My date of appointment to Chief Medical Officer, Grade is actually 26/04/88 and not 14/03/88 which may also be corrected."

This representation was disposed of by Annexure D order dated 14.2.1994 issued by the Assistant Postmaster General (Staff). In the said order it is stated as follows:

".....The said DPC did not recommend your name for promotion. Accordingly your seniority has been re-fixed in accordance with instructions on the subject."

Thereafter the applicant submitted Annexure F representation dated 22.2.1994. However, this representation was not disposed of. Situated thus, the applicant has approached this Tribunal by filing this present original application.

3. We have heard both sides. Mr B.K. Sharma, learned counsel for the applicant raised the following grounds:

- i) though Annexure D order refers to 'instructions on the subject' it has not been made clear what were the instructions on the basis of which the applicant's seniority was refixed pushing him down below his erstwhile juniors.
- ii) As the promotions had been given with retrospective effect the applicant's placement ought to have been above the junior Doctors who had been earlier promoted.
- iii) The applicant's placement in the grade of Chief Medical Officer (NFSG) being non-functional his seniority should have been maintained as available in the grade of Chief Medical Officer.
- iv) the seniority was wrongly decided on the ground that the applicant ought to have earned at least two 'very good' gradings which he did not earn at all; but the fact is that during that period no grading was given to the applicant.

Ofcourse, Mr Sharma raised the last ground after looking through the record and the written statement.

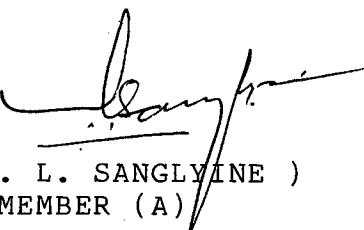
4. Mr A.K. Choudhury, learned Addl. C.G.S.C., on the other hand tried to justify the order of the respondents. He also submits that the applicant was not selected by the earlier DPC as he was not found fit, on his subsequent promotion he would get the seniority below those persons

AB who.....

had been promoted earlier, may be on the same date.

5. On hearing the learned counsel for the parties we find that the authority did not consider certain points even though these were urged by the applicant in his representation. Furter, as submitted by Mr B.K. Sharma, the denial of promotion in the first DPC was also on a wrong assumption inasmuch as during 1984-85 no grading was given to the applicant. In our opinion, all these require fresh consideration by the authorities. Accordingly we dispose of this application with direction to the respondents, more specifically the first respondent- the Secretary, Government of India, Ministry of Health & Family Welfare, to examine the entire matter and pass a reasoned order. The applicant may file a fresh representation highlighting all his points within a period of fifteen days from today if so advised. If such representation is filed by the applicant within the period mentioned, the respondents shall consider that representation also and pass a reasoned order as early as possible, at any rate within a period of three months from the date of receipt of this order. If the applicant is still aggrieved he may approach the appropriate authority, if so advised.

6. The application is accordingly disposed of. Considering the facts and circumstances of the case we make no order as to costs.


(G. L. SANGLYINE)
MEMBER (A)


(D. N. BARUAH)
VICE-CHAIRMAN