

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**OA-2623/2016
MA-2392/2016**

Reserved on : 08.05.2017.

Pronounced on : 31.07.2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Dr. Anita Jain, aged about 60 years,
Additional Medical Superintendent
Safdarjung Hospital, New Delhi.

..... Applicant

(through Sh. Mayank Jain, Advocate)

Versus

1. Union of India,
Ministry of Health & Family Welfare,
Nirman Bhawan Maulana Azad
Road, New Delhi through its
Secretary.
2. Dr. D.C. Joshi, aged about 60
Years, Director, Central Government
Health Scheme, Nirman Bhawan,
Maulana Azad Road, New Delhi.

..... Respondents

(through Sh. Ranjan Tyagi, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant is working in the Senior Administrative Grade in the General Duty Medical Officer cadre in the Central Health Service (CHS). Presently, she is posted as Additional Medical Superintendent, Safdarjung Hospital, New Delhi. According to her,

she is highly qualified and possesses degrees, such as, MBBS, MS, MBA, LLB, Diploma in Hospital Management, Diploma in Disaster Management, Diploma in Maternal and Child Health, Diploma in AIDS and Family Education, Diploma in Health and Family Welfare Management. All her qualifications are recorded in her service book. Her grievance is that one Dr. D.C. Joshi (respondent No.2) has been appointed as Director, CGHS, despite the fact that she was senior to him and had an impeccable service record. Aggrieved by the aforesaid decision, she submitted a representation to the respondents on 02.03.2015. This was, however, rejected by them on 10.04.2015. The applicant preferred a review application on 16.06.2016 and has filed this O.A. on 20.07.2016. Along with the OA, she has filed MA-2392/2016 for condonation of delay of 101 days in filing the OA. For the reasons stated in the MA, the same is allowed and delay is condoned.

2. According to the applicant, she satisfies all the eligibility conditions for being appointed as Director, CGHS. She has an unblemished record of service and her ACRs would reveal that she has been outstanding in her performance. She was also senior to the respondent No.2. Yet, the respondent No.2 has been appointed superseding her. She has submitted that this decision smacks of arbitrariness and illegality. According to her, the criteria for appointment on the aforesaid post was seniority and suitability,

which means that the senior most person should have been appointed until and unless that person was unfit for appointment. However, the respondents have acted in contravention of this rule and discriminated against the applicant. She has relied on several judgments of the Apex Court, such as, **Sukhdev Singh Vs. UOI & Ors.**, (2007) 2 SCC 363, **Valsala Kumari Devi M Vs. Director, Higher Secondary**, (2007) 8 SCC 533, **Smt. Santosh Sherry Vs. RFC Jaipur**, CWP No. 4015/1996. She has also relied on the judgment of the Apex Court in the case of **Tarsem Singh and Anr. Vs. State of Punjab and Ors.**, (1994) 5 SCC 392 as well as the judgment of this Tribunal in the case of **Dr. A.K. Rai Vs. UOI**.

3. In their reply, the respondents have submitted that it was well within their rights to select the most suitable candidate for the post of Director, CGHS in the interest of service. Raising objection to such selection was frivolous and deserved to be rejected. The respondents have further submitted that the competent authority had duly considered the record of the applicant as well as other eligible officers and had decided to appoint respondent No.2 to the aforesaid post. Further, respondents have stated that criteria for selection was not seniority alone. Other credentials and capabilities of the officer were also taken into account. The respondents have also stated that respondent No.2, who has been appointed as Director, CGHS, was also a regularly promoted officer of Senior

Administrative Grade of the service and was qualified to hold the post.

4. We have heard both sides and have perused the material placed on record. Our attention was drawn to Annexure R-2 (page-165 of the paper-book), which contains the notes of the Ministry by which selection for the post was made. Learned counsel for the applicant drawing strength from the aforesaid note stated that the applicant was the senior most eligible officer. The notes also reveal that her record was found to be the best along with respondent No.2. Yet, the applicant has been over looked and respondent No.2, who was much junior to the applicant in the seniority list has been appointed.

4.1 On the other hand, learned counsel for the respondents argued that both the applicant and respondent No.2 are working in the Senior Administrative Grade of the service. The post of Director, CGHS is also in that grade. As such, the appointment of respondent No.2 on that post was not a case of promotion. All the arguments advanced by the applicant and the judgments cited pertained to cases of promotion and were not relevant in the instant case.

4.2 We have considered the aforesaid submissions and perused the Notification issued by the Ministry of Health & Family Welfare containing the Rules of the Central Health Service effective from

07.04.2014. Schedule-II of these Rules (page-43) reveals that the Senior Administrative Grade of the service comprises of Teaching Specialist Sub-Cadre, Non-Teaching Specialist Sub-Cadre, Public Health Sub-Cadre as well as the General Duty Sub-Cadre. In the General Duty Sub-Cadre at No. 3 is listed the post of Director, CGHS. The post occupied by the applicant is listed at Serial No.12 of the same cadre. A mere perusal of these Rules would make it abundantly clear that both the posts, namely, the post of Director, CGHS and Additional Medical Superintendent, Safdarjung Hospital, New Delhi are listed under the Senior Administrative Grade of the service carrying the pay scale of Rs. 37400-67000 with Grade Pay of Rs.10000/-. Thus, it is evident that the appointment of respondent No.2 as Director, CGHS was not a promotion but a case of lateral shifting since he was already working in the Senior Administrative Grade of the service at the time when he was chosen for appointment to the post in question. The applicant had stated that this was not a case of lateral shifting as the post of Director, CGHS is ranked higher than the post of Additional Medical Superintendent occupied by the applicant. However, we are not convinced by this argument. Simply because the post of Director, CGHS is listed at Serial No. 3 whereas the post of Additional Medical Superintendent occupied by the applicant is listed at Serial No.12 of the cadre does not mean that the post of Director, CGHS is higher in rank. Both the

posts are part of the same General Duty Sub-Cadre in the Senior Administrative Grade. There is also no force in the argument of the applicant that Director, CGHS controls Several Additional Directors of this Scheme and is therefore higher. While it is possible that this post may be having administrative control over other Additional Directors of this Scheme but that does not make it a higher post. Moreover, the applicant holding the post of Additional Medical Superintendent, Safdarjung Hospital is not required to work under the administrative control of respondent No.2. Since both posts were in the same grade, we do not find any fault in the action of the respondents in appointing respondent No. 2 to this post despite the fact that the applicant was senior to him.

4.3 We have also perused the various judgments relied upon by the applicant. We find that the judgment of Apex Court in the case of **Valsala Kumari Devi** (supra) and the judgment of Hon'ble Rajasthan High Court in the case of **Smt. Santosh Sherry** (supra) both relate to promotion cases. Similarly, we find that the judgment of Apex Court in the case of **Tarsem Singh** (supra) also pertained to promotion. Since we have already come to the conclusion above that this was not a case of promotion but of lateral shift, none of these judgments are applicable in the instant case and can be of any help to the applicant.

4.4 The judgment of this Tribunal in the case of **Dr. A.K. Rai** (supra) relied upon by the applicant relates to the appointment of Head of the Department in which both the applicant as well as respondent No.4 were working. The applicant despite being senior was required to work under the administrative control of his junior. In those circumstances, this Tribunal had allowed the OA and granted relief to the applicant therein. However, in the instant case the applicant is not required to work under the administrative control of respondent No.2 as the applicant is working in Safdarjung Hospital, which is not under the administrative control of Director, CGHS. Hence, this judgment also cannot be of much held to the applicant. The judgment of **Sukhdev Singh** (supra) relied upon by the applicant deals with un-communicated below benchmark APARs and has no relevance in this case.

5. In view of the aforesaid, we do not find any merit in this O.A. and the same is dismissed. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

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