

**Central Administrative Tribunal
Principal Bench**

OA No.2623/2016

New Delhi, this the 6th day of July, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)**

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

(By Advocates: Shri Mathur Jain, Shri B.R. Jain and Shri
Shantanu Jain)

Versus

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

(By Advocate: Shri Ranjan Tyagi)

ORDER (ORAL)

Justice L. Narasimha Reddy :-

The applicant joined the Central Government Health Service(CGHS for short) in the year 1979 and thereafter held various posts. The post of Director, CGHS fell vacant in the year 2014. Steps were initiated for filling up the same, taking note of the fact that there were no specific rules for recruitment to the post. The Ministry of Health and Family Welfare initiated

steps to fill up the said post and the principle of "seniority and suitability" was identified to select candidates. In the seniority list of eligible candidates, such of them who were left with tenure of over two years were identified, and five of them were found suitable. Out of them, the applicant who figured at SI. No.4 in the seniority list, was on the top of the list. The second respondent, who was at SI. No. 19 in the seniority list, was candidate No.5. The three other candidates who figured at SI. Nos. 10, 11 and 12 in the seniority list and 2, 3 and 14 in the short list, were held to be not suitable on account of their not being part of CGHS.

2. The Additional Secretary and Director General, CGHS to whom the matter appears to have been entrusted, had analyzed the relative merits of the applicant on the one hand and the second respondent on the other. He noted that the ACRs of the applicant in the present OA, for the past three years were not available. He further stated that the respondent No.2 is associated with CGHS for long and is hard working, knowledgeable and efficient, therefore, recommended his name. Accordingly, the second respondent was

appointed as Director, CGHS vide proceedings dated 27.02.2015, the same is challenged in this OA.

3. The applicant contends that when she is undisputedly the senior most and the appointing authority also did not find her unfit, there was no basis or justification for appointing the second respondent.

4. In the counter affidavit filed by the respondents, it is stated that there is no element of favoritism in the exercise of selection and it was done duly following the prescribed procedure. It is also stated that the suitability of the candidates was assessed and on finding that the second respondent more suitable, he was appointed.

5. The second respondent who was served with notice, did not choose to appear.

6. On an earlier occasion, the OA was dismissed through Order dated 31.05.2017 on certain grounds and when the matter was carried to the Delhi High Court by filing WP(C) No.5597/2017, the case was remanded to the Tribunal for fresh consideration.

7. We heard the learned counsel for the applicant, Shri Madhur Jain and learned counsel for the respondents, Shri Ranjan Tyagi.

8. Admittedly, the post in question i.e., Director of CGHS is not governed by any specific service rules. Obviously for that reason, the appointing authority has identified the principle of "seniority and suitability". It is evident from the notes submitted by the Additional Secretary and Director General of CGHS, the relevant portion reads as under:-

"2. As reported by CHS Division, there are no recruitment rules for appointment to this post and appointments have been made from senior SAG officers of GDMO sub-cadre of CHS on the basis of seniority and suitability. In this background, the seniority list of doctors, placed below at F/X (CP-9), may be perused. Most of the doctors in this list, upto seniority no. 20, retire within this calendar year itself; and some in fact have only 2-3 months to go. In view of the nature of the job, it is felt that continuity of tenure is important and the incumbent should have at least a year before he/she superannuates. The criterion leaves the following in fray:

- (i) Dr. Anita Jain(Seniority no.4)
- (ii) Dr. Ravindra Ahluwalia (Seniority no.10)
- (iii) Dr. Chandra Kant (Seniority no.11)
- (iv) Dr. Manisha Saxena (Seniority no.12)
- (v) Dr. Dinesh C. Joshi (Seniority no.19)

3. Out of the above list, 3 of them are currently not in CGHS. In fact, Dr. Ahluwalia and Dr. Chandra Kant have hardly any experience, if at all, of the CGHS. This is a

relevant criterion, though technically they are not debarred from the appointment to the post.

4. The gist of available APARs of these officers, placed below at F/Y, reveals that the best record is of Dr. Anita Jain and Dr. Dinesh C. Joshi. Between these two officers, it is seen that the last 3 APARs of Dr. Anita Jain are not available on record. I have had observed the work and conduct of Dr. Dinesh C. Joshi since November, 2014 and have found him to be hard working, knowledgeable and efficient. He is well regarded within the CGHS and can also effectively represent the organisation at various forums. He has shown initiative during his posting as the Addl. Director (HQ) – incharge of all Wellness Centres in the NCR region; and, in my view, would be the most appropriate candidate to the appointed as Director, CGHS.”

9. The criterion of “seniority and suitability” are the basis for selection. The appointing authority has to consider the seniority on the one hand and suitability on the other. Once a candidate, under consideration, is found suitable or if he is not declared unsuitable, the seniority would guide the process. In the instant case, nowhere in the consideration, the authority who assessed the merits of candidates expressed that the applicant is not suitable. On the other hand, the undisputed service particulars of the applicant, placed her above the other candidates.

10. The record discloses that the applicant was associated with the CGHS for about 32 years whereas the association of the second respondent was just few months as on the date of consideration. Added to that, not a word was uttered adverse to the applicant. The seniority being the prominent factor in deciding the candidature, it cannot be ignored, when there is nothing adverse against the applicant who is otherwise senior. In our view, the appointing authority has deviated from the principle of "seniority and suitability" and the appointment of the second respondent was totally untenable.

11. We are informed that the applicant has attained the age of 62 years and though entitled to continue up to the age of 65 years under the Revised Government scheme, she is not entitled to hold any administrative position.

12. Injustice that was meted out to the applicant cannot go unredressed. The appointment of second respondent as Director of CGHS vide proceedings dated 27.02.2015, deserves to be set aside. The petitioner is entitled to be treated as having been appointed as Director with effect from the date on which the second

respondent was appointed. Though we do not intend to grant any benefit of back wages, we direct that the appointment of the applicant as Director, CGHS be considered as notional which shall entitle her to the benefit in the context of pension and other purposes. We also direct that in case no other person below the age of 62 years in the service is holding the post of Director, the applicant shall be entitled to work against that vacancy till a regular appointment is made.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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