

CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

(ORDER ON INTERIM RELIEF)

O.A.NO.060/00412/2019

Pronounced on: May 8, 2019

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

Dr. Arun K. Jain, aged 60, S/o Sh. K.C. Jain, R/o H. No. 195, Sector 12-A, Panchkula Haryana currently working as professor in Eye Department and Head of Unit III in Advanced Eye Centre, Post Graduate institute of Medical Education & Research, Chandigarh Pin: 160014 (Group-A).

Applicant

**(BY: MR. D.S. PATWALIA, SR. ADVOCATE, WITH
MS. SUPRIYA GARG, ADVOCATE)**

Versus

1. Union of India through the Secretary, Ministry of Health and Family Welfare, Nirman Bhawan, new Delhi, 348 "A" Wing, Nirman Bhavan, New Delhi-110011.

(BY : MR. SANJAY GOYAL, SR. CGSC)

2. Post Graduate Institute of Medical Education and Research, Sector-12, Chandighr-160014, through its Director
3. Senior Administrative officer, Post Graduate Institute of Medical Education and Research, Sector-12, Chandighr-160014.

(BY MR. AMIT JHANJI, ADVOCATE)

4. Dr. Surinder Singh Pandav, Professor, Post Graduate Institute of Medical Education and Research, Sector-12, Chandighr-160014

(BY: MR. K.B. SHARMA, ADVOCATE)

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Respondents

O R D E R (INTERIM RELIEF)
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. This order would dispose of the prayer of the applicant for grant of interim relief, made in para 9 of the Original Application.
2. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, seeking quashing of impugned order dated 12.4.2019 (Annexure A-15) vide which his for seniority over and above respondent no.3 has been rejected and to direct the respondent no.2 to correct the error made in seniority list dated 25.9.2018 (Annexure A-12) and respondents be restrained from giving any benefit, out of the seniority list dated 25.9.2018.
3. The case, as projected by the applicant in the Original Application, is that for the last 23 years, applicant has been shown senior to Respondent No. 4 in the seniority lists issued in the years 2006, 2007, 2015 whether it was as Assistant Professor, Associate Professor or Professor, and even in the seniority list dated 31.01.2018 (Annexure A-9), he has been shown at Sr. No. 43 and respondent No. 4 at Sr. No. 44. Respondent No. 4, at the first time, after 23 years of service with the respondents, made a representation dated 25.11.2017 and 28.03.2018, taking a clue from the order passed by this Court in O.A. No. 00336/2017 titled Professor **ARUNANSHU BEHRA VS. UNION OF INDIA & OTHERS** wherein the respondents were directed to re-cast the seniority list. The respondents while accepting the representation of Respondent No. 4, in an arbitrary manner, changed the seniority list and he has been shown senior to the applicant in seniority list dated 25.09.2018. (Annexure A-12). A representation filed there against by the applicant has been rejected vide order dated 12.04.2019. It is pleaded that seniority position settled for the last 23 years cannot be unsettled. Moreover, the order dated 28.03.2018 passed by this Court

in the case of Professor Arunanshu Behra(supra), on the basis of which seniority list has been re-cast, stands set aside by the Hon'ble High Court in CWP NO. 11433/2018, vide order dated 23.01.2019 (Annexure A-13), therefore, the seniority list is not sustainable in the eyes of law and, as such the seniority list dated 25.09.2018 (Annexure A-12) and order dated 12.04.2019 (Annexure A-15), rejecting the representation filed there against, be quashed and set aside.

4. We have heard the learned counsel for the parties, on plea of the applicant for grant of interim relief.

5. Mr. Patwalia, Sr. Advocate, learned counsel for the applicant vehemently argued that the action of the respondents in altering the seniority list of the applicant and making respondent no.4 senior to applicant, after 23 years of service, is illegal, arbitrary and therefore, action is liable to be set aside and the appointment to head of Department should be made as per existing seniority list. For this, he places reliance on judgment in the case of **MALCOM LAWRENCE CECIL D'SOUZA VS. UNIONK OF INDIA ETC.**, MANU/SC/0459/1975, in which it was held settled things cannot be unsettled and as such seniority list dated 25.9.2018 (Annexure A-12) may be stayed and no further benefits be granted on the basis of same.

6. On the other hand, Mr. Amit Jhanji, Advocate, learned counsel for Respondents No.2&3, vehemently opposed the prayer of the applicant and submitted that the pleas raised by the applicant that the seniority cannot be altered after a long period cannot be disputed but in the present case, the seniority list has not yet been finalized and as such plea raised by applicant is not tenable.

7. On merits, he submits that as per Regulation 34 of the PGIMER, Chandigarh Regulation, 1967, the seniority of employees of the

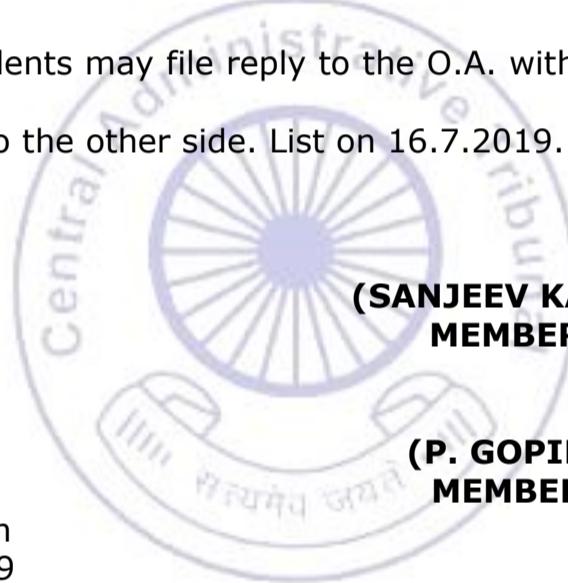
Institute in each category shall be determined by the order of merit in which they are selected for appointment to the grade in question, those selected on earlier occasion being ranked senior to those selected later, provided that in the case of members recruited by direct appointment, the order of merit determined by the Commission or the Selection Body shall not be disturbed in fixing the seniority. In other words, the seniority is to be maintained on the basis of position in the panel. In this case, as per panel, Annexure A-1, two candidates (applicant Dr. A.K. Jain and Respondent no.4 Dr. S.S. Pandav), had appeared for interview and after adjudging their suitability, they were recommended for appointment as per merit in which name of applicant no.1 was mentioned at Sr. No. 2 and that of respondent no.4 (Dr. S.S. Pandav) was at Sr. No.1. However, in the tentative seniority list(s) throughout, applicant was shown as Senior whereas respondent no.4 was shown as junior to him. Since, the list was never finalized so respondents did not get a chance to correct the error, as both of them were promoted on same date. It is for the first time, when respondent no.4 submitted a representation for correction of the tentative seniority list in 2017, that PGIMER took corrective steps and shown respondent no.4, senior to applicant, as per panel seniority position, in terms of Regulation 34 aforesaid. Therefore, he submits that plea of applicant deserves to be rejected out rightly.

8. On a careful examination of aforesaid pleas raised by both the sides, and in the wake of the fact that the final seniority list has not yet been published by the respondents and it is only a tentative seniority list and official respondents themselves have corrected their mistake by placing respondent no.3, over and above applicant on the basis of panel seniority in terms of indicated regulation, we do not find any grounds

made out to stay the seniority list or restrain the respondents from finalizing the seniority list and taking further action for promotion to the post of HOD. The balance of convenience does not lie in favour of the applicant. In case the applicant ultimately succeeds in the O.A., the court can always direct to extend him due benefits. So, it cannot be said that he would suffer any irreparable loss or injury which cannot be compensated. Even the *prima facie* case, does not appear to favouring the applicant, at this stage.

9. It is, however, made clear that the observations made hereinabove would not have any effect on the final adjudication of the issue involved in the instant O.A.

10. The respondents may file reply to the O.A. within four weeks, with copy in advance to the other side. List on 16.7.2019.



Place: Chandigarh
Dated: 08.05.2019

HC*