

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A./100/1233/2018

New Delhi, this the 7th day of August, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

Sushmita Pathy
Professor Department of Radiotherapy,
Dr. Ambedkar Institute Rotary Cancer
Hospital, All India Medical Institute,
New Delhi

....Applicant

(Through Ms. Geetanjali Mohan, Advocate)

Versus

1. All India Institute of Medical Sciences
New Delhi
Through Director
 2. Dr. Subash Chandra Professor and Head
Department of Radiation Oncology
Dr. BRAIRCH
All India Institute of Medical Science,
New Delhi
 3. Dr. Suman Bhaskar
Professor, Unit II Department of Radiotherapy
Dr. Ambedkar Institute Rotary Cancer Hospital
All India Institute of Medical Sciences,
New Delhi
 4. Dr. Daya Nand Sharma
Professor Unit I,
Department of Radiotherapy Unit-I
All India Institute of Medical Sciences,
New Delhi
- ... Respondents

(Through Sh. Manoranjan Paikaray, Sh. Satyabrata Panda
and Sh. Aniruddha Purushotham, for respondent 3
Shri Sanjay Kumar with Ms. Kalpna Devi, for
respondents 1 and 2
None for respondent 4)

ORDER (Oral)

Justice L. Narasimha Reddy, Chairman

The All India Institute of Medical Sciences (AIIMS), first respondent herein, issued a notification in the year 2002 proposing to fill three posts of Assistant Professor in Radiotherapy. The applicant, respondents 3 and 4 and many others applied. The results were declared in the year 2003. While respondents 2 and 3 and one Dr. Satyajit Pradhan were selected, the applicant and Dr. Dilip Parida were placed at serial number 1 and 2 in the waiting list. Dr. Satyajit Pradhan did not join the post. After prolonged litigation, the applicant was issued an order of appointment dated 10.04.2004 and she joined duty two days thereafter.

2. Recently, the occasion arose to appoint the Head of Department (HoD) in the Radiotherapy Unit. The applicant states that she is senior to respondents 3 and 4 and ought to have been appointed as HoD. The applicant made a representation to the respondents with a request to fix seniority in the post of Assistant Professor of Radiotherapy. Through letter dated 7.02.2018, the respondents informed the applicant that according to the ranking assigned in the select list, she figures at serial number 4 whereas respondents 3 and 4 are placed in the merit list at serial number 3 and 1,

respectively. It is also stated that respondents 3 and 4 are senior to the applicant.

3. This OA is filed challenging the letter dated 7.02.2018 and with a prayer to declare the applicant as senior to respondents 3 and 4. Other consequential reliefs are also prayed for.

4. The applicant submits that the Selection Committee rated Dr. Satyajit Pradhan as A+, her as A and respondents 3 and 4 as B+ and if the ranking is to take place accordingly, she was to figure above respondents 3 and 4. It is also stated that though respondents 3 and 4 joined the service in June, 2003, the issuance of order of appointment to the applicant was delayed on account of the writ petition filed by Dr. Dilip Parida and she joined the duties within two days after issuance of offer of appointment to her. The applicant further submits that the first respondent followed 'Floating Reservation' policy and respondents number 3 and 4, who are from SC and OBC category respectively, are treated as seniors despite their low ranking.

5. Respondents 1, 2 and 3 filed separate counter affidavits. According to them, the Selection Committee, which met on 1.04.2003 assigned the ranking to the candidates and the applicant was not selected but was put in the waiting list. It is also stated that the seniority list was issued in the year 2004

wherein the name of the applicant figured below the names of respondents 3 and 4, and that she did not raise any objection. Referring to the dates of appointment of the applicant, on the one hand and respondents 3 and 4, on the other, the respondents state that the applicant cannot be treated as senior to them.

6. We heard Ms. Geetanjali Mohan, for the applicant, Shri Sanjay Kumar with Ms. Kalpna Devi, for respondents 1 and 2 and Shri Manoranjan Paikaray, Shri Satyabrata Panda and Shri Aniruddha Purushotham, for respondent 3.

7. The undisputed facts are that the selection to the post of Assistant Professor of Radiotherapy took place in the year 2003, and the Selection Committee prepared a list of selected candidates based on merit, as under :

- “i) Dr. D.N. Sharma
- ii) Dr. Satyajit Pradhan
- iii) Dr. Suman Bhaskar

Waiting List:-

- i) Dr. Sushmita Pathy
- ii) Dr. Dilip Kumar Parida”

8. From this, it becomes clear that the applicant was waitlisted whereas respondent 3 and 4 were placed at serial number 3 and 1 respectively in the list of selected candidates. Dr. Satyajit Pradhan did not join the post and being number

1 in the waiting list, the applicant was appointed on 10.04.2004, after prolonged litigation.

9. Once the selection is on the basis of ranking of the candidates assigned by the Selection Committee, the Tribunal cannot act as an Appellate Authority, that too, at this length of time. Further, the applicant did not object to the ranking at any point of time, not to speak of the litigation that ensued earlier. Therefore, if one goes by the ranking assigned by the Selection Committee, there is no way, that the applicant can be treated senior to respondents 3 and 4.

10. This is not a case where the selection was made separately for different categories, such as Unreserved, OBC, SC/ST. If a selected candidate belonging to a particular category did not join, only a candidate from that very category was liable to be appointed. Added to that, the fourth respondent who was said to be an OBC, was placed at serial number 1 in the merit list whereas Dr. Satyajit Pradhan, an unreserved candidate was placed at number 2. That only shows that the placing of the candidates in the merit list was not on the basis of their social status but purely on merit. At any rate, if the applicant had any grievance in that behalf, she was expected to raise the issue at the relevant point of time.

11. Another factor that becomes relevant in the context of determining seniority is the date on which the concerned employees were appointed. It is not in dispute that respondents 3 and 4 were appointed and joined duty in June 2003, whereas the applicant was appointed on 10.04.2004, and joined the duty on 12.04.2004. In case, the applicant was of the view that she was entitled to be appointed on the same date on which respondents 3 and 4 were appointed, she was expected to press for that in the litigation that ensued before the Hon'ble Delhi High Court. Since no steps in that direction were taken, the question of declaring the applicant senior to respondents 3 and 4 does not arise.

12. The OA is accordingly dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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