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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

D.A. No. 1300 OF 2003

New Delhi, this the 16th day of January, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

Dr. C.P. Dubey,
Reader,
A & U Tibbia College,
Karol Bagh,
New Delhi

.....Applicant
(By Advocate : Shri S.D. Raturi)

VERSUS

1. The Lt. Governor of Delhi,
Rajpur Road,
Delhi.
2. Govt. of NCT of Delhi,
through its
Chief Secretary (Delhi Secretariat),
Govt. of NCT of Delhi, T.P. Estate,
New Delhi-110002
3. Principal Secretary,
Health & Family Welfare Deptt.,
Govt. of NCT of Delhi (Delhi Secretariat)
T.P. Estate,
New Delhi- 110002
4. Director (I.S.M. & H.),
Govt. of NCT of Delhi,
Health & Family Welfare Deptt.,
A & U Tibbia College Campus,
Karol Bagh,
New Delhi-110005
5. Joint Director (I.S.M. & H.),
Head of Office,
Govt. of NCT of Delhi,
A & U Tibbia College Campus,
Karol Bagh,
New Delhi-110005
6. Dr. M.A. Iari, Principal,
A & U Tibbia College,
Karol Bagh,
New Delhi-110005.
7. Dr. R.N. Sinha,
A & U Tibbia College,
Karol Bagh,
New Delhi-110005

(By Advocate: Shri Vijay Pandita, R-1 to R-6 and
Shri Mohit Madan, proxy for
Mrs. Avnish Ahlawat for R-7)
ORDER (ORAL.)

Unserved

Shri R.K.Upadhyaya, Aministrative Member

The applicant in this application is seeking a direction to quash and set aside tentative seniority list dated 11.10.2002 and final seniority list dated 22.1.2003 as well as order dated 7.4.2003. As per the applicant, he is senior to respondent No.7 Dr. R.N.Sinha and has requested that he should be so declared.

2. It is stated by the applicant that he was initially appointed as Demonstrator (Teaching Cadre) in Ayurvedic & Unani College (A & U for short) Tibbia College, Karol Bagh, New Delhi on 4.9.76. Thereafter he was selected and appointed as Junior Lecturer(Ayurveda Swasthvritta) w.e.f. 19.6.78 as a direct recruit in response to an advertisement along with Respondent No.7 who also joined as Junior Lecturer on the same date, viz., 19.6.78. The applicant claims that he was senior in merit list as well as was working in A & U Tibbia College before direct recruitment as Junior Lecturer. Therefore, he was all along shown senior to Dr.R.N. Sinha (Junior Lecturer, Ayurveda Kaya Chikitsa) in all seniority lists prior to issue of the impugned seniority list of 2002 and 2003. He has placed reliance on a seniority list of 3.12.1980 wherein the name of the applicant was at Serial No.21 and the name of Respondent No.7 Dr.R.N.Sinha was at Serial No.22. In the list of 11.5.82, the name of the applicant is at Sl. No.7 whereas the name of Respondent No.7 is at Sl. No.8. The order dated 23.6.90 of confirmation in the grade

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of Junior Lecturer also has mentioned the name of the applicant at SJ.No.14 and Dr.B.N.Sinha's name is at SJ.No.15. The applicant has also placed reliance on orders of the respondents dated 10.1.2001 and 16.12.2002 (Annexure A-14) whereby he was entrusted to look after the routine work of the college Principal being 'senior most'. The learned counsel of the applicant stated that the criteria of date of birth for determining seniority could not be applied in the case of the direct recruitment where the applicant was placed senior to Respondent No.7 in the merit list. In any case, it was stated on behalf of the applicant that such a decision for altering seniority of the applicant could not be taken after 25 years from the date of entry in the grade of Junior Lecturer, particularly in the face of the records of the respondents.

3. The official respondents in their reply have stated "that appointment on the post of incharge Principal is temporary and purely stopgap arrangement with no financial or otherwise benefits". They have further stated that even Dr. R.N.Sinha was ordered to look after the work of the Principal w.e.f. 30.6.2003. The management of Tibbia College was taken over under Delhi Tibbia College (Take Over) Act, 1977 w.e.f. 1.5.98 and the final seniority list was issued on 22.1.2003. Since the applicant as well as the Respondent No.7 both were appointed on the same date viz. 19.6.78, the respondent No.7 being elder in age has been placed senior to the applicant.

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④ Should be read 1907 as per order dt 10.2.04 para 6
in M/s. 292/04 in OA, 130/03.

4. The respondent No.7 Dr. R.N. Sinha has also filed a reply and has stated that only in 1995 a tentative seniority list was circulated. After the take over of the college by the official respondents, the final seniority list has been circulated duly considering the objections against the tentative list.

5. In the rejoinder filed by the applicant, he has reiterated his contention that he was senior as per the select list of 'Direct Recruitment' on the basis of merit and ranking.

6. We have heard the learned counsel of the parties and perused the material available on record carefully.

7(a). There is no dispute that both the applicant as well as respondent No.7 Dr. R.N.Sinha joined as 'Direct Recruit' Junior Lecturers on 19.6.78. For determining inter se seniority of the direct recruits, their rank in the select list is relevant. Therefore, this court on 29.10.2003 ordered as follows:

"After the matter has been addressed, it becomes necessary and therefore, we direct the official respondents to produce the record pertaining to selection of the applicant and private respondent Shri Sinha so as to indicate as to if any merit list was drawn at that time or not.

In case the record which is stated to be old is not available, an affidavit to that effect should be filed."

7(b). The above order was passed as the applicant in his application has made the following averments:

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"4.8 that the relevant records of A & U Tibbia College show that till the issuance of a tentative seniority list dated 11.10.2002, in all previous seniority lists, the applicant had been shown as senior to Mr. R.N.Sinha. In fact, A&U, Tibbia College has issued a final seniority list of Teaching Staff, which was drawn and circulated on 3rd Dec., 1980, the name of the applicant has been at Sl.No.21 and that of Mr.R.N.Sinha at Sl.No.22. The said seniority of the applicant was fixed in accordance with the order of merit and ranking given by the Staff Selection Board at the time of his selection to the post of Junior Lecturer in the year 1978, and according to the said order of merit and ranking Mr. R.N.Sinha has been placed at Sl.No.22 below the applicant being junior to him as per norms of fixing the relative seniority of direct recruits."

In their reply, the official respondents have stated as follows:-

"4.8 In reply to para 4.8 it is submitted that, the contents of which are denied as no final seniority list was issued by the A&U, Tibbia College Administration till 22.1.2003."

A perusal of the above indicates that official respondents have not denied specifically the averments made by the applicant that he was shown senior on the basis of higher rank in initial select panel of junior lecturer. In our opinion, in absence of such an specific denial, the seniority of the applicant should not have been changed on the basis of date of birth. Criteria of determining seniority on the basis of date of birth of direct recruits could be resorted to only when both of them occupied the same rank in the selection list.

7(c). We also find that records from 1978 till issue of the impugned list on 16.1.2003 cannot be ignored without valid grounds. The lists of 3.12.1980,

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11.5.1982 and 23.6.1990 referred to and relied upon by the applicant mention the name of the applicant at a place as senior to Respondent No.7. The order of the respondents dated 10.1.2001 specifically mentions that the applicant was "seniormost" and, therefore, entrusted the work of Principal. The respondent no.7 has been given such officiating work of Principal in June, 2003, that is, after issue of impugned order dated 16.1.2003.

7(d). In case respondent No.7 was aggrieved by the tentative seniority list dated 7.2.95, he should not have waited till a list of 16.1.2003 was issued. There is also nothing on record to suggest that respondent No.7 ever disputed the seniority as assigned to the applicant before issue of impugned list dated 16.1.2003. A person who sleeps over his rights for decades cannot claim the same afterwards. Even if, any objection was raised by the respondent No.7 in February, 1995 as claimed by him, he did not pursue the same.

8. For the reasons mentioned in the preceding paragraphs, and on the facts of the case, we quash the impugned seniority lists dated 11.10.2002 and dated ~~22.1.03~~ 16.1.2003, qua the applicant and direct that the applicant should be taken as senior to the respondent No.7 Dr. R.N.Sinha. We further direct that the officials respondents give effect to this judgment including consequential benefits, if any within two

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⑧ deemed to have been incorporated in the order
vide order dated 10.2.2004
passed in MWT.292/2004
in OA 1300/03.

months from the date of receipt of a certified copy of this order. The OA is accordingly allowed without any order as to costs.

U.P. Upadhyaya
(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

Ag
(V.S. AGGARWAL)
CHAIRMAN

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