

Ramvir Singh

Vs

Union of India and Others

Civil Appeal No. 4806 of 1992

(L.M. Sharma, K. Ramaswamy, N. Venkatachala JJ)

13.11.1992

JUDGMENT

VENKATACHALA, J. –

1. Leave granted.

2. This appeal raises the questions as to inter se seniority between Ramvir Singh - the appellant and D. N. Gupta - respondent 4 in the cadre of Medico Social Workers of Dr. Ram Manohar Lohia Hospital, New Delhi (for short 'the Hospital') and the validity of the appointment of respondent 4 in the higher cadre post of Medico Social Service Officer of the same Hospital on adhoc basis at the first instance and on permanent basis subsequently. It would be convenient to refer to the material facts which bear on the said question at the very outset.

3. Three posts in the cadre of Medico Social Workers came to be created in the Hospital by an Order dated August 24, 1978 by the Ministry of Health and Family Welfare of the Central Government. The Hospital authorities sought to fill up those posts by candidates sponsored by the Employment Exchange as also the in-service candidates of the Hospital according to their performance at interview. The Hospital authorities held the interview for the said candidates on February 1, 1979 and prepared a select list of three candidates required to fill up the said three posts of Medico Social Workers. While the appellants, the candidate sponsored by the Employment Exchange was selected and placed in that select list, respondent 4, an in-service candidate was not so selected and hence did not find any place therein. Although, all the three candidates, who found places in the select list were given appointment orders for filling up the said posts of Medico Social Workers, only the appellant and another P. G. Radappa, joined two of those posts on September 25, 1979. The other post remaining vacant, due to one of the appointees not joining it, was re-advertised on January 10, 1980 inviting applications from eligible candidates. Respondent 4, who was not selected to that post earlier, having applied for it came to be appointed therein and joined it on April 11, 1980. Four years later when a provisional seniority list dated July 25, 1984 of the appointees in the cadre of Medico Social Workers in the Hospital was prepared, the seniority of the appellant (Shri Ramvir Singh) against respondent 4 (Shri D. N. Gupta) in that cadre was maintained as becomes obvious from the following excerpt of that list :

#"Sl. Name Date of Date of appt. Date of Perm./ No. entry to the present birth  
Temp./ into Govt. post Ad hoc serviceMedical SocialWorkers1. Shri Ramvir Singh  
25-9-1979 25-9-1979 1-3-1955 Temp.2. Shri D. N. Gupta 12-9-1966 11-4-1980 19-7-  
1943 Temp.3. Miss Indra Bhalla 1-5-1982 1-5-1982 24-10-1945 Purely Ad hoc \* \*  
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4. Respondent 4, three years after the publication of the said provisional seniority list came to request the Hospital authorities on March 15, 1987 seeking preponement of his date of appointment as Medico Social Worker from April 11, 1980 to September 25, 1979 so as to coincide with the date of appointment of the appellant. That request of respondent 4 is granted on June 10, 1989. This development has led the Director General of Health Services, by his Order dated July 9, 1990 to appoint respondent 4 on ad hoc basis in the post of Medico Social Service Officer, a higher cadre post in the Hospital. This ad hoc appointment of respondent 4, a junior to the appellant in the lower cadre, has been challenged by the appellant by an application under Section 19 of the Administrative Tribunals Act, 1985 filed before the Central Administrative Tribunal, New Delhi (CAT) with prayers made therein for the quashing of the ad hoc appointment of respondent 4 as Medico Social Service Officer in the Hospital and for issuance of directions to the Hospital authorities and the Union of India, to restore the seniority of the appellant over respondent 4 in the cadre of posts of Medico Social Workers and to consider the claim of the appellant for appointment to the higher cadre post of Medico Social Service Officer in the Hospital in preference to respondents 4. But, that application is dismissed by the CAT by its Order dated July 26, 1991 on its view that by preponing the date of appointment of respondent 4 as Medico Social Worker to September 25, 1979 the Hospital authorities had corrected an error committed by the Section Committee in not selecting him on the ground that he did not possess the requisite qualification when he was interviewed on February 1, 1979 along with the appellants, and the subsequent appointment of respondent 4 as Medico Social Service Officer, being an ad hoc appointment was liable to be redone on a regular basis by the Hospital authorities after a revised seniority list was prepared fixing the inter se seniority between the appellant and respondent 4 in the cadre of Medico Social Workers of the Hospital. It is this Order of the CAT which has come to be impugned in this appeal by special leave. However, a letter No. A-12026/7/89-MH dated September 26, 1991 issued by the Directorate General of Health Services shows that he had treated respondent 4 as senior to the appellants in the cadre of Medico Social Workers of the Hospital while an Office Order dated June 23, 1992 issued by the Directorate General of Health Services shows that respondent 4 is promoted as Medico Social Service Officer of the Hospital in a regular temporary capacity from June 22, 1992 until further orders.

5. We shall first deal with the question of inter se seniority between the appellant and respondent 4 in their cadre of Medico Social Workers in the Hospital for that that inter se seniority even if does not form the sole basis for the appointment of either of them in a higher cadre post in the Hospital, the same may constitute a relevant factor for such appointment.

6. When the non-selection of respondent 4 by the Hospital authorities for any of the three newly created posts of Medico Social Workers in the Hospital in the select list prepared by them on the basis of interview held for all the candidates including respondent 4 on February 1, 1979 and the appointment of the appellant and two others made thereon was not questioned by respondent 4, it is difficult to think of the basis on which respondent 4, who was appointed subsequently in one of those posts on a fresh application made by him in that regard, could claim seniority over the appellant, the earlier appointee in one of those posts. Therefore, the Order of the Hospital authorities by which the date of appointment of respondent 4 is preponed from April 11, 1980 to September 25, 1979, the date of appointment of the appellant, so as to enable them to treat the former as senior to the latter in their cadre has to be regarded as an arbitrary one if not a whimsical one. The view taken by the CAT that the preponement of the date of appointment of respondent 4 by the Hospital authorities from April 11, 1980 to September 25, 1979, so as to make him senior to the appellant had the effect of correcting a mistake committed by the Hospital authorities in not selecting respondent 4 to one for the posts of Medico Social Workers on the plea that he did not possess the

requisite qualifications, although possessed by him, is erroneous, as such correction even if desired, was impermissible in law, when it is sought to be done ten years after the selection list for the posts had been prepared by the Hospital authorities and when the inclusion of the appellant and the non-selection of respondent 4 in that selection list had remained unquestioned by any mode known to law. Hence, the Hospital authorities were wholly wrong in interfering with the provisional seniority list dated July 25, 1984 relating to the appellant and respondent 4, prepared on the basis of their respective dates of appointment and in making an Order dated September 26, 1991 to the effect that respondent 4 was senior to the appellant. The CAT was also fully unjustified in upholding the action of the Hospital authorities in the matter of disturbing inter se seniority of the appellant and respondent 4 by its Order now under appeal on its view of the authorities having corrected a past mistake while correction by the Hospital authorities of the purported mistake committed by the selection authorities was impermissible by the method they had adopted therefor.

7. The question which remains for our consideration is that relating to the appointment of respondent 4 as Medico Social Service Officer. When this appointment was questioned before the CAT it was an ad hoc appointment. The CAT has refused to examine the validity of this appointment because of its view that regular appointment to the post of Medico Social Service Officer when has to be made regularly, the same could be made on resolution by the Hospital authorities of the dispute between the appellant and respondent 4 as to their inter se seniority in the cadre of Medico Social Workers. Unfortunately, what has been done by the Hospital authorities is to make an arbitrary order to the effect that respondent 4 was senior to the appellant in the cadre of Medico Social Workers without hearing the appellant in the matter and appointment of respondent 4 on a regular basis in the higher cadre post of Medico Social Service Officer purporting to be on the recommendation of a Departmental Selection Committee. In our view, when the Departmental Selection Committee, as seen from its proceedings produced before us, has decided to select respondent 4 on the basis that respondent 4 at the relevant time held the post of Medico Social Service Officer while the appellant held at the time only the post of Medico Social Worker and further not on the basis that the appellant was senior to respondent 4 as it ought to have been done, such selection gets vitiated making the Order dated June 23, 1992 by which respondent 4 is appointed as Medico Social Service Officer on a regular basis, unsustainable.

8. In the result we allow this appeal, set aside the order under appeal, allow the application of the appellant made before the CAT, New Delhi and quash the Order No. 8-22/78/RMLH/NS/MSW/10719-22 dated June 10, 1989, the Order No. A-12026/7/89-MH dated September 26, 1991 and the Order No. A-12026/5/92-MH dated June 23, 1992 of the respondents and direct them to re-fix the inter se seniority of the appellant and respondent 4 in the cadre of Medico Social Workers in the Hospital and consider their cases afresh for appointment to the higher cadre post of Medico Social Service Officer in the Hospital, in the light of this judgment and in accordance with law. No costs.

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