

(1986) 08 PAT CK 0028

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 88 of 1982 (R)

Dr. (Mrs) Minakshi Bose

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 12-08-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1987) PLJR 318

Hon'ble Judges : U.P. Singh, J

Bench : Single Bench

Advocate : B.C. Ghosh and P.K. Sinha, for the Appellant; A.K. Sinha and A.K. Sahani for Respondents 1 to 3 and Mr. Narayan Roy, for the Respondent

Final Decision : Dismissed

Judgement

U.P. Singh, J.—The petitioner has challenged the order contained in Annexure-1, whereby Respondent no. 4, Dr. R.B. Sinha was promoted as Addl. Medical Superintendent. Annexure-1 A is the letter rejecting the petitioner's representation. The petitioner, then named, as Dr. (Miss) Thelma Hayward, joined the Heavy Engineering Corporation Hospital in 1963 as C.D.M.O. Grade II. After her marriage in 1968 she changed her name as Minakshi Bose. In 1970 she was promoted as G.D.M.O. Grade I, in the seniority list of the doctors circulated by the Corporation (Annexure-2) she was shown as senior most G.D.M.O. Grade I in the service. Respondent no. 4 was three places junior to her in the aforesaid seniority list. He joined the hospital of the Corporation in January 1966 as an Assistant Surgeon. He worked in different departments and was promoted in the year 1971 to the post of G.D.M.O. Grade I.

2. The petitioner's grievance is that although Respondent no. 4 was junior to the petitioner in the seniority list of the year 1972, he was wrongly promoted as Additional Medical Superintendent (Super Time Grade II) in preference to the petitioner. Since the said appointment was purely on ad hoc basis, the petitioner considered it only as a local arrangement and did not protest against the same.

According to her, this did not affect the seniority list and did not create any right and any superiority over the petitioner. Sometimes, in July, 1980, she learnt that promotions on permanent basis would be made from G.D.M.O. Grade 1 to super time Grade II in the scale of Rs. 1500-2000/- Accordingly, she made an application and drew the attention of the Chairman of the Corporation to the facts that she was senior most and was entitled to prior consideration for promotion to super time Grade II. However, the promotion of Respondent no, 4 was effected by office order dated 27.3.1981. She then made a representation to the Chairman against the said order of promotion. By letter dated 14th December, 1981, she was informed by the Junior Manager (P) of the Corporation that on careful consideration of her case, the Management was unable to agree to her request. The said letter is contained in Annexure-1-A.

3. Mr. B.C. Ghosh, the Learned Counsel appearing for the petitioner contended that the order dated 27.3.1981 (Annexure-1) by which Respondent no. 4 was promoted to super time Grade II was illegal, without authority in law and in contravention of Articles 14 and 16 of the Constitution and the principles of natural justice.

4. In the counter affidavit filed by Respondent nos. 2 and 3, the Statement is categoric that with effect from 1.1.1974, the Chairman of the Corporation decided that in the matter of pay scale, dearness allowance, N.P.A., recruitment and promotion, the Medical Officer of the Corporation will be governed by the Central Health Services Rules, 1963 as amended by the Central Health Services (Amendment) Rules; 1966 as amended from time to time. The said rule was further amended on 9th September, 1966 and known as Central Health Services (Amendment) Rules, 1966. The relevant rules may be noticed :--

Rule 8 (3) : Super Time grade-II

(a) Fifty per cent of vacancies in super time Grade II shall be filled up by promotion.

(i) General Duty Officer grade I with not less than ten years of service in that category.

(iii) Specialists Grade Officer with not less 8 years of service in that category, in ratio, of 2:3 on the recommendation of the D.P.C. on the basis of merit and seniority of officer concerned, provided that no person shall be eligible for appointment to any such posts unless he possesses the qualification and experience requisite for appointment to such posts.

(b) The remaining fifty per cent of the vacancies shall be filled up by direct recruitment in the manner specified in the second schedule.

Annexure-1 to the second Schedule states that Post-Graduate qualification be minimum qualification for promotion to the post of super time Grade II.

5. In May, 1980, occasion arose for filling up the post of Additional Medical

Superintendent on acting basis (Super Time Grade II). The screening Committee was constituted consisting of D.G.M. (Administration and Personnel), Chief Medical Officer, Manager (Finance) The screening Committee also considered the case of the petitioner and did not find her fit on the ground that she did not possess experience in Hospital administration not trained in hospital administration management development etc., her A.C.R. was average and she did not have post graduate qualification. On the other hand, Respondent No. 4 was found having high qualification of post graduate, better A.C.R., training in hospital administration. Accordingly, on 30.5.1980 Respondent no. 4 was promoted on acting basis to the Super Time Grade II which was never challenged by the petitioner. Thereafter when again the said post was decided to be filled up on regular basis in the year 1981 it was to be filled up on selection basis irrespective of seniority and criteria was merit and seniority. For the purpose of promotion by selection a departmental promotion committee was constituted which was headed by the General Manager, H.M.B.P., Chief Medical Officer and Senior Deputy General Manager (Administration and Personnel).

6. The case of the petitioner was considered along with Respondent no. 4 and one Dr. S. Das Gupta. Amongst the three candidates, the Respondent no. 4 was found more suitable than the petitioner and Sri Gupta because of his following qualification and experience

(a) A master degree in Surgery.

(b) has done course of Management Development from Central Training Institute of H.E.C.

(c) Has done a course on developing skill in problem solving from the Management.

(d) All India Seminal of Hospital Administration Organisation of Armed Force Medical College, Pune, Indian Hospital Association as attained by him.

(e) Attendance of 4 weeks course on Hospital Administration organised by National Institute of Health and Family Planning Welfare, Delhi.

(f) Attended or entered training course in Family Welfare Planning Organisation organised by Indian Medical Association

(g) Acting as Additional Medical Superintendent (Super Time Grade II) with effect from 30.5.1980.

(h) A.C.R. above average.

(i) G.D.M.O. Grade I given on 14.1.1971.

On the other hand the qualification and experience of the petitioner was :

(i) M.B.B.S. and no other qualification.

(ii) G.D.M.O. Grade I given on 29.4.1970.

7. After considering the better qualification, experience and A.C.R. and other activities, the departmental promotion committee found Respondent no. 4 more suitable and better hand than the petitioner. The D.P.C. found that the petitioner had no qualification of Post Graduate, no experience in administration of training and had average A.C.R. Shri S. Das Gupta was also not found fit for the same reason. Thus, the case of the petitioner was fully considered along with others and the Selection Board found that Respondent no. 4 was better and more suitable candidate for promotion than the petitioner. The statement made in paragraph 4 of the supplementary affidavit was controverted and it was stated that the petitioner had no experience in hospital administration. The petitioner's main function was professional job only. She being the senior most in dispensary concerned, she was made incharge of the particular dispensary and hence she was incharge of very small group of medical officers and staff working there for coordinating the day to day activities carried out in the dispensary. It was stated that in the Heavy Engineering Corporation, there are six small dispensaries; and the petitioner was incharge of only one such dispensary. In reply to the amendment petition filed on behalf of the petitioner it was stated that the petitioner must, prove that she is a tribal although at the time of selection her case was considered.

8. The allegation of mala fide and bias pleaded against the Chief Medical Officer of the Corporation (Respondent no. 5) has been denied. In his categorical statement in the counter affidavit, the Chief Medical Officer has stated that he was never biased against petitioner nor did he act malafide. Since the petitioner failed to be appointed to the post in question, she made all baseless allegations against him. The petitioner's case was fully considered by the Selection Board in which he was one of the members and she was found fit for promotion. The post in question was a selection post. In a selection post always the suitable persons are appointed. It was to be filled up by merit and seniority. All the three members of the Selection Board including him were unanimous while considering the case of the petitioner that she was not suitable to the post in question. The Respondent no. 4 was found suitable by the Selection Board. Respondent No. 4's performance, qualification, experience and other activities were superior to the petitioner, hence the Selection Board rightly appointed him after considering the case of the petitioner. It has also been stated the Chief Medical Officer of the Corporation that the Central Health Services Rules has, in practice, been adopted by the Corporation. The Rule may not prescribe the Post Graduate qualification but while considering the merit between the two persons, it always gives an additional point. Respondent No. 4 having post graduate qualification, had better qualification and experience than the petitioner who did not possess the post graduate qualification. The Selection Board found him suitable in every respect. Further Respondent no. 4 had ten years experience for the purpose of appointment to the post in question.

9. Considering the facts of this case, it must be held that the petitioner has failed to make out any case for interference by this Court, the impugned orders

therefore, cannot be quashed as violative of Articles 14 and 16 of the Constitution of India or the principle of natural justice. Her case was fully considered on its own merit by the Departmental Promotion Committee. The criteria for promotion to the post of Super Time Grade II was merit and seniority. The Selection Board was a duly constituted body and after properly considering the respective suitability of the candidates, it found Respondent No. 4 more suitable for the said post. Therefore the contention raised by the petitioner's Counsel must fail. The allegation of bias and mala fide raised against Respondent no. 5, the Chief Medical Officer, for the first time in the supplementary affidavit, has been categorically denied and it is difficult to assume that he must have influenced the other two members of the selection Board. In the matter of filling a Selection Grade post the question of seniority alone is not relevant and I find no reason to interfere with the selection actually made on the basis of merit. The allegation of mala fide often more easily made than proved and the very seriousness of such allegation demand proof of high order of credibility. The burden of establishing mala fide is very heavy on the person who alleges it. Here, the petitioner has failed to discharge the burden of establishing mala fide against Respondent no. 5. In the result, this writ application is dismissed but there will be no order as to costs.