

\$~13

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 5597/2017**

DR. ANITA JAIN Petitioner
Through: Mr. Madhur Jain, Advocate.

versus

UNION OF INDIA & ANR. Respondents
Through: Mr. Anil Panwar, CGSC.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **27.10.2017**

1. The petitioner is aggrieved by judgment dated 31.05.2017 passed by the learned Central Administrative Tribunal, dismissing her original application for issuing directions to the respondent No.1/Union of India to consider appointing her to the post of Director, CGHS with all consequential benefits.
2. The case of the petitioner as set up before the Tribunal was that she is posted as an Additional Medical Superintendent, Safdarjung Hospital, New Delhi and entitled for being appointed to the post of Director, CGHS, on adoption of the criteria of "seniority cum suitability" but the competent authority has failed to apply the said criteria and instead, appointed respondent No.2 to the subject post.
3. It is stated by learned counsel for the petitioner that the petitioner is senior to the respondent No.2 and though she meets the criteria of 'seniority

cum suitability', respondent No.2 has been appointed by superseding her, without any justification. He submits that being the senior most person in the cadre, the petitioner ought to have been appointed unless and until, she was found unfit for appointment but the respondents have not followed the said criteria at all.

4. We may note that the case of the petitioner has been turned down by the Tribunal solely on the ground that this was not a case of promotion but of "lateral shifting" and it has been held that in such circumstances, the petitioner cannot claim application of the rule of 'seniority cum suitability'.

5. The aforesaid observation of the Tribunal runs contrary to the response given by the Government of India to the petitioner's representation dated 02.03.2015 wherein, in the letter dated 10.4.2015, it has been stated that appointment to the post of Director, CGHS has been done on the basis of 'seniority cum suitability' and not on seniority alone.

6. Learned counsel for the petitioner also draws our attention to the relevant extract of the noting file of the respondent No.1, annexed to the present petition as Annexure P-5, wherein it has been clarified that an officer of the Senior Administrative Grade in GDMO sub-cadre of CHS is appointed as Director, CGHS on the basis of 'seniority cum suitability' of the officer to the specific post of Director as also the fact that there are no recruitment rules for appointment of Director, CGHS and other similar administrative posts.

7. Having regard to the specific stand taken by the respondent No.1/Union of India itself, as noted above, we are of the opinion that this aspect ought to have engaged the attention of the learned Tribunal while deciding the present case. However, the impugned judgment does not reflect

so as there is no discussion in relation thereto. We, therefore, deem it appropriate to set aside the impugned judgment dated 31.05.2017 and remand the matter to the learned Tribunal for a fresh decision on merits while taking into consideration the fact position noted above.

8. The parties shall appear before the Tribunal on 09.11.2017, for a date to be fixed for addressing arguments. The Tribunal is requested to dispose of the matter by taking a fresh view on the aspects highlighted above, as expeditiously as is possible.

9. The petition is disposed of. No orders as to costs.

HIMA KOHLI, J

REKHA PALLI, J

OCTOBER 27, 2017

na/rkb/ap