

Civil Writ Petition No.13186 of 2019 (O & M)
Date of Decision: *July 15, 2019*

Dr. Arun K. Jain

..... PETITIONER

VERSUS

Union of India & others

..... RESPONDENTS

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CORAM: **HON'BLE MR. JUSTICE RAJIV SHARMA**
 HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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PRESENT: - Mr. D.S. Patwalia, Senior Advocate, with Ms. Supriya Garg, Advocate, for the petitioner.

Mr. Namit Kumar, Advocate, for respondent No.1.

Mr. Amit Jhanji, Advocate, for respondent Nos.2 and 4.

Mr. K.B. Sharma, Advocate, for respondent No.3.

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Rajiv Sharma, J (Oral)

The petitioner has laid challenge to order dated 08.05.2019 rendered by learned Central Administrative Tribunal in OA No.060-00412-2019.

The facts necessary for the adjudication of this petition are that petitioner was aggrieved by order dated 12.04.2019 whereby the representation made by him was rejected against the seniority list dated 25.09.2018. The fact of the matter is that the petitioner as well as respondent

No.3 were selected to the post of Assistant professor on 11.02.1995. The petitioner as well as respondent No.3 were promoted to the post of Associate Professor w.e.f. 01.07.1999. Respondent No.2 – PGI issued the provisional seniority list on 30.11.2001 in which the petitioner ranked at serial No.42 and respondent No.3 ranked at serial No.46. The petitioner and respondent No.3 were promoted to the post of Additional Professor on 21.12.2005. Fresh provisional seniority list was issued on 31.03.2006 in which the petitioner ranked at serial No.37 and respondent No.3 ranked at serial No.39. Yet another provisional seniority list was issued on 31.03.2007 in which the petitioner again ranked senior to private respondent No.3. The fact of the matter is that the petitioner and respondent No.3 were promoted to the post of Professor on 23.04.2011. The provisional seniority list was issued on 14.08.2015 in which on the post of Professor, the petitioner ranked at serial No.69 and respondent No.3 ranked at serial No.70. Thereafter, seniority list of Professors was circulated on 31.01.2018 in which petitioner ranked at serial No.43 and respondent No.3 ranked at serial No.44.

Feeling aggrieved by seniority list circulated on 31.01.2018, respondent No.3 filed a representation against the provisional seniority list wherein he was ranked junior to the petitioner.

One of the Professors filed OA which was decided on 28.03.2018. In sequel thereto, PGI – respondent No.2 issued provisional/tentative seniority list on 25.09.2018 in which petitioner, for the first time, ranked at serial No.36 and respondent No.3 was ranked at serial No.35.

The petitioner made a representation on 16.10.2018 which was rejected on 12.04.2019. It is in these circumstances, petitioner

approached the learned Central Administrative Tribunal. However, in the meantime, respondent No.3 was appointed as Head of Department in the Department of Ophthalmology.

What emerges from the facts enumerated here-in-above is that the petitioner and respondent No.3 were selected on 11.02.1995. They were promoted as noticed here-in-above on 01.07.1999 as Associate Professors. In all the seniority lists issued on 30.11.2001, 31.03.2006, 31.03.2007, 23.04.2011, 14.08.2015, the petitioner ranked senior to respondent No.3. It is only in the seniority list dated 25.09.2018 that the respondent No.3 was made senior to petitioner by bringing him at serial No.35 and petitioner at serial No.36.

Learned counsel appearing on behalf of the respondents submits that respondent No.3 was ranked at serial No.1 and petitioner at serial No.2 in the merit list drawn vide Annexure P-1 on 11.02.1995. However, the fact of the matter is that petitioner ranked senior to respondent No.3 in all the seniority lists upto 25.09.2018. The first representation was made by respondent No.3 on 25.11.2017. He has slept over his right for almost 22 years. The settled things have been unsettled by PGI by alteration in seniority list as well as consequential order of appointment of respondent No.3 to the post of Head of Department. The issue is pending before the Tribunal but the crux of the matter is that whether the seniority position could be altered after 22 years as discussed here-in-above or not? On the basis of the seniority list dated 25.09.2018, which is again a provisional seniority list, respondent No.3 has been appointed as HOD.

In our view, it is a fit case where a direction is required to be issued to the Central Administrative Tribunal to adjudicate the matter finally

within a period of 4 weeks. Parties are directed to exchange pleadings within one week. Central Administrative Tribunal is requested to decide the petition within 4 weeks. Till then, just to balance the equities, the Director, PGI is directed to nominate a professor to discharge the duties of HOD to avoid disruption in the office.

These observations will not influence the outcome of the OA pending before the Central Administrative Tribunal for the simple reason that these observations have been made since respondent No3, prima facie, could not be permitted to discharge the duties of HOD after disturbing the seniority, that too after 22 years.

Disposed of accordingly.

(Rajiv Sharma)
Judge

(Harinder Singh Sidhu)
Judge

July 15, 2019
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No