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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No 3079/2001

Date of Decision 8.4.2003

Dr. Sunil Kumar Malhotra ... Applicant

Shri E. X. Joseph with Shri... Advocate for the Applicant
Sachin Chauhan

VERSUS

Govt. of NCT of Delhi through
Secretary (Health) and Ors. Respondents

Mrs. Jasmine Ahmed for R-1 Advocates for the Respondents

None for R-2

Shri K.R. Sachdeva for R-3

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri V.K. Majotra, Member (A)

1. To be referred to the Reporter or not ? Yes

2. Whether it needs to be circulated to other
Benches of the Tribunal? No

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

Central Administrative Tribunal
Principal Bench

O.A. No.3079/2001

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New Delhi this the 8th day of April, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri V.K. Majotra, Member (A)

Dr. Sunil Kumar Malhotra,
Junior Staff Surgeon (Dental),
R/o H.No.11, Block-C, Pocket-8,
Sector-VII, Rohini, Delhi-85.

-Applicant

(By Advocate: Shri E.X. Joseph with
Shri Sachin Chauhan)

Versus

1. Govt. of National Capital Territory of Delhi through Secretary (Health), Delhi Secretariat, I.P. Estate, New Delhi-110002.
2. Union of India, through The Secretary to the Government of India, Ministry of Health, Nirman Bhawan, New Delhi.
3. The Union Public Service Commission, Through its Secretary, Dholpur House, Shahjahan Road, New Delhi.

-Respondents

(By Advocate: Mrs. Jasmine Ahmed, for R-1
None for R-2
Shri K.R. Sachdeva, for R-3)

ORDER (Oral)

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)

This is the second round of litigation by the applicant as he had earlier filed OA-1345/1990 which was disposed of by Tribunal's order dated 9.8.94.

2. By order dated 9.8.94, it has been ordered:-

"The applicant was directed by the Employment Exchange vide their letter dated 24.5.84 to appear before the Staff Selection Board of the Delhi Administration for recruitment to the post of Civil Assistant Surgeon Grade.I (Dental). He was selected for appointment and on 13.7.1984 he was appointed as such on ad hoc basis. The applicant is still continuing on the said post. The applicant approached this Tribunal on 6.7.90 and prayed that the directions be issued to the respondent not to

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terminate his services as Asstt. Surgeon Grade-I (Dental) pending disposal of this OA. On 10.7.90 stay order was granted and the respondents were directed not to terminate the services of the applicant.

In the instant case, the applicant has been working for more than 10 years. In fact, before approaching this Tribunal he had worked for more than 6 years. The respondents can initiate the process for recruitment according to rules. However, they should also consider the case of the applicant for regularisation as well as for selection in consultation with the Union Public Service Commission according to rules. It will not be out of place to mention here that the age bar should not come in the way of selections. The OA is disposed of accordingly. No costs".

3. In the present application, the following reliefs have been sought by the applicant:-

"a) That the applicant may kindly be declared to have been regularised on the post of Civil Asstt. Surgeon (Grade-I)/Dental Surgeon to which he was originally appointed on 18.7.1984 with all consequential benefits.

b) Alternatively, the respondents are directed to declare the applicant having been regularised w.e.f. 18.7.1984 and for this purpose they may consider the case of the applicant for regularisation in accordance with the usual method of consideration for regularisation on the basis of service records etc.

c) To declare the action of the respondents whereby the applicant has been subjected to selection process as illegal".

4. It is relevant to note that in the present application, the applicant has impleaded Government of NCT of Delhi as Respondent No.1, Union of India through, Secretary, Ministry of Health, Nirman Bhawan as Respondent No.2 and Union Public Service Commission (UPSC) as respondent No.3. In the previous OA (OA-1345/1990), the applicant had impleaded only Delhi Administration and the Director of Health Services of Delhi Administration.

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5. We have heard Shri E.X. Joseph, learned senior counsel for applicant, Mrs. Jasmine Ahmed, learned counsel for respondent No.1 and Shri K.R. Sachdeva, learned counsel for respondent No.3. None has appeared for respondent No.2, i.e., Central Government/Ministry of Health even though the notices have been issued to them and service is complete.

6. Learned senior counsel for applicant has submitted that in terms of the aforesaid order of the Tribunal dated 9.8.1994 in OA-1345/1990, the applicant's services as Civil Assistant Surgeon Grade.I(Dental) should have been regularised long time back keeping in view also the decision of the Hon'ble Supreme Court and the principles of equality giving equal treatment to similarly situated persons. This has, however, not been done by respondent No.1/Government of NCT of Delhi in spite of several representations to them.

7. The applicant was appointed as Civil Assistant Surgeon Grade-I w.e.f. 18.7.1984 on ad hoc basis and that position has been continued/extended from time to time and according to him he has served for more than 17 years when this OA was filed on 8.11.2001. He has referred to the order dated 1.8.1997 issued by respondent No.1 which states that Administrator/Delhi is pleased to promote the applicant as Dental Surgeon in the pay scale of Rs.3000-4500 + NPA w.e.f. 1.1.90. There is a rider in this letter of promotion contained in paragraph-6, regarding the fact that the promoted officer will not be entitled to claim

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regular appointment to this or any other equivalent post, i.e., the post of Dental Surgeon which is higher than the Junior Staff Surgeon (JSS) (Dental) carrying a pay scale of Rs.3000-4500 and his seniority will be decided on the basis of the seniority in the grade of Dental Surgeon, determined by the Government in accordance with the relevant rules. It is also relevant to note that the Delhi Administration has granted promotion to the applicant for the post of JSS and no reference to the fact that this is an ad hoc promotion has been made in the order dated 1.8.1997. It is also relevant to note that no conditions have also been attached to the earlier post held by them, i.e., the post of Civil Assistant Surgeon, Grade-I (Dental) prior to his promotion.

8. With regard to the aforesaid order of promotion issued by respondent No.1, Shri K.R. Sachdeva, learned counsel for UPSC has pointed out that there is no reference to UPSC in that order but the same has been issued with the approval of the Finance Department.

9. Learned senior counsel for applicant has submitted that in 1991-1992 respondent No.2 has issued a number of orders regularising similarly situated persons like the applicant who are working on ad hoc basis with the Delhi Administration or other Doctors who are working with the Central Government Health Services Scheme (CGHS), copies placed at pages 75-81 of the paper book. We note, for example, that in Serial Nos. 197, 199 and 208, at least three of the Doctors

who were working in the Delhi Administration on ad hoc basis in the year 1997, have been regularised on the dates mentioned in their respective columns, on the basis of the judgment of the Hon'ble Supreme Court dated 29.10.1991 in Civil Appeal No.3519 of 1984 and WP No.1228 of 1986. He has contended that it is only in the case of the applicant that respondent No.3 and respondent No.1 are insisting that he should appear in a written examination again for regularisation, in terms of the aforesaid order of the Tribunal dated 9.8.1994 in OA 1345/90. He has drawn our attention to the letter issued by respondent No.1 to Secretary (Medical) Delhi Administration/Respondent No.1 on the subject of regularisation of services of Medical Officers (Ad hoc) and their induction into Central Health Services which are stated to be covered by the directions of the Hon'ble Supreme Court in the aforesated case. We note that the list attached to this letter contains names of Doctors who were in CGHS, Delhi and elsewhere as well as the Delhi Administration at the relevant time.

10. It is noted from Tribunal's previous order dated 9.8.94 in OA-1345/90 that a direction was given to Delhi Administration/Respondent No.1 to consider the case of the applicant for regularisation as well as for selection in consultation with the UPSC according to rules. Learned counsel for the parties in this OA have submitted that the relevant Rules in question are in the post of Civil Assistant Surgeon, Grade-I (Dental) under the Medical and Public Health Department, Government of NCT of Delhi, notified in the Gazette on

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12.7.1993. By these rules, the previous Recruitment Rules dated 25.8.1973 were cancelled. In Column.11 of Annexure R-1 to the Rules, the method of recruitment has been indicated as follows:-

"By direct recruitment failing which by transfer on deputation.

Note: The suitability of the existing Civil Asstt, Surgeon Grade-I (Dental) in the pre-revised scale of pay of Rs.2000-3200 will be assessed by the commission for appointment to the grade of Rs.2200-4000/- . If assessed suitable, he/she shall be appointed to the post at the initial Constitution. If assessed not suitable, he/she shall continue in the scale of pay of Rs.2000-3500 and his/her case will be revised every year".

11. Shri E.X. Joseph, learned senior counsel for applicant has submitted that even initially the applicant had been subjected to selection through the Staff Selection Board of the Delhi Administration and in spite of Tribunal's order dated 9.8.1994 to consider his case for regularisation of the ad hoc appointment, necessary action has not been taken. He has further submitted that on the other hand, similarly situated Doctors/Dental Surgeons have been so regularised as seen from some of the letters issued by respondent No.2. His grievance is that the applicant has not been so regularised, without subjecting him to the selection process, i.e., the examination which UPSC is insisting upon. In this connection, he has also drawn attention to an affidavit filed by the respondent No.2/Union of India dated 3.4.91 before the Hon'ble Supreme Court in Writ Petition (Civil) No.683/90 (Annexure R-2). Paragraphs 10 and 11 in this affidavit are relevant in which it has been stated, inter alia, that Dental Surgeons have been given the scale of Rs.2200-4000, an

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action for their placement in the senior scale of Rs.3000-4500 is in progress. It has also been stated that "all existing ad hoc appointees to medical posts in Group "B" have already been regularised".

12. In this connection, it will be relevant to note the submission of Mrs. Jasmine Ahmed, learned counsel for R-1/Delhi Administration that the respondents were always recommending the case of the applicant keeping his case separately in view of the aforesaid order of the Tribunal in OA-1345/1990 and in fact a post of Civil Assistant Surgeon (Dental) in General Category has been kept vacant for him. In the counter affidavit filed by respondent No.1, they have also stated in paragraph-4(x) that they have not denied that the applicant deserves to be considered for regularisation. However, the same has to be done by UPSC which is the authorised agency. These actions are in terms of the Tribunal's interim order dated 29.11.2001 to keep one post of Civil Assistant Surgeon (Dental) vacant.

13. Shri K.R. Sachdeva, learned counsel for respondent No.3 has raised the preliminary objection that this OA is barred by the principles of res-judicata as the applicant is seeking the same remedy which he had already sought and obtained in OA-1345/1990. This has been disputed by the learned senior counsel for applicant who has submitted that after the Tribunal's order dated 9.8.1994 has been passed, further developments have taken place, including the promotion order issued by respondent No.1

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dated 1.8.1997. Further, he has also submitted that while other Doctors/Dental Surgeons similarly situated as the applicant have been regularised in terms of the Hon'ble Supreme Court's orders, that benefit has been denied unfairly to the applicant and he is to be subjected to an examination at this stage, after working in that very post for nearly two decades and that too, after earning a promotion to the higher post of Junior Staff Surgeon (Dental).

14. We do agree with the submissions of Shri K.R. Sachdeva, learned counsel that in the previous OA-1345/1990 filed by the applicant, UPSC was not a party. However, the direction of the Tribunal in the order dated 9.8.1994 was quite clear to Delhi Administration that the case of the applicant for regularisation as well as for selection should be done in consultation with the UPSC according to rules. Admittedly, the relevant Recruitment Rules which were applicable to the case were the Recruitment Rules of 1993 which had superseded the earlier Rules of 1973. The applicant had been appointed as Civil Assistant Surgeon on ad hoc basis in 1984 and has been promoted as Junior Staff Surgeon (Dental) w.e.f. 1.1.90. In the facts and circumstances of the case, we have no reason to believe that respondent No.1 would have issued these orders without necessary consultation of UPSC and no documents have been shown to us to the contrary.

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15. In the facts and circumstances of the case, while admittedly a post of Civil Assistant Surgeon (Dental) is being kept vacant for the applicant for the last several years, a final decision has not been taken by respondent No.1/Delhi Administration in consultation with UPSC in terms of the 1993 Recruitment Rules or the previous order of the Tribunal dated 9.8.1994. This is so in spite of the averments of the Delhi Administration itself that they are pursuing the matter diligently even after several years, which in the circumstances of the case, we find difficult to accept. The issue which has been raised by the applicant in the present OA is still pending/a proper decision by the respondents. In the circumstances of the case, the plea of res judicata is rejected. We see no reason why an appropriate decision in the manner taken in respect of other similarly situated persons/Doctors which has been taken by respondents 1, 2 & 3 could not have been taken by them in the case of the applicant also.

16. Nothing has been brought on record by the three respondents to show that while regularising other Doctors/Dental Surgeons who were similarly situated, i.e., those who were also appointed on ad hoc basis at the relevant time and later orders were issued regularising their services, whether they were also subjected to any fresh examination/selection as is sought to be done in the case of the applicant. Neither of the learned counsel for the two respondents before us could assist us as to the manner in which the Note below Column.11 of the relevant Recruitment Rules

of 1993 has been operated/implemented with regard to persons who were to be adjudged for suitability in the existing Civil Assistant Surgeon Grade.I (Dental) in the pre-revised scale of pay of Rs.2000-3500, at the relevant time. Needless to say, Tribunal's order dated 9.8.94 has also specifically referred to the regularisation of the applicant in accordance with the rules, which exercise has admittedly not been completed by the respondents, for whatever reason for a number of years.

17. In the result, for the reasons given above, the OA succeeds and is allowed with the following directions:-

Respondents 1, 2 & 3 are directed to comply with the previous order of the Tribunal dated 9.8.94 in OA-1345/90 as expeditiously as possible and in any case within a period of three months from the date of receipt of a copy of this order, keeping in view the aforesaid observations, the relevant judgment of the Hon'ble Supreme Court and other subsequent orders issued by them in relation to similarly situated persons/Doctors at the relevant time. No order as to costs.

V.K. Majotra
(V.K. Majotra)
Member (A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)

CC.