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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.933/2001

New Delhi this the 5th day of September, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri Govindan S. Tampi, Member (A).

DR. NEEL KANTH GOSWAMI
S/O LATE SHRI ASUKARAN GOSWAMI
AGED ABOUT 57 YEARS,
RESIDENT OF Q-706, ANUPAM APARTMENTS,
EAST ARJUN NAGAR, SHAHDARA,
DELHI-110032

PRESENTLY WORKING AS
SR. DIVISIONAL MEDICAL OFFICER/SG,
NORTHERN RAILWAY CENTRAL HOSPITAL,
NEW DELHI.
(By Advocate Shri B.S. Mainee)

APPLICANT.

VERSUS

1. UNION OF INDIA
THROUGH THE SECRETARY (ESTABLISHMENT)
MINISTRY OF RAILWAYS,
RAIL BHAWAN, NEW DELHI-110001.

2. GENERAL MANAGER (PERSONNEL),
NORTHERN RAILWAY,
HEAD QUARTERS OFFICE,
BARODA HOUSE, NEW DELHI-110001.

3. DR. (MRS.) AMITA RAWAL,
SG/IRMS/RAILWAY BOARD.

SERVICE TO BE EFFECTED
THROUGH THE SECRETARY (ESTABLISHMENT)
MINISTRY OF RAILWAYS,
RAILWAY BOARD, RAIL BHAWAN, NEW DELHI.

RESPONDENTS.

(By Advocate Shri V.S.R. Krishna)

V.S.R.K.

O R D E R

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

In this application, the applicant who is working as Selection Grade Doctor, is aggrieved by the letter issued by the respondents dated 12.4.2001. By this letter, the respondents have granted promotion to eight Selection Grade officers in Indian Railways Medical Services (IRMS) to officiate in Senior Administrative Grade (SAG) which, the applicant alleges, is illegal as they have ignored his seniority over Respondent 3 - Dr. (Mrs) Amita Rawal. By this letter, Respondent 3 has been appointed to officiate in SAG by making suitable local arrangements till the superannuation of Dr. Y.P. Gulati on 30.4.2001.

2. This O.A. has been filed on 17.4.2001. By Tribunal's order dated 27.4.2001, after hearing both the learned counsel for the parties, the earlier interim order dated 17.4.2001 stating that any promotion made shall be subject to the outcome of the O.A. was not modified. The main contention of the applicant is that he is senior to Respondent 3 who has been promoted to SAG prior to his promotion. He relies on the judgement of the Supreme Court in Union of India & Anr. Vs. Lalita S. Rao & Ors. dated 10.4.2001 (copy placed on record). Learned counsel has contended that Respondent 3 had not joined service within reasonable time after her selection as there was a gap of more than one year. His contention is that the applicant's seniority should be reckoned w.e.f. 24.10.1973 in accordance with the judgement of the Supreme Court dated 10.4.2001 in Lalita S.Rao's case (supra). In that event,

the impugned order dated 12.4.2001 passed by the respondents should be quashed and set aside granting the applicant SAG in IRMS with all consequential benefits. During the hearing, Shri B.S. Maine, learned counsel had very vehemently submitted that the impugned order has been passed in a great hurry by the respondents, by burning the midnight oil immediately after the judgement of the Apex Court in Lalita S. Rao's case (supra) on 10.4.2001. He has questioned the hurried action of the respondents which he states shows their dubious ~~and~~ bad intention not to implement the Supreme Court order in the manner they ought to do. He has referred to various judgements of the Supreme Court and the Tribunal, including the judgement in Dr. P. Srinivasulu & Ors. Vs. Union of India & Ors. (OA1603/87) which has also been referred to in the O.A.

3. The respondents have submitted that they had filed a review petition against the aforesaid order of the Supreme Court dated 10.4.2001 before the same Court. Shri V.S.R. Krishna, learned counsel, has submitted that, that petition has been dismissed on 30.8.2001. He has further submitted that the respondents will accordingly implement the judgement of the Supreme Court and they have to necessarily prepare a revised seniority list in terms of the directions of the Supreme Court. He has drawn our attention to paragraph 4.14 of the reply to controvert the submissions of Shri B.S. Maine, learned counsel that they have issued the impugned letter dated 12.4.2001 in a hurry. He has submitted that that is not the position, as

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explained in their reply. He has also submitted that as the Hon'ble Supreme Court had not stayed the operation of the existing seniority list of Doctors, that has been operative while issuing the order dated 12.4.2001. He has, therefore, submitted that in the circumstances of the case, that order cannot be held to be arbitrary or illegal, as contended by the learned counsel for the applicant. Learned counsel has submitted that the panel for promotion to SAG of IRMS containing the names of 30 Doctors was approved by the competent authority on 11.10.2000 and not 11.10.2001 as wrongly typed in the reply. The impugned promotion order of the batch of eight Doctors, including Respondent 3 was issued on 12.4.2001. Out of the three Doctors approved for promotion to SAG, some of the promotion orders have been issued prior to 12.4.2001 and for some, promotion orders were issued later on 1.5.2001. He has, therefore, submitted that there is absolutely no mala fide intention on the part of the respondents in issuing the impugned order dated 12.4.2001.

4. Learned counsel for the respondents has also very categorically submitted, with which we agree, that there are no two opinions that the respondents have to implement the Apex Court judgement in Lalita S. Rao's case (supra). He has submitted that the O.A. is misconceived. After revision of the seniority list at the junior level, the review DPCs have to be held for considering promotions of eligible Doctors from Junior Scale to Senior Scale, Senior Scale to JAG and thereafter promotion to SAG level would

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arise. He has also pointed out that one of the main reliefs prayed for by the applicant is that based on his seniority w.e.f.24.10.1973, he should be given the seniority over Respondent 3 and the impugned order dated 12.4.2001 should be quashed and set aside which he has submitted cannot be done until the revised seniority list of the Doctors has been prepared and issued.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. Shri B.S. Mainee, learned counsel has also been heard in rejoinder.

6. One of the main contentions of the learned counsel Shri B.S. Mainee is that the applicant was initially appointed on ad hoc basis on 24.10.1973 and regularised by the UPSC in the year 1975. His claim is that in terms of the recent judgement of the Hon'ble Supreme Court dated 10.4.2000 in Lalita S. Rao's case (supra), he would, therefore, be entitled for promotion in SAG by reckoning his seniority from 24.10.1973. His other contention is that even if Respondent 3 had appeared in the 1972 examination held by the UPSC, she has joined the service after ^{an} _{an} inordinate delay which cannot be held as reasonable and she has only been appointed on 7.1.1974. Therefore, his contention is that she has to be considered junior to the applicant for promotion to the grade of SAG. However, as correctly pointed out by Shri V.S.R. Krishna, learned counsel, even if the seniority of the

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applicant at the time of appointment vis-a-vis Respondent 3 is taken into account, as submitted by the learned counsel for the applicant, based on the revised seniority list, review DPCs would have to be held in the subsequent promotions, especially considering the fact that promotion to SAG level is by selection. We also see force in the submissions made by Shri V.S.R. Krishna, learned counsel that only after the review petition filed by the respondents against the Apex Court order dated 10.4.2001 was dismissed on 30.8.2001, some time would be required by them to carry out the exercise ^{in respect of review} of the concerned lists of Doctors in IRMS. Shri B.S. Maine, learned counsel for the applicant has, on the other hand, submitted that this O.A. has been filed without exhausting the other remedies, as required under Section 20 of the Administrative Tribunals Act, 1985, considering the fact that he had wanted the interim order, ^{and} Hence, the O.A. was filed immediately. While that may be so, we cannot ignore the fact that now, the judgement of the Hon'ble Supreme Court dated 10.4.2001 is final and binding on all the parties and the respondents themselves have rightly submitted that they have to implement the orders.

7. Therefore, taking into account the facts and circumstances of the case, it cannot be held that on the basis of the existing seniority list, the action of the respondents is either arbitrary or unreasonable. In any case, they have submitted that they will recast the seniority list of AMOs/ADMOS in terms of the judgement of the Apex Court dated 10.4.2001. For this, they have prayed

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for some time which we do not consider as unreasonable, taking into account also the fact that the Review Petition filed by them in the Apex Court against the order dated 10.4.2001 has been disposed of only on 30.8.2001.

8. In the facts and circumstances of the case, particularly having regard to the judgement of the Hon'ble Supreme Court dated 10.4.2001 read with the order dated 30.8.2001, this application is premature. However, we expect, as submitted by the learned counsel for the respondents, ^{that is,} they will take action expeditiously to implement the orders of the Apex Court by way of revision of the seniority lists of AMOs and ADMOs and also take necessary action to convene review DPCs for carrying out the promotions in accordance with the provisions of law, rules and instructions. In this view of the matter, the O.A. is disposed of. No order as to costs.

(Govindan S. Tampi)
Member (A)
S.R.D.

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