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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 421/98

New Delhi, this the 29th day of January, 1999

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P.BISWAS, MEMBER (A)

In the matter of:

Dr. R.K. Aggarwal
S/o Shri Nanak Chand,
R/o 303/2-B, Chemsford Road,
New Delhi.

Presently working as
Deputy Chief Medical Director,
Northern Railway, H.Q. Office,
Baroda House,
New Delhi.

(By Advocate: Sh. K.C. Mittal) **Applicant**

Vs.

1. Union of India
through the Secretary (Establishment),
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. General Manager (Personnel),
Northern Railway, H.Q. Office,
Baroda House, New Delhi.
3. Dr. J.I. Raha,
Eastern Railway.
4. Dr. S.K. Gupta
Northern Railway.
5. Dr. M.L. Gaur,
Northern Railway.
6. Dr. (Mrs.) K. Sudha Rao
Northern Railway.
7. Dr. Mohd. Zahoorul Hussain
South Central Railway.
8. Dr. Dilip Kr. Dutta
North East Frontier Railway.
9. Dr. R.R. Dhavedkar
Central Railway.
10. Dr. TSR Wasnik
Central Railway.
11. Dr. S.K. Dube
Central Railway.
12. Dr. S. Parasuramulu
R.S.C.

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13. Dr. S.K. Paramhansa
South Eastern Railway.
14. Dr. (Mrs.) Maitrayee Gupta
Eastern Railway.
15. Dr. (Mrs.) S. Renuka Subramanian
Southern Railway.
16. Dr. S.G. Mendhekar
Central Railway.
17. Dr. Kalyan Ghosh
South Eastern Railway.
18. Dr. Manjit Singh Sachdeva
Northern Railway.

All to be served through
The Secretary (Establishment),
Ministry of Railways,
Railway Board,
Rail Bhawan,
New Delhi.

.... Respondents.

O R D E R

delivered by Hon'ble Shri T.N. Bhat, Member (J)

The applicant who is presently working as Deputy Chief Medical Officer, Northern Railway at New Delhi has in this OA assailed his exclusion from the list of promotees to the Senior Administrative Grade (SAG, for short). The list of promotees by which the applicant is aggrieved has been placed as Annexure A-1 to the OA. According to the applicant, 16 out of the 18 promotees mentioned in the list, are junior to the applicant, having been initially appointed on ad hoc basis after the appointment of the applicant and also later appointed on regular basis after the regular appointment of the applicant through the UPSC.

2. The applicant had earlier also come to the Tribunal by filing OA-177/87 which was decided by the judgment dated 30.7.92 with the following directions to the respondents:-

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"Accordingly, we order and direct that the applicant shall be deemed to have been regularised as AMO from the date of his initial appointment viz. w.e.f. 3.1.1970 and ADMO w.e.f. 1.1.1973. He shall be entitled to fixation of pay on notional basis in the grade of ADMO (Class I) viz. Rs. 700-1600 w.e.f. 1.1.1973, duly reckoning his service w.e.f. 3.1.1970. The applicant shall also be entitled to refixation of pay in the revised scale of pay as ADMO and to the payment of arrears on that account w.e.f. 1.1.1986."

"As far as the issue of seniority is concerned, the same has been decided by the Constitution Bench of the Hon'ble Supreme Court in Direct Recruit Class II. Eng. Officers' Ass. (supra) case and we have no doubt that the respondents will regulate the seniority of the applicant in accordance with the principles laid down in the said case."

"We, therefore, do not issue any direction in this regard. In the circumstances of the case, as alluded to earlier we also direct that the respondents shall pay Rs. 500/- as costs to the applicant. Finally we direct that the above orders



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shall be implemented with utmost expedition but preferably within 3 months from the date of communication."

3. The applicant has relied upon the judgment of the Tribunal dated 18.3.93 in Dr. P.Srinivasalu & Others vs. Union of India & Others (OA No.1603/87) which was upheld by the Hon'ble Supreme Court by the judgment dated 15.11.93, a copy of which has been placed at Annexure A-6 (Colly.). It is not disputed that the applicant is similarly placed. In the case of Dr. P.Srinivasalu (supra) it was held that the period of ad hoc service put in by Assistant Medical Officer in the Railways before his regular appointment through UPSC has to be counted towards seniority.

4. As before the Hon'ble Supreme Court so before us the learned counsel for the respondents sought to press into aid the judgment of the Apex Court in Dr. M.A.Haque and others vs. Union of India and others (intelocutory application No.1/92 in Writ Petition No.1165/86) decided on 18.2.93. The Apex Court in the aforesaid judgment dated 18.2.93 held on the facts of the case seniority should be determined according to the dates of regular appointment through U.P.S.C. Dealing with this contention in Dr. P.Srinivasalu (supra) it was held that:-

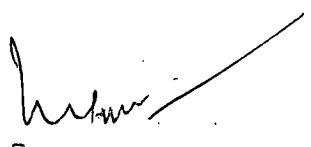
"In Dr. Haque's case the applicants before this Court had not appeared in any written examination or interview and had not gone through any process of selection

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by the UPSC. The applicants in that case were regularised under the directions of this Court. It was in these circumstances that this Court refused to grant the applicants in Dr. Haque's case the benefit of their ad hoc service towards seniority. The facts in the present Special Leave Petition are entirely different. The respondents herein were selected through the UPSC and were regularised. They have been rightly given the benefit of their ad hoc service towards seniority by the CAT. The Special Leave Petition is dismissed."

5. As already mentioned, the applicant, after being initially appointed on ad hoc basis, later came to be appointed on regular basis through the UPSC and this Tribunal also held in clear terms in the judgment dated 30.7.92 (supra) in the earlier OA filed by him that the applicant should be deemed to have been appointed on regular basis from the very inception, i.e., the date of his initial appointment on ad hoc basis which is 3.1.70. It is true that the issue of seniority was left open by the Tribunal in the aforesaid judgment. But it is equally true that the respondents were on this question directed to follow the principle enunciated by the Constitution Bench of the Hon'ble Supreme Court in the Direct Recruits Class II Engineering Officers Association Case, [JT 1990 (ii) SC 264].



6. In this situation the respondents were bound to refix the seniority of the applicant above those persons who had been appointed on ad hoc basis on dates subsequent to the appointment of the applicant. Had that been done the applicant would have been entitled to promotion to the SAG prior to the private respondents Nos. 3 to 18 in the present OA.

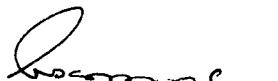
7. The above view finds further support from the judgment of this Tribunal in OA-321/96 (Dr. Lalita S. Rao vs. Union of India and another). The judgment in the aforesaid OA was delivered on 5.6.97 and the benefit of the judgment in the case of Sh. P. Srinivasalu (supra) was granted to the applicant in that OA, namely, Dr. (Mrs.) Lalita Rao who also, like the applicants, had been initially appointed as Assistant Medical Officer on ad hoc basis but whose services were later regularised through UPSC. The Tribunal held her entitled to seniority from the date of initial appointment on ad hoc basis. The applicant's case cannot be treated differently and he is clearly entitled to the benefit of the judgment in Dr. Srinivasalu's case.

8. In view of the above, we allow this OA and quash the impugned order dated 13.2.98 to the extent it excludes the applicant from the list of persons promoted to the senior administrative grade. The respondents are directed to consider the case of the applicant for promotion to SAG proceeding on the basis that the date of appointment of the applicant as AMO was 3.1.70 and that therefore he was senior to those who had been appointed after the aforesaid dates on ad hoc basis and regular

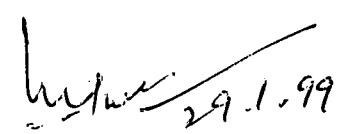
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basis, respectively. We further direct that this judgment shall be implemented within a period of 3 months from the date of receipt of a copy of this order.


(S.P. BISWAS)

Member (A)


(T.N. BHAT)

Member (J)

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