

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

OA.No.332/95

Dated this the 7th Day of February, 1996.

Hon'ble Shri S.R. Adige, Member(A)
Hon'ble Dr. A.Vedavalli, Member(J)

1. S. Sunder Rajan,
S/o V. Sunder Raman,
693, Sector XII,
R.K. Puram,
New Delhi 110 022.
2. Dr. B.P. Patnaik,
National Malaria Eradication
Programme, 22, Shamnath Marg,
Delhi 110 051.
3. Dr. M.C. Aggarwal,
Delhi Administration Polyclinic,
Tilak Nagar, New Delhi.
4. Dr. Chandrakant,
Department of Forensic Medicine,
Safdarjung Hospital, New Delhi.
5. Dr. S.R. Khurana,
CGHS Dispensary, Ghaziabad, U.P.
6. Dr. A.S. Rathore,
S/o Shri B. Rathore,
Epidemiologist, Safdarjung Hospital,
New Delhi.
7. Dr. Meena Saini,
W/o Lt Col S.S.Saini,
1200, sector D, Packet I,
Vasant Kunj, New Delhi.Applicants

By advocate: Shri Ravindra Bhatt.

versus

1. Union of India through
Secretary, Ministry of
Health & Family Welfare,
Nirman Bhawan, New Delhi 110 011.
2. The Director General of
Health Services, Central Health
Services, Government of India,
Nirman Bhawan, New Delhi 110 011...Respondents

By Advocate: Mrs. Raj Kumari Chopra.

O R D E R (Oral)
(By Hon'ble Shri S.R. Adige)

In this application, Dr. S. Sunder Rajan and six others have sought a direction to the respondents to reckon their entire length of their Commissioned

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service in the concerned Defence Forces for the purposes of seniority and consequential promotional benefits under the Central Health Service in their respective cadres and in the concerned Departments, where they are working.

2. Shortly stated, the applicants, all of whom served under various Armed Forces of the Union are short service commissioned officers, their services ranging between 5 to 9 years. Upon the conclusion of their short service commissions, they were recruited under the Central Health Service Rules, 1982 (CHS Rules -in short) as direct recruits. Their case is that while Emergency Commissioned Officers (ECOs) and Short Service Commissioned Officers (SSCOs) recruited during certain periods (e.g. 1962, 1965 and 1971) were entitled to reckon their entire length of service in the Defence Forces for all purposes including pay, promotion, seniority, gratuity, pension etc. upon recruitment to the Civil Services under various Rules, Regulations and posts, those SSCOs recruited before or after the period prescribed and are not covered by the Rules such as the applicants, have had the benefits of their military service restricted to pay protection, reckoning of eligibility and provision for recruitment into civilian service/posts. They are pressing that the benefit of seniority on account of their past military service should also be extended to them.

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3. We have heard Shri Bhatt for the applicants and Mrs. Raj Kumari Chopra for the respondents.

4. At the outset, Mrs. Raj Kumari Chopra has invited our attention to the facts that the Central Health Service Rules, 1982 do not provide for any benefits of this nature and the Rules themselves have not been challenged in the OA.

5. Secondly, Mrs. Chopra invited our attention to the fact that a similarly placed applicant one Dr. B.B.Mishra has filed OA.213/90 claiming *inter alia* for refixation of his seniority with all consequential benefits, taking into account, his army service of four years. That OA was disposed of by judgement dated 18.12.92 in para-11 of which it was noted that the applicant had not produced any documentary evidence to support his contention that his army service had been recognised by the respondents, except for the purpose of his pay fixation under FR 27. While disposing of that OA, the Tribunal accordingly held that in the absence of any such recognition, his service period in the Defence Forces could not be reckoned for seniority purposes. No materials were shown to us to lead us to believe that the judgement dated 18.12.92 had not become final. Shri Bhatt stated that the said judgement had been sprung upon him all of a sudden, and hence, he could not confirm or deny that the said judgement had

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become final, but Mrs. Chopra affirmed that the said judgement had become final and we have no reasons *prima facie* to doubt this assertion.

6. Applicants counsel Shri Bhatt has relied upon the Tribunal's judgement dated 11.2.93 in OA.No.1215/91 Dr. M.P. Srivastava Vs. Union of India in which the applicants prayer for counting of his military service for purposes of seniority had been remanded to the respondents for reconsideration. Mrs. Chopra has invited our attention to paragraph-2 of respondents reply in which it has been stated that the respondents did reconsider the matter but found themselves unable to grant the benefit prayed for by Shri Srivastava and informed him accordingly. There is no denial to this averment in the applicants rejoinder. Further more we note that a very similar issue happened to be considered by the Hon'ble Supreme Court in All India Ex-emergency Commissioned Officers and Short Commissioned Officers Association versus Union of India ,and another and connected cases reported in 1995 (SCC) L&S 258. In that judgement, the Hon'ble Supreme Court noted that the released Emergency Commissioned Officers and Short Service Commissioned Officers (Reserved Vacancies) Rules, 1971 were framed by the President to compensate the ECOS for the chances they had lost by entering public service during the time country needed them. The rules apply to those who were commissioned after 1.11.62, but before 10.1.68 and made certain percentage of reservation in all Central Services, besides giving protection of seniority. The prayer of

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the applicants Association was that the same benefit should be made available to those categories of persons when they joined the non-reserved posts also.

Dismissing the prayer, the Hon'ble Supreme Court observed that a policy decision have been taken to give some benefits to those service men who had stood with the people when the country was invaded and had rendered useful service during the emergency in question. How much benefits and in what shape it ought to have been given were not matters of which Court should have any say as these were exclusively for the executive to decide. The Courts came into the picture in such matters only if the same was either illegal or irrational or were to suffer from procedural impropriety and they did not find any such infirmity in the policy at hand. Further more, there was no possibility of some of the released officers obtained reserved posts with the benefit available under the rules and others obtaining non-reserved posts with no benefits visualised by the rules. The two types of incumbents had to be taken as belonging to two different categories "one having no clash with the other" and "the one being denied no benefit available to the other".

8. Yet another judgement in the same vein is available in Ravi Pal and others versus Union of India and others (JT 1995 (1) SC 579). On the point of determining seniority of Emergency Commissioned Officers in BSF who were recruited as Assistant Commandants after release from the Army, it was held that rule 8(b) of CRPF Rules does not govern officers

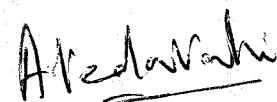
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appointed to BSF and such BSF officers were not entitled to court services in the Army for seniority in BSF.

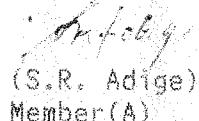
9. In the absence of any specific provisions in the CHS Recruitment Rules for counting of service in the Defence Forces for purposes of seniority at the time of direct recruitment and in the background of various judgement cited above, we are unable to grant the relief prayed for by the applicants before us. Shri Bhatt has sought to place reliance upon the Hon'ble Supreme Court decision in K. Madhavan versus Union of India (AIR 1987 (SC) 2291), but that ruling relates to a case where the officers who was a DSP in the Rajasthan State Police came on deputation to the CBI. In the present case, the applicants who were commissioned in the Defence Forces relinquished their Commission and were recruited as Direct Recruits under the CHS Rules. Hence Madhavan's case (supra) is distinguishable on facts from the present case before us and, therefore, does not help the applicants.

10. In the result, the OA fails and is dismissed. No costs.



(Dr. A. Vedavalli)
Member(J)

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(S.R. Adige)
Member(A)