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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 1555 of 1996

New Delhi, this the 8th day of March, 1999

Hon'ble Mr. N. Sahu, Member (Admmv)
Hon'ble Dr. A. Vedavalli, Member (J)

1. Indian Railway A.M.O. (Adhoc)
Association through its General
Secretary, Dr. Sudhir Kumar Sharma,
C-36/D, Railway Colony, Lajpat
Nagar-I, New Delhi-110024.

2. Dr. C.P. Singh, S/o late Keshar
Singh, R/o 1-A, Railway Colony, Tilak
Bridge, New Delhi.

-APPLICANTS

(By Advocate: Shri P.P. Khurana)

1. Dr. Brahm Prakash, S/o Shri Uday Ram
Sr. D.M.O., Northern Railway, Central
Hospital, New Delhi.

2. Dr. Atul Vaish, S/o Shri Prakash
Chand Vaish, D.M.O. Northern Railway,
Central Hospital, New Delhi.

-INTERVENORS

(By Shri R. Ramchandran Sr. Advocate
with Ms. Nisha Bagchi & Shri S.K. Gupta
Advocates)

VERSUS

1. Union of India, through its Secretary,
Railway Board (Ministry of Railways),
Rail Bhawan, New Delhi.

2. The Chairman, Railway Board, Rail
Bhawan, New Delhi.

- RESPONDENTS

(By Advocate Shri R.L. Dhawan)

ORDER

By Mr. N. Sahu, Member (A):

This OA was filed on 15.4.96 seeking a direction to the respondents to count towards seniority the period of service rendered by the members of the applicants' association as Assistant Medical Officers (in short 'AMO')/ Assistant Divisional Medical Officers (in short 'ADMO') prior to their selection through the Union Public Service

Commission (in short UPSC). For this purpose the applicants relied on a decision of this Court in the case of Dr. P. Srinivaslu and others Vs. Union of India and others, OA No. 1603 of 1987 decided on 18.3.93. The Bench held that "the adhoc period of service was to be counted towards seniority, as the said ad hoc period was ripen into the regularisation without any break". The Bench quashed the seniority list dated 1.6.87. The applicants' claim that denial of the benefit of the seniority for the ad hoc service is unjust and illegal. They rely on the Constitution Bench of the Hon'ble Supreme Court in Makhan Lal Waza Vs. State of Jammu & Kashmir, (1971) 1 SCC 749. It is claimed on the basis of that decision that similarly placed persons should be given the same benefit and the respondents ought to have refixed the seniority of all the identically placed doctors and not limit the reliefs to only those who were impleaded as applicants in Dr. P. Srinivaslu's case (supra).

The applicants in Dr. P. Srinivaslu's case prayed for the benefit of their past ad hoc service to be reckoned for their seniority. This was allowed by this Court. This was apparently at variance with an earlier judgement of the Hon'ble Supreme Court in the case of Dr. M.A. Haque & Ors Vs. Union of India and others, (1993) 2 SCC 213 : 1993 SCC (L&S) 412 : (1993) 24 ATC 117 : 1993 (2) SLR 1. Dr. Haque's case laid down the principle that seniority should be determined according to the date of regular appointment but the SLP (Civil) No.10714/93 filed against Dr. P. Srinivaslu's case (supra) was dismissed by the



Hon'ble Supreme Court on 15.11.93 (Annexure-V).

However, considering the fact that counting of ad hoc service of these 21 doctors might create in the perception of the respondents a very anomalous situation I.A.2 in SLP (Civil) NO.10714/93 was filed in the Supreme Court seeking clarification/modification of the court's order dated 15.11.93. This application was also dismissed by the Supreme Court on 13.5.94. Thus, even according to the Ministry of Railways the decision of the Supreme Court in the case of Dr. P.Srinivaslu has become absolute and binding.

2. The respondents submit that the order implementing the judgement dated 16.3.93 of this Court in the case of Dr. P.Srinivaslu has again been challenged by the direct recruit doctors before the Principal Bench of the Tribunal in OA-51/96 in the case of Dr. S.K. Gupta and anr Vs. Union of India. It is also stated that one Dr. Satish Chandra Agarwal and another have filed SLP No.4225/95 before the Supreme Court challenging the order of this Court in the case of Dr. P.Srinivaslu, which was dismissed by their Lordships on 11.4.1997. According to the respondents the benefit of ad hoc service could not be given to the members of the applicants' association as the matter is subjudice still before various courts.

3. Dr. Brahm Prakash and Dr. Atul Vaish have been permitted to be impleaded as intervenors. These two intervenors joined IRMS Group 'A' as direct

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recruits through UPSC under the recruitment rules of 1979 and 1986. They state that a large number of doctors in this OA were recruited and inducted into IRMS cadre much later than them. They relied on the decision of the Supreme Court in Dr. M.A. Haque's case. The operative portion of the directions of the Supreme Court in Dr. M.A. Haque's case is as under:

"In the result we direct that the seniority of the direct recruits both outsiders and insiders should be determined according to the dates of the regular appointment through the UPSC and the petitioner-applicants should be placed in the seniority list after those direct recruits who are recruited till this date. Among themselves, their seniority will be governed by the dates of the initial appointment."

This preferential treatment to be given to the direct recruits as ordered by the Supreme Court in Dr. M.A. Haque's case has not been brought to lime light. It is stated that applicant No.2 Dr. C.P. Singh was inducted in 1982 whereas Dr. Brahm Prakash was inducted in 1979. According to the intervenors the grant of the said relief to the applicants would adversely affect the seniority of the two intervenors in the MA.

4. A Division Bench of this Court in the case of Dr. (Mrs) Lalitha S. Rao Vs. Union of India and others OA No. 321 of 1996 decided on 5.6.97 held that the applicant in that case was similarly situated as Shri P.Srinivaslu. Reliance was placed on the decision of Supreme Court in the case of Girdhari Lal Vs. Union of India & Ors., SLP (C) No. 14005/92 decided on 3.1.96 wherein the Supreme

Court deprecated the resistance of Union of India to grant similar benefits to the applicant. The Supreme Court held "it is appropriate that the Union of India treat all such persons alike and to grant them the same benefits instead of driving each one of them to litigation in the course of which the Union of India itself is required to spend considerable public money."

5. The earlier order passed by this Bench on 9.1.98 was recalled by allowing the review application.

6. It is clarified by Shri P.P.Khurana, learned counsel for the applicant-association that service of none of the members of the association had at any time treated as dies non. They have no broken period of service. Their entire service was continuous and regular. The applicants' counsel strenuously urged that category of doctors with broken period of service need not be brought into this OA at all. With regard to the decision of the Madras Bench in the case of Dr. O.P. Santhanam Vs. Union of India and another, O.A. No.251 of 1996 decided on 25.3.96 filed by Sh. Dhawan, it is submitted that this Madras Bench's decision is no longer good law in view of the decision of the Supreme Court in Dr. P. Srinivasulu's case (supra). Shri Khurana mentioned that while disposing of the decision in Dr. P. Srinivasulu's case the Hon'ble Supreme Court

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noted, cited and distinguished the decision in Dr. M.A. Haque's case (supra) and, therefore, the said decision is binding.

7. Sh. Dhawan, learned counsel for the respondents cited the decision of the Hon'ble Supreme Court in Dr. (Mrs) Pushpa Vishnu Kumar Gurtu Vs. State of Maharashtra & others 1996 (1) SLJ 19. Dr. (Mrs.) Gurtu was selected by the Maharashtra Public Service Commission and joined the post on 11.2.77. She joined the post as a Reader on 11.10.77 and continued in the said post till 21.10.81. On 15.10.81 she was appointed as Associate Professor in Gynaecology. The Supreme Court granted the seniority and the benefit of continuous service from the date of eligibility according to the rules, relying on the decision in the case of Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and others, (1990) 2 SCC 715 : 1990 SCC(L&S) 339: (1990) 13 ATC 348 wherein it is held that once an incumbent is appointed to a post according to the rules his seniority has to be counted from the date of his appointment. The Supreme Court also did not agree with the plea of conferring seniority from the date of eligibility.

8. The applicant's counsel on the other hand relied on the case of Shreedharan Kallat Vs. Union of India & Ors, (1995) 4 SCC 207. It was held in that case that once the judgement of the High Court is affirmed by the Supreme Court the C.A.T. will not be competent to deny the binding effect of that order

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on the ground of alleged inconsistency with the rules. Such a view of the Tribunal is held to be against judicial comity and propriety. The Supreme Court heavily came down on the Tribunal for reopening the matters that were concluded by a decision of the Apex Court. In **Vijayalaxmi Cashew Company & Ors. Vs. Dy. Commercial Tax Officer & Anr.**, (1996) 1 SCC 468 the Supreme Court held that the decision of a Bench not doubted by any later Bench cannot be held to be over-ruled. On the basis of these two authorities Shri Khurana urged that decision in **Dr. P. Srinivasulu's** case (supra) would be binding and has to be implemented and the reliefs prayed for should be allowed.

9. The next ground raised by Shri Dhawan is that the seniority list of the doctors was settled as early as on 10.6.1987. Such a settled issue cannot be reopened. For this purpose he relied on the decision of **Govt. of A.P. & Ors. Vs. M.A. Kareem & Ors.**, 1991 SCC (L&S) 1206. The question involved in that case was whether the claim for previous service could not be raised on the ground that Government at one stage considered to accept transfer by allowing benefit of previous service. The plea was that transfer had to be treated in public interest. That was a case of voluntary transfer to another organisation by foregoing previous service. The Supreme Court held that the seniority decided cannot be reopened and unsettled after 13 years. In that case the respondents qualified in a special qualifying examination conducted in 1974. They were

actually appointed in 1965-67 but they did not appear in general examinations held from 1968. Seniority was given to them from 1.8.72. Thus they allowed the benefit of only part of the service rendered prior to the passing of the prescribed examination. The Supreme Court also clearly held that the Writ Petition filed after 8 years after the impugned order challenging the seniority list is hit by laches and delay. Shri Dhawan particularly relied on the State of Karnataka & Ors Vs. S.M. Kotrayya and Ors., 1996 SCC (L&S) 1488. The Supreme Court held that the mere fact that the applicants filed the belated application immediately after coming to know that in similar claims reliefs had been granted by the Tribunal was held to be not an appropriate explanation to justify condonation of delay. The explanation must relate to failure to avail the remedy within the limitation period. Relying on this decision Sh.Dhawan contended that the OA is barred by limitation. Shri Dhawan also stated that initial appointment of the applicants as ad hoc AMOs/ADMOS was in Group 'B' service. In terms of the recruitment rules the recruitment of ADMO is on the basis of a Combined Medical Services Examination which is conducted by the UPSC. On such appointment as ADMO Group 'A' the period of ad hoc AMO Group 'B' service is not to be counted for the purpose of seniority in terms of the Constitutional Bench's judgement in the Direct Recruits case (supra). The Hon'ble Supreme Court have in an identical case of Dr. Anuradha Bodi Vs. MCD, 1998 (2) SCSLJ SC 48 rejected the claim of the petitioner for counting ad



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hoc service for the purpose of seniority. It is also stated that appointment as ADMO Group 'B' used to be made by the Zonal Railway Administration pending availability of directly recruited ADMOs Group 'A' in the interest of administration to meet with the existing requirements. Such an appointment as ad hoc ADMO Group 'B' was not according to rules but was made as a stop gap arrangement pending availability of directly recruited ADMOs Group 'A' through the UPSC and as such the service as ad hoc ADMO Group 'B' cannot be taken into account for fixing seniority as ADMO Group 'A'. Shri Dhawan also brought to our notice the decision of the Hon'ble Supreme Court in the case of **Punjab National Bank Vs. K.C.Chopra and another**, JT 1997 (7) SC 161 wherein it is held that "[O]thers, therefore, cannot claim the same benefit on the basis of that decision specially when giving that benefit would be contrary to and in the teeth of the service regulations applicable to the employee". Therefore, Shri. Dhawan submits that the seniority list as on 1.1.88 cannot be unsettled after more than 10 years as per the law laid down by the Hon'ble Supreme Court in the case of **Melcom Lawrence Cecil D'Souza Vs. Union of India and others**, 1976 SCC (L&S) 115).

10. Dr. Raju Ramachandran, learned counsel for the intervenors has made two submissions. He stated that **Dr. (Mrs) Lalita S. Rao's case** (supra) has been stayed by a Division Bench of the Delhi High Court by an order dated 18.7.1997 in CW Nos. 2802/97 and CM 5532/97. The next point made by him was that the



Full Bench of the Delhi High Court in the case of The Management of M/s Patiala Iron Works Vs. Union of India and others, 1975 Lab. IC 1265 have laid down certain propositions of law as to what should be the duties of Court when faced with contradictory decisions of the Hon'ble Supreme Court. The Full Bench laid down as under -

"Where a decision of the Supreme Court is plainly in contradiction of what was said by that Court earlier in another case and where it is not possible to reconcile the observations in the two decisions the Courts must follow the decision of the Larger Bench and also see whether the view "on principle" commends itself and is the right view to take .

Where the decisions taking opposing and contradictory views are of the same number of Judges and it is not possible to reconcile the observations in these two decisions, the courts are at liberty to consider which of the two views is supported by the provisions of the Constitution."

He next explained the decision of the Hon'ble Supreme Court in the case of Dr. M. A. Haque's case (supra). The Hon'ble Supreme Court in that case was dealing with three classes of ADMOs. The first category represents the directly recruited Medical Officers through the UPSC; the second category represents adhoc appointees but later on regularly recruited through UPSC; and the third category represents the adhoc appointees but regularised through orders of Courts. The Hon'ble Supreme Court has held, following the decision in the case of Direct Recruit (supra) that the seniority of the first and second categories are to be determined according to the dates of their regular appointment through UPSC and those belonging to the third category are to be placed below them and among themselves

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seniority has to be determined by the dates of their initial appointment. The intervenors in this case belong to the first category. The applicants in this case belong to the second category. A reference was also made on behalf of Dr. M. A. Haque upon a decision of the Hon'ble Supreme Court in Dr. P. P. C. Rawani and others Vs. Union of India and others, 1992 SCC (L&S) 309 = JT 1991 (6) SC 534. The facts in Rawani's case (supra) are under the CGHS scheme. This scheme had laid down for medical officers who were directly recruited through the UPSC and those who were appointed either on adhoc or short term basis. The adhoc appointees in the service had been agitating for their regularisation and ultimately they approached the Supreme Court. They were appointed on various dates between 1968 and 1977. The Supreme Court directed for their regularisation. The Union of India approached the Supreme Court with a review petition and then a clarification application pointing out certain difficulties in giving effect to the court's order. These applications were dismissed by the Hon'ble Supreme Court. It was then that Dr. Rawani's case was decided in the above background. Before their Lordships difficulty was expressed in giving effect to the directions in view of the fact that regularised Medical Officers were appointed much earlier though on adhoc basis. The counsel for the appellants before the Hon'ble Supreme Court agreed to forward certain proposals in order to avoid any injustice to any of the parties, namely, the regularised Medical Officers as well as directly recruited Medical Officers. No doubt the Union of



India was not agreeable to accept those proposals but their Lordships were of the opinion that there was no way of rendering justice to all the parties except by accepting those proposals. The respondents gave precedence to the regularised Medical Officers over the directly recruited Medical officers and this was unsuccessfully challenged in the case of Dr. Akhilesh Chand Aggarwal Vs. Union of India and others, O.A. No. 1744 of 1993 decided on 23.1.1996. A reading of the Hon'ble Supreme Court's direction in Dr. P.P.C. Rawani's case (supra) shows that in order to avoid disturbance to the seniority and promotional prospects of the regularly recruited doctors, separate seniority lists of the two categories of the doctors, namely, directly recruited Medical Officers and regularised Medical Officers were directed to be prepared. The promotions were also required to be regulated by such seniority lists. It was further directed that the promotion of the appellants before the Hon'ble Supreme Court, namely, the regularised doctors would be on the supernumerary posts to be created. The promotion of the regularised Medical Officers was made dependent on the promotion of the directly recruited Medical Officers. It is also important to note in Dr. P.P.C. Rawani's case (supra) that regularised Medical Officers were directed to be promoted only on supernumerary posts and no promotion would be given to them in the existing vacancies which were only to go to regularly appointed doctors. Thus, in Dr. P.P.C. Rawani's case regular posts of promotion are



to be given to the directly recruited Medical Officers and similar posts of promotion should be created to accommodate the regularised Medical Officers.

11. In Dr. M.A. Haque's case (supra) also the Hon'ble Supreme Court had left the course open to the Railways to follow the method in Dr. P.P.C. Rawani's case if they so liked. It is also made clear in Dr. M.A. Haque's case that "in accordance with the rules means" the rules of recruitment and not the special procedure laid down by the Court. Prior to 1977 the method of recruitment was otherwise than by examination. In 1977 the UPSC introduced the Combined Medical Services Examination for the first time. Dr. M.A. Haque and others were recruited between 1968 and 1977. They were given three chances for their selection through the UPSC but they did not avail of them. Some of those who were appointed with them, however, had availed of the chances and were appointed as regular direct recruits and their seniority was given from the date of their regular appointment. Although in 1977 the written examination was introduced but on account of exigency, the UPSC held two special examinations in the years 1982 and 1985 based on interviews only and by relaxing the age limits. In these two special examinations 167 doctors were selected and absorbed in the regular cadre. They have also been given seniority from the date of their regular absorption. In Dr. M.A. Haque's case the applicants failed to appear in these examinations also or after appearing in the same had failed.



12. Shri Dhawan's contention on limitation has no merit. After the judgment of the Hon'ble Supreme Court dated 15.11.1993 in the case of Dr. P. Srinivaslu several representations were sent by the affected applicants of the Association in September, October, and November, 1994, which were not answered. The order giving effect to the case of Dr. P. Srinivaslu and 21 others has radically changed the earlier seniority position of the applicants vis-a-vis the earlier seniority list as on 1.1.1988. There is a perennial threat of promotional prospects being thwarted, every time a promotional vacancy arises.

In Inder Pal Yadav Vs. Union of India, (1985) 2 SCC 648 the Hon'ble Supreme Court held that those who have not approached the Court and who are similarly situated will be entitled to similar benefits. Not conferring the benefit on the members of the Association and applicant Dr. C.P. Singh amounts to hostile discrimination and violates Articles 14 and 16 of the Constitution of India. This discrimination is a cause of action which is perennially present after the decision in Dr. P. Srinivaslu's case has been affirmed and implemented by the respondents. Therefore, the argument on limitation is without any basis.

13. The applicants in the OA before us are relying on the case of Dr. P. Srinivaslu (supra). As state above, the Hon'ble Supreme Court upheld this Court's order dated 18.3.1993 in the case of Union of India and another Vs. Dr. P. Srinivaslu and others in

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SLP (Civil) No. 10714 of 1993 decided on 15.11.1993: saying that the CAT had rightly given the benefit of their adhoc service towards seniority. The Railways filed an application for a clarification, modification and direction. The direct recruit doctors also intervened in the above case. The Hon'ble Supreme Court held by an order dated 13.5.1994 that no clarification is needed and dismissed the petition. The Direct Recruit Doctors' Association filed a writ petition No.445/94 and when it came for preliminary hearing the Hon'ble Supreme Court dismissed the said writ petition by an order dated 4.8.94. Thereafter Dr. D.P. Pandey and others moved another writ petition no. 612/94 and by an order dated 4.10.1994 the said writ petition was dismissed. Further Satish Chandra Agarwalla and others filed an SLP against this Court's order in OA No.1603/87 and this was disposed of by an order of the Supreme Court dated 11.4.1997. Their Lordships noted that this is an identical case where similar petitions had been dismissed and judicial discipline requires that this petition should also be dismissed. On behalf of the Indian Railways AMO Adhoc Association the prayer is that persons who are placed similar to that of Dr. P. Srinivaslu have requested for their refixation of seniority as it was done in the case of Dr.P.Srinivaslu and 20 other doctors.

14. We are unable to agree with the interveners or with the respondents. We have already noted above the admonition administered by the Hon'ble Supreme Court in Shreedharan Kallat's case (supra). We also

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noticed that Dr. M.A.Haque's case was cited and distinguished in Dr.P.Srinivaslu's case. Thus, we have only to reiterate the earlier order given on 9.1.1998 by way of a direction to the respondents to grant the same benefits to the applicants as has been granted by the Hon'ble Supreme Court and the respondents in the case of Dr.P.Srinivaslu and others. It is for the respondents-Railway administration to take the matter to the Hon'ble Supreme Court and seek any modification they like.

15. We, therefore, direct the respondents to refix the seniority of Dr.C.P.Singh and similarly situated persons of the applicant-association as was done in the case of Dr.P.Srinivaslu and 20 other doctors. The respondents are also directed to consider the members of the Association for further promotion to higher grades on the basis of the revised seniority. Since P. Srinivaslu's case has been affirmed and reaffirmed, we respectfully are bound by the said decision and direct accordingly. The above directions shall be complied with within a period of three months from the date of receipt of a copy of this order.

16. The O.A. is allowed with the above directions. No costs.

A.Vedavalli
(Dr. A. Vedavalli)
Member (J)

N. Sahu
(N. Sahu)
Member (Admnv)