

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2491/97

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T.A.No.

DATE OF DECISION 25. -7.2000

Dr.P.K.Jain & Ors

....Petitioner:

Dr.M.P.Raju, learned counselAdvocate for the
through proxy counsel Petitioner(s)
Sh.John Thomas.

VERSUS

ESIC & Ors

....Respondent:

Sh.G.R.Nayyar

....Advocate for the
Respondents.

OPINION

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)

The Hon'ble Sh.S.A.T. Rizvi, Member (A)

1. To be referred to the Reportee or not Yes
2. Whether it needs to be circulated to other Benches of the Tribunal No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O. A. 2491/1997

New Delhi this the 25th day of August, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri S.A.T. Rizvi, Member(A).

1. Dr. P.K. Jain,
WZ-29, Golden Park Rompura,
Delhi-110 025.
2. Dr. Om Prakash,
5/20, Jam Nagar House,
Shahjahan Road,
New Delhi-110 011.
3. Dr. R.K. Sharma,
M-112-A, Uttam Nagar,
New Delhi-110 059.
4. Dr. Arvind Sharma,
G-131, Ashok Vihar Phase-I,
Delhi-110 052.
5. Dr. Krishan Avtar Gupta,
Qtr. No.3, ESI Hosp. Residence
Complex, Noida-201301.
6. Dr. Z.A. Zaidi,
Qtr. No. 1, ESI Hosp. Residence
Complex, Noida-201301.
7. Dr. Bharat Bhushan,
H.No. 2/112, Sunder Vihar,
New Delhi-110 087.
8. Dr. Romi Khurana,
Qtr. D-64, IG. ESI Hospital,
Residence Complex,
Jhilmil, Delhi-110 095.
9. Dr. Ram Kumar,
D-2-34-D, Janakpuri,
New Delhi-110 058.
10. Dr. J.P. Jain,
Jain Nursing Home,
Ganga Sahai Gali, Loni,
Ghaziabad, U.P.
11. Dr. (Mrs.) Meeta Kachhwah,
H-192, Sarita Vihar,
New Delhi. Applicants.

(By Advocate Shri John Thomas proxy for Dr. M.P. Raju)

Versus

Employees State Insurance Corporation
through its Director General
Shri B.R. Basu, Kotla Road,
New Delhi.

... Respondent.

(By Advocate Shri G.R. Nayyar)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member (J).

This application has been filed by Dr. P.K. Jain and 10 other persons in which they have stated that the respondents have acted in an arbitrary, unreasonable and discriminatory manner by refusing to grant them seniority from the date of their initial appointments and later regularisation in the pay scales for the post of IMO Grade-II with all consequential benefits.

2. Shri G.R. Nayyar, learned counsel has drawn our attention to MA 726/98 filed by the respondents, that is ESI Corporation, praying for dismissal of this OA on the preliminary objection that a false allegation has been made in the present OA by Dr. P.K. Jain, applicant No. 1 in Paragraph 7. In the O.A., we find that Dr. P.K. Jain R/o WZ 29, Golden Park Rampura, Delhi-110 025 is also the applicant in OA 1796/97 which has been filed on 14.7.1997 and the present O.A., in which he is also one of the applicants has been filed on 9.10.1997. The respondents have pointed out that the reliefs prayed for by the applicants in this O.A. and O.A. 1796/97 filed by Dr. P.K. Jain are the same, namely, for grant of seniority in the grade of IMO Grade-II from the date of their initial appointments on ad hoc basis. We have seen the declaration given by this applicant, along with the other applicants, that he has not previously filed any application, writ petition or suit regarding the matter

in respect of which this present application (OA 2491/97) has been filed. This has been supported by an affidavit by Dr. P.K. Jain, applicant No. 1 (Pages 66-67 of the paper book in MA 2423/97) praying for filing the joint application under Rule 4(5) of the CAT (Procedure) Rules, 1987, that the contents of the application are true and correct to the best of his knowledge and he has not concealed any material from the Tribunal.

3. It is further noted from the rejoinder filed by the applicants on 8.1.1998 that in respect of para 7, the applicants have reiterated their contentions in the O.A. denying the averments made by the respondents in their reply dated 31.12.1997, in which they have categorically stated that the contents of paragraph 7 of the application are false as per their preliminary submissions.

4. Apart from the above, Shri G.R. Nayyar, learned counsel for the respondents has on ^{the} ~~merits~~ ^{of the case} also submitted that the O.A. may be dismissed. He has relied on the judgement of the Tribunal in **Dr. Prem Lata Choudhary Vs. ESI Corporation & Ors.** (OA 951/91) which was disposed of by the Tribunal vide order dated 6.5.1997 in which one of us (Hon'ble Smt. Lakshmi Swaminathan, Member(J)) was also a Member) which has been followed in another judgement of the Tribunal in **Dr. Ashok Kumar Taneja & Ors. Vs. ESI Corporation** (OA 2343/93) by order dated 4.11.1997 (copies placed on record). He has submitted that the facts and issues in the present case are similar to the facts and issues before the Tribunal in OA 951/91 and OA 2343/93 where

the Tribunal had dismissed the claims of the applicants for granting them seniority from the dates of ad hoc promotions with consequential benefits.

5. We have carefully considered the pleadings and heard the learned counsel for the parties.

6. From the pleadings, it is seen that the averments of the applicants in paragraph 7 of the O.A. are indeed false, as the applicant Dr. P.K. Jain has filed a previous application (OA 1796/97) on 14.7.1997 which is pending adjudication. He, therefore, could not have made the declaration as he has done, along with the other applicants in paragraph 7, and it is also relevant to note that even after this wrong statement was pointed out by the respondents in their reply, the applicants including Dr. P.K. Jain, have reiterated the averments in paragraph 7 of the O.A.

7. In the reply of the applicants, including Dr. P.K. Jain to MA 726/98, they have, inter alia, stated that there is no bar for the present application on account of pendency of the present O.A. 1796/97. This statement is, however, contradictory to what he has averred in paragraph 7 of the O.A. and the further submission made by the applicants in this regard is, therefore, untenable and is accordingly rejected. In this view of the matter, the present O.A. is liable to be dismissed on the ground of false declaration given by the applicants regarding the factual positions, which ~~was~~ ^{is} very well within their knowledge and known to them.

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8. Apart from the above, we are also satisfied that the ratio of the judgements of the Tribunal in O.A. 951/91 and OA 2343/93 is fully applicable to the facts and issues in the present case. We respectfully follow the judgements of the Tribunal in those cases, namely, Dr. Prem Lata Choudhary and Dr. Ashok Kumar Taneja (supra).

9. For the reasons given above, the O.A. fails on the preliminary objection as well as on merits, as mentioned above. Accordingly, O.A. is dismissed along with M.As. No order as to costs.

(S.A.T. Rizvi)
Member(A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'