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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 446 / 1997

DATE OF DECISION : 18.11.1999

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI R.K.AHOOJA, MEMBER (A)

Indian Railways A.M.O.(Ad hoc)

... Applicant(s)

Association & anr.

-Versus-

U.O.I & anr.

... Respondent(s)

Advocates :

Mr./Ms. P.P.Khurana,

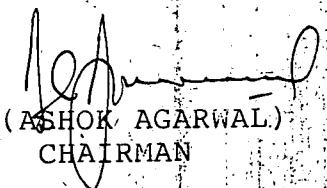
for Applicant(s)

Mr./Ms. R.L.Dhawan,

for Respondent(s)

1. Whether to be referred to Reporter? Yes

2. Whether to be circulated to other Benches? No


(ASHOK AGARWAL)
CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 446/1997

New Delhi this the 18th day of November, 1999.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI R. K. AHOOJA, MEMBER (A)

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

2. Dr. Surendra Kumar Shukla
N.E Railway Hospital
Badshah Nagar, Lucknow

... Applicants

(By Shri P. P. Khurana, Advocate)

-Versus-

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

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

... Respondents

(By Shri R.L.Dhawan, Advocate)

O R D E R (ORAL)

Justice Ashok Agarwal :

Applicant No.1 is the Indian Railway A.M.O. (Ad-hoc) Association. The Association has been duly registered under the Societies Registration Act, 1960. Its aims and objects are to safeguard and protect the rights and interests of its members. Applicant No.2 along with several other Doctors were initially appointed in the Railways as Assistant Medical Officers or as Assistant Divisional Medical Officers on ad hoc basis. Such appointees filed a group of writ petitions before the Supreme Court, the leading petition being Writ Petition Nos. 822, 875, 180

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& 200/87, Dr. A.K.Jain & ors. v.Union of India & ors. The petitions, inter alia, sought regularisation. The Supreme Court by an order passed on 24.9.1987 inter alia directed as follows :

"The services of all doctors appointed either as Assistant Medical Officers or as Assistant Divisional Medical Officers on adhoc basis upto 1.10.1984 shall be regularised in consultation with the Union Public Service Commission on the evaluation of their work and conduct on the basis of their confidential reports in respect of the period subsequent to 1.10.1982. Such evaluation shall be done by the Union Public Service Commission. The doctors so regularised shall be appointed as Assistant Divisional Medical Officers with effect from the date from which they have been continuously working as Assistant Medical Officer/Assistant Divisional Medical Officers. The Railway shall be at liberty to terminate the services of those who are not so regularised. If the services of any of the petitioners appointed prior to 1.10.1984 have been terminated except on resignation or on disciplinary grounds, he shall be also considered for regularisation and if found fit his services shall be regularised as if there was no break in the continuity of service but without any backwages."

2. Applicant No.2 as also several other Doctors who are members of of Applicant No.1 Association were parties to the aforesaid Writ Petition before the Supreme Court. Based on the aforesaid order, the respondent Railway Board on 16.4.1993 issued a notification whereby services of the 254 Doctors who were initially appointed on ad hoc basis were regularised after due screening by the Union Public Service Commission. Prior to the issue of the notification, individual letters of appointment were issued in favour of different Doctors appointing them



on regular basis. A copy of one such letter dated 15.3.1989 is at Annexure IV of the O.A. However, by clarification letter issued on 24.11.1989, Annexure V, it was provided:

....The services of those of the adhoc doctors whose services had earlier been terminated but have now been regularised in pursuance of the Supreme Court Order of the 24th September 1987 may also be deemed as continuous from their initial date of appointment treating the broken period of service as dies non.

3. An individual Doctor, Dr.B.Subba Rao taking exception to the aforesaid clarification issued on 24.11.1989 moved the Supreme Court by filing Contempt Petition No.57/1992 in Writ Petition (C) No.1609/86. By order dated 21.4.1995, the Supreme Court disposed of the aforesaid contempt petition by passing the following direction :-

"The only direction that is necessary to be given in the present contempt petition is that the petitioner's salary should be fixed by taking into consideration the pro forma increments which he might have earned during the period of the break in his service. He would, however, not be entitled to the arrears of salary on the basis of the said increments...."

4. As far as Dr.B.Subba Rao is concerned, the aforesaid order of the Supreme Court, we are informed, has been complied with. Since, however, the respondents declined to follow the aforesaid direction in respect of other Doctors similarly placed, they approached this Tribunal by filing O.A.

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No. 1554/96. By order passed on 25.7.1996, copies of the O.A. were directed to be furnished to the respondents through the registry of the Tribunal in order to enable them to consider the same as representations submitted by the applicants. By the impugned order passed on 4.10.1996, it has been observed that the aforesaid order passed by the Supreme Court only enabled the applicants to get the benefit of the ad hoc service rendered by them before termination of their services. They were not entitled to the benefit of the period they were not in service. Their period of break in service was treated as "dies non" (a period which is deemed not to exist). It was further observed that by treating the period of break in service as dies non (non-existent service) the applicants were afforded continuity of service and the judgement of the Supreme Court was accordingly honoured. Hence the prayer contained in the application of the applicants before the Tribunal for treating the non-existent service as actual service for the purpose of fixation of increments of pay cannot be granted. No increments could be granted for a period for which one has not shouldered responsibility. Hence the prayer for grant of notional increments for the period of "dies non" was rejected. By the present O.A., applicants seek to impugn the aforesaid order dated 4.10.1996.

5. Shri Khurana, the learned counsel appearing in support of the application has submitted that as



far as applicant No.2 and other members of applicant No.1 Association are concerned, they are similarly placed as Dr.B.Subba Rao. In the circumstances they are entitled to similar reliefs which have been granted to Dr.B.Subba Rao in terms of the order passed by the Supreme Court on 24.9.1987 as clarified by the order passed on 21.4.1995. He has, therefore, submitted that the impugned order dated 4.10.1996 deserves to be quashed and relief\$ similar to the one which have been granted to Dr.B.Subba Rao be granted to the applicants.

6. Shri Dhawan, the learned counsel appearing on behalf of the respondents, has, however, strenuously opposed the grant of reliefs claimed in the application on various grounds. He has first contended that the present application which has been filed on 31.1.1997 after a period of about eight years is hopelessly barred by the law of limitation. According to Shri Dhawan, applicants for all practical purposes are impugning the order passed on 24.11.1989 where a decision has been taken for treating the broken period of service as dies non.

7. In our view, the submission advanced ignores various events which have taken place after the issue of the aforesaid order dated 24.11.1989. After the aforesaid order was passed, Dr.Subba Rao filed Contempt Petition No.57/92 and the Supreme Court by its order dated 21.4.1995 gave its clarification.

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When the respondents declined to grant the reliefs as per the order of the Supreme Court dated 21.4.1995, the applicants had filed in this Tribunal O.A. No.1554/96. Present objection in respect of limitation, it is pertinent, was not raised in the aforesaid O.A. By an order passed on 25.7.1996, this Tribunal directed copies of the O.A. to be forwarded to the respondents for consideration of the claim of the applicants by treating the same as representations. This was directed to be done latest by 30.9.1996. It was, thereafter that the impugned order dated 4.10.1996 had been issued. Present O.A. which has been filed on 31.1.1997 cannot, therefore, be treated as being time barred. The first objection of Shri Dhawan, therefore, is rejected.

8. Shri Dhawan next contended that the directions issued by the Supreme Court on 21.4.1995 can be made applicable only to Dr.B.Subba Rao who was a party to the contempt petition. Directions contained therein cannot be made applicable to the applicants. Directions in the order dated 21.4.1995 cannot be termed as law laid down by the Supreme Court. The same, therefore, cannot be followed in the case of applicants. In support of the contention, Shri Dhawan has relied upon the decisions of the Supreme Court in the case of Supreme Court Employees Welfare Association v. Union of India & Anr., 1989 (4) SCC 187 at para 22; Prakash Amichand Shah v.



State of Gujarat & Ors., AIR 1986 SC 468; and L.

Chandra Kumar v. Union of India, 1997 (3) SCALE 40.

In our view, the ratio laid down in the aforesaid decisions cannot be disputed. The same, however, can have no application to the case at hand. The Supreme Court's ~~in the~~ directions initially issued on 24.9.1987 were in a group of petitions where applicants were also parties. As far as the order which ~~had~~ been passed on 21.4.1995 is concerned, the same merely clarifies the order passed on 24.9.1987. The relevant part of the order dated 24.9.1987 which is material for consideration of the point advanced reads as under:

"...If the services of any of the petitioners appointed prior to 1.10.1984 have been terminated except on resignation or on disciplinary grounds, he shall be also considered for regularisation and if found fit his services shall be regularised as if there was no break in the continuity of service but without any backwages."
(Emphasis provided)

9. By the order passed on 21.4.1995, the Supreme Court ~~had~~ directed that "the petitioner's salary should be fixed by taking into consideration the pro forma increments which he might have earned during the period of the break in his service. He would, however, not be entitled to the arrears of salary on the basis of the said increments." (Emphasis provided). Aforesaid order, as we read it, merely clarifies the earlier order passed on 24.9.1987. ~~The A~~

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clarification is made to the aforesaid order passed on 24.9.1987. The Supreme Court has thus directed that its order of 24.9.1987 should be read in the light of the clarification issued. In the circumstances, we have no hesitation in holding that the respondents are bound to honour the directions issued by the Apex Court also in relation to the applicants who were very much parties to the earlier order passed by the Supreme Court on 24.9.1987. We are further of the view that it does not behove the Government to stand on technicalities and contend that they will follow the directions of the Supreme Court in the case of an individual Doctor and refuse to comply with the same in regard to others. The second contention raised by Shri Dhawan is also in the circumstances rejected.

10. It is next contended by Shri Dhawan that the interpretation which we are giving to the orders passed by the Supreme Court will involve heavy financial implications. In our view, we are not concerned with this aspect of the matter. We are reading the orders of the Supreme Court as passed and in the circumstances, we have no hesitation in directing the respondents to follow those directions.

11. Shri Dhawan has next drawn our attention to Para 1320 of the Indian Railways Establishment Code dealing with reckoning of service for increments. Clause (a) of the para provides that all duty in a

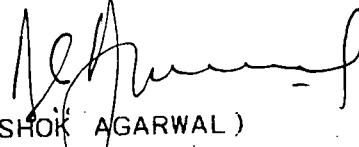


post on a time-scale counts for increments in that time-scale. Placing reliance on the para, he has contended that whatever period has not been spent on duty cannot be counted for the purpose of increments. He has further contended that as far as this Tribunal is concerned, it is bound by the law and the rules and no direction contrary to the rules can be issued. In our view, it is too late in the day to advance this contention. The said contention was open to the respondents before the Supreme Court. The same was not advanced or at least does not appear to have been advanced. As far as we are concerned, we have the orders of the Supreme Court before us. We are, therefore, duty bound to direct the observance of the directions contained in the said orders. It is not open to us to consider this issue *de novo* on merits and pass orders contrary to those issued by the Supreme Court.

12. In view of the foregoing reasons, the present O.A. succeeds. The impugned order passed by the respondents on 4.10.1996, Annexure-IX is quashed and set aside. Respondents are now directed to grant the benefit of the order dated 21.4.1995 passed by the Supreme Court in Contempt Petition No.57/92 to applicant No.2 and all other similarly placed Doctors who are members of applicant No.1, Association. Respondents will fix the salary of the said Doctors by taking into consideration the *pro forma* increments which they might have earned during the period of

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their break in service. This will be with effect from 21.4.1995, the date on which the Supreme Court disposed of the aforesaid contempt petition in Dr. Subba Rao's case. Applicants will, however, not be entitled to the arrears of salary on the basis of the said increments. Present O.A. is allowed. There will, however, in the circumstances, be no order as to costs.


(ASHOK AGARWAL)

CHAIRMAN


(R.K. AHOOJA)

MEMBER(A)

/sns/