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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.No.889/88

Date of decision: 7.10.91

Railway Medical Officers  
Association

...Applicants

Versus

Union of India & Others

...Respondents

CORAM:

THE HON'BLE MR. JUSTICE RAM PAL SINGH, VICE CHAIRMAN

THE HON'BLE MR. R. VENKATESAN, ADMINISTRATIVE MEMBER

Counsel for the applicants

...Shri R.K.Kamal

Counsel for the respondents

...Shri P.H.Ramchandani

JUDGEMENT

(Of the Bench delivered by Hon'ble Mr. R.Venkatesan, Member(A).  

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This is an application filed by the Railway Medical Officers Association with the prayer to direct the respondents not to resort to any direct recruitment to the post of Divisional Medical Officer (DMO) until decisions have been taken on the recommendations of the inter-departmental committee set up in the context of the recommendations of the Fourth Pay Commission. Their further prayer is to direct the respondents to implement the report of the said committee on a separate cadre of specialists in the Medical Department, before resorting to any direct recruitment to the posts of D.M.Os.

2. The facts of the case are that the direct recruitment in the Railway Medical Service (RMS) takes place at the level of Asstt. Divisional Medical Officer (ADMO) and the next higher level of Divisional Medical Officer(DMO).

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According to the Recruitment Rules published by the Railways on 14.7.1988 amending the earlier Recruitment Rules known as the Indian Railway Medical Services (Divisional Medical Officers/Sr. Medical Officers) Recruitment Rules, 1975, it was <sup>prescribed that</sup> the posts of Divisional Medical Officers/Sr. Medical Officers shall be filled up  $66\frac{2}{3}\%$  by promotion and  $33\frac{1}{3}\%$  by direct recruitment. The promotion quota will be filled up from the grade of Asstt. Divisional Medical Officers <sup>with</sup> five years service <sup>promotion</sup> after regular appointment; is required to be made in consultation with the U.P.S.C. The said Rules published on 14.7.1988 also indicate the number of posts as 101 permanent and 24 temporary, making 125 posts in all.

3. The direct recruitment quota was subsequently reduced in 1980 to 25%, with the promotion quota being increased to 75%.

4. The U.P.S.C. issued an advertisement on 2.4.1988 calling for applications for direct recruitment against 73 posts of DMOs for different specializations like Cardiology, Anaesthetics, Radiology, Pathology, etc. as well as for the general category of Physicians and Surgeons. The applicants have challenged this recruitment notification in the present application.

5. The main ground of the applicant Association is that the Fourth Pay Commission had recognised that the present cadre structure in the Railway Medical Service does not provide enough opportunities of promotion to officers in service and had recommended as follows :

"There are about 2400 officers in the Railway Medical Service (RMS). RMS at present makes recruitment at the level of Asstt. Divisional Medical Officer (Rs.700-1600) and Divisional

*Dr. White*

Medical Officer (Rs.1100-1800). The Department has informed that it has been decided to stop direct recruitment at the level of Divisional Medical Officer. Unlike the other two organised Health Services (CHS and II OFHS), RMS has no separate cadre of specialists and doctors with post-graduate qualifications to work as specialists. The present cadre structure in RMS does not provide enough opportunities of promotion to officers of this service. The service requires organisation with adequate number of posts at different levels, including creation of posts of specialists wherever necessary. ..."

The applicant has contended that the Government of India thereafter decided as follows :

"An inter-departmental committee will be set up to look into the structure and career progressions of services of these doctors. "

The applicant contends that thereafter an inter-departmental committee under the chairmanship of the then Additional Secretary in the Ministry of Health was set up, and that the report of the committee had not been finalised. Hence, the prayer which we have referred to at the out set.

6. The learned counsel for the applicant challenged the proposed recruitment through the UPSC as being violative of the Recruitment Rules on the ground that the direct recruitment to the cadre of DMO's should be confined only to 25% of the posts which have been indicated in the rules, namely, 125. As against this, the proposal of the UPSC to fill up as many as 73 posts by direct recruitment was clearly a gross violation of the quota rule.

7. The counsel also referred to the reply affidavit of the respondents that a large number of posts of ADMO's numbering around 1100 had been upgraded to DMOs, and existing incumbents of ADMO's posts had been given the benefit according to seniority and fitness. Having done this one

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time upgradation, the respondents had contended that future vacancies arising due to retirement, promotions and resignations would have to be filled up in the ratio of 75% and 25% by promotion and direct recruitment, as per Rules and that the posts advertised were within the 25% quota completed on the vacancy occurring in the total number of posts in the DMOs cadre. The counsel for the applicant contended that this was a violation of Rules inasmuch as the upgraded posts should not be added to the 125 posts notified in the Rules in 1978 until formal amendment to the Rules was made. Till then, the upgraded posts will have to be treated as being outside the purview of the Rules, and should be exclusively<sup>filled</sup> by promotion, as they had all been filled up by promotees in the first instance at the time of upgradation.

8. In respect of contention that the upgraded posts were to be filled up only by promotion and that no direct recruitment could be made against these, the learned counsel for the applicant-Association placed strong reliance on the judgement of this Tribunal<sup>(Jubbulpore Bench)</sup> in Ashok Kumar Srivastava & Another V. Union of India (TA-139 of 1986), which was also a case of promotion of ADMOs of the Railways. He pointed out that the decision of the Tribunal, which was in favour of the applicants, had been upheld by the Supreme Court in its order dated December 8, 1987 while dismissing SLP No.11801 of 1987 filed by the Union of India against the decision, in the following<sup>terms</sup> directions :

"We agree with the reasons given by the Central Administrative Tribunal for the conclusions it has reached. We hereby affirm the judgement of the Central Administrative Tribunal. The Special Leave Petition is dismissed. "

The question decided in that case was whether the orders

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of the Government of India reserving posts for Scheduled Castes and Scheduled Tribes, which were made applicable to posts in the RMS cadre under Rule 9 of the Recruitment Rules for this cadre, would apply to 300 posts of ADMOs which have been upgraded to posts of DMOs on 31.7.1981. The Railway Board had initially instructed that the reservation orders would not apply to the 300 upgraded posts. On the advice of the Department of Personnel, Govt. of India, however, the Railway Board modified the above order and made reservation applicable to these posts also. This order was challenged in the above application. This Tribunal went into the question whether any process of promotion was involved at all in the case of mass upgradation of posts consequent to re-structuring of cadres, to which the reservation orders would apply. The Tribunal held :

"We are of the view that the upgradation of ADMOs to DMOs involves neither a selection nor a promotion. It is simply nomination or placing of some seniors to the upgraded posts with better pay-scale, on the basis of seniority subject to suitability. In the circumstances of this case, placing of these few seniors to their upgraded posts with better pay scales does not amount to any fresh appointment by promotion and, moreover, these persons do not leave behind vacant their earlier posts. ...

.....For the above reasons and on the basis of the above facts of this case, we hold that placing of ADMOs to the higher scale of DMOs in the 300 upgraded posts is neither promotion nor appointment and so reservation policy cannot be applied to this upgradation process. As no element of promotion or appointment is involved in upgradation of these 300 posts of ADMOs and since the policy of reservation for SC & ST can be applied only in the case of fresh appointment or promotion, it cannot be applied to these 300 upgraded posts. "

The counsel for the applicant-Association argued that this <sup>direct</sup> judgement implied that no recruitment could be made against the upgraded posts, and they had to be filled up only by promotion. The quota of 25% prescribed for direct recruit-

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*Benches*

ment under the Rules would not apply to them.

9. The learned counsel for the applicant-Association also referred to the note submitted by the Ministry of Railways to the Fourth Pay Commission and the Report of the Pay Commission, which has been extracted above, and contended that in view of the commitment by the Railways to stop direct recruitment as quoted by the Pay Commission, several doctors who had contemplated resigning had continued in service. The counsel, therefore, contended that the doctrine of promissory estoppel would apply and the Government could not go back on their commitment not to make any direct recruitments.

10. The main arguments of the learned counsel for the respondents were as follows :

(i) The Railways have a hospital ~~the~~ network requiring various specialised posts. The cadre did not have enough number of specialists with post-graduate specialised qualification. He drew attention to the advertisement by the UPSC which had been challenged, and pointed out that out of 73 posts advertised, the majority pertained to various specialisations. Direct recruitment was, therefore, necessary to meet the requirements and this could not be stopped on the plea that <sup>a</sup> Committee's report was awaited.

(ii) The counsel further contended that the proposed recruitment was strictly according to rules. He refuted the argument that <sup>/there would be</sup> no direct recruitment quota against 1100 upgraded posts of ADMOs. He agreed that at the time of upgradation, the quota rule would not be applicable. This would be a case of deemed relaxation of the quota rule, at the time of such upgradation. But, once the upgradation had been done, the upgraded posts became part of the cadre

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of the DMOs and the Recruitment Rules would apply to all future vacancies due to resignations, retirements, promotions, etc. which occurred in the cadre as a whole. He averred that <sup>direct</sup> proposed/recruitment against 73 posts was strictly within 25% of the available vacancies in the cadre of DMOs as a whole.

(iii) The counsel referred to the appointment of <sup>the</sup> inter-departmental committee which had been relied upon by the applicant-Association in the prayer. He drew attention to the fact <sup>that</sup> this Committee which had been appointed on 2nd June, 1987, had wide terms of reference for going into the career progression and re-structuring of various cadres of Medical Officers including Central Health Service, Central Police ~~Medical~~ Organisations as well as the Railway Medical Service. It was not correct to hold up the filling up of the posts in of the RMS pending decisions of Government on the ~~recommendations~~ a Committee with such wide ranging terms of reference covering several cadres of Medical Officers. He pointed out that the Tribunal had not stayed the direct recruitment, by an ~~interim order only~~ for this reason.

(iv) Referring to the argument of promissory estoppel advanced by the Counsel for the applicant, the Counsel for the respondents pointed out that in their note submitted to the Pay Commission, the Government had stated as follows :

"Incidentally, direct recruitment in the senior scale of Rs.1100-1800 has since been stopped as per the decision of the Ministry of Railways. Acceptance of this suggestion is under correspondence with the UPSC. "

He stated that the Fourth Pay Commission had omitted to note the fact that the Ministry had only suspended the recruitment temporarily pending acceptance of the proposal by the UPSC which was necessary for formal amendment of the

*Amendments*

Rules. He referred to para 3 of the reply affidavit in which it had been stated that as the UPSC subsequently did not agree to the proposal, the Department had to go ahead with direct recruitment in the DMOs grade to the extent of 25% of the vacancies as provided in the Recruitment Rules. He, therefore, contended that there was no case of promissory estoppel involved as there had been no decision taken or indicated to anyone, regarding stoppage of direct recruitment finally.

11. From the facts and averments of this case, it will be seen that the issue to be decided falls in a narrow focus. The question is whether 73 posts which had been advertised for direct recruitment fall within the quota of the direct recruitment under the Rules of recruitment. This in turn would depend on whether the quota for direct recruitment should be computed only taking into account the 125 posts which were notified when the amended Recruitment Rules were published on 14.7.78, or <sup>whether</sup> ~~the~~ the quota would apply to all the posts in the cadre of DMOs including those which had been upgraded.

12. We may note that while the cadre of DMOs included only 125 posts at the time of the notification of the Rules in July, 1978, there was a substantial addition to the cadre thereafter on two occasions. In July, 1981, 300 posts were upgraded from ADMOs to DMOs. Again in 1987, 1145 posts of ADMOs were upgraded to DMOs. At the same time, 237 posts of DMOs were further upgraded to the grade next above. Thus, there has been a net addition of around 1200 posts to the original cadre of 125 posts of DMOs. At the time of upgradation promotions were done of existing ADMOs on the principle of seniority-cum-fitness unlike the normal promotions which

*Deven Sharma*



are to be done by selection. Thus, at the time of upgradation, there was, more or less, an insitu promotion of the ADMOs, essentially on the basis of seniority. The averment of the respondents in a <sup>Miscellaneous Petition for interim relief</sup> ~~in a~~ <sup>referred</sup> ~~in this connection~~, in which the first upgradation of 300 posts is/to may be noted:

"It is a fact that about 300 posts of Assistant Divisional Medical Officers were upgraded to the grade of Divisional Medical Officers in 1981. For filling these upgraded posts, no direct recruitment element was provided and all the 300 posts were filled up by promoting the then existing Assistant Divisional Medical Officers on the basis of seniority cum-suitability. For filling these 300 posts, ~~no~~ direct recruitment to the extent of 25% was undertaken, as these were upgradations of posts of Assistant Divisional Medical Officers to the grade of Divisional Medical Officers for the benefit of the incumbents of the posts. "

13. We find this position, more or less, is in accord with the decision of the Tribunal in the case of Ashok Kumar Srivastava of the Jabalpur Bench which has been referred to above.

14. The question is whether these posts continue to remain as a separate category falling outside the purview of the Recruitment Rules, vacancies in which had to be filled up only through promotions, for all time, as contended by the counsel for the applicant. The answer, we consider, is 'No'.

15. The Recruitment Rules of the cadre <sup>are</sup> of statutory rules framed under the proviso to Article 309 of the Constitution. The opening paragraphs of the Rules read as follows :

" In exercise of the powers conferred by the proviso to Article 309 of the Constitution and in supersession of the Indian Railway Medical Service (Divisional Medical Officers/Senior Medical Officers) Recruitment Rules, 1975, the President hereby makes the following rules regulating the method of recruitment to the posts of Chief Medical Officers, Additional Chief Medical Officers, Medical Superintendents and Divisional Senior Medical Officers in the Indian Railway Medical Service, namely:-

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1. Short title and commencement: (1) These rules may be called the Indian Railway Medical Service (Chief Medical Officers, Additional Chief Medical Officers, Medical Superintendents and Divisional/Senior Medical Officers) Recruitment Rules, 1978.
2. They shall come into force on the date of their publication in the official Gazette.
2. Application :- These rules shall apply to the posts specified in Column 1 of the Schedule annexed to these rules.
3. Number of Posts, classification and scale of pay :- The number of the said posts, its clarification and the scales of pay attached thereto shall be as specified in columns 2 to 4 of the said Schedule.
4. Method of recruitment, age limit, qualification etc.- The method of recruitment, age limit, qualifications and other matters relating to the said posts shall be as specified in columns 5 to 13 of the Schedule aforesaid. "

The Schedule to the above Rules contains in the 2nd column <sup>the</sup> number of posts covered under different grades of Chief Medical Officer, Additional Chief Medical Officer, Divisional Medical Officer, etc. The further provisions in the columns of the Schedule indicate the age limits, scales of pay, educational and other qualifications, method of recruitment, composition of DPCs and circumstances in which UPSC is to be consulted. The quota of direct recruitment and promotion is one of the stipulations in the Schedule to the Rules. Viewing the Rules as a whole, we consider that the Rules contain a number of mandatory provisions which include most of the above items. The number of posts which are shown in column 2, we hold, cannot be deemed to be mandatory, but only directory with reference to a particular point in time. <sup>The strength of a</sup> cadre such as the RMS with <sup>a</sup> the strength of 2400 officers is bound to be undergoing periodic additions at the various levels or grades and cannot remain <sup>a</sup> static figures frozen in time. Viewed from another angle, if the contentions of the applicant are to be accepted, it would mean that out

*D. K. Kishan*


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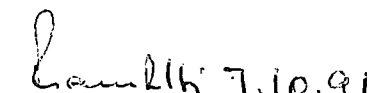
of a total cadre of strength of a little over 1300 posts of DMOs, as many as 1200 would have to be deemed to be outside the cadre Rules. Such a proposition will not be tenable. Apart from anything else, there can be no rational basis for classifying these posts after their date of upgradation, separately from the rest of the posts numbering 125. It will also not be an acceptable proposition to contend that the Recruitment Rules would apply to the upgraded posts also except in regard to one particular requirement alone, namely, the quota of direct recruitment. As we have said, the quotas for direct recruitment and promotion prescribed in the Rules are mandatory and there could be no selective application of some mandatory provisions in of the Rules to some posts in the cadre leaving out the bulk of the posts in a certain category, viz the DMO's.

16. We also accept the contentions of the learned counsel for the respondents that no case of promissory estoppel is involved in this case for the very valid reasons stated by the Counsel for the respondents.

17. We, therefore, accept the contentions of the learned counsel for the respondents that there has been no violation of the Rules involved in the recruitment to the 73 posts advertised by the UPSC.

The application is accordingly dismissed. There will be no order as to costs.

  
(R. VENKATESAN)  
MEMBER (A)

  
7.10.91  
(RAM PAL SINGH)  
VICE CHAIRMAN

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