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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH NEW DELHI

Original Application No. 1603 of 1987

18-3.93
Dr. P. Srinivasalu and others Applicants

Versus

Union of India & Others Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. B. S.R. Adige Member (A)

(By Hon'ble Mr. Justice U.C. Srivastava, V.C.)

Feeling aggrieved of the seniority list of these Doctors the applicant has approached this tribunal praying that a direction may be given to them to determine the fresh seniority of the applicants after taking into consideration their entire service including their initial adhoc period which was followed by regularisation with break through U.P.S.C. and promotion may be given to them with the senior scale of Divisional Medical Officers retrospectively from the date and the promotion of Assistant Divisional Medical Officers under the order dated 29.9.1987 who were found juniors to them on the basis of revised seniority as claimed by them. They have also challenged the validity of Indian Railway Medical Service (Assistant Divisional Medical Officers) Recruitment Rules 1967 and Indian Railways Medical department (Assistant Medical Officer grade-II) Recruitment Rules 1967 in as much as the said rules deny the benefits of seniority to Medical Officers appointed on temporary/adhoc basis, though their retention in service and subsequently regularised.

2. The applicants were initially appointed for a period of six months as a Assistant Medical Officer on adhoc basis and ~~thereafter~~ the said adhoc period was extended from time to time . These appointments on adhoc basis were made after selection which were held by committee consisting of three head of the department . The posts were referable to the

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Union Public Service Commission. It appears that all the employees, who served number of years, their services were terminated on the ground that they have been screened if they have been screened by the U.P.S.C. and have not been found fit or others appointments have been made, which they challenged before the Supreme Court in A.K. Jain Vs. Union of India & Others .. The Court allowed the application with the following directions :-

" All Medical Officer working on adhoc basis shall be paid the same salary and allowances Assistant Division Medical Officer to revise the scale and no adhoc assistant medical officer / Assistant Divisional Medical Officer working shall be replaced by newly appointed A.M.O./A.D.M. on adhoc basis and there is need for appointment on adhoc basis in any zone, the existing adhoc A.M.O./A.D.M. ^{who} are likely to be placed, the regularly appointed candidate shall be given preference." Certain directions were given also in respect of the adhoc Doctors in appointed after the year 1984 "

But so far as the reference to the U.P.S.C. is concerned it was specifically laid down that the matter will be decided on the basis of. The said judgement has now been consistently followed. The applicant's grievance is that even though they have been regularised, but so far as the question of seniority is concerned; they have been deprived of their seniority in as much period during which they have got for adhoc basis which was followed by regularisation with out any break, have not been taken into consideration for determining in their seniority. In this connection the applicants placed reliance on the case of Dr. P.P.C. Rawaniya and others Vs. U.O.I. and others

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Civil Appeal No. 3519/84, decided by the Supreme Court in which it was held :

" If the orders of regularisation of appointment are made to take effect from their respective dates of original appointment and seniority so determined there will be no other problem

And a reference has also been made to the judgement of Delhi High Court in the case of Dr. G.P. Sarabhai Vs. Union of India(1983 Lab.I.C. 910) as well as the case of G.S. Lamba Vs. Union of India(1983 Lab.I.C.910) it was held by the Supreme Court :-

" Once the power to relax a given mandatory rule exists and an action in derogation of the rules has been repeatedly taken year after, it would be a permissible inference that the action was taken in relaxation of the rules

It is not necessary that in every case, the adhoc service should be counted, but even other-wise the others services whenever the exigencies of situation arise or when the rules were permitted or whenever, the conditions are such, the adhoc service is to be counted, the same cannot be ignored but is to be counted. In this connection reference may be to the case of Rajbir Singh and others Vs. Union of India and others 1991(2) Supreme Court cases 272, it was held :

" period of ad hoc service on promotion in substantive vacancy subsequently regularised ~~xxxxxxxx~~ was counted towards seniority."

In the instant case, in view of the legal position as directions given by the Supreme Court, the adhoc period of service was to be counted towards seniority, as the said adhoc period was ~~xxxxxx~~ ripen into the regularisation without any break and as such the seniority list dated 10.6.1987 is quashed and the respondents are directed

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to prepare the seniority list in accordance with law in the light of the reservation as made above. Let it be done within a period of 3 months from the date of communication of this order. No order as to the costs.

Anjoli
Member (A)

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Vice-Chairman

Dated: 18.3.1993.

(RKA)