

OA No.177/87

Date of decision:

Dr. R.K. Aggarwal

...Applicant

Versus

Union of India & Others

...Respondents

Coram:-

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J)

The Hon'ble Mr. I.K. Rasgotra, Administrative Member

For the Applicant Shri B.S. Maine, Counsel.

For the Respondents Shri R.L. Dhawan, Counsel.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? *Yes*

I.K. Rasgotra
(I.K. Rasgotra)
Member (A)

Ram Pal Singh
(Ram Pal Singh)
Chairman

In the Central Administrative Tribunal

Principal Bench: New Delhi



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For the Respondents Shri R.L. Dhawan, Counsel.

(Judgement of the Bench delivered by Hon'ble
Mr. Justice Ram Pal Singh, Vice-Chairman (J)

This Original Application has been filed by Dr. R.K. Aggarwal, Assistant Divisional Medical Officer (ADMO for short) Northern Railway under Section 19 of the Administrative Tribunals Act, 1985, assailing the order of the respondents dated 3.12.1986, informing the applicant that he has been correctly allotted the scale of ADMO Viz. Rs.700-1600 (RS) with effect from 1.3.1974 on the ground that his earlier service was in Class-II adhoc capacity which cannot be equated with Class-I post of ADMO and accordingly his request for regularisation etc. from the date of his initial appointment viz. 3.1.1970 is not tenable and hence rejected.

2. This case was given priority for early hearing vide order dated 21.3.1990 by the Hon'ble Chairman. Thereafter the matter was heard on 16.12.91 and 21.1.92. On the latter

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date the learned counsel for the respondents had submitted that he would like to file the judgement of the Hon'ble Supreme Court in the case of Dr. A.K. Jain and others with a view to augment the view point of the respondents. While acceding to the request of Shri R.L. Dhawan, learned counsel for the respondents we also directed him to produce the relevant record including the file on which the case of the applicant has been considered on 6.2.92. The case came up on 21.2.92 but at the request of the learned counsel for the respondents, it was adjourned to 28.2.1992 for production of relevant record and for concluding arguments. On 3.3.92, when the matter was listed the learned counsel for the respondents stated that the file containing the relevant record in respect of the applicant was not traceable. He was, therefore, directed to file an affidavit to that effect. On 24.2.1992 Shri R.L. Dhawan, learned counsel for the respondents made the statement that the file has since been traced out and he would like to file additional affidavit. As the conclusion of this case was being delayed we felt the purpose for which this Special Bench was constituted was being frustrated and therefore considered it proper to release it from part heard vide order dated 8.5.92 for being listed on 6.7.1992 in the appropriate Court. On 6.7.92, when the case came up before the regular Bench the learned counsel for the respondents submitted that he had not brought the case file in the Court and the case was ordered to be listed on 9.7.92. On 10.7.92 the Bench comprising (Hon'ble Justice Mr. Ram Pal Singh) Vice Chairman ^{myself} *Lalitha*

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(J) and Hon'ble Mr. I.P. Gupta, Member (A) observed that "This matter was heard extensively for several days by a bench consisting of myself (Justice Mr.Ram Pal Singh) and Hon'ble Member Mr. I.K. Rasgotra. But as the records were not made available by respondents to that bench, this case was released from part heard. However, that Bench will assemble today in the afternoon. Listed before that bench." The matter thus came to be heard finally by the Special bench comprising Hon'ble Justice Mr.Ram Pal Singh and ~~myself~~ (Mr. I.K. Rasgotra, Member (A)). It will be observed from the above that this matter would have been disposed of much earlier than now, but for the lack of diligence on the part of the respondents.

3. We now turn to the facts of the case. They are that the applicant obtained MBBS degree in the year 1968 and joined the Northern Railway as ad hoc Assistant Medical Officer (AMO) Rs.350-900 on 3.7.1970 for a period of six months. While continuing as ad hoc AMO the applicant responded to the advertisement issued by the Union Public Service Commission (UPSC) in 1972 and was interviewed on 17.4.1972. The applicant was declared successful by the UPSC and his name was included in the Select List of successful candidates which was forwarded by the UPSC to the Secretary, Ministry of Railways vide letter No.F.1/1089/70 dated 20.6.1973, 23.7.1973 and 29.8.1973. Consequently, he was offered appointment to the post of AMO (Class II) in the pay scale of Rs.350-900 vide letter dated 26.2.1974. Meanwhile, on the basis of the recommendations of the Third Central Pay Commission the posts of AMO (Class II) were upgraded to ADMO

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Class I in the pay scale of Rs.700-1600. The applicant too was extended this benefit but from the date of his regular appointment to the class II post w.e.f. 1.3.1974. He was allowed to cross the efficiency bar in the revised pay scale of Rs.650-1200 in the grade of AMO and his annual increments were accorded to him on the basis of his total length of service from the date of initial appointment from 1.3.1970. He was, however, not given the benefit of counting the adhoc service rendered between 3.1.1970 to 1.3.1974 for the purpose of his seniority etc. despite his various representations to the Secretary, Railway Board and various other authorities.

4. The respondents have taken the stand that first the O.A. is time barred, as the cause of action arose in the year 1970 while the O.A. has been filed in 1987 and secondly the applicant was granted status and pay scale of ADMO Class I post alongwith others in accordance with the recommendations of the Third Central Pay Commission and that his initial spell of adhoc service as AMO (Class II) from 3.1.1970 which was on the basis of the appointment made by the General Manager, Northern Railway cannot be combined with Class I service ^{as ADMO} /w.e.f. 1.3.1974. Further regular service ^{as ADMO} constitutes fresh appointment through independent selection by the UPSC, and as such the twain cannot meet. The two spells of service, therefore, cannot be combined. They further submit that the claims raised by the applicant in his representation dated 7.5.1986 were fully answered by

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the respondents vide their letter dated 3.12.1986.

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5. The applicant has filed a rejoinder.

6. Through MP No.2066/89, the applicant brought to the notice of the Tribunal that his case for counting of adhoc service from the date of initial appointment has further gathered weight vide orders No.86/E(GR)/II/9/15 dated 24.11.1989 issued by the Railway Board, contemplating regularisation of the service of a large number of adhoc Doctors after screening by the UPSC in pursuance of the Hon'ble Supreme Court's order dated 24.9.1987 on the writ petitions filed by the adhoc Doctors. The issue of seniority was left open by the Supreme Court to be decided by the Government in the light of the decision to be rendered by the Court in the cases involving issues relating to seniority pending before the Constitution Bench.

In reply to the said MP the respondents filed a copy of the Railway Board's letter dated 24.11.1989 and a copy of the judgement of the Hon'ble Supreme Court rendered in the case of **Dr. A.K. Jain & Ors. etc. et.c vs. Union of India & Ors.** and pointed out that the issues relating to the seniority have since been decided by the Constitution Bench of the Supreme Court vide judgement dated 2.5.1990 in the case of **The Direct Recruit Class II Eng. Officers' Ass. V. State of Maharashtra JT 1990 (2) SC 264.** The learned counsel for the respondents took the stand that judgement of the Hon'ble Supreme Court in **Dr. A.K. Jain** (supra) has no relevance in the present case as the facts and circumstances of that case are entirely different and reiterated the

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of service but without any backwages.

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3. All Assistant Medical Officers/Assistant Divisional Medical Officers working on ad hoc basis shall be paid the same salary and allowances as Assistant Divisional Medical Officers on the revised scale with effect from 1.1.1986. The arrears shall be paid within four months."

In pursuance of the above judgement of the Supreme Court, respondents have regularised 241 Doctors from the date of their initial appointments after screening by the UPSC vide order No.92E(GR)II/9/4 dated 28.2.1992.

7. The learned counsel for the respondents also filed Railway Boars's office file No.86/E(GR)II/7/60 containing pages 1-39 and noting pages 1-3 and Railway Board's letter No.92-E(GR)II/9/4 dated 28.2.1992, referred to in the preceding paragraph alongwith the list of officers who have been regularised in service in pursuance of the Hon'ble Supreme Courts's said judgement. There is no evidence on the record filed by the respondents if the case of the applicant was reviewed/considered in the changed situation, as requested by him vide his representation dated 17.9.1990. In fact the said representation is not on the record file.

8. Shri B.S. Maine, learned counsel for the applicant, reacting to the records, filed by the respondents expressed his serious doubts if the Railway Board have produced the

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complete file for the perusal of the court. He also pointed out that the affidavit filed by the respondents is also incomplete, as the respondents have nowhere stated that the file produced is the complete file. Recapitulating the background, the learned counsel further submitted that the Doctors were recruited to Class III posts with designation of Assistant Surgeon but were subsequently promoted as AMOs by upgrading of posts of Assistant Surgeon to AMOS in Class II (Group 'B') in 1966. As the recruitment to AMOs through UPSC turned out to be a time consuming process and the posts could not be kept vacant, the Railway Board authorised the General Managers of the Zonal Railways to appoint AMOs on adhoc basis for a period of six months. The/ Railway Board was, however, xxxxxxxx necessary for continuing adhoc AMOs beyond six months. The AMO thus recruited on adhoc basis were required to apply to the UPSC with a view to get regularised after going through the selection. Initially the adhoc Doctors were given two chances to appear and qualify in the examination held by the UPSC for regular appointment but subsequently the number of chances was enhanced to three. The applicant who was appointed on 3.1.1970 applied to the UPSC and qualified in the very first chance, as he was declared successful on 24.8.1973. The select list was forwarded by the UPSC to the Ministry of Railways and the applicant was given regular appointment on 26.2.1974 in class II. A large number of adhoc Doctors similarly situated either did not apply to the UPSC or applied and failed to qualify but were continued on adhoc basis from *L*

time to time. The AMOs who have been appointed on adhoc basis were specifically warned by the Railway Board that in case they failed to qualify in the UPSC examination their services would be terminated. In this regard special examinations were also arranged for adhoc Doctors with a view to enable them to qualify for regular appointment. In 1986 some of the adhoc AMOs who had failed to qualify in the UPSC examination and were facing termination of service approached the Supreme Court by way of filing writ petitions and sought stay orders against termination of their services on account of availability of regularly selected ADMOs. The cases filed by such adhoc AMOs/ADMOs, as referred to above, have since been decided by the Supreme Court in **Dr. A.K. Jain** (supra) judgement. The impact of the above judgement is that all AMOs/ADMOs recruited prior to 1.10.1984 would be regularised as AMOs/ADMOs from the date of initial appointment on the basis of evaluation of conduct and confidential reports earned after 1.10.1982. This means that such Doctors as failed to qualify would not only become regular AMOs/ADMOs from the date of initial appointment but would also be fixed in the pay scale of ADMO (Group A) w.e.f. 1.1.1973 or date of initial appointment whichever is later and thus some of them would draw higher pay than the applicant. The learned counsel submitted that the plea of limitation is totally irrelevant in the above circumstances. The applicant has been seriously prejudiced merely because he appeared before the UPSC at the earliest opportunity and qualified in the selection and got regularised. Had he not

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appeared before the UPSC in 1972, he too would have been regularised as AMO/ADMO w.e.f. 3.1.1970, date of his initial appointment and ADMO from 1.1.1973 in accordance with the orders of the Hon'ble Supreme Court.

9. The respondents have not controverted the above exposition of the case of the applicant in their reply. They appear to rely solely on their argument that the applicant's case is different from the case of AMOs/ADMOs, as he was selected as ADMO by the UPSC in response to an advertisement and that service in Group 'B' and Group 'A' cannot be combined in such circumstances.

10. We have heard the learned counsel of both the parties and perused the record carefully. We are in agreement with the learned counsel for the applicant that the limitation is only a diversionary plea taken by the respondents. The action of the respondents in regularising 241 adhoc AMOs/ADMOs from the date of initial appointment, admittedly directly affects the applicant prejudicially. This is not disputed by the respondents either. The argument of limitation, therefore, is no good ground and is not tenable in the dynamics of the background of the matter before us. The applicant was employed as AMO on adhoc basis from 3.1.1970 and he was declared successful by the UPSC on 28.4.1973. Even after the UPSC list was declared in April, 1973 the respondents appear to have taken unreasonable time to issue the letter, regularising his service which was

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accomplished only w.e.f. 1.3.1974. The case of the applicant that some of AMOs/ADMOs who were similarly recruited as the applicant and who failed to qualify in the UPSC examination have since been regularised as AMOs/ADMOs from the date of their initial appointment or 1.1.1973 whichever is later has also not been refuted by the respondents. In fact the list of AMOs/ADMOs vide Railway Board's order dated 28.02.92 shows that some of the Doctors who are appointed in 1968, 1972 and 1973 as AMOs/ADMOs on adhoc basis and continued as such have now been regularised vide order dated 28.02.1992. This fact establishes that the case of the applicant is not different than the some of these Doctors e.g. S/Shri M.L. Rawat, R. Gopal Rao, Laxmi Narain Rao etc. but for his regular appointment through the UPSC w.e.f. 1.3.1974. The applicant was also an adhoc Doctor and if he had not appeared before the UPSC, he would have received the benefit now extended to the adhoc AMOs/ADMOs being a similarly situate. In the circumstances, we are of the opinion that if the applicant is denied the extension of the judgement of the Supreme Court in **Dr. A.K. Jain** (supra) case which has been accorded to the adhoc AMOs/ADMOs who have now been regularised after screening on the basis of record of service subsequent to 1.10.1982, vide their order dated 28.2.92, it will constitute discrimination and infraction of Articles 14 and 16 of the Constitution of India. Accordingly, we order and direct that the applicant shall be

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deemed to have been regularised as AMO from the date of his initial appointment viz. w.e.f. 3.1.1970 and ADMO w.e.f. 1.1.1973. He shall be entitled to fixation of pay on notional basis in the grade of ADMO (Class I) viz. Rs.700-1600 w.e.f. 1.1.1973, duly reckoning his service w.e.f. 3.1.1970. The applicant shall also be entitled to refixation of pay in the revised scale of pay as ADMO and to the payment of arrears on that account w.e.f. 1.1.1986.

As far as the issue of seniority is concerned, the same has been decided by the Constitution Bench of the Hon'ble Supreme Court in **Direct Recruit Class II. Eng. Officers' Ass.** (supra) case and we have no doubt that the respondents will regulate the seniority of the applicant in accordance with the principles laid down in the said case.

We, therefore, do not issue any direction in this regard. In the circumstances of the case, as alluded to earlier we also direct that the respondents shall pay Rs.500/- as costs to the applicant. Finally we direct that the above orders shall be implemented with utmost expedition but preferably within 3 months from the date of communication.

S. K. Singh
(I.K. Rasgotra)
Member(A)

Ram Pal Singh
(Ram Pal Singh)
Vice-Chairman(J)

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