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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1057/2004

New Delhi, this the 27th day of June, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)**

Dr. G.R. Malik
S/o Late Shri Bhagirath Malik
Sr. Divisional Medical Officer
North Central Railway Hospital
Agra Cantt
R/o Railway Bungalow No.F-104
Railway Hospital
Agra Cantt. ... Applicant

(By Advocate: Ms. Meenu Mainee)

Versus

Union of India through

1. The Secretary
Ministry of Railways
Railway Board
New Delhi.
2. The General Manager
North Central Railway
Allahabad. ... Respondents

(By Advocate: Sh. Rajinder Khatter proxy for Sh. V.S.R. Krishna)

O R D E R (Oral)

By Mr. Justice V.S.Aggarwal:

Applicant, after passing his MBBS, joined the Indian Army as Short Service Commissioned Officer in 1971. On 3.11.1977, he joined the Indian Railways as Assistant Divisional Medical Officer. He was promoted as Divisional Medical Officer in February 1988 and thereafter as Senior Medical Officer on 1.3.1993. By virtue of

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the present application, he seeks a direction to the respondents to fix his seniority reckoning his service as Short Service Commissioned Officer from 4.1.1972 to 1.4.1977 and grant him consequential benefits.

2. According to the applicant, similarly situated other persons have been given such benefits and that even under the Rules, he is entitled to the same.

3. The applicant has submitted a representation which has been rejected vide the impugned order, operative part of which reads:

“As regards the benefit of past service for the purpose of seniority, attention may be drawn to Rule 6 of the Released Emergency Commissioned Officers (ECOs) and Short Service Commissioned Officers (SSCOs) (Engineering and Medical Services Reservation of Vacancies No.II) Rules, 1971 (Circulated vide Cabinet Secretariat’s Notification No.9/14/71/Estt(C) dated 25.11.1971) on the subject, which provides that seniority of a released ECO/SSCO appointed against a reserved vacancy shall be fixed on the assumption that he would have been appointed to the service or post, as the case may be, on the date arrived at after giving credit for his approved military service as ECO/SSCO as the case may be, including the period of training, if any, and for the purpose of seniority he shall be deemed to have been allotted to the corresponding year. In terms of sub rule (1) of Rule 4 the benefit as brought out above is applicable to only those who were commissioned on or after 1.11.1962, but before 10.01.1968.

2. As Dr. G.R.Malik, MS/Agra was commissioned in Army as a Short Service Commission (SSC) officer w.e.f. 04.01.1972 upto 01.04.1977, i.e., after the cut off date of 10.01.1968 mentioned in the notification dated 25.11.1971 mentioned above, the Released

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Emergency Commissioned Officers (ECOs) and Short Service Commissioned Officers (SSCOs) (Engineering and Medical Services Reservation of Vacancies No.II) Rules, 1971 quoted above do not cover his case for weightage of seniority, reckoning his past service as a SSCO.

3. As regards the notification of the Government of Uttar Pradesh dated 6th August, 1973 annexed by Dr. Malik with his representation, wherein provision for reservation has been made for the officers who were commissioned after 3.12.1971, it may be clarified that no such instruction has been issued by the Central Government.

4. In view of the position stated above, the weightage of Army Service for the purpose of seniority is not admissible to Dr. G.R.Malik.””

4. The application is being contested.

5. The basic facts are not in dispute, i.e., the period where the applicant served. According to the respondents, the benefit of the past service cannot be accorded because under Rule 6 of the Released Emergency Commissioned Officers and Short Service Commissioned Officers (Engineering and Medical Services Reservation of Vacancies No.II) Rules 1971, read with Rule 4, the benefit can only be accorded to those who were commissioned after 1.11.1962 and before 10.1.1968. The applicant's case is not covered therein.

6. We have heard the parties' counsel and have seen the relevant record.

7. The learned counsel for the applicant relied upon the notification issued on 6.8.1973 by the Government of Uttar Pradesh to press the claim for seniority. The said plea, however, is totally devoid of any merit. This is so because that notification

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would only apply to those who may be serving in the Government of Uttar Pradesh.

8. In that event, it was pointed that there were three other similarly situated Doctors who have been given the said benefit, namely, Dr. S.K.Gupta, Dr. G.K.Mishra and Dr. M.K.Sogani. However, it has been explained by the respondents that they had joined on 24.7.1966, 20.6.1966 and 20.6.1966, respectively.

9. Therefore, since this fact was not disputed and since they had joined before the year 1968, the applicant's claim of parity cannot be sustained.

10. The main controversy herein was as to if the applicant could get the benefit of his service for purposes of seniority. The said service for which seniority is being claimed is stated to have been rendered in the Indian Army as Short Service Commissioned Officer.

11. The matter would be governed by the Released Emergency Commissioned Officers and Short Service Commissioned Officers (Engineering and Medical Services) Reservation of Vacancies (No.II) Rules, 1971. Rule 3 (c) defines the expression "release" in the following words:

"(c) the expression "release" (with its grammatical variations) means release as per the Scheduled year of release, after a spell of service, from the Armed Forces of the Union and does not mean release during or at the end of training, or during or at the end of Short Service Commission granted to cover periods of such training prior to being taken in actual service, nor does it cover cases of officers released on account of misconduct or inefficiency or at their own request;"

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12. Rule 4 further prescribes about reservation of vacancies and Sub-Rule (1), which is relevant, reads:

“4. Reservation of vacancies:- (1) Twenty seven percent (in the case of recruitment by open competition) and 25 percent (in the case of recruitment otherwise than by open competition), of the vacancies in all the Class I and Class II Engineering and Medical Services and posts of the Government of India to which these rules apply and which are to be filled by direct recruitment in any year shall be reserved for being filled by Commissioned Officers of the Armed Forces of the Union, who were commissioned on or after the 1st November 1962, but before the 10th January 1968, and who

- (i) in the case of Emergency Commissioned Officers are released according to a phased programme; or
- (ii) in the case of Short Service Commissioned Officers are released on the expiry of the tenure of their service; or
- (iii) are invalidated owing to a disability attributable to or aggravated by military service.”

13. On behalf of the applicant, reliance is being placed on Sub-Rule (1) to Rule 6, which is also being reproduced below for the sake of facility:

“6. Seniority and pay:- (1) Pay of the released Emergency Commissioned Officer or Short Service Commissioned Officer appointed against a reserved vacancy shall be fixed on the assumption that he would have been appointed to the Service or post, as the case may be, on the date arrived at after giving credit for his approved military service as Emergency Commissioned Officer or Short Service Commissioned Officer, as the case may be, including the period of training, if any, and for the purpose of seniority he shall be deemed to have been allotted to the corresponding year:

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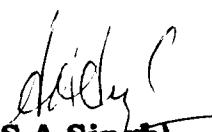
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Provided that in the case of an officer who competes for the reserved vacancies under the proviso to sub-clause (i) of clause (a) of sub rule (2) of rule 5 the pay and seniority would be fixed as if he has been directly recruited to the Service or post through open competition corresponding to the date and year in which he actually joined the Service or post."

14. A conjoint reading of the same would show that before a person can claim seniority, he has to be appointed for the reserved vacancies under Rule 4, as reproduced above, as Short Service Commissioned Officer between 1.11.1962 and 10.1.1968. The applicant admittedly joined much later. Therefore, he has rightly been denied the benefit claimed by him.

15. No other arguments had been advanced.

16. For these reasons, the OA being without merit must fail and is dismissed.


(S.A. Singh)

Member (A)


(V.S. Aggarwal)

Chairman

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