

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.384/93

New Delhi, this the 11th day of November, 1998.


Hon'ble Mr. N. Sahu, Member(Admnv)
Hon'ble Dr.A.Vedavalli, Member(J)

Dr. V.K. Kapoor ...Applicant
(By Advocates Sh. G.D. Chopra & Sh. O.P. Kshtariya)

Versus

Union of India ...Respondents
(By Advocate Shri V.S.R. Krishna)

1. To be referred to the Reporter or not? YES
2. To be circulated to other Benches of the Tribunal
or not? NO


(Dr.A. Vedavalli)
Member(J)

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Original Application No.384/93

New Delhi, this the // day of November, 1998.

Hon'ble Mr. N. Sahu, Member(Admnv)
Hon'ble Dr.A.Vedavalli, Member(J)

Dr. V.K. Kapoor,
S/o late Shri P.D. Kapur,
Chief Medical Officer,
Dr. R.M.L. Hospital,
New Delhi.

...Applicant

(By Advocates Shri G.D. Chopra and Sh. O.P.
Kshtariya)

Versus

Union of India through
Secretary, Ministry of
Health and Family Welfare,
Nirman Bhawan,
New Delhi.

...Respondents

(By Advocate Shri V.S.R. Krishna)

O R D E R

By Hon'ble Dr. A. Vedavalli, Member (J):

Applicant, Dr. V.K. Kapoor, working as a Chief Medical Officer in Dr. Ram Manohar Lohia Hospital, New Delhi at the time of filing of this OA, is aggrieved by the impugned order dated 7.9.92 (Annexure to OA) passed by the respondents, rejecting his request for counting of his past service as Short Service Commissioned Officer in the Army Medical Corps for seniority benefits in the Central Health Service (CHS).

2. The facts of this case, briefly, are as under:

2.1 The applicant joined the Army as a Captain in the Army Medical Corps on short service commission basis on 21.12.70. He served in the Army



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for a period of three years and 28 days, i.e., upto 17.1.1974. After release from the Army he joined service again under Government of India on 25.1.1974 in CHS and was treated as on ad hoc basis till 6.6.1980. He was appointed on regular basis w.e.f. 7.6.80 on the basis of the recommendations of the Union Public Service Commission. However, in pursuance of the decision of the Apex Court in the case of Dr. P.P.C. Rawani and Others his ad hoc service was regularised. Applicant submitted a request to the respondents for counting of his past service as Short Service Commissioned Officer in the Army Medical Corps for seniority benefits in CHS (copy not filed). The said request was rejected by the respondents for the reasons stated in the impugned order dated 7.9.92.

2.2 The applicant seeks the following reliefs in this OA:

- "a) To direct the Respondents that the service rendered by the applicant in the Army be counted and treated as service in the Govt. of India for all purposes in the Department of the Government where the applicant is serving now, including for the purposes of seniority.
 - b) To direct the Respondents to give the benefit sought for even by exercising the power of relaxation vested with the Central Government, if it be necessary to invoke such power.
 - c) To grant to the applicant such other or further relief to which he may be entitled on the facts and circumstances for the ends of justice, fair treatment and costs of the proceedings may also be awarded to the applicant."
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3. The O.A. is contested by the respondents and a counter reply has been filed. No rejoinder has been filed by the applicant.

4. We have heard the learned counsel for both the parties. Pleadings and the relevant materials and documents placed on record have been perused. The matter has been considered carefully.

5. The impugned order dated 7.9.92 is as under:

"No.A-38012/6/92-CHS.I
Government of India
Ministry of Health and Family Welfare
(Department of Health)

New Delhi, dated the 7.9.92

To

The Medical Superintendent,
Dr. R.M.L. Hospital,
New Delhi.

Subject: Counting of past service rendered by Dr. V.K. Kapoor, CMO in Army Medical Corps, as Short Service Commissioned Officer for seniority purposes in CHS.

Sir,

I am directed to refer to your letter NO.2-26/74-RMLH(HA-I)/2045 dated 4-5-92 on the subject noted above and to say that the request of Dr. Kapoor, CMO for counting of his past service as Short Service Commissioned Officer in Army Medical Corps for seniority benefits in CHS has been considered carefully in this Ministry, but it is regretted that the same cannot be agreed to as it is not covered under the rules in force. The special dispensation in the matter of seniority etc. as contained in the Released Emergency Commissioned Officers and Short Service Commissioned Officers (Engineering and Medical Service) Reservation of vacancies (No.II) Rules, 1971 are

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applicable in respect of persons who were commissioned on or after 1-11-62 but before 10-1-68 or who had joined any pre-commissioned training before the later dates but who were commissioned on or after that date. These rules ceased to exist from 29-1-1974 as such no special dispensation to ECOs/SSCOs in the matter of reservation of vacancies and seniority etc. is to be allowed on their appointment against civil posts after 29.1.74. As Dr. Kapoor was granted commission on 21.12.70, his case is not covered in the above provisions.

As regards his request regarding regularisation of his past ad-hoc service against CHS post, orders appointing him in Grade "A" w.e.f. 25.1.74 on regular basis have already issued on 7-5-92 in pursuance of directions of the Hon'ble Supreme Court given in the case of Dr. P.P.C. Rawani.

Dr. Kapoor may please be informed accordingly.

yours faithfully,

sd/-

(R.C. SHARMA)

UNDER SECRETARY TO THE GOVT. OF INDIA"

6. The main ground urged by the learned counsel for the applicant is that the impugned order is violative of Articles 14 and 16 of the Constitution since it is unreasonable, arbitrary and illegal. It was submitted that as per the impugned order the released emergency commissioned and short service commissioned officer (Engineering and Medical Service) Reservation of Vacancies (No.II) Rules, 1971 (hereinafter referred to as "the Rules") ceased to exist from 29.1.74 but he should not have been denied the benefit of the said Rules since he had joined the Short Service Commission in the Army on 21.12.70 and served there upto his release and joined CHS when the aforesaid Rules were in operation. It was further contended that even otherwise the applicant is similarly situated as the officers who were given the benefit of the Army Service for all purposes as he

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too has a medical degree etc. and served the Army on short service commission basis during the period of emergency and should, therefore, be treated on par with them.

7. The above ground was opposed vehemently by the learned counsel for the respondents. He submitted that the representation of the applicant was examined in the light of the advice given by the Department of Personnel and Training in a case of similar nature and brought to our notice a copy of the said advice dated 9.6.92 (Annexure R-1) in this connection. He contended that as per the advice which is clear the said dispensation contained in the Rules of 1971, noted supra, are applicable in respect of persons who were commissioned on or after 1.11.62 but before 10.1.68 or who had joined any pre commission training before the later date but who were commissioned on or after that date. These Rules ceased to exist from 29.1.74 and as such no special dispensation to ECOs/SSCOs in the matter of reservation in respect of vacancies, seniority etc. can be given after 29.1.74. As the applicant joined the Army on 21.12.70 his case is not covered under these Rules and his request cannot be granted. He submitted that the classification of persons in two categories under the Rules is reasonable and rational. It is based upon intelligible differentia and hence there is no question of discrimination against the applicant. In support of his argument he relied upon the judgement of the Apex court in All India Ex-Emergency Commissioned Officers & Short

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Commissioned Officers' Welfare Assn. & Anr. etc.
vs. Union of India & Anr. (1995 SCC (L&S) 258) and
 an order of the Tribunal dated 7.2.96 in QA-332/95 -
S. Sunder Rajan & Ors. vs. Union of India & Anr.

8. It is seen that as per the advice tendered by the Department of Personnel and Training dated 9.6.92 in a case which is stated to be a similar one (Annexure R-1), inter alia, it was stated that "The rationale behind special dispensation to ECOs who had been commissioned during the emergency are given on the principle that in responding to the call of the nation in an emergency, these young men have deliberately shunned opportunities of securing the necessary educational qualification and availing the opportunities in their civil life. This principle obviously would not hold good in respect of officers who have been commissioned in the army after the emergency. In view of this there is no justification in case of persons who had chosen Emergency Commissioned as their career and released after 1974."

9. In the case of All India Ex-Emergency Commissioned Officers and Short Commd. Officers Welfare Assn. (supra) it was observed by the Apex Court thus:

"The Released Emergency Commissioned Officers and Short Service Commissioned Officers (Reservation of Vacancies) Rules, 1971 (for short 'the Rules') came to be framed by the President of India to compensate the emergency commissioned officers for the chances they had lost by entering public services during the time the

country needed them. The Rules apply to those who were commissioned after 1.11.1962 but before 10.1.1968 and make certain percentage or reservation in all Central Civil Services and their seniority, on entering these services, is determined on the assumption that they entered the same "at the first opportunity they had after joining the training prior to their Commission or the date of their Commission". The prayer of All India ex-Emergency Commissioned Officers and Short Service Commissioned Officers' Welfare Association and other petitioners is that the same benefit should be made available to these categories of persons when they join the non-reserved posts also."

It was held by the Hon'ble Court thus:

"According to us, a policy decision was taken to give some benefit to those servicemen who had stood with the people when the country was invaded and had rendered useful service during the emergency in question. How much benefit and in what shape it ought to have been given are not matters on which courts can have any say, these are exclusively for the executive to decide. The courts come into picture in such policy matters if the same be either illegal or irrational or were to suffer from procedural impropriety, as reiterated recently by this Court in Tata Cellular vs. Union of India (1994 (6) SCC 651). We do not find any such infirmity in the policy at hand.

4. This is not all. As the recruitment for the reserved post is through separate method, as stated in para 6(b) of the reply filed on behalf of Respondents 1 and 2 to Writ Petition No.151 of 1989, there is no possibility of some of the released officers obtaining reserved posts with the benefit available under the Rules, and others obtaining non-reserved posts with no benefit visualised by the Rules. So the two types of incumbents have to be taken as belonging to two different categories; the one having no clash of interest with the other; the one being denied no benefit available to the other.

5. In view of the aforesaid, we are not in a position to concede the prayer made in these petitions. They are, therefore, dismissed. We leave the parties to bear their own costs."

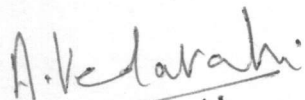
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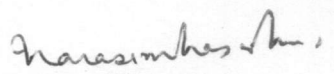
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10. The aforesaid decision of the Apex Court and another judgement in Ram Pal and Others vs. Union of India and Others (JT 1995 (1) SC 579) were followed by this Tribunal in the case of S. Sunder Rajan & Others in OA-332/95 (supra) while disposing of the prayer of the applicants therein (direct recruits to the Central Health Service who served under various Armed Forces as Short Service Commissioned Officers) for a direction to the respondents to reckon their entire length of their commissioned service for purposes of seniority and consequential promotional benefits under the CHS in their respective cadre under the concerned department where they were working.

11. In the facts and circumstances of this case as discussed and in view of the law laid down by the Apex Court in the aforesaid judgements followed by the Tribunal in its order (supra) we are of the opinion that the OA is devoid of any merit and there is no justification to interfere with the impugned order.

12. In the result the O.A. is dismissed.
No costs.


(Dr. A. Vedavalli)
Member(J)


(N. Sahu)
Member(Admnv)

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