

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHAPAD BENCH
ALLAHAPAD

Allahabad this the 8th day of September 2000.

Hon'ble Mr. Justice R.R.K. Trivedi, VC
Hon'ble Mr. M.P. Singh, AM

Original Application no 841 of 1992.

ALONGWITH

Original Application no. 1505-A of 1998.

Acchyut Kumar Singh,
S/o Shri R.K. Singh,
R/o Railway Quarter,
M-2, Malgodam Road, Barabanki,
Distt. Barabanki.

... Applicant

C/A Shri A.K. Singh, Shri J.N. Sharma.

Versus

1. The Union of India through Secretary,
Railway Board, New Delhi.
2. The General Manager, N. Rly., Baroda House,
New Delhi.
3. The Divisional Railway Manager, N. Rly.,
Lucknow.
4. UPSC through its Chairman/Secretary, New Delhi.

Respondents in OA 841/92

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1. Union of India through the General Manager,
(P), N. Rly., H.Q., Baroda House, New Delhi.
- 2 Divisional Railway Manager, N. Rly., Lucknow.
3. Union Public Service Commission, New Delhi.

• Respondents in OA 1505-A
of 1998.

C/Rs (in both OAs) Shri A. Sthalekar

O R D E R

Hon'ble Mr. Justice R.R.K. Trivedi, VC.

Both the aforesaid OAs have been filed by the same applicant against same respondents. Question of facts and law are also similar. Both the OAs may be disposed of by a common order against which learned counsel for the parties have no objection. OA 841 of 1992 will be the leading case.

2. The facts giving rise to these OAs are that the applicant Dr. A.K. Singh joined Northern Railway on 24.01.86 as Assistant Divisional Medical Officer. The appointment was on ad-hoc basis. Letter of appointment has been filed as annexure A-1. Some of the conditions provided in this appointment letter dated 24.01.86 are very material for deciding the controversy. Hence they are being re-produced below :-

a. The appointment will be on a purely temporary adhoc basis for a period of six months or the availability of UPSC selected candidates whichever is earlier.

c. Those who fail to get selected in the selection/competitive examination held by the UPSC on three successive occasions or do not avail three chances would be terminated from service without any notice.

i. In all matters not specifically referred to above you will be governed by the provisions of Indian Railway Establishment Code and the extant orders as amended/issued from time to time.

3. It is not disputed that in railways such doctors appointed on adhoc basis were engaged in large numbers. Question of their regularisation came under consideration before Hon'ble Supreme Court, in the case of A.K. Jain and others Vs. Union of India & Others, 1987 (Suppl) SCC 497. Hon'ble Supreme Court after considering entire matter in detail provided for a cutoff date i.e. 01.10.84 and gave separate directions in respect of the doctors engaged on adhoc basis after 01.10.84. As the present applicant was appointed after 01.10.84, in the present application we are concern with the directions which ^{are being} reproduced below :-

" 2. The petitions of the Assistant Medical Officers/Assistant Divisional Medical Officers appointed subsequent to October 1, 1984 are dismissed. But we however direct that the

Assistant Divisional Medical Officers who may have been now selected by the Union Public Service Commission shall first be posted to the vacant posts available whereever they may be. If all those selected by the UPSC cannot be accommodated against the available vacant posts they may be posted to the posts now held by the doctors appointed on ad-hoc basis subsequent of October 1, 1984 and on such posting the doctor **holding** the post on ad-hoc basis shall vacate the same. While making such postings the principle of last come, first go shall be observed by the Railways on Zonal basis. If any doctor who is displaced pursuant to the above direction is willing to serve in any other zone where there is a vacancy he may be accommodated on adhoc basis in such vacancy.

3. All Assistant Medical Officers/Assistant Divisional Medical Officers **working** on adhoc basis shall be paid the same salary and allowances as Assistant Divisional Medical on the revised scale with effect from January 1, 1986. The arrears shall be paid within four months.

4. No ad-hoc Assistant Medical Officer/ Assistant Divisional Medical who may be working in the Railways shall be replaced by any newly appointed AMO/ADMO on ad-hoc basis. Whenever, there is need for the appointment of any AMO/ ADMO on adhoc basis in any zone the existing adhoc AMO/ADMOs who are likely to be replaced by regularly appointed candidates shall be given preference.

[Handwritten signature]

5. If the adhoc doctors appointed after October 1, 1984 apply for selection by the Union Public Service Commission the Union of India and the Railways Department shall grant relaxation in age, to the extent of the period of service rendered by them as adhoc doctors in the Railways."

4. After the judgment of Hon'ble Supreme Court in A.K. Jain's case, the case of the applicant alongwith others was also examined by UPSC for regularisation. The case of 119 doctors ~~were~~ considered by the Commission. However, only 105 of them ~~were~~ approved for regularisation, remaining 14 doctors were not approved for regularisation, applicant is one of them. After the Opinion of UPSC services of the applicant was terminated by order dated 14.5.92/16.6.92. Copy of which has been annexed as annexure A 2. Aggrieved by this order of termination, applicant filed OA 841 of 1992. By order dated 30.6.92, the operation of the impugned order of termination was stayed untill further orders. It is not disputed that under the strength of the interim order granted by this Tribunal, applicant continued in service. However, the application was dismissed in default on 24.09.96. Consequently the order ^{was} passed by General Manager on 13.11.96 for termination of the services of the applicant; in pursuance of which order dated 21.11.96 was passed by D.R.M. However, these orders, it appears from the record, were ^{not} given effect due to intervening factors. On 5.12.96, the order was passed that orders dated 13.11.96 and 21.11.96 shall be kept pended. Applicant



claimed that he continued to work on the post at Barabanki till the order was passed on 06.07.98, terminating him from service which has been challenged in OA 1505-A of 1998. It may be mentioned here that an application was filed for restoration of OA 841 of 1992 which was allowed on 09.02.99. The OA has been restored to its original number. In both the OAs counter affidavit and rejoinder affidavit have been exchanged.

5. We have heard Shri A.K. Singh learned counsel for the applicant and Shri Amit Sthalekar learned counsel for the respondents.

6. Learned counsel for the applicant has made many submissions. First submission is that, in view of the condition no. 'c' provided in the appointment order, the applicant could not be terminated from service, until he exhausted three chances before UPSC. It is claimed that the applicant has faced Commission only once and he is still to avail 2 chances. For this averment learned counsel for the applicant submitted that similar controversy was raised before Madras Bench ~~of this Tribunal~~ and Calcutta Bench of this Tribunal, and applications were allowed and the judgments of both the Benches have been upheld by Hon'ble Supreme Court. The second submission of learned counsel for the applicant is that the appointment of the applicant was till regularly selected candidate by Commission joined ^{for period} the post. It is claimed that no such candidate has

come to join the post and applicant is entitled to continue ~~on~~ ^{on condition} this ~~purpose~~. Reliance has been placed ~~on~~ judgment of the Jabalpur Bench of this Tribunal, which has also been confirmed by the Hon'ble Supreme Court. The third submission of learned counsel for the applicant is for payment of salary of arrears during which applicant has worked. This period is since December 1996 to July 1998 and for a month of June 1992. The fourth submission of learned counsel for the applicant is for ^{payment} ~~claim~~ of suitable compensation for non payment of the salary for such a long period ~~and~~ for ^{The} ~~which~~ suffering the applicant ~~has~~ under gone.

Last submission of learned counsel for the applicant is that while considered for regularisation by UPSC credit of the past services may be taken into account and a suitable direction may be given to this effect. Learned counsel for the applicant has placed reliance on certain judgments which shall be referred to at relevant places in subsequent paragraphs.

7. Shri A. Sthalekar learned counsel for the respondents on the other hand submitted that out of 14 doctors who were found unfit by the Commission, two of them, namely Dr. Davendra Veer Shahi and Dr. Gyan Prakash Singh, challenged their order of termination before this Bench. Applications were allowed. The matter ultimately went before the Hon'ble Supreme Court in appeals filed by Union of India and both the orders passed by this Bench were set aside. Judgments



are reported in 1995 (Suppl) Vol 2 SCC 463 and 1994 (Suppl) 1 SCC 306. Shri A. Sthalekar also placed reliance in a judgment of Hon'ble Supreme Court in case of J & K Public Service Commission vs. Narendra Mohan, AIR 1994 SC 1808, in respect of the claim of the applicant for payment of arrears of salary. Shri A. Sthalekar has submitted that as a ~~resumption~~ report was not available, the claim for salary could not be accepted by the Railway Authorities and the applicant is not entitled for the relief as prayed.

8. We have carefully considered the submissions of the learned counsel for the parties.

9. Learned counsel for the applicant has placed before us unreported copy of the order dated 03.05.1994, passed by Calcutta Bench of this Tribunal in OA no. 406 of 1992, in which the controversy, as to whether the services of the adhoc doctors could be terminated before giving him 3 successful chances of the examination of his claim by the UPSC, has been considered in detail. In this order, judgment of the Hon'ble Supreme Court in A.K. Jain's case and Dr. G.P. Singh's case have also been considered. Calcutta Bench, after detail consideration, concluded the controversy in following manner. Relevant para 11

is being reproduced below :-

"11. For the reasons stated above, we dispose of this application with the following orders :

i. Within three months from the date of communication of this order, the UPSC shall issue appropriate notice to the applicants fixing the date of interview for them and hold interview of the applicants as per approved guidelines. If the applicants or any of them are found to be fit for regularisation then the UPSC shall recommend their/his name(s) to the concerned railway authorities and accordingly they/he shall be regularised as ADMO.

ii. If, however, the applicants or any of them fail to get themselves/himself selected in the aforesaid interview, then the UPSC shall issue another notice to them after three months from the date of publication of the result of first interview, and hold interview in the manner indicated above. If the applicants or any of them are/is found suitable for regularisation in the said interview, then their services shall be regularised accordingly.

iii. If the applicants or any of them, after getting three chances including the one already given to them in 1991, fail to get themselves/ himself selected, then the respondents may take appropriate action against them as per rules.

iv. Till the applicants get three chances in all to get themselves selected they shall continue to work as adhoc ADMOs and the order of their termination, if any, shall not be given effect till then."



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Aforesaid order of the Calcutta Bench of this Tribunal was challenged before Hon'ble Supreme Court in SLP no. 7318 of 1995. The appeal was dismissed on 24.4.95 by the following order :-

"In view of the dismissal of the Special Leave Petition (C) No. 10007/93 filed by Union of India Vs. S.K. Rajan decided on 23.3.93. This Special Leave Petition is dismissed."

10. It may be mentioned here that by S.L.P. no. 10007 of 1995, the similar view taken by Madras Bench of this Tribunal was challenged, in the case filed by Dr. S.K. Rajan. In view of the legal position settled by the 2 orders of this Tribunal one by Madras Bench and other by Calcutta Bench, in our opinion the applicant is entitled to continue on the post untill he exhausts 3 chances of his opportunity of selection by UPSC. The order of termination passed against him for this reason cannot be sustained. Since OA can be allowed on the first submission made by the learned counsel for the applicant, we do not think ^{to examine} ~~to examine~~ another ground as to whether any regularly selected candidate was available or not.

11. Comming to the third submission of the learned counsel for the applicant regarding payment of arrears of salary from December 1996 to July 1998, From the pleadings we are satisfied that the applicant

in his letters and also in his assertion made before this Tribunal make positive averments that he has worked on the post during that period, but he has not been paid salary. In reply to this claim, the respondents have only said that resumption report was not in record, therefore, salary could not be paid. They have not come with the case of denial that applicant has not worked during that period as ADMO. In the circumstances the denial by the respondents is based only on technical ground and applicant is entitled for this relief also.

12. So far as the compensation claim by the learned counsel for the applicant is concerned, in our opinion, relief cannot be granted, as there is no pleadings in the OA and respondents have not given opportunity to reply the same. This claim was raised during the arguments. This claim is thus cannot be accepted.

13. The last claim with regard to the credit of the past services, of this matter is to be examined by the Union Public Service Commission, we refrain from making any observation in this regard.

14. For the reasons stated above both the OAs are allowed. The orders of termination dated 14.5.92/16.6.92 and 06.07.1998 are quashed. Applicant shall be entitled for being reinstated on the post with

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all benefits. He shall also be paid arrears of salary for the period from December 1996 to June 1998 and salary for the month of June 1992. Amount payable under this order shall be paid within a period of six months from the date of communication of this order. Applicant shall also be entitled for the direction given by the Calcutta Bench of this Tribunal for examination of the claim of the applicant for regularisation.

15. There shall be no order as to costs.