

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 892 of 1992

Allahabad this the 29th day of May 1997

Hon'ble Dr. R.K. Saxena, Member (J)
Hon'ble Mr. D.S. Baweja, Member (A)

Dr. Kaushal Kumar Srivastava, S/o Shri Sant Prasad,
R/o L.N. Mishra, Railway Hospital, N.E. Railway,
Gorakhpur.

Applicant.

By Advocate Sri Sanjay Kumar

Versus

1. Union of India through Secretary, Railway Board,
Rail Bhawan, New Delhi.
2. Joint Director, (Establishment) Railway Board,
Rail Bhawan, New Delhi.
3. General Manager(P) N.E. Railway, Gorakhpur.

Respondents

By Advocate Sri G.P. Agrawal

O R D E R

BY Hon'ble Dr. R.K. Saxena, Member (J)

The applicant Dr. K.K. Srivastava

has filed this O.A. to seek the relief that the orders passed on 05.7.1991 and 24.11.1989 be quashed, the seniority of the applicant be assigned w.e.f. 26.9.74, his salary with all the increments and other benefits be directed to be re-fixed and arrears be directed to be paid to the applicant.

2. The brief facts of the case are that the applicant was appointed as Assistant Medical Officer

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on 26/9/74 in the North-Eastern-Railway. The appointment was temporary and terminable after six months or on the availability of the approved candidates from the Union Public Service Commission. The services of the applicant were, however, terminated on 31.12.1979.

3. The applicant filed a writ petition no. 641 of 1980 Dr. K.K. Srivastava Vs. Union of India and Others in the High Court. The said writ petition was decided by the High Court on 31.10.1985 whereby the termination order passed against the applicant, was quashed, and he was deemed to be in service and entitled to all emoluments which he would have availed ^{of} had the impugned order not been passed. It appears that the said judgment in the writ petition was challenged by way of filing Civil Appeal after seeking leave of the ^{Supreme} court. Their Lordships of Supreme Court decided the Civil Appeals no.1229-1230 of 1986 on 07.9.90. The Civil Appeal which was filed against the judgment which was rendered in favour of the applicant, was numbered as 1280 of 1986. Another Civil Appeal no. 1229/86 was filed against the judgment which was given in favour of Dr. Surendra Kumar Shukla. Both these appeals were decided by the common judgment. Their Lordships of Supreme Court decided the appeal in the light of the judgment given in Dr. A.K. Jain and Others Vs. Union of India and Others. It is stated that the name of the applicant was considered by the Union Public Service Commission in the light of the

judgment given by the Hon'ble Supreme Court, and he was approved for regularisation. It is further stated that instead of regularising the services of the applicant from the date of his original appointment which was given on 26.9.74, the matter was referred to the Railway Board which ordered on 05.7.91 that the broken period of service of the applicant should be treated as dies-non. It was further directed that the seniority should be assigned from the date of offer of appointment as Assistant Divisional Medical Officer. Feeling aggrieved by these orders, this O.A. has been preferred.

4. The respondents have opposed the claim of the applicant and it is averred that the applicant was appointed on ad hoc basis on 26.9.74 but his services were terminated on 31.12.1979. It is stated that he was re-instated on 30.1.1980 because the writ petition was filed in the High Court and stay was obtained. His services were again terminated on 23.2.1980 on vacation of the stay order, but he was taken back again in service. The orders which were passed for treating the broken period as dies-non, has been justified. It is also contended that the Tribunal has got no jurisdiction because if the applicant has felt aggrieved by any order, he should have approached the Hon'ble Supreme Court. It is therefore, contended that the O.A. is liable to be dismissed.

5. The applicant filed no rejoinder.

Certain judgments have, however, been brought on record. We have heard the learned counsel for the applicant and the respondents and have perused the record.

6. Before we deal with the controversy involved in the case, we would like to dispose of the objection which has been raised on behalf of the respondents. It is contended on their behalf that this Tribunal has got no jurisdiction and if there is any grievance to the applicant, he should have approached the Hon'ble Supreme Court. There is no doubt that this matter had gone upto the Hon'ble Supreme Court and the Civil Appeal which was preferred by the respondents challenging the decision of the High Court, was disposed of in terms of the decision given in Dr. A.K. Jain and Others Vs. Union of India and Others 1987 S.C.C. (Supp.) 497! The copy of the judgment in the case of Dr. A.K. Jain, has also been brought on record by the applicant. It was observed by their Lordships in the case of Dr. A.K. Jain (supra) that the Doctors (who were given appointment upto 01.10.84 as ad hoc Doctors) should be regularised in consultation with the Union Public Service Commission on the evaluation of their work and conduct, on the

basis of their confidential reports in respect of the period subsequent to 01.10.1982. It was further observed that the Doctors so regularised, should be appointed as Assistant-Divisional-Medical-Officer w.e.f. the date from which they had been continuously working as Assistant Medical Officer/Assistant Divisional Medical Officer. The railway was given an option to terminate the services of those who were not so regularised. It was further observed that if the services of any of the petitioners appointed prior to 01.10.1984 had been terminated except on resignation or on disciplinary grounds, he should also be considered for regularisation, and if found fit, his services should be regularised as if there was no break in the continuity of service but without any backwages. In the background of these directions, what appears is that the present applicant was regularised in consultation with the Union Public Service Commission and he was posted again. The only grievance of the applicant is that for the period during which he had been out of service because of the order of termination which was in no way connected with the resignation or the disciplinary action, has now been declared dies-hon. In such a situation, it is contended that a fresh cause of action has arisen. We are in full agreement with the argument of the learned counsel for the applicant and we hold that this Tribunal has got jurisdiction.

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Thus, the objection raised on behalf of the respondents stands rejected.

7. The applicant has approached the Tribunal being apprehensive of the use of the term 'dies-non' in the order dated 05.7.1991. What has been written in the impugned order annexure-6 is that the Railway Board had taken a view in the circular dated 24.11.1989 annexure -7 that the broken period of service should be treated as dies-non and accordingly the broken period in the case of the applicant, was treated as dies-non through this impugned order. Before we proceed to decide the legality or otherwise of the impugned orders annexures 6 and 7, we would like to consider the meaning of dies-non. This term 'dies-non' is the short form of "DIES-DOMINICUS-NON-EST-JURIDICUS". The meaning of this phrase, according to the book 'A Selection Of Legal Maxims' by Herbert Broom is that Sunday is not a day for judicial or legal proceedings. In Black's Law Dictionary "dies-non" is shown as a ^{abbreviation} provision of dies-non judicious, which means a day not judicial. This term "dies-non" is defined in Legal Glossary issued by Government of India to mean a day on which general business may not lawfully be transacted. In the Concise Oxford Dictionary, this term has been defined as a day that does not count or cannot be used. On
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going through the definitions as are given in various books, it can be concluded that the term "dies non" indicates a day which does not count. We, therefore, find that the term "dies-non" has been used in the impugned order annexure-6 in the same sense. When we peruse the Board's circular dated 24.11.1989 annexure -7, we find that the position was clearly clarified. To quote, " the ad hoc doctors, whose services have been regularised after screening by the Union Public Service Commission in keeping with the Supreme Court Order dated 24.9.87 on the writ petitions filed by the ad hoc doctors, shall be treated duly appointed from the date of their initial appointment for all purposes except the seniority as this was left open by the Supreme Court to be decided by the Government in the light of decision to be rendered by the Court in the cases which are pending before the Constitution Bench involving similar questions. The services of those of the ad hoc doctors whose services had earlier been terminated but have now been regularised in pursuance of the Supreme Court Order of the 24th September 1987 may also be deemed as continuous from their initial date of appointment treating the broken period of service as dies-non."

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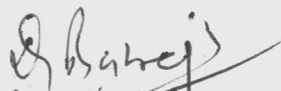
8. What appears from the circular(annexure-7) is that the broken period of ad-hoc doctors was treated as dies-non but they were also deemed as continuing in service from their initial date of appointment. In our opinion, no further clarification is required by the applicant or similarly situated doctors. Not only this that the clarification was given by the Railway Board in its circular, their Lordships of Supreme Court had also, while disposing of the writ petition of Dr. A.K. Jain and Others, had observed in clear terms that the doctor so regularised should be appointed as Assistant Medical Officer w.e.f. the date from which they had been continuously working as Assistant Medical Officer/Assistant Divisional Medical Officer. The observation further was that if the services of any of the petitioners appointed prior to 01.10.1984, had been terminated except on resignation or on disciplinary grounds, he should be also considered for regularisation, and if found fit, his services should be regularised as if there was no break in the continuity of service but without any backwages. In this way, their Lordships of Supreme Court did not leave any occasion to the department to take a different view. The break in service had no adverse effect either on the applicant or on similarly situated persons because the applicant had not worked during the period of break

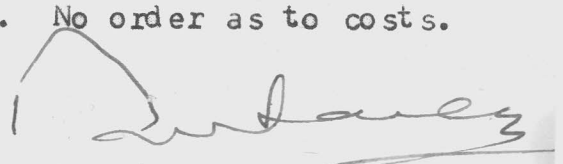
in service, it was made clear that backwages would not be given to him. The apprehension which is existing in the mind of the applicant, has got no valid basis.

9. The learned counsel for the applicant, however, referred to some of the judgments particularly in the writ petition no. 13705-06 of 1984 Shiv Shanker & Anr. Vs. Union of India and Others and of the Allahabad Bench of the Tribunal in O.A.no.207 of 1992 Jagdish Mitter Vs. Union of India and Others, decided on 23.3.93.

The facts as have been narrated earlier, are quite different from the facts in the cases cited before us. It is not a case of any penalty that the broken period has been declared as dies-non. In a notice of passing an order of dies-non is required only when such an order is passed by way of penalty. Thus, we are of the view that the cases cited by the learned counsel for the applicant, are distinguishable and are not applicable to the facts of the present case.

10. On the consideration of the facts and circumstances of the case above, we find that no interference by the Tribunal is required in the matter. We do not see any illegality or infirmity in the impugned orders. The O.A., therefore, stands dismissed. No order as to costs.


Member (A)


Member (J)