

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD

O.A. No./I.A. No. 1568 of 1994

Date of decision 05.07.2002

Dr S.K Varmani

Applicant(s)

Sri N.K Nair & Sri Chh. Upadhyaya

Counsel for the
Applicant (s)

VERSUS

Union of India & Others

Respondent (s)

Sri RC Joshi & Sri S. Chaturvedi

Counsel for the
Respondent(s)

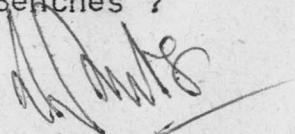
C O R A M

Hon'ble Mr. Gen K.K. Srivastava V.C. Member (A)

Hon'ble Mr. Ak Bhatnagar Member (J)

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether their Lordship wish to see the fair copy of the judgment ?
4. Whether to be circulated to all Benches ?

AJR


Signature

PIYUSH/

2.

Board (in short OFB) with effect from such retrospective dated as may be directed, with all consequential benefits; respondents no. 1 to 3 be directed to reinstate the applicant in service under OFB treating the applicant to be continuing in service with all consequential benefits quashing the order of Director General Ordnance Factory (in short DG OF) Calcutta dated 3.7.1980 and the letter of General Manager, OF Dehradun dated 7.8.1980 intimating the applicant that his services shall stand terminated w.e.f. 18.8.1980 under Rule 5 (i) of Central Civil Services (Temporary Services) Rules 1965. The applicant has also claimed pay and allowances w.e.f. 19.8.1980 on reinstatement of service by order of DG OF dated 13.9.1996.

Re to this OA

2. The facts giving rise, in short, are that the applicant joined on 3.7.1969 on temporary basis as Assistant Surgeon Grade I (Male) in Ordnance Factories Organisation at Ordnance Parachute Factory Kanpur for one year. After completion of stipulated period of one year he was allowed to continue without break. On 1.1.1978 he was transferred from Ordnance Parachute Factory Kanpur to OF Dehradun where he joined on 12.7.1978. The post of Assistant Surgeon Grade I was redesignated as Junior Medical Officer. He also performed the duties of Incharge of the Hospital from time to time, during the absence of the Medical Officer Incharge. The applicant's services were continued for a period of 11 years 1½ months. The service of the applicant were abruptly terminated by order of DG OF dated 3.7.1980 under Rule 5(i) of the CCS. The services of number of similarly appointed doctors was also terminated. One Dr. (Mrs.) Madhuri Singh and Dr. H.N. Misra with some other doctors challenged the order by filing case before Hon'ble High Court. Hon'ble

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 5th day of July 2002.

Original Application no. 1568 of 1994.

Hon'ble Maj Gen K.K. Srivastava, Member (A)
Hon'ble Mr. A.K. Bhatnagar, Member (J)

Dr. Surendra Kumar Varmani, S/o late D.L. Varmani,
R/o 89/32, Acharya Nagar, Kanpur, previously employed
as Medical Officer under the Ordnance Factory Board.

... Applicant

By Adv : Sri N.K. Nair & Sri M.K. Updhayaya

Versus

1. Union of India, through the Secretary,
Ministry of Defence, Govt. of India,
NEW DELHI.
2. The Chairman, Ordnance Factory Board/ Director General
of Ordnance Factories, 10-A, Auckland Road,
Kolkata.
3. General Manager, Ordnance Factory,
Dehradun.
4. Union Public Service Commission,
Dholpur House, Shahjahan Road, New Delhi.
through its Secretary.

... Respondents

By Adv : Sri R.C. Joshi & Sri S Chaturvedi.

O R D E R

Hon'ble Maj Gen K.K. Srivastava, Member (A).

In this OA, filed under section 19 of the A.T.
Act, 1985, the applicant has prayed that the respondents
be directed to regularise the services of the applicant
on the post of Medical Officer under Ordnance Factory

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Allahabad High Court vide its judgment dated 25.10.1984 passed in 2nd Appeal no. 1628/83 (Ann A7) ordered for the reinstatement of applicants with all consequential benefits. Applicant also filed a Civil suit no. 312 of 1983 before Civil Judge Dehradun which was transferred to this Tribunal as Transfer Application no. 1406 of 1986. Meanwhile after reinstatement of Dr. H.N. Misra and Dr (Mrs.) Madhuri Singh the respondents terminated their services by Presidential order dated 8.9.1986 which was also challenged by Dr. (Mrs) Madhuri Singh in OA no. 25 of 1987 by order dated 14.3.1991. This Tribunal quashed order dated 8.9.1986 and held that the applicant were deemed to be continuing in service with all consequential benefits. UPSC was directed to consider the regularisation in accordance with law. However the case filed by Dr. H.N. Misra (ie OA 186 of 1987) against his termination by order dated 8.9.1986 alongwith the case of the applicant ie TA no. 1406 of 1986 was pending which were decided by Lucknow Bench of this Tribunal by order dated 29.1.1992 (Ann A11 & A12) quashing the order of termination of applicants with all consequential benefits. The applicant sent a representation no. 22.4.1992 to Chairman OFB/DG OF Calcutta alongwith the with request that he order of this Tribunal Lucknow Bench dated 29.1.1992 be reinstated alongwith all benefits. When the respondents failed to comply with the orders of this Tribunal Lucknow Bench dated 29.1.1992 the applicant filed contempt petition no. 147 of 1993. During the pendency of Contempt Petition the applicant again represented respondents including UPSC seeking justice but no reply from the respondents. In order to circumvent the contempt proceedings in Contempt Petition no. 147 of 1993 the DG OF passed order dated 13.9.1996, that the applicant was thereby reinstated in service w.e.f. 19.8.1980.



This order was received by the applicant in Kanpur on 23.9.1996 through Registered Post. The applicant informed DG OF, OFB, Calcutta on 24.9.1996 through Registered Post that the applicant would be joining duties in the ordnance Factory on 28.9.1996. The applicant vide letter dated 21.9.1996 of Dy. General Manager (Admin) OF Dehradun, delivered through messenger on 24.9.1996 was informed that the payment of arrears of salary and allowances was ready for collection from factory immediately. It was also informed that the applicant was being reinstated in service w.e.f. 19.8.1980 and the applicant would be paid pay and allowances as applicable to the grade of JMO for the period from 30.1.1992 ie the next date of the Tribunal's order to 14.1.1993 ie the date of review of regularisation by UPSC. The date of 14.1.1993 is the letter of UPSC mentioned by the respondents in their counter reply to CCP 147 of 1993 that the UPSC considered the case of regularisation of the applicant and found him unsuitable. The applicant reported for duty at Ordnance Factory Dehradun on 28.9.1996 and submitted a joining letter dated 28.9.1996 to Head Clerk Ordnance Factory Hospital. He met General Manager and persuaded that in terms of DG OF order dated 13.9.1996 reinstating the applicant in service, the applicant should be allowed to resume duties but the General Manager refused to permit applicant to resume duty. The applicant reported this fact that he was not permitted to resume duties to DG OF vide Registered letter dated 5.10.1996 with request to inform the applicant about future directions at his Kanpur address. The applicant went personally to OFB Calcutta and submitted another representation on 23.10.1996 requesting that the General Manager Ordnance Factory Dehradun be directed to permit the applicant to resume duties. The applicant was offered a ^{l a} ~~me~~ sum of Rs. 19913/- towards

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the entire arrears of salary from 30.1.1992 to 14.1.1993 at the rate of pay and allowances which the applicant was drawing in the year 1980.

3. Sri N.K. Nair, learned counsel for the applicant submitted that the action of the respondents has ^{been} along been illegal and malafide. The applicant was appointed by Presidential order and therefore his services could have been terminated only by order of President. Therefore, order of DG OF dated 3.7.1980 terminating the services of the applicant is bad in law and is liable to be quashed. The learned counsel argued that the initial appointment of the applicant was for one year only but he was continued to work for more than 11 years after obtaining the approval of UPSC every year (Ann A15 and A16), the respondents could not terminate the services of the applicant without affording opportunity of hearing and show cause. Further that once the order of termination was quashed with all consequential benefits by Lucknow Bench of this Tribunal 'vide order dated 29.1.1992 in TA no. 1406 of 1986 the respondents were duty bound to reinstate the applicant, regularise him and pay ^{the applicant} pay and allowances for the entire period. The learned counsel has placed reliance on the judgments of Hon'ble Supreme Court in Devendra Pratap Sharma Vs. State of UP & Ors AIR 1962 SC 1334, U.O.I. & Ors Vs. Babu Ram Lalla AIR 1988 SC 344 & Sukhdeo Raj Vs. U.O.I. & Ors 1987 SCC (L&S) 281. The learned counsel further submitted that Calcutta Bench of this Tribunal has given similar decision in this regard in Ram Bilas Mahto Vs. U.O.I. & Ors (1989) 10 ATC 268.

4. The learned counsel further submitted that once the order was issued by DG OF on 13.9.1996, the applicant

should have been reinstated with full back wages and his services could not have been terminated without passing another order to that effect. On the point that the applicant is entitled for full back wages the learned counsel has placed reliance on the judgment of Chandigarh Bench of this Tribunal in Rattan Chand Vs. U.O.I. & Ors (1988) 6 ATC 604 and also the judgments of Hon'ble Supreme Court in Maharaja Sayajirao University of Baroda & Ors Vs. R.S. Thakur 1988 SCC (L&S) 426 and Manorama Verma Vs. State of Bihar & Ors (1994) 28 ATC 709. Not allowing the applicant to rejoin at Ordnance Factory Dehradun on the ground that the applicant was not found fit for regularisation by UPSC as communicated by letter dated 14.1.1993 is illegal and arbitrary. It is not known as to what documents were sent to the UPSC in connection with regularisation on the basis of which the UPSC did not find the applicant fit for regularisation specially when the UPSC approved the continuation of the applicant for the period from 1.7.1979 to 31.12.1979 (Ann A-15) and 1.1.1980 to 30.6.1980 (Ann A-16). The sole intention of the respondents has been not to comply the order of this Tribunal and harass the applicant.

5. Resisting the claim of the applicant, learned counsel for the respondents Sri G.R. Gupta, brief holder of Sri R.C. Joshi, submitted that the applicant had filed petition ie TA no. 1406 of 1986 challenging the termination order which was disposed of by order dated 29.1.1992 by Lucknow Bench of this Tribunal with certain directions and also quashed the termination order. The respondents complied with the directions and the matter was referred to UPSC as the post in question is class I. UPSC vide



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letter dated 14.1.1993 did not find the applicant fit for regularisation.

6. The learned counsel for the respondents further submitted that the Tribunal vide order dated 29.1.1992 in TA no. 1406 of 1986 did not give any relief except quashing the termination order. The applicant filed CCA no. 147 of 1993 for the same cause of action. Therefore, the case of the applicant is barred on the principles of res-judicata.

7. The learned counsel submitted that the applicant worked in the respondents's establishment purely on temporary basis and it was being extended for 6 months at a time with the concurrence of UPSC due to non availability of regular candidates. On each occasion, the applicant was asked to respond to UPSC advertisement in his own interest for regular appointment but the applicant did not qualify for the regular appointment. In the year 1980 UPSC selected 92 doctors for the post of Asstt. Medical Officer in Ordnance Factory and therefore, the services of the applicant had to be terminated with effect from 3.8.1980 on joining of the regular incumbents selected by UPSC. The learned counsel for respondents has placed reliance on the judgment of Hon'ble Supreme Court in MA Haque Vs. U.O.I. & Ors AIR 1993 (1) SCC 573 on the point of adhoc appointment:-

"That the recruitment rule made under Article 309 of the Constitution have to be followed strictly and not in breach. If disregard of the rules and by passing public service Commission are permitted it will open a back-door for illegal recruitment without limit. In fact, the court has of late been witnessing a constant violation of recruitment rules and scant respect of constitut-

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ional provision requiring recruitment through Public Service Commission."

8. The learned counsel for the respondents also submitted that where reinstatement is ordered it would not automatically include payment of back wages. The learned counsel cited the judgment of Hon'ble Supreme Court in this regard in Ram Chandra Jadav Vs. State of Bihar 1988 (2) SLR 482 in which it has been held:-

"We accordingly direct the reinstatement of the appellant in service with effect from 15th March, 1988. We further direct that the interregnum between the date of dismissal and the date of re-instatement will not be treated as a break and the appellant will be treated as having continued in service for all purposes except for the purpose of back wages. In otherwise the applicant will not be entitled to back wages for the intrregnum in view of the circumstances of the case and fact that appellant approached the court after considerable time."

9. Learned counsel further submitted that the applicant was holding the post of Junior Medical Officer purely on ad-hoc and temporary basis knowing fully well that regular appointment to the post has to be through UPSC. Even the maximum age was enhanced to 50 years but the applicant ~~in spite~~ of availing repeated chances after 1980 could not pass the UPSC examination which reflects his performance.

10. The learned counsel concluded his arguments submitting that the case of the applicant does not deserve any consideration lacks merits and therefore liable to be dismissed.

11. We have heard counsel for the parties. We have carefully considered their submissions and have closely

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perused records. The respondent's counsel submitted that the OA is liable to be dismissed on principle of res judicata.

12. We do not agree with this submission of the respondent's counsel because in the present case the respondents have not complied with the orders of this Tribunal Lucknow Bench dated 29.1.1992 and another cause of action has arisen as the respondents after issuing the order dated 13.9.1996 for reinstatement have not allowed the applicant to join at Ordnance Factory, Dehradun.

13. Admittedly the applicant worked in the respondent's establishment for more than 11 years ie from 3.7.1969 to 18.8.1980. He was allowed to cross efficiency bar (in short EB) in 1974-75. The services of the applicant were terminated by DG OF order dated 3.7.1980 w.e.f. 18.8.1980. This is the third round of litigation, first filing of Civil Suit no. 312 of 1983 before Civil Judge Dehradun transferred to this Tribunal as TA no. 1406 of 1986, second filing of Contempt Petition no. 147 of 1993 and thirdly the present OA. As regards termination of the applicant by impugned order dated 3.7.1980, the controversy has been decided by this Tribunal Lucknow Bench in TA no. 1406 of 1986. Before we proceed we would like to go through the decision of this Tribunal dated 29.1.1992 in TA no. 1406 of 1986. The relevant para is reproduced below:-

"The very same observations apply in this case also and in terms of the above directions given in the case OA no. 186 of 1987 (Dr. Hari Narain Mishra Vs. U.O.I. & Ors) the said direction are given in this case."

The direction given in OA no. 186 of 1987 by order dated 29.1.1992 are given below :-

"Thus in view of what has been said above the application deserves to be allowed and the termina-

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tion order 8.9.86 is quashed, and the respondents are directed to consider the case of the applicant for regularisation without requiring them to appear for interview after perusing the ACRs."

14. Thus the termination order dated 3.7.1980 passed in respect of the applicant stands quashed and, therefore, the applicant is entitled for reinstatement and UPSC to examine the case of regularisation of the applicant on basis of ACRs of the applicant. However, when the respondents did not act upon the order and direction of this Tribunal the applicant filed CCA no. 147 of 1993 which was dismissed by order dated 7.07.1997 with the following observations:-

"We have also been told that there has been some delay in passing offthe order regarding reinstatement and payment of wages. There is nothing to demostrate that such delay as deliberate or wilful."

15. This order of the Tribunal was passed keeping in view the order no. 25A/SKV/A/M dated 13.9.1996 of the OFB Calcutta which reads as under :-

"In compliance with the order dated 29.1.92 passed by the Hon'ble CAT/Lucknow Bench in Registration TA no. 1406 of 1986, Dr. S.K. Varmani is hereby reinstated in service w.e.f. 19.08.80."

16. Therefore, respondent no. 3 i.e General Manager OF, Dehradun was duty bound to take back the applicant on duty and pay him the pay and allowance from the date of reinstatement i.e 19.8.1980. On the basis of the orders of OFB respondent no. 3 issued FO Part II dated 19.9.1996 regarding reinstatement of the applicant w.e.f. 19.8.1980 and also ordering for payment of pay and allowances as applicable to the grade of Junior Medical Officer for the period 30.01.1992 i.e, from the next date of CATs order dated 14.1.1993 that is the date of review of regularisation by UPSC New Delhi.

17. We are constrained to point out that the respondents in their own wisdom did not comply with the direction of this Tribunal passed in order dated 29.1.1992 in correct ^{pers} prospective. Since the termination order dated 3.7.1980 was quashed the applicant had to be reinstated and on reinstatement the applicant was entitled for pay and allowances w.e.f. 19.8.1980 to the date of re-instatement and, thereafter, every month till he continued in the service. Not only this the order of re-instatement was passed by OFB Calcutta after more than four and half years. Such action on the part of respondents demonstrates their lack of respect for the law and negative approach. What is more ridiculous is the action of respondents trying to settle the dues for the period from 30.1.1992 to 14.1.1993 on the basis of pay and allowances which the applicant was drawing in 1980. We would like to go through the judgment of apex court and this Tribunal cited by the learned counsel for the applicant as given below :-

In Babu Ram Lalla's case (supra) the Hon'ble Supreme Court has held :

"... Since the order of termination of service of the respondents was rightly held to be a nullity he was entitled to be paid salary on the footing that he had always continued in service and the void order was never in existence in the eyes of law...."

In case of Sukhdev Raj (supra) the Hon'ble Supreme Court has held :-

"Having held that retrenchment was bad and that it should be set aside, the High Court was not justified in not awarding back wages to the petitioner. We direct that the petitioner should be paid back wages within three months from today....."

18. The Hon'ble Supreme Court in R.S. Thakar's case (supra) has upheld the claim to back wages less the amount

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earned in another profession. In Manorama Verma's case (supra) also the apex court has granted back wages from the date of termination till reinstatement granted. Even Chandigarh Bench of this Tribunal has granted similar relief in case of Rattan Chand (supra).

19. In view of the above judgments of Hon'ble supreme Court, the legal position is well settled that when the termination of service is held invalid one is entitled to full back wages and the law laid down by the apex court in above cases is squarely applicable in this case. The law laid down by the Apex Court in Ram Chandra Jadav's case (supra) relied upon by the respondents is easily distinguishable because the applicant approached the Court after considerable time.

20. As per orders of OFB dated 13.9.1996 filed as Ann AA-1 to Misc Application no. 4047 of 1997 the applicant is re-instated in service w.e.f. 19.8.1980. Thereafter, the services of the applicant could not be stopped or terminated merely on the ground that the applicant was not found fit for regularisation by UPSC as intimated by UPSC letter dated 14.1.1993 without specific order of termination passed by the competent authority. No order has been passed and in our opinion the applicant continues in the service. The action of the respondents in not allowing the applicant to join at OF Dehradun after order of OFB Calcutta dated 13.9.1996 and FO Part II order dated 19.9.1996 is absolutely illegal.

21. Argument advanced by the respondents is that the applicant was not found fit for regularisation by UPSC on the basis of ACRs of the applicant and the decision of the UPSC was conveyed by letter dated 14.1.1993 (Ann A-1). It

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appears that the complete ACR of the applicant for 11 years was not sent to the UPSC by respondents. We ask a question to overselves as to how could UPSC ^h _h approved the extention of the applicant for continuance of adhoc appointment for the period from 1.7.1979 to 31.12.1979 as conveyed by respondent no. 3 by letter dated 9.8.1979 (Ann A-15) and again for the period from 1.1.1980 to 30.6.1980 by letter dated 5.3.1980 if the ACR of the applicant was not satisfactory. We feel that complete ACR was not sent to UPSC with full details and this Tribunal order dated 29.1.1992. We consider it necessary that the case of the applicant for regularisation is re-considered by UPSC in the light of our aforesaid observations. The law laid down by Hon'ble Supreme Court in MA Haque's case (supra) relied upon by the respondents will not be helpful in view of our above observations.

22. On overall consideration, we find it expedient in the interest of justice, that the applicant is provided legal protection.

23. In the facts and circumstances OA is allowed. UPSC letter dated 14.1.1993 (Ann A-1) and para 3 of Factory order part II no. 1185 dated 19.9.1996 (Ann AA4) are quashed. The applicant shall be deemed to be reinstated w.e.f. 19.8.1980 as per order dated 13.9.1996 of respondent no. 3. The applicant shall be allowed to work on the post of Junior Medical Officer and he will be entitled for the pay and allowances w.e.f. 19.8.1980 revised from time to time as applicable in the grade of Junior Medical Officer. The implementation of this order shall be ensured by respondent no. 2 within one month from the date of communication of this order. As regards the arrears respondents shall pay such arrears of pay and allowances w.e.f. 19.8.1980 till the date of reinstate-



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payment if any made earlier
ment minus within 3 months and continue paying the monthly
pay and allowances when due in future. The respondents are
directed to consider the case of the applicant for regulari-
sation in consultation with UPSC without requiring the
applicant to appear for interview after perusing the ACRs
within a period of 3 months from the date of communication
of this order.

24. We also award cost of Rs. 2000/- (Rupees Two
Thousand only) to the applicant to be paid by respondent
no. 2 within 3 months as the applicant has been involved
in litigation for more than two decades because of illegal
action of respondents.


Member (J)


Member (A)

Dated : 05/07/2002

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