

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 607 of 2003

Fri day, this the 14th day of December, 2007

Hon'ble Mr. K.S. Menon, Member (A)

Dr. I.A. Khan, aged about 50 years S/o Late Ramzan Ali Khan, R/o M-47, N.E. Railway Colony, Purani Basti, Basti.

Applicant

By Advocate Sri M.A. Siddiqui

Versus

1. U.O.I. Through the Secretary, Railway Board, New Delhi.
2. The G.M., N.E. Railway, Gorakhpur (U.P.)

Respondents

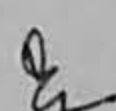
By Advocate Sri Dhananjay Awasthi

ORDER

By K.S. Menon, Member (A)

The applicant has filed this O.A. against the order dated 14.08.2001 (Annexure-5 to this O.A.) with a prayer to this Tribunal to direct the respondents to include his name also in the impugned order and fix his pay like other similarly placed Doctors.

2. The brief facts of the case are that the applicant was appointed as Assistant Medical Officer in Class II in pay scale of Rs.650-1200/- in North Eastern Railway w.e.f. 12.05.1977 on ad hoc basis on the condition that the applicant's services were to be terminated after six months or as soon as an approved U.P.S.C. candidate is available whichever is earlier. Subsequently the post was advertised by the U.P.S.C. in which the applicant also applied and continuously 3 times he failed. Due to his non-qualification in examination conducted by the U.P.S.C. and on the basis of condition imposed upon him at the time of appointment, his services were terminated by the Order dated 11.11.1983. Subsequent to this termination letter, the applicant filed a Writ Petition No. 14291 of 1983 in the Hon'ble High Court, Allahabad, which was transferred to Central Administrative Tribunal, Additional Bench at Allahabad as T.A. No. 98 of 1987. During pendency of the application, the applicant again appeared in the examination conducted



by the U.P.S.C. in the year 1985 and he ^g~~was~~ qualified and on recommendation of U.P.S.C., the applicant vide Railway Board Letter No. 86/E (GR) II/7/27 dated 01.04.1987 was appointed as Assistant Divisional Medical Officer (Group 'A') and he was also allowed higher initial pay at the stage of Rs.900/- per month as per recommendation of U.P.S.C. in the scale of Rs.700-1600/-. After reappointment of the applicant some other ad hoc Assistant Medical Officers filed group of petitions (No.822, 876, 180 and 287) before the Hon'ble Supreme Court seeking regularization, which were disposed of by the Hon'ble Supreme Court vide Order dated 24.09.1987 with the directions, quoted as under: -

"The services of doctors appointed earlier as Assistant Medical Officer or Assistant Divisional Medical Officer on ad hoc basis upto 01.10.1984 shall be regularized in consultation with the Union Public Service Commission on the evaluation of their work and conduct on the basis of their confidential report in respect of the period subsequent to 01.10.1982. Such evaluation shall be done by the UPSC. The Doctors so regularized shall be appointed as Assistant Divisional Medical Officers with effect from the date from which they have been continuously working as Assistant Medical Officer/Assistant Divisional Medical Officers. The Railway shall be at liberty to terminate the services of those who are not regularized. If the services of any of the petitioners prior to 1-10-1984 have been terminated except on resignation or on discretionary ground he shall be also considered for regularization and if found fit, his services shall be regularized as if there was no break in the continuity of service but without any back wages."

3. The Order of the Supreme Court was complied with by the respondents vide their letter dated 24.11.1989 (Annexure CR-1). This Tribunal thereafter taking into account the Order passed by Supreme Court dated 24.09.1987 allowed T.A. No. 98 of 1987 vide their Order dated 26.03.1992 by which it was stated that applicants appointed prior to 01.10.1984 and who have not tendered their resignation shall also be considered for regularisation as if there was no break in service, if found fit by the respondents. The respondents on the basis of the Orders of the Central Administrative Tribunal, Principal Bench, New Delhi dated 18.11.1999 in O.A. 446 of 1997 which was upheld by the Supreme Court vide Judgment dated 26.03.2001 in SLP CC No. 4218/2000 directed the General Manager (P) N.E. Railway, Gorakhpur to implement these orders in respect of only three doctors viz. Dr. R.K. Srivastava, Dr. D.K. Singh and Dr. S.K. Shukla, who were the applicants in the case vide the impugned order dated 14.08.2001. The applicants ⁱⁿ contends

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that since he was a member of the A.M.O. (ad hoc) Association which was applicant No.1 in O.A. No. 446 of 1997, he is similarly situated as Dr. S.K. Shukla his junior and who was terminated alongwith the applicant on 11.11.1983 and is therefore covered by the Supreme Court Judgment dated 24.09.1987. Being aggrieved by the omission of his name in the Order dated 14.08.2001 the applicant submitted several representations to the respondents last one being submitted on 10.02.2002, in which he ^{2nd} drew the attention of the respondents to the discrimination and consequent loss of pay every month, but no action was taken by the respondents so far. Hence, he filed this O.A.

4. The respondents' counsel Shri Dhananjay Awasthi argues that the O.A. is badly time barred. He says that the letter dated 14.08.2001 has not been challenged by the applicant in the relief clause of the O.A. He ^{1st} was merely sought similar treatment like the other Doctors in the said letter dated 14.08.2001. Besides the orders of this Tribunal in T.A. No. 98 of 1987 is more than 11 years old, while the orders of the Railway Board dated 24.11.1989 and 30.06.1993 cited by him are more than 14 years and 10 years, respectively. The applicant's counsel Shri Siddiqui counters this by stating that the cause of action arose after the respondents issued the letter dated 14.08.2001 in which the name of the applicant's junior Dr.S.K. Shukla finds a mention and since the applicant's and Dr. Shukla's services were terminated on the same day, he should also be covered by the same order. He further adds that since his pay has been affected by the discrimination shown by the respondents, there is a recurring cause of action which affects his retiral benefits as well. The O.A. is, therefore, not barred by limitation and prays the case be decided on merits.

5. On the issue of merits of the case, Shri Awasthi, Counsel for the respondents submit that the Judgment of the Supreme Court on which so much reliance is being placed, was passed on 24.09.1987, whereas the applicant was already appointed on regular basis as Assistant Divisional Medical Officer by the Railway Board on the basis of U.P.S.C. examination and recommendations of the U.P.S.C. thereon on 01.04.1987 as such, the applicant cannot take advantage of the Apex Court's Judgment nor the Judgment of the Central Administrative Tribunal, Principal Bench, New Delhi, which deals with broken period of service of only those doctors who were appointed by the Apex Court Judgment. Since the applicant was not regularised by the Judgment of the Supreme Court, hence the applicant's plea is without any basis.

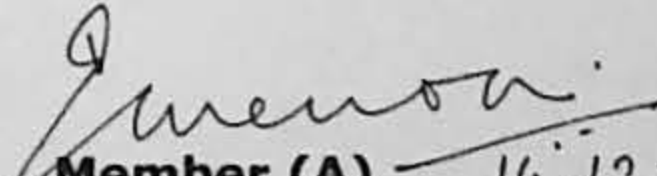
Respondents' Counsel reiterates the fact that the Supreme Court Judgment covers only those Assistant Medical Officers/Assistant Divisional Medical Officers, who were working on ad hoc basis, whereas the applicant had already been regularly appointed on 01.04.1987. The applicant's case for fixation of pay was done vide order of the respondents dated 25/29/30 June 1993 (page 22 of the O.A.), whereby the services of the applicant were treated from initial date of ad hoc appointment except his broken period of service i.e. from 11.11.1983 to 07.04.1987 as dies non, as otherwise the continuity before termination of services and after his joining in the year 1987 cannot be treated as continuous. In pursuance of the Central Administrative Tribunal, Principal Bench, New Delhi's Judgment, the Railway Board directed vide letter dated 16.09.1993 (CR-6 of CA) that all ad hoc doctors appointed prior to 01.10.1984 and subsequently qualified through U.P.S.C. should also be allowed fixation of pay as had been allowed in case of ad hoc doctors regularized on the direction of Supreme Court dated 24.09.1987, ^{the} the pay has therefore been correctly fixed treating break of period as dies non vide Railway Board's letter dated 24.11.1989. The respondents in support of their arguments have drawn a parallel in the applicant's case to that of Dr. B.B. Bhowmick whose case is identical in all respects in which C.A.T. Kolkata Bench held vide its Judgment dated 18.12.1991 that broken period should be treated as dies-non and pay should be fixed accordingly. In view of the above, the respondents argue that the applicant has really no ground to seek any relief ⁱⁿ and the O.A. should be dismissed.

6. Heard, Shri M.A. Siddiqui, learned counsel for the applicant and Shri Dhananjay Awasthi, ^{the} learned counsel for the respondents, and perused the pleadings on record.

7. This case is covered by a series of Original Applications, Writ Petitions and SLPs and consequentially many Judgments. The question whether these Judgments cover the case of the applicant in this O.A. or not has also been discussed at length. Admittedly, the applicant worked as an ad hoc Assistant Medical Officer Class II from the date of his appointment on 12.05.1977 till his services were terminated in accordance with the terms of appointment on 11.11.1983. He filed a case against this Order of termination, which was finally allowed by this Tribunal vide Order dated 26.03.1992. It is also an admitted fact that in the meantime, the applicant successfully passed the Written Examination conducted by U.P.S.C. in 1985 and was appointed on

regular basis as Assistant Divisional Medical Officer on 08.04.1987. The basic question which arises is whether the benefits of the Orders of this Court and the Supreme Court Judgments in the case of similarly placed² Doctors passed after the applicant was regularly appointed after passing the U.P.S.C. examination would be applicable to the applicant or not. Admittedly most of the Judgments pertain to fixation of pay of ad hoc AMOs/ADMOs and the manner in which the broken period of service is to be treated. The applicant was appointed on regular basis after passing the examination and recommendation of the U.P.S.C. on 08.04.1987 i.e. much before various ad hoc AMOs/ADMOs moved respective Tribunals and Courts, hence there is merit in the contention that the applicant is not covered by the Judgments of the Supreme Court, which basically covers the regularisation of those ad hoc AMOs/ADMOs who had moved the Court. The applicant's contention is that the Judgment of this Tribunal in O.A. No. 446 of 1997 is applicable to him as he was a member of the Indian Railways AMO (ad hoc) Association i.e. Applicant No.1 in the above O.A. This contention is not free from doubt as when the O.A. 446^{of} 1997 was filed, the applicant was already a regularly appointed ADMO and hence whether he could continue to be a part of the ad hoc association needs to be clearly established.

8. In view of the above, it cannot be said that the issue is free from doubt and that the benefits given to the ad hoc AMOs/ADMOs regularised on the basis of Supreme Court, Orders in Dr. A.K. Jain's case is applicable to the applicant also. It would therefore be in the interest of natural justice that the representation of the applicant dated 10.02.2002 and this O.A. be considered by the respondents with reference to Railway Board's letters No.86/E (GR)II/9/27(Pt.) dated 12.09.1989 and No.92/E(GR) II/9/4 dated 16.09.1993, and pass a detailed, reasoned and speaking order within a period of three months from the date of receipt of a certified copy of this order. With these directions, the O.A. stands disposed off. No costs.


Member (A) 14.12.2007

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