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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.510 OF 2006

ALLAHABAD THIS THE 16th DAY OF ~~May~~ 2008

HON'BLE MR. N. D. DAYAL, MEMBER-A
HON'BLE MR. ASHOK S. KARAMADI, MEMBER-J

Dr. B. L. Singh aged about 55 years,
Son of Late Ghan Shyam Lal, Presently
Posted as Deputy Chief Medical Director,
North Central Railway, Allahabad.

. Applicant

By Advocate: Shri V. Budhwar and Shri A. K. Srivastava
Shri A. Tripathi

Versus

1. Union of India, through Secretary
Ministry of Railways, New Delhi.
2. Deputy Secretary D & A Railway Board,
Railway Bhawan, New Delhi.

. Respondents

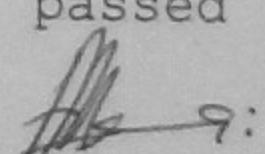
By Advocate : Shri P. N. Rai

O R D E R

HON'BLE MR. ASHOK S. KARAMADI, MEMBER-J

The applicant being aggrieved by the order dated 28.12.2005 passed by the respondent no.2, seeking quashing of the same and consequential order of direction to the respondents to refix the seniority of the applicant.

2. The applicant appeared before the Selection Committee for the post of Assistant Medical Officers Grade-II on 15.09.1997, and the appointment order was issued on 15.09.1997 appointing the applicant for the post of Ad-hoc/Temporary Medical Officer against the substantive post. On 03.10.1997 an order was passed



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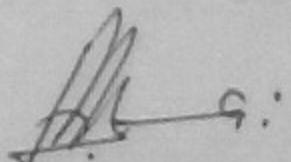
by the respondents placing him in the North Eastern Railway. The conduct of the applicant was exemplary and there was no stigma against him, inspite of that the respondents arbitrarily issued the order dated 31.12.1980 terminating the service of the applicant.

The applicant submitted the objection against the order of termination to the respondents, thereafter the respondent issued an order dated 22.07.1981, the applicant was appointed on ad-hoc basis as Assistant Medical Officer. The respondents passed an order dated 14.09.1997 relying on the circular dated 24.11.1989, the period from 07.10.1977 to 30.08.1981 was treated as dies non only. Thereafter the applicant submitted the representation to the respondents to consider his seniority with effect from the date of his initial appointment from 15.09.1997, the respondents have not passed any order, in the mean while a seniority list was issued on 04.02.2002 in which the name of the applicant was found place at serial no. 5 on taking into consideration of joining the service date as 31.08.1981. Being aggrieved by the seniority list submitted representation to the respondents the last one is dated 05.09.2005. Thereafter the respondents have passed the impugned order dated 28.12.2005, rejecting the request of the applicant for assignment of seniority w.e.f. 15.09.1997 instead of from 31.08.1981. Hence prayed for the above reliefs.

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3. On notice the respondents have appeared and filed the counter affidavit. The sum and substance of the counter affidavit is that the applicant was appointed as an Assistant Medical Officer in the North Eastern Railway on an Ad-hoc basis, in the offer of appointment it is made clear to the applicant that the appointment is on purely temporary basis and will be terminated on completion of six months period or on availability of a Union Public Service Commission recruit, whichever is earlier, and also advised to the applicant that he should apply for the post of Assistant Medical Officer when the vacancies are arise by the Union Public Service Commission for filling up of the same. Since the applicant could not get himself selected through the UPSC his services were terminated vide order dated 31.12.1982, a UPSC recruited candidate became available and as such termination became effective on 08.01.1981. Thereafter the applicant again appointed on ad-hoc basis from 31.08.1981. While continuing on ad-hoc basis he got regularly appointed through the UPSC w.e.f. 01.01.1983. The applicant submitted representation to the seniority list, and the same was considered by the respondents as there was a break in his services from 07.01.1981 till 31.08.1981 when he was appointed again on ad-hoc basis, therefore not allowed his request to fix the seniority with effect from his earlier date of appointment i.e. 07.10.1977, and further stated that this decision is taken by the respondents in pursuance of the judgment of the

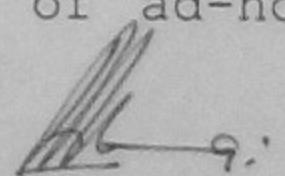


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Hon'ble Supreme Court dated 10.04.2001 passed in the case of Union of India and Others Versus Lalita S. Rao and Others reported in 2001 Lab I.C. 1353 and sought for the dismissal of the OA.

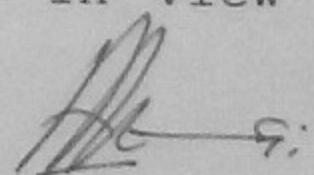
4. The applicant has filed a rejoinder reiterating same contentions as said in the OA, and prayed for the reliefs.

5. We have heard the learned counsel for the parties and perused the pleadings and the materials on record. The learned counsel for the applicant relying upon the judgment of the Hon'ble Supreme Court in the case of A. K. Jain Versus Union of India reported in SCC 1987 Suppl. 497 submits that the judgment fully applies to the present case and states that benefit of the same judgment be given to the applicant with regard to continuity of service, fixing seniority etc. The learned counsel for the respondents submits that the case of the applicant was considered by the respondents while passing the order on taking into consideration of the judgment of the Hon'ble Supreme Court. The contention of the learned counsel for the applicant cannot be accepted having regard to the fact that as there was a break in his service from 07.01.1981 to 31.08.1981, having regard to this fact and in view of the judgment of the Hon'ble Supreme Court in the case of Union of India and Others Versus Lalita S. Rao and Others, the Hon'ble Supreme Court elaborately discussed the matter with regard to determination of seniority and the status of ad-hoc

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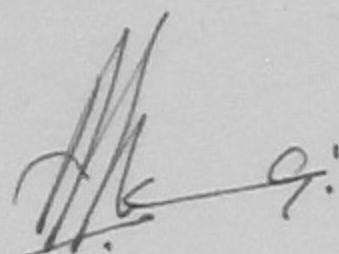
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appointees on their being regularized in service observed that in Dr. Jain's case the court had not indicated as to how their seniority in the cadre would be determined, and further stated that this dispute was not really before the court and the court had not focused its attention minutely as the insider direct recruits has not been parties to the same and the court was merely examining how the case of those officers, who got themselves regularized pursuant to the orders of Dr. Jain's case would be determined. On taking into consideration of the judgment of the constitution bench reported in AIR 1990 SC 1607 Direct Recruit Engineering Officers Association case Versus State of Maharashtra, "If the Initial appointment has not been made in accordance with the prescribed procedure laid down by the Recruitment Rules, and yet the appointees Medical Officers were allowed to continue in the post uninterruptedly and then they appeared at the selection test conducted by the Union Public Service Commission, and on being selected their services stood regularized then there would be no justification in not applying the principle 'B' of the Direct Recruit Class II Engineering Officers Association case (supra) and denying the period of officiation services for being counted for the purpose of seniority." It is clear from this judgment the persons who are appointed on ad-hoc basis if allowed to continue in the post uninterruptedly are entitled for consideration of the officiating services rendered being counted for the purpose of seniority. In view



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of this proportion of law laid down by the Hon'ble Supreme Court in the Constitution Bench and the decision relied upon by the respondent while passing the impugned order, the contention of the learned counsel for the applicant is unsustainable in law. On perusal of the impugned order also we are of the view that the respondents have taken into consideration the relevant facts and the circumstances of the applicant based on the judgment of the Hon'ble Supreme Court has passed the impugned order, we do not find any justification for interference of the order passed by the respondents. Accordingly, rejecting the contention of the applicant this OA is dismissed. No Costs.



Member-J



Member-A

/ns/