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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 125 OF 1995
Cuttack, this the 1st day of November, 2000


Dr.Sribatsa Ku. Mishra Applicant

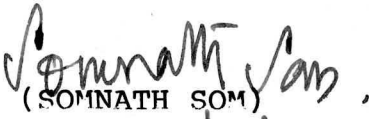
Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.


(G.NARASIMHAM)
MEMBER(JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN
11/11/2000

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 125 OF 1995
Cuttack, this the 1st day of November, 2000

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Dr.Sribatsa Ku. Mishra, aged 49 years,
son of Sri Pranabandhu Mishra, at present
working as Chief Medical Officer, Static-cum-Mobile Medical
Unit, Dasarathpur, Dist.JajpurApplicant

Advocates for applicant - M/s P.V.Ramdas
P.V.Balakrishna

Vrs.

1. Union of India, represented by its Secretary, Ministry of Health & Family Welfare, New Delhi.
2. Secretary to Government of India, Ministry of Labour, Shrama Shakti Bhavan, New Delhi.
3. Welfare Commissioner, 33, Ashok Nagar, Bhubaneswar, District-Khurda.
4. Director (Vigilance), Government of India, Ministry of Labour, Jai Salmer House, Manasingh Road, New Delhi-110 011.
5. General Manager, South Eastern Railway, Garden Reach, Calcutta-43 Respondents

Advocates for respondents - Mr.A.K.Bose, Sr.CGSC
(For R 1 to 4)

O R D E R
SOMNATH SOM, VICE-CHASIRMAN

&
M/s B.Pal, O.N.Ghose
S.K.Ojha (For R-5)

S.M.

In this application the petitioner has prayed for quashing the order dated 30.12.1994 (Annexure-12) rejecting the prayer of the applicant for getting benefit of the judgment of the Hon'ble Supreme Court in the case of Dr.P.P.C.Rawani & others, etc. v. Union of India and others, JT 1991(6) 534. The second prayer is for a direction to the respondents to grant higher scale of pay to

the applicant as per option exercised by the applicant from the date of his entitlement.

2. The applicant's case is that he was appointed after due selection as Assistant Medical Officer Class II under the Railways on ad hoc basis and joined the post on 22.9.1972. While functioning as such, on the recommendation of the Union Public Service Commission, he was appointed as Medical Officer in Central Health Service on probation for a period of two years on 30.6.1979 in the pay scale of Rs.700-1300/-. Offer of appointment dated 16.8.1979 issued to him is at Annexure-3. In this offer of appointment it has been mentioned in response to his letter dated 16.7.1979 that no assurance can be given for his pay protection and the question will be decided in accordance with rules only after he joins the post of Medical Officer in Junior Class-I of Central Health Service under the Ministry of Labour. The applicant joined on 2.2.1980 after being relieved from his service under the S.E. Railway on 31.1.1980. On his joining the new post, the Ministry of Health in their letter dated 28.11.1980 (Annexure-4) fixed his pay at Rs.980/- in the pay scale of Rs.700-1300/- apparently giving him the benefit of his past service in the Railways for the purpose of fixation of pay. It was indicated in this letter that his date of next increment will be 1st February every year. The applicant was relieved from the Railways on 31.1.1980 and joined the Ministry of Labour on 2.2.1980. The gap of one day, i.e., on 1.2.1980 (which has been wrongly mentioned in the letter at Annexure-4 as 1.1.1980) was treated as joining time. The

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applicant has stated that the above would show that his previous service was taken into account after he joined the Ministry of Labour. He was promoted to Senior Class I in the pay scale of Rs.3000-4500/- on 21.8.1987 (Annexure-5). He was further promoted to the rank of Chief Medical Officer in the pay scale of Rs.3700-5000/- with effect from 1.12.1991 in order dated 31.12.1991 communicated to him in letter dated 30.6.1992 at Annexure-6. On the basis of the decision of the Hon'ble Supreme Court in Dr.P.P.C.Rawani's case (supra), Welfare Commissioner, Bhubaneswar (respondent no.3) made correspondence with the applicant Annexures 8 and 9 and in course of this a statement was communicated showing his date of appointment as Group-A Medical Officer on 1.1.1973. The applicant has stated that pursuant to the decision of the Hon'ble Supreme Court in Dr.P.P.C.Rawani's case (supra) guidelines were issued regarding regularisation of services of ad hoc Medical Officers and their induction in Central Health Service with effect from 1.1.1973. The date 1.1.1973 is relevant because on that day Group-A and Group-B Services were merged by government of India basing on the recommendation of the Pay Commission. The applicant has stated that he was appointed on regular basis in Group-A on 1.1.1973 and got further promotion. But in the impugned order dated 30.12.1994 at Annexure-12 he has been informed that he is not entitled to the benefit of the decision of the Hon'ble supreme Court in the above case. The applicant has stated that there is a combined recruitment of Medical Officers in Railways and Central Health Service. In the context of the above facts, the applicant has come up in this petition with the prayers referred to earlier.

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3. The respondents in their counter have opposed the prayers of the applicant mainly stating that in Dr.P.P.C.Rawani's case (supra) the Hon'ble Supreme Court have considered and decided the cases of those Medical Officers who had initially been appointed on ad hoc basis against the posts of Medical Officer in Central Health Service and therefore the applicant's case is not covered by the above decision. They have stated that on his joining the Central Health Service his pay was correctly fixed under FR 22-C and he is not entitled to be considered to have been appointed in Central Health Service with effect from 1.1.1973. They have further stated that in the case of Dr.M.A.Haque and others v. Union of India and others, JT 1993 (2) SC 265, the Hon'ble Supreme Court have held that directions given in Dr.P.P.C.Rawani's case (supra) have to be confined to the special facts of the case and cannot be extended to other cases.

4. We have heard Shri P.V.Ramdas, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for respondent nos. 1 to 4 and Shri A.Mishra on behalf of Shri B.Pal, the learned Senior Panel Counsel (Railways) for respondent no.5 and have also perused the records. The respondents along with their counter have enclosed copies of decisions of the Hon'ble Supreme Court in Dr.P.P.C.Rawani's case (supra) and Dr.M.A.Haque's case (supra) and these have also been perused.

5. The undisputed facts of this case are that the petitioner was initially appointed as Assistant Medical Officer in S.E.Railway on ad hoc basis in 1972. He appeared at the examination conducted by the Union Public

Service Commission, commonly known as Combined Medical Services Examination, and was appointed as Medical Officer in Central Health Service in June 1979 in the pay scale of Rs.700-1300/-. It is also the admitted position that on his initial appointment to Central Health Service under the Ministry of Health his pay was fixed at Rs.980/- in the pay scale of Rs.700-1300/- taking into account his service under the Railways from 1972. In the present petition he has come up with the prayers which have been referred to by us earlier. Essentially his prayer is for treating his period of service under the Railways from 1972 as service in the Central Health Service. If that is done, then he would be entitled to promotions on completion of certain specific years of service. His prayer for counting the period of service under the Railways as service in Central Health Service under the Ministry of Health has been rejected in order dated 30.12.1994 (Annexure-12) and he has prayed for quashing this order. From the above it is clear that the applicant has been inducted to Central Health Service under the Ministry of Health through an examination conducted by Union Public Service Commission. His service under the Railways is not through any examination conducted by Union Public Service Commission. It is also clear that his service under the Railways was on ad hoc basis. Therefore, prima facie his service in Central Health Service cannot be ante-dated to 1972 because that would make him senior to the recruits who have joined Central Health Service seven to eight years earlier than him through examination conducted by Union Public Service Commission. In support of this prayer, the petitioner has

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relied on Dr.P.P.C.Rawani's case (supra). The facts of that case are totally different. In that case the appellants were appointed in Central Health Service on ad hoc basis through an interview by the Selection Committee and not through an examination conducted by Union Public Service Commission on different dates between 1968 and 1977. Their grievance before the Hon'ble Supreme Court was that in spite of their long service in the Department, they were not regularised with reference to their original dates of appointment. The Hon'ble Supreme Court directed them to be regularised with effect from 1.1.1973 or the date of their respective original appointment whichever is later. The Union of India pointed out in that case that if direction of the Hon'ble Supreme Court is given effect to, then the appellants before the Hon'ble Supreme Court will become senior to some other persons who have been regularly appointed in Central Health Service Group-A through Union Public Service Commission. After considering the difficulties in implementing the order, the Hon'ble Supreme Court directed that by giving effect to their order for regularising the appellants before them from 1.1.1973 or the date of their initial appointment, seniority and promotional prospects of regularly recruited doctors should not be disturbed and there should be a separate seniority list in respect of these appellants. From the above, it is clear that Dr.P.P.C.Rawani's case (supra) relates to persons who were recruited on ad hoc basis in Central Health Service and continued as such for long years without regularisation. The case of the applicant is not at all similar to the cases of those considered by the Hon'ble Supreme Court in the above case. The petitioner was never

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recruited on ad hoc basis in Central Health Service in 1972. He joined S.E.Railway as Assistant Medical Officer on ad hoc basis with clear understanding that this service will not confer on him any right. It is also to be noted that initially the applicant was appointed for a period of three months, but such ad hoc appointment apparently continued for years. As the applicant was not appointed even on ad hoc basis in Central Health Service, his case is quite different from Dr.P.P.C.Rawani's case (supra). It is no doubt true that after the decision in Dr.P.P.C.Rawani's case (supra) the departmental authorities called for details of service of the applicant under the misconception that his case is covered by the decision of the Hon'ble Supreme Court in Dr.P.P.C.Rawani's case (supra).

But on finding that the case of the applicant is different, in the impugned order at Annexure-12 it was made clear that the decision in Dr.P.P.C.Rawani's case (supra) would not be applicable to him. The respondents have pointed out that in Dr.M.A.Haque's case (supra) the very same question was considered by the Hon'ble Supreme Court and prayers similar to those made by the applicant in this petition were rejected. In that case the appellants were Medical Officers who were recruited by Railways on ad hoc basis as Assistant Divisional Medical Officers between 1968 and 1984 pending regular recruitment to the said posts through Union Public Service Commission. Some of these ad hoc doctors appeared at subsequent examination conducted by Union Public Service Commission and got regularised. But

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those who either did not appear at the examination conducted by Union Public Service Commission or did not get regularised through the examination, had approached the Courts for their regularisation from their initial dates of appointment and this prayer was not accepted by the Hon'ble Supreme Court mainly on the ground that thereby the seniority and the service prospects of regularly recruited doctors through UPSC Examination would be adversely affected. Case of the petitioner stands on even weaker footing because he was an ad hoc doctor in the Railways and through UPSC Examination he joined the Central Health Service. He was given benefit of his service under the Railways in the matter of fixation of pay in Central Health Service, but that would not give him any right to claim that his period of service under the Railways should be taken as service under the Central Health Service. The rationale adopted by the Hon'ble Supreme Court in Dr. P. P. C. Rawani's case (supra) and Dr. M. A. Haque's case (supra) is squarely against the claim of the applicant. The facts of the applicant's case are also totally different from those two cases.

6. In the result, therefore, we hold that the applicant is not entitled to the reliefs claimed by him in this O.A. which is accordingly rejected but without any order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

November 1, 2000/AN/PS

(SOMNATH SOM)
VICE-CHAIRMAN