

(S)

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 607 OF 1995

Cuttack, this the 30th March, 2001

Dr.Kirti Chandra Sahoo

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
(SOMNATH SOM)
VICE-CHAIRMAN
30.3.2001

6

(1)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 607 OF 1995
Cuttack, this the 30th day of March, 2001

CORAM:

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

.....
Dr. Kirti Chandra Sahoo, aged about 48 years, son of
Durgamadhab Sahoo, Village-Narula, P.O-Narula,
District-Kalahandi
Applicant

Advocate for applicant - M/s Dr.D.B.Mishra
S.K.Rath

Vrs.

1. Union of India, represented through the Secretary to Government of India, Ministry of Health & Family Welfare (Department of Health), Nirman Bhawan, New Delhi-110 001.
2. The Welfare Commissioner, Labour Welfare Organisation, Ministry of Labour, At-Karma, P.O-Jhumritalaya, Dist.Koderma(Bihar).
3. The Welfare Commissioner, Labour Welfare Organisation, Ministry of Labour, 33/Ashok Nagar, Bhubaneswar-751 009

.....

Respondents

Advocate for respondents-Mr.U.B.Mohapatra
ACGSC

O R D E R
SOMNATH SOM, VICE-CHAIRMAN

J.Som.

In this Original Application, the petitioner has prayed for a direction to the respondents to treat the applicant's entry into Central Health Service effective from 29.5.1977 instead of 5.5.1979. The second prayer is to count the service of the applicant in Central Health Service and posting under Assam Rifles from 29.3.1977 to 5.5.1979 as continuous service in Central Health Service for all purposes including fixation of seniority. The third prayer is for correcting the seniority list taking his initial entry in Central Health Service on

29.3.1977 and to allow him all service and financial benefits.

2. Respondents have filed counter opposing the prayers of the applicant, and the applicant has filed rejoinder.

3. The applicant's case is that he joined Government of Orissa on 3.6.1975 as Assistant Surgeon. In response to an advertisement of Union Public Service Commission (UPSC) at Annexure-1 he applied for appointment to the post of Junior Medical Officer in Central Health Service and was duly selected. On the recommendation of the UPSC he was informed in the order at Annexure-2 for appointment to the post of Junior Medical Officer in Arunachal Pradesh Administration/Assam Rifles. Accordingly, in the order of appointment dated 20.12.1976 (Annexure-3) he was appointed as Medical Officer in Central Health Service (CHS) and posted under Assam Rifles. He joined 12th Battalion of Assam Rifles in Nagaland on 29.3.1977. The climate of Nagaland did not suit him and his family members and the applicant wanted transfer from Nagaland but his representation was not forwarded by the authorities of Assam Rifles. While the applicant was serving in Nagaland, UPSC issued another advertisement for recruitment to the post of Medical Officer under the Department of Health. The petitioner applied in response to the advertisement at Annexure-4, went through the process of selection, i.e., interview and was selected. He was intimated about his selection in the order dated 7.10.1978 (Annexure-5) and was appointed as Medical Officer in CHS under Ministry of Labour in the order dated 17.11.1978 (Annexure-6). The

S Jom.

applicant was relieved from Assam Rifles on 2.5.1979 and joined his new post under Ministry of Labour as Medical Officer in Raniganj Coalfields in pursuance of Ministry of Labour's letter dated 2.1.1979. The applicant has stated that he did not resign from the post of Medical Officer under CHS for posting under Ministry of Labour. He was also relieved from the Assam Rifles as per request made to the Assam Rifles by the Ministry of Health. He has stated that his service under Assam Rifles was taken into account for the purpose of granting his increment on 1st March and taking into account his service under Assam Rifles he was allowed to cross EB on completion of five years of service. He also got 12 days joining time for joining the Ministry of Labour and unutilised joining time was credited to his E.L.account. His leave account was maintained taking into account his service under Assam Rifles. On 13.8.1979 the applicant wrote to Ministry of Health to calculate his service of two years under Assam Rifles for the purpose of seniority in the cadre. As there was no response he again applied on 15.6.1981. He was allowed to cross EB in March 1982 and because of this he was under the impression that his service under Assam Rifles from 1977 to 1979 has been allowed to be taken into account for the purpose of seniority in the cadre. But he later on came to know that he has not been given seniority in the cadre taking into account his initial date of appointment under Assam Rifles on 29.3.1977. In spite of number of representations his case was not considered. The applicant has stated that in

SJm.

the meantime Government of India in order dated 9.4.1993 at Annexure-11 regularised the services of a number of medical Officers who were appointed on ad hoc basis and these Medical Officers were regularised in Group-A cadre from 1.1.1973 even though they were initially appointed on ad hoc basis. But the applicant, who joined Assam Rifles in 1977 on regular basis was not regularised in CHS from that date. His case was also recommended by the Welfare Commissioner. The applicant has furtherstated that his case was recommended along with the case of one Dr.(Mrs.) P.Tripathy. While Mrs. Tripathy was allowed her seniority in the service, the applicant's case was rejected. The applicant has stated that taking into account his service under Assam Rifles he became eligible for promotion to the post of Senior Medical Officer in 1982 on completion of five years of service, but he was shown eligible for the same promotion for the year 1984. But actually he got promotion in 1987 because of want of vacancy. The applicant has made several other averments how he has suffered loss financially because of not counting his previous service under Assam Rifles and in the context of the above he has come up in this petition with the prayers referred to earlier.

4. Respondents have pointed out in their counter that the applicant was initially appointed as Medical Officer in Assam Rifles, a participating unit in CHS and therefore, while applying for any post including the one under Ministry of Labour under CHS he should have applied for the same through proper channel. But he directly applied to UPSC and therefore, he cannot claim the benefit of his past service on his appointment under the

SJM.

Ministry of Labour for which offer of appointment was given on 17.11.1978. The respondents have stated that the applicant has averred that after joining Ministry of Labour he applied for taking into account his previous service under Assam Rifles, but this was rejected. But the applicant has not enclosed either the representation or the order of the Ministry of Health. Along with his rejoinder the applicant has filed a copy of the representation dated 13.8.1979 at Annexure-13 and the order dated 30.10.1979 of Ministry of Health (Annexure-14) rejecting his representation. As regards regularisation of the service of Dr.(Mrs.) P.Tripathy, the respondents have stated that the services of Mrs.Tripathy were regularised in pursuance of the decision of the Hon'ble Supreme Court in Dr.P.P.C.Rawani's case. The respondents have stated that as the applicant joined the Ministry of Labour as a direct recruit by appearing at the UPSC's selection, his seniority as Medical Officer will count from the date of his joining, i.e., 5.5.1979 on the basis of his later selection through UPSC. They have further stated that granting of annual increment and crossing of EB have no relevance to the question of fixation of his seniority. On the above grounds the respondents have opposed the prayers of the applicant.

5. In the rejoinder the applicant has stated that before applying second time for the UPSC's selection, he applied for "No objection certificate" and his application was forwarded through proper channel. "No objection certificate" was also issued by the authorities of Assam Rifles. The other averments made by the applicant in his rejoinder are on the same lines of his averments in the OA and on that basis the applicant has reiterated his prayers made in the OA.

11

6. We have heard Dr.D.B.Mishra, the learned counsel for the petitioner and Shri U.B.Mohapatra, the learned Additional Standing Counsel for the respondents and have perused the record.

7. From the above recital of pleadings of the parties, it is clear that the facts required to be taken into consideration for the purpose of this OA are not in dispute. In response to the employment notice issued by the UPSC at Annexure-1 the petitioner applied for the post of Junior Medical Officer. The notice at Annexure-1 clearly mentions that recruitment of Junior Medical Officers in Arunachal Pradesh Administration and Assam Rifles, Ministry of Health & Family Planning and Central Health Service Group-A was being undertaken through this notice. In the notice of selection at Annexure-2 it has been clearly intimated to the applicant that he has been recommended to the Ministry of Health for appointment to the post of Junior Medical Officer in Arunachal Pradesh Administration and Assam Rifles. The respondents have stated that he was initially appointed as Medical Officer in Assam Rifles, which is a participating unit in Central Health Service. But from the employment notice issued by UPSC at Annexure-1 it is also clear that recruitment for the post under Arunachal Pradesh Administration and Assam Rifles and the post in Central Health Service was being conducted through a common examination. The applicant accordingly joined Assam Rifles on 29.3.1977. In response to UPSC's notice at Annexure-4 he again appeared at the interview and again got selected and joined as Medical Officer under the Ministry of Labour. He was thus a direct recruitment in the post

S Jam.

which he joined under the Ministry of Labour on 5.5.1979. Therefore, as a direct recruitment his seniority in that cadre will count from the date of his joining and on the basis the position in the merit list drawn up by UPSC amongst the persons who came out successful along with him in that year's examination and joined the Ministry of Labour. The fact that he did not resign from the Assam Rifles and was relieved from Assam Rifles to join under Ministry of Labour and the fact that in the matter of fixation of his date of increment and crossing of EB his previous under Assam Rifles was taken into account will not change the situation so far as his seniority in the cadre of Medical Officer under the Ministry of Labour is concerned.

8. The applicant has complained of discriminatory treatment in so far as services of some other Medical Officers, who were initially appointed on ad hoc basis without coming through UPSC Examination, were regularised from 1.1.1973, i.e., from the date of their ad hoc appointment, whereas his regular service under Assam Rifles rendered after his selection through UPSC was not taken into account. The respondents have pointed out that regularisation of services of ad hoc Medical Officers with effect from 1.1.1973 has been done in pursuance of the decision of the Hon'ble Supreme Court in the case of Dr.P.P.C.Rawani v. Union of India, JT 1991 (6) SC 534. We have gone through this decision. From the decision it appears that the Hon'ble Supreme Court by an earlier judgment had directed regularisation of services of such ad hoc appointees from 1.1.1973 in the Central Health Service. By that process such ad hoc appointees became senior to regularly recruited Medical Officers in Central Health

SJM

Service who came through UPSC's selection. In Dr.P.P.C.Rawani's case (supra) the Hon'ble Supreme Court, after considering the conflicting claims of ad hoc appointees, who had been ordered to be regularised, and those who had joined after qualifying in UPSC's examination, have issued certain directions about maintenance of the seniority of the two groups of Medical Officers independently. It is not necessary to go further into the matter because the above would clearly indicate that the decision of the Hon'ble Supreme Court in Dr.P.P.C.Rawani's case (supra) has no application to the case of the applicant before us and the applicant cannot derive any support from regularisation of such Medical Officers who were originally appointed on ad hoc basis. The respondents have pointed out in their counter and this has not been denied by the applicant in his rejoinder that the case of Dr.(Mrs.)P.Tripathy is one of regularisation of such ad hoc appointees. Therefore, the applicant cannot draw parallel with the case of Dr.(Mrs.)P.Tripathy or those ad hoc appointee Medical Officers who were regularised from 1.1.1973. To sum up, therefore, we hold that the applicant's seniority in Central Health Service under Ministry of Labour will count from the date of his joining after he cleared the examination second time, i.e., from 5.5.1979. If he is allowed seniority from 29.3.1977, then he would become much senior to those who had qualified along with him in the selection undertaken by UPSC in pursuance of the notice at Annexure-4 even though he might have occupied a much lower position compared to them in the merit list.

J. Jom

9. In view of all the above, we hold that the applicant is not entitled to the reliefs claimed by him in this OA which is accordingly rejected. No costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
30.3.2001
VICE-CHAIRMAN

30th March, 2001/AN/PS