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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 446 OF 2004
CUTTACK, THIS THE 10th DAY OF September, 2009


Dr. Gopinath Sahu.....Applicant


Vrs.

Union of India & OrsRespondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?


(C.R. MOHAPATRA)
MEMBER (ADMN.)


(K. THANKAPPAN)
MEMBER (JUDL.)

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CORAM :

HON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER(J)
HON'BLE MR. C.R. MOHAPATRA, MEMBER(A)

.....

Dr. Gopinath Sahu, aged about 64 years. S/o. Late Lingaraj Sahu, At/PO Paika Tigiria, P.S./Dist-Khurda, Pin-752055 at present retired as Chief Medical Officer, B.B.D. Bag and permanent residing in village- Paika Tigiria, P.S./Dist-Khurda.

...Applicants

By the Advocates -

M/s. J.Sengupta, D.K.Panda, G.Sinha,
A.Mishra, S.Mishra, S.Rath.

-Versus-

1. Union of India represented through The Chairman, Railway Board, New Delhi-110001, At/PO Rail Bhawan, Raisinha Road.
2. The General Manager, South Eastern Railway, Garden Reach, Kolkata-43.
3. Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata-43.
4. Divisional Railway Manager, Bilaspur, Chattisgarh.
5. Secretary, Minister of Health and F.W., Govt. of India, Nirman Bhawan, New Delhi-110011.

...Respondents

By the Advocates - Mr. S.K.Ojha, Mr. S.B.Jena (For R-5)

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ORDER

Shri Justice K. Thankappan, Member (J):-

This is the third round of litigation by the applicant, a retired Medical Officer with the following prayers:

"...to produce the records of the applicant's service at Bilaspur division as Assistant Medical Officer and the service records of Central Health Services and after hearing the parties the respondents be directed to protect the pay for previous services under Railway and to regularize the services and to transfer Service Book, Leave account, G.P.F. Account and pay particulars to Central Health Services and the Secretary, Health Services be directed to compute the Services in Railway from 6.8.74 to 7.1.80 along with Central Health Services up to 31.1.1997 and give increments and service benefits accordingly and fix pension after due computation of services from 6.8.74 to 31.1.97 and give all pensionary benefits and arrear dues of service and regular pension with due computation within stipulated time and the order vide Anenxure-5 may kindly be quashed with positive direction to release the pensioner's lawful dues flowing from service rendered in Railway and Central Health Services starting from 6.8.74 upto 31.1.97 by condoning the break from 8.1.80 to 8.2.80 and any other order as deem fit be passed."

2. The short facts of the case are as follows:

The applicant after attaining his Medical Degree during 1974 was selected for the post of Asstt. Medical Officer in the South Eastern Railway, Bilaspur Division and joined the

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said post on 6.8.1974 on ad hoc basis. While continuing as such, the applicant filed application for appointment as Medical Officer in the Central Health Services through Union Public Service Commission and having been selected by the UPSC he was appointed as Medical Officer under the Director of Medical and Health Services (Union Territory) in which post he joined on 9.2.1980 being posted at Lakshya Deep till 31.1.1997, when he retired on superannuation. In course of his employment, the applicant had submitted representation to the Railway Authorities for computing his service as Asst. Medical Officer from 6.8.1974 to 7.1.1980 and fix his pay accordingly, which having not yielded any fruitful result, he had moved this Tribunal in O.A. 15/97 seeking pay protection and to transfer Service Book, Leave Account, G.P.F. Account and pay particulars to Central Health Services. This Tribunal having rejected the claim of the applicant in order dated 15.4.1999, the matter gave rise to OJC No. 9403/99, which is subjudice before the Hon'ble High Court. While the matter stood thus, the applicant filed O.A. No. 486/97 before this Tribunal for a direction to pay the increments and other service benefits within a stipulated time and to fix the pension at the higher rate after calculating the last increment and pay revision within stipulated



period. As per order dated 18.9.2003 this Tribunal allowed the said O.A. as under:

"The role and responsibility of doctors in a society do not require any fresh deliberation and their role in the railways in keeping the Railways moving day in and day out can hardly be overemphasized. It is also a fact that the medical service in the Railways is run at the grass roots level by employing quite a sizeable number of doctors on ad hoc basis in running the trains, in looking after the passengers, in running the workshops, in one word, in running their show. How then the genuine interests of this category of the employees could be overlooked? How their social security needs could be ignored ? When the employer department has looked after the social security needs of the casual workers by reckoning their past service for pension purpose surely they could extend the benefit for the ad hoc medical officers also otherwise that will constitute discrimination at workplace violating the sanctity of the constitutional provision made in this regard. We therefore, hope and trust that the Respondents will re-examine the prayer of the applicant afresh especially in the backdrop of the contribution of the doctors in the sustenance of the Railway services and grant him the benefit, as prayed for, as a token of their recognition of the service rendered by this category of Railway servants, either on regular basis or on casual basis. We would further like to point out that the Central Government as early as in August, 1984, vide their O.M.No.28-10/84-Pension Unit, dated 29.08.1984, had decided to grant the benefit of pension based on combined service in Central Govt. and outside it in central autonomous/statutory



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bodies having pension scheme or vice versa. The pension rules have also been further liberalized to enable the scientific employees of autonomous bodies, financed of controlled by the Govt. to count their previous service outside Central Govt. for pension on permanent absorption. We, therefore, see no reason why the applicant who got permanent job under the Central Health Service and spent over two decades of his life in the service of the people of Lakhsa Deep, should not get the benefit of six years of his service under the Railways in a regular post which was pensionable, to be added to his total service under the Govt. for the purpose of pension. We accordingly direct Respondent Nos. 2 and 3 to take up the matter on a priority basis with Respondent No.1 for considering the ad hoc period of service rendered by a Medical Officer in the Railway Medical service on his absorption on permanent basis either in the Railway Medical Service or under any other Medical Service of the Central/State Government for the purpose of counting of pensionable service."

After the order passed by this Tribunal, the applicant submitted representation to the Respondents for compliance of the above order dated 18.09.2003 in O.A. No. 486/97 of this Tribunal, but the Respondent Nos. 2 and 3 without applying their judicial mind and without having regard to Govt. of India orders rejected the claim of the applicant for computation of services rendered by the applicant in Railway, as per order dated 26.3.2004 (Annexure-A/5). Aggrieved by the



stand taken by the Chief Personnel Officer, South Eastern Railways, the 3rd Respondent at Annexure-A/5, the applicant has filed this O.A. for the relief as quoted above.

3. The O.A. has been admitted by this Tribunal and notice ordered. In response to notice issued by this Tribunal, a counter reply has been filed for and on behalf of the Respondents. In the reply statement, the stand taken by the Respondents is that the applicant was initially appointed as Asst. Medical Officer (Class-II) on ad hoc basis in Bilaspur Division of South Eastern Railways in which post he joined on 6.8.1974. His ad hoc services having been extended from time to time, the applicant continued as such upto 6.1.1980, when he was selected for the post of Medical Officer in the Central Health Services as per Ministry of Health and Family Welfare Department Memorandum dated 8.11.1979 and the applicant having tendered resignation from the Railway Service on giving notice for 14 days joined the Medical Service of Central Govt. It is the case of the Respondents that since the appointment of the applicant in the S.E. Railways was on ad hoc basis his services could not be counted for the purpose of pensionary benefits. In this respect in page 6 of the counter affidavit the Respondents have stated as under:

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".....that Rule 2 of Central civil Services (Pension) rules, 1972 applies to employees appointed substantively. Rule 13 provides that qualifying service of a Govt. servant shall commence from the date he takes charge of the post of which he is first appointed either substantively or in officiating or temporary capacity. On the other hand, ad hoc appointments are generally made against the leave vacancies or short term vacancies awaiting appointment regular candidates. From the rule position explained in the preceding paragraph, it is clear that ad hoc appointments do not come under the purview of Central Civil Services (Pension) Rules, 1972."

On these grounds, the Respondents have submitted that the O.A. being devoid of merit is liable to be dismissed.

4. We have heard the Ld. Counsel for the parties and perused the records.

5. Relying on and reiterating the grounds urged in the O.A. Ld. Counsel for the applicant Shri J. Sengupta submitted that the applicant has been appointed in the S.E. Railways as Asst. Medical Officer and as per the observation given by this Tribunal in order dated 18.09.2003 in O.A. 486/97, the applicant is entitled for counting his ad hoc service in the Railways for the purpose of pension. Ld. Counsel further submitted that since earlier O.A. filed by the applicant has been



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allowed by this Tribunal with certain observations on the basis of that observation and the findings entered therein, the applicant is entitled for counting his service in the Railways along with his Medical Service in the Central Govt. for refixing his pension and other pensionary benefits.

6. Ld. Counsel for the Respondents relying on counter affidavit filed on behalf of the Respondents submitted that as per the Central Civil Services (Pension) Rules 1972, only qualifying service of a Govt. employee should be considered for counting pensionary benefits provided he was appointed and worked in a substantive vacancy in other service which was pensionable service. Ld. Counsel further submitted that the appointment of the applicant in the S.E. Railways from 7.8.1974 to 7.1.1980 was on ad hoc basis and even the judgment of the Apex Court relied on by the Ld. Counsel for the applicant in Dr. A.K.Jain and others vs Union of India & Ors is not applicable to the facts of the case in hand.

7. On analyzing the entire arguments of the parties and after going through the relevant documents, the question to be decided by this Tribunal is whether the applicant is entitled for counting his ad hoc Railway service along with his service



in the Central Health Department or not. It is to be noted at the outset that the applicant had earlier moved this Tribunal in O.A. No. 15/97 seeking almost the same relief as in the instant O.A. and the same having been rejected by this Tribunal, the matter is now subjudice before the Hon'ble High Court in O.J.C.No. 9403/99. However, the applicant again moved this Tribunal for the same relief in O.A. 486/97 in line with O.A. 15/97 and though as per order dated 18.09.2003 the Tribunal observed and expressed certain opinion yet left the matter to Respondents to take a decision, which is at Annexure-A/5 and impugned herein. In the fitness of things, the relevant portion of Annexure-A/5 is reproduced hereunder for the sake of convenience:

"Dr. Sahoo was appointed as Medical Officer Class-II on ad hoc basis we.f. 7.8.1974 on a purely temporary basis for a period of 6 months from the date of appointment with clear stipulation that services will be liable for termination at any time without assigning any reason by giving 14 days' notice on either side. The services of petitioner were extended from time to time by the Railway.

Dr. Sahoo got selected as Asstt. Medical Officer in the CGHS through UPSC. He was released from S.E.Railway on 7.1.1980 vide his resignation letter dated 30.11.1979 to join the Central Health



Service. He reported for new assignment on 9.2.1980 i.e. after a gap of about 33 days.

As the term 'ad hoc appointment' has nowhere been defined in the pension rules the Department of Pensions and Pensioners' Welfare has also been consulted in the matter.

Rule 2 of Central Civil Services (Pension) Rules, 1972 provides that these rules are applicable to employees appointed substantively. Rule 13 of the said rules provides that qualifying service of a Govt. servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in officiating or temporary capacity.

Ad hoc appointments are generally made against the leave vacancies or short term vacancies awaiting appointment of regular candidates. From the rule position explained in the preceding paragraph, it is clear that ad hoc appointments do not come under the purview of Central Civil Services (Pension) Rules, 1972. However, as a special dispensation, service rendered on ad hoc basis is taken into account for pension purposes if the same has been followed without interruption by regular service particularly in the same department.

In view of the position stated above, the ad hoc service rendered by Dr. Gopinath Sahoo in the Railways cannot be counted for pension purposes."

8. It is the case of the applicant that based on the decision of the Hon'ble Supreme Court in Civil Appeal No.



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3519/84 and Writ Petition No. 1228/86, the applicant is entitled to have his ad hoc services regularized in the Railways. Besides, we have gone through the decision of the Hon'ble Supreme Court in Dr. A.K.Jain & Ors vs Union of India & Ors (date of judgment 24.09.1987) holding that services of all doctors appointed as Assistant Medical Officers on ad hoc basis upto 1.10.1984 shall be regularized in consultation with the UPSC.

9. We have given our anxious consideration to the arguments advanced and submissions made by the parties. We have also looked into the impugned order at Annexure-A/5 and also considered the applicability of the judgment of the Hon'ble Supreme Court as cited by the applicant in support of his case. Having regard to all these, we are not inclined to accede to the prayer of the applicant for the following reasons:

- i) The application for selection by the UPSC to the post of Medical Officer under the Central Health Services by the applicant was not made through proper channel as the applicant has failed to produce any such document.



ii) By the acceptance of resignation to take up the new assignment, the benefit of services so rendered by the applicant in the Railways carried a halt, as for the reason aforesaid it cannot be said a technical resignation.

iii) Though the applicant's case does not come under the purview of Central Civil Services (Pension) Rules, 1972, yet, had he availed of the benefit of regularization in course of his employment in Railways, then certainly, the applicant would have been entitled to regularization with effect from the date he joined as Asst. Medical Officer on ad hoc basis in the Railways. But the fact remains, before his services could be regularized, in order to take up the new assignment in Central Health Services he tendered his resignation and thereby the ad hoc service rendered by him in the Railways came to an end as such and his appointment as Medical Officer in Central Govt. Health Services turned to a new and fresh appointment.

iv) The benefit of the decision of the Hon'ble Supreme Court is not applicable to the applicant as the facts of

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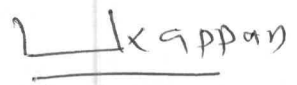
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that case are at variance with the facts of the case in hand as the applicants before the Hon'ble Supreme Court belonged to same and similar Department and there was no resignation tendered by the applicants therein in course of ad hoc service.

v) The Original Application as laid is hit by the principles of constructive res judicata.

10. For the foregoing discussions, we hold that the applicant is not entitled to any of the relief sought in this O.A. In the result, the O.A. being devoid of merit is dismissed No costs.


(C.R. Mohapatra)
MEMBER (ADMN.)


(K. Thankappan)
MEMBER (JUDL.)

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