

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. OA 673 of 97
MA 19 of 03 AND
OA 763 of 97
MA 20 of 03

Present : Hon'ble Mr.S.Biswas, Administrative Member

Hon'ble Mr.A.Sathath Khan, Judicial Member

DR.OM PRAKASH SINGH & ORS.

DR. SUNIL KUMAR CHAUDHURY

...APPLICANTS

-VERSUS-

1. Union of India service through the General Manager, E.Rly., 17 Netaji Subhas Road, Calcutta-1.
2. The Chairman, Railway Board, Railway Bhavan, New Delhi.
3. Union Public Service Commission, through the Secretary, UPSC Dholpur House, Shahjahan Marg, New Delhi.
4. The Chief Personnel Officer, E.Rly., 17 Netaji Subhas Road, Calcutta-1.
5. The Chief Medical Director, E.Rly., New Koilaghata Building, 14 Strand Road, Calcutta-1.
6. The Secretary, Ministry of Railway, Rail Bhavan, New Delhi.
7. The Medical Supdt., E.Rly., Dhanbad Divn.
8. The Medical Supdt., E.Rly., Asansol Divn.
9. The Medical Supdt., E.Rly., Danapur Divn.

...RESPONDENTS

For the applicants : Mr.R.N.Das, counsel
Ms.S.Banerjee, counsel

For the respondents: Mr.L.K.Chatterjee, counsel
Mr.P.K.Arora, counsel

Heard on : 29.4.03

Date of order : 02.05.2003

O R D E R

A.Sathath Khan, J.M.

The above OAs have been filed to direct the respondents not to terminate the services of the applicants till the vacancies are there in the light of the decision of the Supreme Court dated 24.9.87 in Dr.Jain's case, to declare the letters dated 3.3.97 and 21.2.97 for interview in the garb of 'personal talk' as illegal and to direct the respondents to continue their services on ad-hoc basis since the second and third interview were not conducted as per the directions of this Tribunal in OA 406/92. The above MAs have been filed by the respondents in the OAs to vacate the interim order dated 13.6.97 and 3.7.97 directing status quo in respect of the engagement of the applicants as ad-hoc doctors.

2. As the issue involved in both the OAs is the same and the relief claimed in both the MAs is the same, they were taken up together for final hearing and the following common order is passed.

3. The brief facts of both the OAs as narrated by the applicants are as follows :

The applicants No.1 to 3 in OA 673/97 and the applicants in OA 763/97 were appointed as doctors on ad-hoc basis in Railways on 7.2.86, 16.12.85, 13.6.85 and 5.8.86 respectively in various places. They were appointed for a period of 6 months or till they are replaced by the UPSC recruits whichever is earlier. However, the tenure of the applicants was extended from time to time with the concurrence of the UPSC to meet the exigencies of the medical service. The applicants have rendered excellent service continuously for about 12 years on ad-hoc basis

but their services were not regularised. Some similarly placed ad-hoc doctors moved the Supreme court by way of WP 822, 875, 180 and 200 of 87, etc. and the Supreme Court by its common judgment dated 24.9.87 directed the respondents that the service of all doctors appointed either as Asstt. Medical Officers (AMO) or as Asstt. Divisional Medical officers (ADMO) on ad-hoc basis up to 1.10.84 shall be regularised in consultation with the UPSC on the evaluation of their work and conduct on the basis of their confidential reports in respect of the period subsequent to 1.10.82 and that the Railways shall be at liberty to terminate the services of those who are not so regularised. The Supreme Court further directed that the ADMOs who are selected by UPSC should be first posted to the vacant posts available and if all those selected by UPSC cannot be accommodated in available vacant posts, they may be posted to the posts now held by the doctors appointed on ad-hoc basis subsequent to 1.10.84 and on such posting the doctors holding the posts on ad-hoc basis ~~will~~ vacate the seat. The Supreme Court further directed that no ad-hoc AMO/ADMO who may be working in the Railways shall be replaced by any newly appointed AMO/ADMO on ad-hoc basis and that whenever there is need for appointment of any AMO/ADMO on ad-hoc basis in any zone, the existing ad-hoc AMO/ADMOS who are likely to be replaced by the regularly appointed candidates shall be given preference. The Supreme Court further directed that if the ad-hoc doctors appointed after 1.10.84 for selection by the UPSC, the Govt. of India and the Railway Department shall grant relaxation in age to the extent of period of service rendered by them as ad-hoc doctors in the Railways. Accordingly, the Railway Department granted relaxation in age to the extent of period of service rendered by the applicants as ad-hoc doctors in the Railways and called the applicants for interview for the post of ADMO on 7.10.91 & 8.10.91 but the applicants were not selected by the UPSC as the interview was conducted in an arbitrary and

illegal manner. Hence the applicants approached this Tribunal in OA 406/92 and this Tribunal by its order dated 3.5.94 directed the respondents to give two more chances of interview to the applicants and further directed that if the applicants or any one of them, after getting three chances including the one already given to them in 1991, fail to get themselves/himself selected then the respondents may take appropriate action against them as per rules. The SLP No.7318/95 filed by the respondents against the order of this Tribunal dated 3.5.94 in OA 406/92 was dismissed by the Supreme Court on 24.4.95. Though this Tribunal directed the respondents to fix the interview within 3 months, the respondents fixed the interview on 18.6.96 and the applicants appeared for the interview but the interview was not conducted by the UPSC as per the approved guidelines. The respondents, without publishing the result of the interview dated 18.6.96, called the applicants on 11.3.97 for a 'personal talk' in respect of the regularisation of ad-hoc service. The applicants appeared for the 'personal talk' but they came to know that interview is going to be conducted in the garb of 'personal talk' and hence they made a representation praying for another date for interview as they were not prepared for the interview. As the applicants came to know that they are going to be terminated even though more than hundred vacancies existed, they have approached this Tribunal by way of the above OAs for the relief stated above.

4. The respondents in their reply have contended that pursuant to the decision of the Supreme Court in Dr.Jain's case, the Railways granted relaxation in age to the applicants to the extent of the period of service rendered by them as ad-hoc doctors in the Railways and the UPSC conducted the screening test but the applicants were declared unfit by the UPSC, that the Ministry had decided to ~~terminate~~ direct the service of the applicants, that the applicants moved OA 406/92 in this Tribunal and obtained

an order of stay of the proposed termination which was extended from time to time; that this Tribunal by its order dated 3.5.94 in OA 406/92 directed the respondents to give the applicants two more chances to appear for the interview in view of the Clause IV(b) of the appointment order that the ad-hoc doctors who actually applied to the Commission will be given three chances to get themselves selected and further directed that if the applicants or any one of them fail to get themselves/himself selected then the respondents may take proper action against them as per rules, that pursuant to the order of this Tribunal the applicants were granted age relaxartion and were given another chance to appear for interview on 18.6.96 but the applicants were found unfit by the UPSC, that the applicants were again granted age relaxation and were given the third chance to attend the interview on 11.3.97 but the applicants did not appear for the interview at all, that since the applicants failed to get themselves selected in all the three chances given to them, the Railway Board decided to terminate their services, that the applicants filed the above OAs in this Tribunal and obtained interim order dated 13.6.97 and 3.7.97 directing the respondents to maintain status quo in respect of their engagement as ad-hoc doctors, that the direction given by the Supreme Court in Dr.Jain's case in respect of the ad-hoc doctors appointed after 1.10.84 and the directions given by this Tribunal in OA 406/92 have been fully complied with and that the applicants having failed in all the three chances to get themselves selected by the UPSC are not entitled to the relief claimed by them. Hence the respondents pray for dismissal of the above OAs.

5. Heard the ld. counsel for the applicants and the respondents and considered all the pleadings and relevant records of the case.

6. The point for consideration in this case is whether the applicants are entitled to the direction that the respondents

should not terminate their services. The 1d. counsel for the applicants vehemently contended that the applicants, having served the Railways as ad-hoc doctors for more than 16 years continuously without any complaint, are entitled to regularisation and that the respondents are not entitled to terminate their services. The 1d. counsel for the applicants relied upon the directions given by the Supreme Court in Dr.Jain's case reported in 1987 (Suppl.) SCC 497 and contended that as per direction No.(iv) no ad-hoc AMO/ADMO who may be working in the Railways shall be replaced by any newly appointed AMO/ADMO on ad-hoc basis and that whenever there is a need for the appointment of AMO/ADMOS on ad-hoc basis in any zone, the existing ad-hoc AMO/ADMOS who are likely to be replaced by regularly appointed candidates should be given preference. On the contrary, the 1d. counsel for the respondents contended that the Supreme Court in Dr.Jain's case has dismissed the case of AMO/ADMOS who are appointed subsequent to 1.10.84 and hence the direction given by the Supreme court are applicable only to AMO/ADMOS appointed up to 1.10.84 and the AMO/ADMOS appointed subsequent to 1.10.84 cannot avail all the benefits of the said directions. We have carefully examined the judgment of the Supreme Court and the directions given by it in Dr.Jain's case. The following are the directions given by the Supreme Court.:

" After hearing learned counsel for the parties at great length having regard to the peculiar facts and circumstances of these cases we pass the following order in the above writ petitions:

(1) The services of all doctors appointed either as Assistant Medical Officers or as Assistant Divisional Medical Officers on ad hoc basis up to October 1, 1984 shall be regularised in consultation with the Union Public Service Commission on the evaluation of their work and conduct on the basis of their confidential reports in respect of a period subsequent to October 1, 1982. Such evaluation shall be done by the Union Public Service Commission. The doctors so regularised 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 Officer. The Railway shall be at liberty to terminate the services of those who are not so regularised. If the services of any of the petitioners appointed prior to October 1, 1984 have been terminated except on resignation or on disciplinary grounds, he shall be also considered for regularisation ; and if found fit his services shall be regularised as if there was not break in the continuity of service but without any back wages.

(2) The petitions of the Assistant Medical Officers/Assistant Divisional Medical Officers appointed subsequent to October 1, 1984 are dismissed. But we however direct that the Assistant Divisional Medical Officers who may have been now selected by the Union Public Service Commission shall first be posted to the vacant posts available wherever they may be. If all those selected by the UPSC cannot be accommodated against the available vacant posts they may be posted to the posts now held by the doctors appointed on ad hoc basis subsequent to October 1, 1984 and on such posting the doctor holding the post on ad hoc basis shall vacate the same. While making such postings the principle of 'last come, first go' shall be observed by the Railways on zonal basis. If any doctor who is displaced pursuant to the above direction is willing to serve in any other zone where there is a vacancy he may be accommodated on ad hoc basis in such vacancy.

(3) All Assistant Medical Officers/Assistant Divisional Medical Officers working on ad hoc basis shall be paid the same salary and allowances as Assistant Divisional Medical Officers on the revised scale with effect from January 1, 1986. The arrears shall be paid within four months.

(4) No ad hoc Assistant Medical Officer/Assistant Divisional Medical Officer who may be working in the Railways shall be replaced by any newly appointed AMO/ADMO on ad hoc basis. Whenever there is need for the appointment of any AMO/ADMO on ad hoc basis in any zone the existing ad hoc AMO/ADMOS who are likely to be replaced by regularly appointed candidates shall be given preference.

(5) If the ad hoc doctors appointed after October 1, 1984 apply for selection by the Union Public Service Commission, the Union of India and the Railway Department shall grant relaxation in age, to the extent of the period of service rendered by them as ad hoc doctors in the Railways.

2. All the Writ Petitions are disposed of in the above terms."

It is true that the petitions of AMO/ADMOS appointed after 1.10.84 have been dismissed by the Supreme Court but it is pertinent to note that they had challenged their termination order and the said applications were dismissed by the Supreme Court on the ground that either they have failed to appear for interview or they have failed in the interview after attending the same. This does not mean that they were excluded from the benefits given in the directions of the Supreme Court. An analysis of the directions given by the Supreme Court shows that they are applicable to both the ad hoc AMO/ADMOS appointed upto 1.10.84 and the ad hoc AMO/ADMOS appointed after 1.10.84 but were in service on the date of the judgment. Infact, the respondents themselves have admitted this position in their MA as follows:

"Your petitioners submit that in the case of Dr.A.K.Jain, Hon'ble Supreme Court directed on 24.9.87 to regularise services of doctors appointed on ad hoc basis upto 1.10.84. Petitions filed by ad hoc doctors appointed after 1.10.84 dismissed with further direction to grant them age relaxation if they appear in Union Public Service Commission selections, replace their services with Union Public Service Commission selected doctors on 'first come last go' basis, whenever appointment of ad hoc doctors is necessary existing ad hoc doctors should get precedence."

Hence we hold that the directions of the Supreme Court are applicable to the applicants who were appointed as ad hoc doctors after 1.10.84 but were in service on the date of the judgment of the Supreme Court. However, we find that the respondents have given the benefit of the said judgment to the applicants by giving them opportunity of getting themselves selected by UPSC by fixing the interview on 7.10.91 & 8.10.91 but unfortunately the applicants were not selected by the UPSC. Under these circumstances we hold that the applicants have already availed of the benefit of the Supreme Court decision in Dr.Jain's case.

Moreover, the respondents have stated in their MA that fresh batch of UPSC candidates have since been offered appointments and they are now in the process of joining service and that the applicants can be replaced by the UPSC recruits and the ad hoc service of the applicants will have to be put an end. If the candidates regularly selected by the UPSC are ready, the Railways are bound to appoint them displacing the applicants who are ad hoc doctors which is permissible under the direction given by the Supreme Court in Dr.Jain's case. In case, the candidates selected by the UPSC will have to be posted in place of the applicants and the applicants have to vacate the seat. Under these circumstances, the relief claimed by the applicants that the respondents should be directed not to terminate their services is not at all sustainable.

7. The second contention of the 1d. counsel for the applicants is that the respondents have failed to give two more chances to appear for the interview as per the order of this Tribunal dated 3.5.94 in OA 406/92 and that the service of the applicants should not be terminated. According to the 1d. counsel for the applicants, the interviews were not conducted by the UPSC as per the approved guidelines. This is nothing but a wild allegation against the UPSC without any basis whatsoever. Moreover, the applicants, having participated in the interview and failed in the interview, cannot turn round and say that the interview was not properly conducted. The further contention of the 1d. counsel for the applicants that the applicants were not called for the interview but only for 'personal talk' on 11.3.97 is a lame excuse for not attending the interview. Admittedly, the applicants did not attend the interview deliberately on 11.3.97 and prayed for time as they were not prepared for the same. Hence the contention of the 1d. counsel for the applicants that the respondents have not given the applicants two more chances of

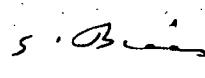
interview as per the order of this Tribunal dated 3.5.94 in OA 406/92 is not sustainable. Hence we hold that the direction of the Supreme Court in Dr.Jain's case and the directions given by this Tribunal in OA 406/92 have been fully complied with by the respondents by giving age relaxation and by giving them three chances of interview. However, unfortunately the applicants failed to get themselves selected by the UPSC inspite of the three chances of interview given by the respondents. Under these circumstances, we hold that the applicants are not entitled to any direction that the respondents should not terminate their services as ad hoc doctors. We further hold that there is no bar for the respondents to terminate the services of the applicants who are ad hoc doctors by candidates regularly selected by UPSC and the respondents are at liberty to do so as the same was permitted by the Supreme Court in Dr.Jain's case and by this Tribunal in OA 406/92. However, we make it clear that the applicants who are ad hoc doctors should not be replaced by another set of ad hoc doctors as directed by the Supreme Court.

8. In the result, both the OAs are dismissed with no order as to costs. In view of the order in the OAs, no orders are required in the above MAs.


MEMBER (J)

in

2/5/2003


MEMBER (A)