

In the Central Administrative Tribunal
Calcutta Bench

OA 825/97

Present : Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman
Hon'ble Mr.N.D. Dayal, Member(A)

Dr. Ashok Kumar Sharma, S/o Bidyapati Sharma, working for gain as Homoeopathic Practitioner under the Staff Benefit Fund, S.E. Rly, KGP at present residing at Railway Bungalow No.207/3 & 4, South side Kharagpur, Dist. Midnapore

...Applicant

-Vs-

- 1) Union of India, service through GM, S.E. Rly, Garden Reach, Calcutta-43
- 2) General Manager, S.E. Rly, -do-
- 3) Chief Personnel Officer -do-
- 4) CPM, S.E. Rly, Kharagpur
- 5) Workshop Personnel Officer, S.E. Rly, Kharagpur
- 6) Secretary, Rly Board, New Delhi

....Respondents

For the applicant : Mr.B.C. Sinha, Counsel

For the respondents: Mr.S. Choudhury, Counsel

Date of Order : 12.7.04

ORDER

Per Mr.Justice B. Panigrahi, V.C.

The applicant herein is working as Homoeopathic Doctor under the Staff Benefit Fund of S.E. Rly, Kharagpur. His prayer is for treating him as a regular Rly employee and to provide him the same service benefits as are enjoyed by Allopathic Doctors of the Rly Medical Service.

2. The applicant was appointed as Homoeopathic Doctor by the Staff Benefit Fund of S.E. Rly on 24-10-79 vide Annexure Al. He is being paid fixed salary. His employment is on full time basis and age of retirement is 70 years. He has been provided with a Rly Quarters and some other facilities by the Rlys. The applicant claims that he has been rendering service as Homoeopathic Doctor to the Rly employees and their families for all these years, but he is being paid only fixed salary which currently is Rs4500/-.



applicant states that the Rly Board vide its Circular dted 21-3-77 issued to General Managers of the Zonal Rlys regarding introduction of indigenous system of medicines directed that suitable qualified persons in approved system of medicine like Homoeopathy, Ayurvedic, Unani and Siddha may be appointed in the Rlys and that such Doctors should be paid in the pay scale of Rs650-1200/-. The grievance of the applicant is that even though he has been functioning as Homoeopathic Doctor from 1979, he has not been paid any regular scale of pay, whereas the Allopathic Doctors serving under the Rlys and treating the employees and their families, are in regular pay scale and have their own promotional channel etc. which has been denied to the applicant. He made representations, but to no avail. Being aggrieved he had earlier filed a Writ Petition before the Hon'ble High Court of Orissa but the same was subsequently withdrawn with liberty to file appropriate application before the Tribunal and accordingly the present OA has been filed for the aforesaid relief.

3. The respondents have filed reply, in which they have raised a preliminary objection that this OA is not maintainable, as the applicant is not holding any civil post, nor he is an employee of the Rlys as he was appointed by the Staff Benefit Committee, which is a separate entity and the applicant knowing fully well accepted the appointment. However, the applicant has been provided with certain facilities by the Rlys but that does not give any right to the applicant to become a Rly employee. It is also contended that the applicant has no locus standi to claim himself as Rly employee or to claim the pay and other service benefits at par with Regular Doctors who are appointed through UPSC.

4. During the course of hearing the learned counsel for the applicant has submitted that the applicant has all along been treated as a Rly employee, which will be manifest from the fact that he has been provided Rly Passes, a Rly Quarters and also residential telephone at Rly Cost. He has also pointed out that the

staff working under the applicant has also been treated as Rly employee on his absorption in the Rly but the case of the applicant has been ignored for being treated as Rly employee and for granting admissible service benefits and pay scale, as a result, the applicant is only getting a meagre amount as remuneration for all these years. He has also pointed out that even the employees of various quasi-Rly Organisation such as Rly Staff Co-operative, Canteen etc. have been treated as Rly employee by various decision of the Hon'ble Supreme Court.

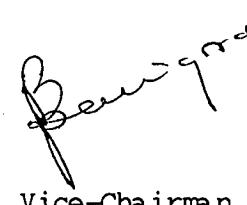
5. During hearing both the parties have relied on the decision of the Cuttack Bench of the Tribunal in OA 408/97 dated 2-1-99 (Dr. Satya Prakash and another V. Union of India). In that case two applicants were also appointed as Homoeopathic Doctor under the Divisional Staff Benefit Committee, S.E. Rly, Khurda Road and they also claimed similar benefit like regular Doctors of the Rlys. In that case also the respondents raised the preliminary objection regarding maintainability of the application on the ground that they were appointed by the Staff Benefit Fund Committee, which was not a part of the Rly, but a separate organisation. All the points raised in the OA were also taken in the OA. The Tribunal, after discussing all the points raised held as follows :

"7. In view of our discussion above, we are of the view that the applicants being not regular employees appointed by the railway administration cannot claim the benefits of pay scales extended to other railway employees, especially, to the Allopathic Doctors appointed by the railway administration. Since they are not holding the civil posts, we feel that we have no jurisdiction to entertain this application under Section 19 of the Administrative Tribunal Act, 1985. It is true that earlier this application was filed in the shape of O.J.C. before the Hon'ble High Court of Orissa and the same was allowed to be withdrawn through order dated 5-11-96. The relevant order dated 5-11-96 is under Annexure-I. The order does not reveal that the Hon'ble High Court held that this Tribunal has jurisdiction to entertain this application containing such reliefs. All that the order reveals that since the learned counsel for the petitioner submitted that the matter needs to be determined by this Tribunal and prayed for withdrawal, withdrawal was allowed. Hence simply because the prayer for withdrawal was allowed by the Hon'ble High Court, we cannot presume point regarding jurisdiction was urged before the Hon'ble High Court and that the Hon'ble High Court ultimately held that this Tribunal has jurisdiction to entertain such application. This application is accordingly barred by jurisdiction".

6. Since a coordinating Bench has already decided the issue, we see no reason to deviate from the said decision. Accordingly, the application is dismissed being without jurisdiction. However, it is open to the applicant to approach appropriate forum for redressal of grievance, if not otherwise barred by law.



Member(A)



Vice-Chairman