

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 463/2005

This the 18th day of January, 2010

Hon'ble Ms. Sadhna Srivastava, Member (J)

Hon'ble Dr. A.K. Mishra, Member(A)

Dr. Atul Kumar Agarwal, Aged about 53 years, S/o late Sri B.L. Agarwal, Presently posted as Senior Divisional Medical officer (SG) N.R., Extra Divisional Hospital, Research Design and Standard Organization, Lucknow and R/o C-162 RDSO Colony, Lucknow.

.....Applicant

By Advocate: Sri S.P. Singh

Versus

1. Railway Board, New Delhi through its Chairman.
2. The Secretary, Railway Board, New Delhi.
3. The General Manager, n.R. Baroda House, New Delhi.
4. Director General, RDSO, Manak Nagar, Lucknow.
5. Union of India through its Secretary, Ministry of Railway, New Delhi.
6. Dr. C.N. Mehrotra, N.C.R., Allahabad.
7. Dr. Madhu Mehrotra, N.C.R., Allahabad.
8. Dr. Santosh Kumar, C/o Chairman Railway Board, New Delhi.
9. Dr. Chattar Pal Singh, N.R. Central Hospital Cannaught Place, New Delhi.
10. Dr. M.L. Kanaujia.
11. Dr. Ranjit Kumar Mandal.

.....Respondents

By Advocate: Sri SMS Saxena

ORDER

By Dr. A.K. Mishra, Member-A

This application has been filed challenging the order dated 17.5.2005 of respondent no.1 in which representation of the applicant for counting his past service and study period from 16.6.1977 upto 17.2.1983 for the purpose of seniority was rejected. He has prayed for quashing of the impugned order dated 17.5.2005 and orders dated 14.5.2002, 25.10.2002, 21.11.2005 and 20.3.2006 as contained in Annexure nos.1, 7,8,9 and 10 respectively and further for a direction to allow him promotion in Junior Administrative Grade (JAG) w.e.f.



13.5.1991 when his immediate junior Dr. C.N. Mehrotra was given such promotion.

2. The applicant was initially appointed on adhoc basis on 16.6.1977 on the post of Assistant Medical Officer under Railways. He was selected for Post Graduate Diploma Course on the subject of Radio-Diagnosis and as no study leave was available to him because of his status as adhoc appointee, he resigned from the post in March, 1982. Subsequently, he was selected by the Union Public Service Commission (UPSC) and joined Railway Medical Service as Assistant Divisional Medical Officer (Class-I) on 18.2.1983. He filed a number of representations for regularizing the period from 16.6.1977 to 17.2.1983. Initially, in consideration of his representation, the railways gave him pay protection for 16.2.1982 to 18.2.1983, the period in which the applicant completed his PG Diploma course, by not treating this period as break in service for the purpose of pay fixation. Pursuant to the judgment of the Apex Court in Civil Appeals no. 2478-79 of 2000 Union of India & Another Vs. Dr. Lalitha S. Rao & Others, the Railway Board circulated the provisional seniority list in respect of adhoc Doctors who got themselves regularized prior to 1.10.1984 in which the name of the applicant was shown at sl. No. 1103-A above his junior Dr. C.N. Mehrotra and others.

3. Subsequently, several doctors including his juniors were given proforma promotion to JAG from the dates mentioned against each of them vide order of Railway Board dated 10.4.2002; but the name of the applicant did not find place in this letter. Aggrieved by such exclusion, he filed a representation dated 28.12.2004 to the Railway Board, which was rejected in the impugned order dated 17.5.2005.

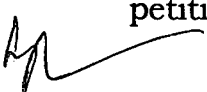
4. At the time of hearing, the learned counsel for the applicant gave emphasis on the fact that the applicant's claim for seniority from the date of his initial appointment in adhoc capacity is supported by the Three Judge decision of Supreme Court in Union of India & Others Vs. Dr. Lalitha S. Rao & Others reported at 2001 SCC (L&S) 829, which went into the full gamut of the principles which should apply in respect of claim of seniority of different categories of adhoc doctors appointed by the Railway Board.



It was also stressed that some doctors similarly situated whose services had been terminated, were allowed the benefit of seniority of past services by the Railway Board, but the same benefit claimed by the applicant had been unfairly rejected.

5. The learned counsel for the respondents took us through the relevant judgments of Supreme Court covering the issue of seniority of adhoc doctors appointed by the Railway Board. He submits that though the Indian Railways Medical Department Recruitment Rules, 1977, nor the Recruitment Rules, 1967 provided for appointment of Assistant Medical Officer on adhoc basis, yet the Railway Board, taking into consideration the dis-location caused and hardships suffered by the employees in the absence of large number of Medical Officers, empowered Zonal General Managers of the Railways to recruit doctors as Assistant Medical officers in Group 'B' on adhoc basis till they were to be replaced by regularly appointed Assistant Divisional Medical Officers selected through UPSC. The Combined Medical Service Examination was introduced in the year 1977 by the UPSC. Some of the adhoc appointees whose services were terminated approached the Supreme Court challenging the action of the respondents. In the case of Dr. A.K. Jain & Others Vs. Union of India & Others reported at 1988 SCC (L&S) 222, the Supreme Court directed, in the peculiar facts and circumstances of those cases, that the services of all doctors appointed either as Assistant Medical Officer or Assistant Divisional Medical Officer on adhoc basis upto 1.10.1984 should be regularized in consultation with the UPSC on evaluation of their work and conduct as reflected in their Confidential reports for the period subsequent to October, 1982. However, it was made clear that this benefit, though available to the petitioners whose services had been terminated, could not apply to those who had left the service either by resignation or on disciplinary ground. According to the learned counsel for the respondents, this special dispensation granted by the Supreme Court was not available to the applicant, who had left the railway service on resignation.

In the case of Union of India & Another Vs. P. Srinivasulu & Others, the Supreme Court upheld the decision of Central Administrative Tribunal, Principal Bench to grant seniority to the petitioners in respect of their adhoc service. In this case, the petitioners, though originally recruited on adhoc basis were



subsequently selected through UPSC and their services were regularized.

6. The issue was placed before the ^{three Judge} Full Bench in Dr. Lalitha S. Rao case (supra) where the Supreme Court laid down the following principles:

- (i) all doctors appointed on adhoc basis upto 1.10.1984 whose services were regularized following the decision of Supreme Court in the case of Dr. A.K. Jain (supra) would not be entitled to count past service towards seniority. This was the position, which was also held by the Supreme Court on the interlocutory application filed by Dr. Haque in the case reported at 2001 (2) SCC 186.
- (ii) those doctors who were appointed on adhoc basis, but got themselves regularized prior to 1.10.1984 by appearing in the selection test held by UPSC would be eligible to get the benefit of past service for their seniority.
- (iii) those appointed after 1.10.1984 on adhoc basis and got selected subsequently by UPSC would not be eligible to seniority on the basis of their past service. This was in view of the the cut off date i.e. 1.10.1984 applied in Dr. A.K. Jain's case (supra) for the benefits granted as a special dispensation.

7. The learned counsel for the respondents submits that the category (ii) refers to such doctors as were on the roll of the Railways uninterruptedly and were regularized through UPSC selection test prior to 1.10.1984. This is not the case with the applicant, who resigned from the Railway service in 1982 and was appointed subsequently in 1983 as a regular candidate recommended by the UPSC. He had resigned not for the purpose of joining any other Government service, but for the purpose of taking P.G Diploma course. He relied on Rule 41 of the Railway Service (Pension) Rules, 1993, which is extracted below:

"41(1) Resignation by a railway servant from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority shall lead to forfeiture of his past service.


(2) A resignation shall not lead to forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent under the Government where service qualifies for pension."

8. According to this rule, the past service of a railway employee, who resigned from railway service and does not take up any other pensionable government service will be forfeited. In other words, the

resignation and the subsequent break in service from March 1982 to 18.2.1983, would not entitle the applicant to the benefit of past service or the period during which he completed his PG Diploma course on his own. The case of the applicant is not covered by any of the judgments of Supreme Court. On the other hand, the judgment in Dr. A.K. Jain (supra) very clearly says that the cases of employees who had resigned from the railway service or whose services were terminated on disciplinary ground, would not be entitled to the benefit.

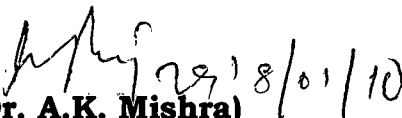
9. As regards the plea of hostile discrimination, the learned counsel for respondents took us through the submissions of the respondents in para 17 of the Counter Reply in which facts of Dr. Arun Kumar Srivastava, Dr. Pala Suryanarayana, Dr. C.V. Prabha and Dr. G. Boyanna whose cases had been cited by the applicant as precedent were explained. According to the respondents, none of the cases similar to that of the applicant, where an employee had resigned the railway service to prosecute further studies. Therefore, the plea of discrimination cannot be sustained. In two cases (Dr. C.V. Prabha and Dr. G. Boyanna) doctors were selected in the Combined Medical Services Examination 1975 and allotted to the Central Government Health Services/Posts & Telegraph department, but subsequently re-allotted to railways. In the case of Dr. Pala Suryanarayana (supra) his appointment was terminated on ground of medical unfitness, which was subsequently reversed by the Medical Board on his appeal and he was re-appointed; therefore, in his case break in service was treated as leave due. In the case of Dr. Arun Kumar Srivastava, his services were terminated erroneously in 1983 although he was regularized being selected through UPSC in the same year.

10. On going through the rival submissions, we find that the applicant had resigned from the railway service in the year 1982 in order to prosecute studies in P.G. Diploma course. His resignation was not for appointment in any pensionable Government service, neither was he working uninterruptedly in the railway service until he was selected in the UPSC test and appointed on a regular basis prior to 1.10.1984. Therefore, he would not be entitled to the benefit of his past service. His case is not covered by any of the decisions of Supreme Court. As a matter of fact, the Supreme Court has very clearly stated in Dr. A.K. Jain's case (supra) that the special



dispensation granted by it would not be applicable to the employees who had resigned or whose services had been terminated on disciplinary ground. We also find that the facts of the cases cited by the applicant as precedent are different from the those of the applicant. His case is one of the resignation from the adhoc railway service to take up further studies and re-appointment on regular basis in the year 1983 after he was recommended by the UPSC on successful completion of the selection test.

11. In the circumstances, we are unable to allow the claim made by the applicant. The application is, accordingly dismissed. No costs.


(Dr. A.K. Mishra)
Member-A


(Ms. Sadhna Srivastava)
Member-J

Girish/-