

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 790/89

Transfer Application No:

DATE OF DECISION: 21.12.94

Dr. H.B. Mahajan

Petitioner

Shri G.K. Masand

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Sh. S.S. Karkera for Sh. P.M. Pradhan Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S. Hegde, Member (J)

The Hon'ble Shri P.P. Srivastava, Member (A)

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?


(P.P. SRIVASTAVA)

MEMBER (A)


(B.S. HEGDE)

MEMBER (J)

(6) BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA. NO. 790/89

Dr. Harish Balkrishna Mahajan

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (J) Shri B.S.Hegde

Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri G.K.Masand
Advocate
for the Applicant

Shri S.S.Karkera
for Shri P.M.Pradhan
Advocate
for the Respondents

JUDGEMENT

Dated: 21.12.94

(PER: B.S.Hegde, Member (J)

Heard the learned counsel for the parties
Shri Masand for the applicant and Shri S.S.Karkera
for Shri P.M.Pradhan for the respondents.

2. The brief facts are that the applicant was employed by the Respondent No. 3 from 10.8.1982 on monthly wages of Rs.1660.50 p.m. as Medical Officer initially for a period of 180 days upto 5.2.1983. The applicant rendered more than 5 years of service on 12.8.1987. He was relieved from service on the ground of over-age i.e. past 35 years, accordingly, his services were dis-continued w.e.f. 12.8.1987. The applicant contends that the respondents had given him artificial break of one or two days but he was allowed to continue as Medical Officer from time to time for a period of five years under Central Govt. Health Scheme, Bombay.

The applicant is a duly qualified Doctor and his educational qualification is B.Sc, M.B.B.S. degree from Indore University. The applicant contends that there was no adverse report against him and he had satisfactorily discharged his duties entrusted to him to the entire satisfaction of his superiors, and his services have been terminated merely on the ground that he is over-aged. Though he made representations to the respondents, it is alleged they did not take any action thereby he was compelled to come for the relief and accordingly he prayed for following reliefs :-

- "(a) It may be declared that the applicant is entitled for reinstatement to his former post of Medical Officer with continuity of service from 12.8.1987 with full back wages and other incidental benefits, and order dt.5.8.87, Annex 'A' is bad in law & null and void.
- (b) The respondents be directed to appoint the applicant as Medical Officer in scale Rs.2200-4000 (Pre-revised Rs.700-1300), from 12.8.1987.
- (c) The respondents be directed to pay all consequential benefits and arrears of pay and allowances to the applicant from 12.8.1987.
- (d) The respondents be directed to report his name to the U.P.S.C. as per proviso (III) to clause (b) of the regulation of the UPSC (exemption from the constitution) Regulation 1958 dated 1.9.1958.
- (e) To direct the Union Public Service Commission to consider the case of applicant for regularisation of appointment as Medical Officer."

3. In reply the respondents have admitted the services rendered by the applicant except stating that the applicant was not on roll of this establishment in the year 1988 whereas the other respondents referred to in his OA. were on the roll as monthly wage Doctors during the year 1988 and therefore were considered for appointment on ad-hoc

basis. The respondents state that the applicant's services stood terminated automatically with effect from afternoon on 12th August, 1987 and as such the applicant's appointment on ad-hoc basis in the service of the respondents was not attracted. The respondents further contended that the applicant's case cannot be considered as he had completed 35 years of age and since the applicant could not be appointed on monthly wage basis in view of the Ministry's letter, the applicant was not entitled for any similar reliefs. The respondents have also taken a plea that the OA. filed by the applicant is barred by time under the provisions of Section 21 of the Administrative Tribunal Act, 1985.

4. The learned counsel for the applicant Shri Masand draws our attention that it is true that there is some delay in filing the application though his services were terminated in 1987 and he has filed the application in 1989 after one year and two months, since his juniors who joined subsequent to him were taken on ad-hoc post in view of the decision of the Principal Bench of the C.A.T., Delhi, therefore he seeks that the similar benefits be extended to him by relaxing his age because his services were terminated merely on the ground of over-age. In this connection, he draws our attention to Annexure-'F' wherein Dr.(Mrs.) S.Thaiyalnayaki, though she had completed 35 years of age in 1988, the respondents have taken a decision to regularise her services pursuant to the decision of Principal Bench. In the circumstances, he submits that if he was to continue in service, he would have been shown at Sr.No. 2-A after Dr.D.D.Kadam because of his seniority in service. In support of his contention he relied on the decision of Principal Bench in OA.NO. *ABU*

1259 of 1990 against which the respondents have preferred a SLP in the Supreme Court which was disposed of by the Supreme Court on 3.5.1993. The Supreme Court while upholding the decision of Central Administrative Tribunal modified the order of Tribunal by passing the following order :-

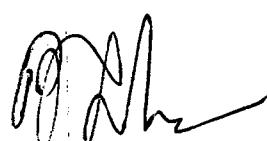
"The only direction which we propose to modify is in regard to the fixation of seniority. In paragraph 20(2) of the impugned judgment the Tribunal has observed that after the services of the applicants are regularised through UPSC, they will be accorded seniority from the dates of their initial appointment on ad hoc basis as Medical Officers after condoning the technical breaks in their ad hoc services. The service rendered by them during the period of operation of the stay order passed by the Tribunal is also directed to be counted as service for the purpose of regularisation. The learned counsel for the appellants submitted that the question of seniority was not specifically put in issue before the Tribunal since no such relief was claimed in the petition. He further states that such a direction without others likely to be affected being parties, would create an inter se dispute regarding seniority which would have to be resolved in accordance with the extant rules. We, therefore, merely clarify that the direction in paragraph 20(2) in regard to fixation of seniority shall be modified to mean that the fixation of seniority would be in accordance with the extant rules. We, however, do not interfere with the direction that service rendered during the pendency of the interim order of the Tribunal shall also be taken into account for the purposes of regularisation. Except for this modification we do not interfere with the impugned order of the Tribunal. The appeal will stand allowed to the above extent only. No order as to costs. The incumbents will be at liberty to question the seniority order if it is not in accordance with the extant rules applicable to that group of employees in any appropriate forum."

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AND THIS COURT DOTHE FURTHER ORDER that this ORDER be punctually observed and carried into execution by all concerned."

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5. In the light of the above, the learned counsel for the applicant submits that the same treatment which has been given to others and the fact that his services were discontinued w.e.f. 12.8.1987 should not come in the way to give effect to the Court's direction by the competent authority to consider the case in accordance with the existing instructions and as per the directions of the Court.

6. In the instant case the applicant has prayed for reinstatement in service. Since his services had already been discontinued, the question of reinstatement does not arise at this stage. However, the second prayer that suitable direction be given to U.P.S.C. to consider his case for regularisation of appointment as Medical Officer in accordance with the directions of C.A.T. as well as Supreme Court is well merited and deserves to be considered. The delay in filing the OA. under the circumstances is condoned and in the circumstances, we hereby direct the respondents to refer his case to U.P.S.C. for regularisation of his services ^{in accordance with law} keeping in view the observations of the Principal Bench and the Supreme Court in the matter. They may complete the entire process within a period of four months from the receipt of a copy of this order. No order as to costs.



(P.P. SRIVASTAVA)
MEMBER (A)



(B.S. HEGDE)
MEMBER (J)

mrj.

This order stands in

the file in the office

14523176

on 23.12.1987

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