

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO. . . : 831 of 1999.

Dated this Thursday, the 27 th day of July, 2000.

Dr. M. R. Prabhakar, Applicant.

Shri G. K. Masand, Advocate for the applicant.

VERSUS

Union of India & Others, Respondents.

Shri R. R. Shetty for Advocate for
Shri R. K. Shetty, the respondents.

CORAM : Hon'ble Shri B. S. Jai Parameshwar, Member (J).

Hon'ble Shri Govindan S. Tampi, Member (A).

(i) To be referred to the Reporter or not ?

(ii) Whether it needs to be circulated to other Benches
of the Tribunal ?

(iii) Library.


(B. S. JAI PARAMESHWAR)
MEMBER (J).

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Hon'ble Shri Govindan S. Tampi.

Dr. M. R. Prabhakar,
Asstt. Director of Malaria,
Government Marwar Hospital Campus,
Nani Daman - 396 210.

Applicant. . .

(By Advocate Shri G. K. Masand)

VERSUS

1. The Administrator,
Union Territory of Daman & Diu,
Administrator's Secretariat,
Fort Ara,
P.O. Moti Daman.

2. Union of India through
The Secretary,
Ministry of Home Affairs,
Government of India,
Central Secretariat,
North Block, New Delhi.

3. Union Public Service Commission
through its Secretary,
Dholpur House,
Shah Jahan Road,
New Delhi. . .

Respondents.

(By Advocate Shri R. R. Shetty for
Shri R. K. Shetty).

O R D E R

PER : Shri B. S. Jai Parameshwar, Member (J).

Heard Shri G. K. Masand, the Learned Counsel for the applicant and Shri R. R. Shetty for Shri R. K. Shetty, the Learned Counsel for the respondents.

2. The applicant is a Medical Graduate. He was appointed as a Medical Officer on the basis of the recommendation of the local

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Selection Committee w.e.f. 03.01.1977. His scale of pay was Rs. 650-1200. His appointment order dated 17.12.1976 is at exhibit 'A'.

3. He submits that he was given promotions and also to cross the Efficiency Bar in the scale of pay.

4. He submits that with the conferment of Statehood on Goa portion of the Union Territory of Goa, Daman & Diu on 31.05.1987, Daman & Diu were retained as Union Territories and the applicant opted to work with the Union Territory of Daman & Diu. He was promoted to the post of Health Officer by order dated 10.07.1990. He submits that Medical Officers who had opted to work in the State of Goa were regularised.

5. Earlier the applicant approached this Tribunal in O.A. No. 126/92 for regularisation of his services as Medical Officer and his seniority on the basis of his past service. During the pendency of the said application, his services were transferred from the post of Health Officer, Primary Health Centre, Diu, to the post of Assistant Director of Malaria at Daman vide order dated 01.10.1992. The application filed by the applicant came to be dismissed by this Tribunal's order dated 06.04.1995.

6. The applicant submits that inspite of his application being dismissed, he was continued in service as Assistant Director of Malaria, Daman. A copy of the order passed in O.A. No. 126/92 has been enclosed at exhibit-G.

7. The applicant submitted a representation for regularisation of his service. Respondent No. 3 by his order dated 21.05.1998 rejected the proposal for regularisation of the ad hoc service of the applicant on the ground that the U.P.S.C., as a matter of policy, did not regularise the ad hoc service.

8. As regards regularisation of the services of the applicant, the administration corresponded with the Ministry of Health and Family Welfare. However, two of his juniors who were recruited in similar circumstances, had approached this Tribunal in O.A. Nos. 125/94 and 926/94. The juniors to the applicant who filed those applications are Dr. (Mrs.) P. V. Kolhatkar and Dr. J. C. Rana. Those two applications came to be accepted by this Tribunal by order dated 05.07.1999 and 06.07.1999. The applicant has produced a copy of the order passed by this Tribunal in those two applications. They are at exhibits 'R' and 'R-1' to the O.A.

9. The applicant has filed this O.A. for the following reliefs :

"To direct the respondents to regularise the applicant's services by taking into consideration the fact that applicant was appointed with effect from 03.01.1977 after selection and that he was fully qualified and eligible to hold the said post on his appointment, with a further direction to give relaxation to the requirement for direct recruitment as has been given by this Tribunal in the two cases of Dr. (Mrs.) Kolhatkar and Dr. J. C. Rana with all consequential reliefs to which he would become eligible on his regularisation be directed to be granted to the applicant."

10. The respondents have filed a written statement. They submit that the present application is barred by the principles of res judicata in view of the decision in O.A. No. 126/92. The

applicant had claimed similar reliefs in the earlier O.A. and the same has been rejected by this Tribunal. The applicant is not permitted to re-agitate the same relief in the present application. They rely upon the decision of the Hon'ble Supreme Court in the case of *Union of India V/s. Dr. H. B. Mahajan and Dr. A. K. Jain & Others V/s. Union Of India & Others*. They submit that the Hon'ble Supreme Court in the case of *H. B. Mahajan* considered an identical issue of regularisation wherein though the U.P.S.C. had been considered but the Supreme Court categorically stated that there is no question of regularising the services of an employees dehors the Recruitment Rules. Thus they submit that the application is liable to be dismissed.

11. The applicant has filed a rejoinder dated 28.03.2000. It is his contention that the respondents having given promotion and other benefits while in service, are estopped from denying the regularisation of service. Further, he submits that he has put in nearly 23 years of service and has attained the age of 58 years and is likely to retire within a period of two years and atleast the benefit of pension and other pensionary benefits be provided to him.

12. In fact, the Learned Counsel for the applicant strongly relied upon the observations made by this Tribunal in O.A. No. 125/94 and 926/94 decided on 05.07.1999 and 06.07.1999 respectively. In fact, at a certain stage we also felt that the applicant should be given similar benefits as has been given by this Tribunal to those two Doctors. However, on careful consideration, we are unable to grant the relief claimed by the applicant.

J

13. The Learned Counsel for the respondents contended that the application is barred by the principles of res-judicata. The applicant has earlier approached this Tribunal for the same reliefs in O.A. No. 126/92. The same has been dismissed by order dated 06.04.1995. When that is so, the applicant cannot claim the same relief in this application. In fact, this clearly negatived the claim of the applicant for regularisation.

14. Apart from that, regularisation has to be done only on the basis of recommendations by the U.P.S.C. The respondents cannot regularise the services of the applicant without the recommendations of the U.P.S.C. Any such attempt on the part of the administration will be against the Recruitment Rules. The Learned Counsel for the respondents relied upon the decision of the Hon'ble Supreme Court in the case of Dr. M. A. Haque & Others V/s. Union of India & Others reported in 1993 SCC (L&S) 412 and in the case of Union of India & others V/s. Harish Balkrishna Mahajan reported in 1998.III.LLJ (Supp.) 687.

15. In the case of Union of India & Others V/s. H. B. Mahajan the Hon'ble Supreme Court has observed as follows :

"3. The controversy is no longer res integra. In similar circumstances, this Court had considered the entire controversy in J. & K. Public Service Commission & Others V. Dr. Narinder Mohan & Others (1994-I-LLJ-780). Admittedly, the post of doctors in the Central Government Health Scheme are required to be filled up by recruitment through Union Public Service Commission. Therefore, the direction to consider the case of the respondent in consultation with the Public Service Commission for regularisation is in violation of the statutory rules and Articles 320 of the Constitution of India. The only course known to law is that the Union of India shall be required to notify the recruitment of the Public Service Commission and Union Public Service Commission shall conduct the examination inviting the applications from all the eligible persons including the persons like the respondents. It would be for the respondents to apply for and seek selection in accordance with Rules. Therefore, the direction is in violation of Article 320 of the Constitution."

16. Further, in the case of Dr. M.A. Haque & Others, the Supreme Court considered in detail even after the directions given by it earlier in the case of Dr.P. P. C. Rawani V/s. Union of India & Others. The Hon'ble Supreme Court after considering the said cases has observed as follows :

"We are conscious of the fact that the petitioner-applicants have been serving the Railways from the year 1968. It is also possible, as contended on their behalf that many of the outside direct recruits have joined the service long after 1968 and some of them might have even taken initial instructions from the petitioner-applicants. We are also conscious of the fact that candidates in service have a disadvantage as against the fresh candidates in the tests particularly when they face the tests after a long lapse of time. As against this, however, we cannot lose sight of the fact that the recruitment rules made under Article 309 of the Constitution have to be followed strictly and not in breach. If a disregard of the rules and the by-passing of the Public Service Commissions are permitted, it will open a back door for illegal recruitment without limit. In fact this Court has, of late, been witnessing a constant violation of the recruitment rules and a scant respect for the constitutional provisions requiring recruitment to the services through the Public Service Commission. It appears that since this Court has in some cases permitted regularisation of the irregularly recruited employees, some Government and authorities have been increasingly resorting to irregularly recruitments. The result has been that the recruitment rules and the Public Service Commissions have been kept in cold storage and candidates dictated by various considerations are being recruited as a matter of course. What is further, in the present case, some of those like the petitioner-applicants who were initially recruited on ad hoc basis, have exerted themselves and taken pains to appear for the tests before the UPSC and have enrolled themselves through regular channel unlike in Dr Rawani case. We have thus on hand three classes of employees as pointed out earlier, viz., the outside direct recruits, the in-service direct recruits and the ad hoc employees like the petitioner-applicants who were regularised through the Court's order. Further, Dr. Rawani case as has been pointed out on behalf of the respondents, pertains to the Central Government Health Services which has a larger component both at the initial and promotional stages. The course adopted by this Court to direct creation of supernumerary promotional posts at every higher

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promotional stage there, may not be feasible in the medical service in the Railways. The creation of supernumerary posts has its own limitations, both physical and financial. The burden of additional posts even when they are not necessary and cannot be accommodated, is not easy to carry. We are, therefore, of the view that the direction given in Dr. Rawani case has to be confined to the special fact of that case and cannot be extended to other cases. In any case, this Court should not give any such direction to the Railways. If, however, the Railways decide to follow that course, they can do so and nothing prevents them for doing it. We would rather refrain from creating a precedent by giving such directions."

17. In that view of the matter, we feel that the applicant cannot claim regularisation without the recommendation by the U.P.S.C. No doubt, certain submissions made by the applicant are appealable. We are not in a position to give the relief to the applicant because he has to be regularised only in accordance with the recommendations made by the U.P.S.C. It all depends upon the service records and past services of the applicant and his performance before the U.P.S.C.

18. The applicant submitted that he has put in nearly 23 years of service and he has been given promotions and also permitted to cross the Efficiency Bar. It is stated by the respondents that these benefits were conferred on the applicant because of the shortage of Doctors in the administration. When that is so, merely conferring these benefits on the applicant does not make him eligible for regularisation contrary to the Recruitment Rules. Hence, in that view of the matter, we feel that the applicant is not entitled to any of the reliefs claimed in the O.A. and the O.A. is liable to be dismissed. Even on the point of resjudicata, the O.A. is not maintainable.



19. For the above reasons, the O.A. is dismissed. No order as to costs.

(GOVINDAN S. TAMPI)
MEMBER (A)
os* 27/7/2007

B. S. JAI PARAMESHWAR
(B. S. JAI PARAMESHWAR)
MEMBER (J).