

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

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ORIGINAL APPLICATION : 242 of 1995.

Dated this Friday the 28<sup>th</sup> day of July, 2000.

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

Hon'ble Shri B. N. Bahadur, Member (A).

1. Dr. D. D. Kadam.
2. Dr. Mirza Wahab.
3. Dr. (Mrs.) Sujatha Khadilkar.
4. Dr. S. N. Wadhwa.
5. Dr. (Mrs.) S. K. Garg.
6. Dr. Ashok Patel.
7. Dr. (Mrs.) S. Thaiyalnayaki.
8. Dr. R. K. Jain.
9. Dr. P. M. Kuril.
10. Dr. (Mrs.) Anjali Maydeo.
11. Dr. (Mrs.) Smita Sinkar.
12. Dr. (Mrs.) Jyothi Murthy.
13. Dr. D. D. Tandel.
14. Dr. A. D. Ughade.
15. Dr. D. N. Moon.
16. Dr. M. A. Chandola.
17. Dr. (Mrs.) Alka Mahajan.
18. Dr. (Mrs.) V. S. Wadhwa.
19. Dr. C. R. Shivdikar.
20. Dr. (Mrs.) A. S. Ektate.
21. Dr. (Mrs.) M. A. Dhuri.
22. Dr. S. Tadvī.
23. Dr. (Mrs.) Neeta Joshi.
24. Dr. (Mrs.) J. S. Khandare.
25. Dr. (Mrs.) K. K. Kapadekar.

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26. Dr. R. S. Shedge.

27. Dr. (Mrs.) S. Jathar.

28. Dr. (Mrs.) Sunita Kshirsagar. ... Applicants.

(By Advocate Shri G. K. Masand).

**VERSUS**

1. Union of India through  
The Secretary in the  
Ministry of Health and  
Family Welfare,  
Nirman Bhavan,  
New Delhi.

2. Director General of Health Services,  
Nirman Bhavan, New Delhi.

3. Addl. Director,  
Central Govt. Health Scheme,  
(Directorate Of Health Services),  
United India Building,  
2nd floor, Sir P.M. Road,  
Fort, Bombay - 400 001.

... Respondents.

(By Advocate Shri V. D. Vadhavkar for  
Shri M. I. Sethna).

**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 Mr. V. D. Vadhavkar for Shri M. I. Sethna, the  
Learned Counsel for the respondents.

2. There are 28 applicants in this O.A. They were initially  
appointed as Medical Officers on monthly wages/on contract basis.  
Subsequently, they were taken over on ad hoc basis in Group 'A'  
post of the Central Health Service.

3. The applicants alongwith Dr. (Mrs.) Sujata Bhushan  
Khadilkar had approached this Tribunal in O.A. No. 619/88 for  
regularisation of their services. While the said application was

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pending, the Principal Bench of this Tribunal had considered the claim of the applicants therein who were similarly situated like the applicants in O.A. No. 619/88 and by its order dated 08.10.1991 had given certain directions to the respondents for regularisation of their services.

3. This Tribunal on 18.06.1992 considered the O.A. No. 619/88 and mostly relying on the observations made by the Principal Bench of this Tribunal in O.A. No. 1259/90 decided on 08.10.1991 issued certain directions to the respondents to regularise their service.

4. Para 20 of the order in O.A. No. 1259/90 is the relevant para. In that para certain directions were issued to the respondents to fix the seniority of the applicants.

5. The respondents being aggrieved by the directions given by this Tribunal, approached the Hon'ble Supreme Court in Civil Appeal No. 2867/93. The Hon'ble Supreme Court considered para 20 of the order passed in O.A. No. 1259/90 and made a slight modification which reads as under :

"The Learned Counsel for the appellents 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 fixation of seniority would be in accordance to 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 purpose of regularisation."

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6. Thereafter, the cases of the applicants for regularisation was considered by the U.P.S.C. The U.P.S.C. by its letter dated 21.09.1994 approved and recommended for regularisation of the applicants and others. On the basis of the recommendation of the U.P.S.C., the respondents issued order no. A-12026/6/93-CHS.I dated 27.09.1994. Their regularisation came into effect w.e.f. 21.09.1994.

7. The applicants mainly relied on the observations made by the Hon'ble Supreme Court in the case of Dr. P.P.C. Rawani & Others V/s. Union of India in Civil Appeal No. 3519/84. The said decision is reported in 1992 SCC (L&S) 309.

8. Their contention is that they are similarly placed like those of Dr. P.P.C. Rawani & Others and that the respondent authorities should have given seniority in accordance with the directions issued in that case.

9. Accordingly, they have filed this application for the following reliefs :

"(b) "To direct the respondents to maintain inter se seniority of applicants vis-a-vis Dr. P.P.C. Rawani & Ors. who are identically placed as applicants as both groups were initially appointed on adhoc basis.

(c) To maintain one single and common seniority list of all CHS/CGHS ad hoc doctors subsequently regularised by court orders and the applicants be included in this list, in accordance with their initial dates of appointment.

(d) In the alternative to prayer clause (b) and (c) this Hon'ble Tribunal be pleased to hold and declare that Applicants are entitled to count their services from the dates of their initial appointment on ad-hoc basis for the purpose of their regularisation as well as for being

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promoted to the post of Sr. Medical Officer and Chief Medical Officer and

(e)

To direct the respondents by a mandatory order to count the services of the applicants rendered on ad hoc basis more particularly given in the Schedule (Ex.B) for the purpose of further promotion to the post of Sr. Medical Officer and Chief Medical Officer."

10. While contending for the reliefs stated above, they submit that earlier on the basis of the decision of the Hon'ble Supreme Court in the case of Dr. P.P.C. Rawani & Others, the respondents issued the letter dated 07.05.1992 wherein the cases of 215 Doctors were considered and regularised. They submit that in that case certain Doctors who were appointed on ad hoc basis or on monthly wages subsequent to the applicants, were given seniority above the applicants. This could not have been done. They have cited the names appearing at sl. nos. 211 to 215. Further, the letter dated 07.05.1992 is at exhibit 'E' page 34 to the O.A. The annexures to the said letter is at page 38 to 44. The note below reads as under :

"NOTE : The seniority will be subject to adjustment after information about other Medical Officers due for ante-dated appointment as Group 'A' Medical Officer is received and incorporated."

11. Thus they submit that their seniority must be fixed in accordance with the principles laid down by the Hon'ble Supreme Court in the case of Dr. P.P.C. Rawani & Others.

12. The respondents have filed a written statement. It is submitted that the case of the applicants were considered by the U.P.S.C. in its letter dated 21.09.1994 approved and recommended for regularisation of the services of the applicant and accordingly, the letter dated 27.09.1994 has been issued. The

date of seniority will be on the basis of <sup>the</sup> recommendations made by the U.P.S.C. They submit that the matter of seniority of the applicants have already been decided by the Hon'ble Supreme Court in its direction given on 03.05.1993 which clearly stated that fixation of seniority should be modified to mean that "fixation of seniority would be in accordance to the extant rules." That it is <sup>the</sup> ~~a~~ general principle of seniority, be it a case of direct recruitment or promotion. That the persons appointed as the result of earlier selection are senior to those appointed as a result of subsequent selection. Their claim for giving seniority inter se on par with Dr. P.P.C. Rawani & Others is erroneous. Further, their claim for preparing a single and common seniority list of all C.H.S. ad-hoc Doctors, subsequently regularised, is also not practicable. They further submit that the category to which Dr. P.P.C. Rawani and others belonged and the category of the applicants are entirely different. Dr. P.P.C. Rawani & Others were initially regularised in Group 'A' or in Group 'B' Services while the applicants were initially appointed on monthly wages <sup>or</sup> on contract basis and were subsequently taken over on ad-hoc basis in Group 'A' post. This was done as per the directions of the Hon'ble Supreme Court in the case of Dr. Sangitha Narang & Others. The ~~direction~~ <sup>doctors</sup> covered in the case of Dr. P.P.C. Rawani & Others had been regularised in their service in Group 'B' or Group 'A' much earlier to 29.10.1991 i.e. the date of the judgement of the Hon'ble Supreme Court in the case of Dr. P.P.C. Rawani & Others, while the applicants were still working on adhoc basis on that date. Further, the Hon'ble Supreme Court clarified subsequently in the case of Dr. Haque & others that the judgement in Dr. P.P.C. Rawani & Others had to be confined to the special facts of that case and cannot be extended to other cases. They

have produced a copy of the judgement of the Hon'ble Supreme Court in the case of Dr. Haque & Others V/s. Union of India, Exhibit-1 to the written statement. In that case the Hon'ble Supreme Court asserted that a single and common seniority list of all CHS Medical Officers/Ad-hoc Medical Officers who have been regularised subsequently cannot be maintained, as their regularisation of service have been done in different circumstances and under different court orders (exhibit 2 to the written statement).

13. Dr. (Mrs.) Sujatha Khadilkar and the present applicants had filed a contempt application for proceedings against the respondents for non-implementation of the directions. When the Tribunal noticed that the respondents had regularised their services by order dated 27.09.1994, the Tribunal did not proceed further in the contempt proceedings. After issue of the letter dated 27.09.1994 the Tribunal discharged the respondents from the contempt proceedings. In this background, the matter has already been considered by the Tribunal and the Hon'ble Supreme Court and there is no fresh cause of action for the applicants to file this application.

14. As regards the case of Dr. (Kum.) Suman Shrivastava, found at sl. No. 213 in letter dated 07.05.1992, they submit that the said Doctor was initially appointed on ad-hoc basis w.e.f. 03.04.1972. When the Doctor made a representation to that effect, her appointment on regular basis in Group 'A' as per the judgement in Dr. P.P.C. Rawani's case was made w.e.f. 01.01.1973. The Hon'ble Supreme Court in its order dated 03.05.1993 has clearly stated to maintain the seniority in accordance with the

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extant rules. That means, the applicant~~y~~ can claim to have been regularly appointed in the Central Health Service only from the date of recommendations made by the U.P.S.C. Their seniority can be reckoned from the date of their initial appointment on ad hoc basis as Medical Officers, after condoning the technical breaks in their ad hoc service by the direction that the seniority will be in accordance with the extant rules. The applicant~~y~~ cannot compare themselves with those of Dr. P.P.C. Rawani & Others. They rely upon the observations made by the Hon'ble Supreme Court in the case of Dr. M. A. Haque V/s. Union of India & Others in para 6. Further, they submit that the applicants have been getting the pay scale and annual increments on par with the regular Medical Officers from the date of their initial appointment on monthly basis/contract basis. Even the applicants are entitled to time bound promotion to the post of SMOs and CMOs after completion of the requisite number of years of service on regular basis. However, their regularisation takes effect from 21.09.1994, on which date the U.P.S.C. recommended the regularisation of the applicants in the Central Health Services. Thus, they pray for the dismissal of the O.A.

15. After hearing the Learned Counsel for the parties, the following points arise for consideration :

- (i) Whether the applicants can compare themselves with those of Dr. P.P.C. Rawani & Others who were parties in the case reported in 1992 SCC (L&S) 309 ?
- (ii) What is the effect of the order dated 03.05.1993 ?
- (iii) Whether the applicants can claim regularisation earlier to 21.09.1994 ?





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16. Our findings :

- (i) The applicants cannot compare themselves with those of Dr. P.P.C. Rawani & Others.
- (ii) The effect of the order dated 03.05.1993 is that the date <sup>by the U.P.S.C.</sup> of regularisation determines the ~~date of~~ seniority.
- (iii) The applicants cannot claim seniority earlier to 21.09.1994.

17. Reasons :

(i) In the first instance, the applicants attempt to get seniority benefits on par with Dr. P. P. C. Rawani & others and those who were parties in the Civil Appeal No. 3519 of 1984. We have gone through the decision in the case of Dr. P.P.C. Rawani & Others. They rely upon para 6 of the directions given by the Hon'ble Supreme Court, which is reproduced below :

"(6) Apart from the appellants there are certain doctors who fall in the same category but who had not filed writ petitions before the High Court. They have filed directly writ petitions before this Court bearing Nos. 2620-2659 of 1985 and intervention applications. The intervention applications are allowed and rule nisi is issued in the writ petitions of which the other parties take notice. These interveners and writ petitioners have to be granted the same relief as the appellants. It is made clear that all these applicants and petitioners will be entitled to the same relief as the appellants for all purposes of seniority and promotion. All monetary claims on account of revision of scales, regularisation or promotion till October 31, 1991 are given up by these applicants and petitioners as well."

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Thus, the Learned Counsel for the applicant submits that at the time when decision in the case of Dr. P.P.C. Rawani & others was delivered, the applicants were agitating their rights before this Tribunal. Therefore, they must be compared with those of Dr. P.P.C. Rawani & Others. It is his contention that at that time the applicants alongwith Dr. (Mrs.) Sujatha Khadilkar were agitating their rights for regularisation and seniority in O.A. No. 619/88. When that is so, they cannot be discriminated in the matter of seniority. In the case of M.A. Haque & Others V/s. Union of India & Others reported in 1993 SCC (L&S) 412 the Hon'ble Supreme Court considered the effect of the directions given in the case of Dr. P.P.C. Rawani & others 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

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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 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."

From the above observations it is clear that the directions given in the case of Dr. P.P.C. Rawani & Others must be confined only to that case and cannot be extended to other cases. When that is so and when that is the view expressed by the Hon'ble Supreme Court, we feel that the applicants cannot compare their services on par with Dr. P.P.C. Rawani & Others. Hence we hold point no. (i) against the applicants.

(ii) The Supreme Court in the matter concerned to the applicants, i.e. in the matter arising out of O.A. No. 619/88 had clarified the paragraph 20 of the order dated 08.10.1991 in O.A. no. 1259/90 of the Principal Bench of this Tribunal. The clarification given by the Hon'ble Supreme Court is extracted above. The Hon'ble Supreme Court was specific and clear to state that the seniority shall be considered as per the extant rules.

When that is so and when the applicants themselves obtained such an order from the Apex Court, it is not open to them to now contend that they can be given other seniority only on the ground that when their application was pending in this Tribunal on the date when the Hon'ble Supreme Court decided the case of Dr. P. P. C. Rawani & Others. The applicants are bound by the decision given by the Hon'ble Supreme Court in its order dated 03.05.1993. If really they were eligible for claiming seniority on par with Dr. P.P.C. Rawani & others, they should have agitated that matter before the Supreme Court on 03.05.1993 when the Supreme Court gave a specific direction that seniority must be in accordance with the extant rules. It is not now open to them to contend that they are now to be compared with that of Dr. P.P.C. Rawan & others while granting them seniority. The Hon'ble Supreme Court in the case of Union of India & Others V/s. H.B. Mahajan 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."

Further, in the case of M. A. Haque & Others V/s. Union of India & Others it is made clear that the direction given in the case of

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Dr. P.P.C. Rawani & Others must be confined to that case only and cannot be extended to other cases. In that view of the matter, the order dated 03.05.1993 of the Hon'ble Supreme Court in Civil Appeal No. 2867/93 clearly governs the case of the applicant. They are to be granted seniority only on the basis of their regularisation made. That means, only from the date of recommendation of their case for regularisation by the U.P.S.C. i.e. from 21.09.1994.

18. The applicants were regularised by the letter dated 27.09.1994 with effect from 21.09.1994. The U.P.S.C. recommended their case only on 21.09.1994. The Annexure to the letter dated 27.09.1994 consists the names of 162 Doctors.

19. After issue of this letter dated 27.09.1994, some of the Doctors who are regularised by the said order, had approached the Hon'ble Supreme Court in Writ Petition No. (C) 661/95 which was decided on 05.05.1998. The observations made by the Hon'ble Supreme Court are as under :

"Thereupon, the matter of regularisation of the petitioners was forwarded to the Union Public Service Commission (UPSC) and the UPSC by their letter dated September 21, 1994 intimated that the petitioners were found fit for regularisation as Medical Officers. On the basis of the said letter received from the UPSC, by order dated September 27, 1994 the petitioners were regularised as Medical Officer in the Central Health Service with effect from September 21, 1994.

The Petitioners thereafter filed this writ petition wherein they have prayed that they should be treated as holding their respective posts regularly from the respective dates of their initial appointment which now stands regularised by UPSC and they should be granted seniority with consequential benefits such as promotion to higher grade. In other words, the petitioners are seeking their regularisation initially on ad hoc basis and are claiming that the period of their ad hoc service as well as the

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period during which they continued in service on the basis of the interim order passed by the Tribunal should be taken into account as regular service for the purpose of seniority. This claim of the petitioners is in no way different from the relief which the Tribunal has given to them under the direction contained in paragraph 20(2) of the judgement dated October 8, 1991, which direction has been modified by this Court by order dated May 3, 1993 whereby it was directed that the fixation of seniority of the petitioners would be in accordance with the extant rules. In view of the aforesaid direction given by this Court under the order dated May 3, 1993 the petitioners cannot claim that the period of their ad hoc service should be taken into account for the purpose of seniority. Their seniority has to be fixed in accordance with the rules governing such fixation of seniority.

Ms. Shyamla Pappu, the Learned Senior Counsel appearing for the petitioners has not been able to show us any rule on the basis of which the Petitioner could count the period of their ad hoc service for the purpose of seniority. Having regard to the fact that the matter of the petitioners was considered by the U.P.S.C. for the purpose of regularisation only in 1994 and, as per the letter of U.P.S.C. dated September 21, 1994 they were found fit for regularisation by the UPSC, they have been regularised by order dated September 27, 1994 with effect from September 21, 1994, their seniority has to be fixed on the basis that they were regularly appointed with effect from September 21, 1994. They cannot claim that their seniority should be fixed by taking into account their ad hoc service prior to the date of their regularisation."

20. When the Hon'ble Supreme Court considered the letter dated 27.09.1994 and also considered the plea of the Doctors therein for considering their ad hoc service for purpose of seniority and turned down their plea in Writ Petition No. (C) 661/95, in our humble opinion, the applicants are not in a better position to claim the relief which has been rejected by the Hon'ble Supreme Court. In fact, at the commencement of the hearing of the arguments, the Learned Counsel for the respondents produced a copy of the said letter and the Learned Counsel for the applicant, after considering the decision, gave a comparative

statement indicating the regularisation of service of Dr. S. C. Mishra, in Central Health Services. The Learned Counsel for the applicant, attempted to contend that the decision dated 05.09.1998 are not applicable. The facts are quite different. It is his contention that the appellants therein were working during the strike period in Delhi Health Service. In that view of the matter, their cases cannot be compared with the case of the applicants. He contends that the applicants were continuously working on ad hoc basis from a longer period than those some of the Doctors who were regularised by order dated 07.05.1992.

21. Regularisation of medical services has to be done only by the recommendations of the U.P.S.C. In the absence of the recommendations by the U.P.S.C., no ad hoc Medical Officer can be regularised on a regular basis. When that is so, the recommendations made by the U.P.S.C. plays an important role. In our humble opinion, the date of recommendation made by the U.P.S.C. determines the seniority. It may be possible that some of the Doctors who were engaged on ad hoc basis subsequent to the applicant, might have been recommended by the U.P.S.C. As stated above, the seniority must be determined in accordance with the extant rules. When that is so, the recommendations made by the U.P.S.C. has to be taken into consideration as a determining factor for the purpose of seniority.

22. Further, the respondents in their reply have categorically stated that the applicants are getting benefits of pay, increments and other benefits on the basis of their initial appointment. It is only their seniority that has to be



considered. The applicants were regularised only after 21.09.1994. The applicants cannot claim seniority contrary to the rules. As already observed, the applicants are parties to the orders dated 03.05.1993 passed by the Hon'ble Supreme Court. When that is so, they cannot now turn back and claim seniority from an earlier date than 21.09.1994. In that view of the matter and having considered the effect of the decision of the Hon'ble Supreme Court in the case of M. A. Haque & Others V/s. Union of India & others, we are of the opinion that the applicants cannot claim seniority on par with Dr. P.P.C. Rawani & others.

23. Both the parties have relied upon certain other decisions also in support of their claims. In fact, the Learned Counsel for the respondents produced a copy of the writ petition No. (C) 661/95, which was decided on 05.05.1998.

24. Having regard to the contentions advanced and also to the latest decisions of the Hon'ble Supreme Court, we are of the humble opinion that the applicants cannot claim seniority earlier to 21.09.1994.

25. In that view of the matter, we find no merit in this O.A. and the O.A. is liable to be dismissed.

26. Accordingly, the O.A. is dismissed. No order as to costs.



(B. N. BAHADUR)

MEMBER (A).



(B. S. JAI PARAMESHWAR)

28/7/2000  
MEMBER (J).



CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

R.P.No.48/2000 in OA.NO.242/95

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Dated this the 31<sup>st</sup> day of January 2002.

CORAM : Hon'ble Shri B.N.Bahadur, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

Dr.D.D.Kadam & Ors.

...Applicants

By Advocate Shri G.K.Masand

vs.

Union of India & Ors.

...Respondents

By Advocate Shri V.D.Vadhavkar  
for Shri M.I.Sethna

TRIBUNAL'S ORDER

{Per : Shri S.L.Jain, Member (J)}

The applicants in OA.No.242/95 have filed this Review Petition in respect of an order passed by the Bench (consisting of Hon'ble Shri B.S.Jai Parameshwar, Member (J) and Hon'ble Shri B.N.Bahadur, Member (A) on 28.7.2000 dismissing the OA.

2. One of the applicants Dr.(Mrs.) Sujata Bhushan Khadilkar in OA.NO.242/95 along with others filed OA.NO.619/88 before this Bench which was decided on 18.6.1992. The operative part of the order is as under :-

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" We need not repeat the order passed by the Central Administrative Tribunal (Principal Bench) Suffice it to say that paragraph 20 of the order of the Tribunal shall form part of this order and the respondents shall carry out the directions as contained in paragraph 20 of the said judgement (OA.NO.1259/90 etc.)

Learned counsel for the respondents submits that the directions No.(ii) as contained in para 20 of the central Administrative Tribunal runs counter to the judgement of the Supreme Court in the case of Union of India vs. Prof.S.K. Sharma, Supreme Court Cases Weekly, 1992, page No.1750. We may note that the applicants before us are similarly situated as the applicants who were before the Central Administrative tribunal. Both the sets of applicants are Doctors employed under the Central Health Service. Both the sets have been working since long on short term appointments. Both the sets are being treated as adhoc appointees. We, therefore, consider it just and proper that the two sets should be kept at par with each other. We are, therefore, refraining from expressing any opinion as to whether S.K.Sharma's case supra is apposite.

This application is allowed with the direction that the respondents shall comply with the directions of the Central Administrative Tribunal as contained in paragraph 20 of the order of that Tribunal dated 8.10.1991.

Para : 20 of Judgement in O.A.No.1259 of 1990

20. The applications are, therefore, allowed and disposed of with the following orders and directions :-

(i) The respondents are directed to refer the cases of the applicants and those similarly situated to the Union Public Service Commission for the purpose of regularisation of their services as Medical Officers. They should be treated as forming a separate block for the purpose of regularisation. Regularisation should be based on the evaluation of work and service records of the applicants and those similarly situated. The respondents shall do the needful in the matter within a period of four months from the date of receipt of this order.

(ii) After the services of the applicants are regularised through the Union Public Service Commission, their seniority shall be reckoned from the dates of their initial appointment on adhoc basis as Medical Officers, after condoning the technical breaks in their ad hoc service.

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The service rendered by them during the period of operation of the stay order passed by the Tribunal shall also count as service for the purpose of regularisation.

(iii) After regularisation of the services of the applicants as indicated in (i) and (ii) above, the respondents will be at liberty to post the applicants as Medical Officers at places where vacancies exist. Till they are so regularised, the respondents are directed to accommodate the applicants at their present places of postings in the Hospitals at Delhi. The interim orders already passed in these cases are hereby made absolute.

(iv) Till the applicants are so regularised, they would be entitled to the same pay scales, allowances and benefits of leave, increments etc. and other benefits of service conditions as are admissible to regularly appointed Medical Officers. In the facts and circumstances, we do not direct the respondents to pay them arrears of pay and allowances for the post period.

(v) There will be no order as to costs."

3. The respondents preferred the Civil Appeal No.2867/93 which was decided by the Apex Court of the Land on 3.5.1993. The operative part of the order is as under :-

"The only direction which we propose to modify is in regard to the fixation of seniority in paragraph 20(2) of the impugned judgement 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 appointments on adhoc basis as Medical Officers after condoning the technical breaks in their adhco services, the services 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

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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 fixation of seniority would be in accordance to 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 purpose 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."

4. Thereafter, the applicants filed the C.P. which was decided by this Tribunal dismissing the same. While C.P. was pending, the impugned order (Annexure-'A' OA. page 18 to 23) was passed. The grievance of the applicants relates to the date of regularisation which is fixed on 21.9.1994 while the applicants were engaged long back on monthly basis. Thereafter, they were made adhoc. In pursuance of the order of this Bench which was modified by the Apex Court, the impugned order was passed.

5. On perusal of the grounds of Review which are enumerated in para 16 (a) to (i), we find that the applicants' grievance is that the order of the Tribunal was not interfered with by the Apex Court relating to the directions that it has formed a separate block for the purpose of regularisation and that regularisation should be based on the evaluation of the work and

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service record of the applicants and those similarly situated, the respondents failed to treat the applicants as forming a separate block in the same manner as they had treated earlier batch of the applicants, namely, Dr.P.P.C. Rawani & Ors. Though this fact was very much highlighted at the time of hearing, this aspect of the matter has not at all been considered by this Tribunal. In Contempt Petition filed by the applicants in respect of OA.NO.619/88 which was in respect of non implementation of the earlier order, impugned order dated 27.9.1994 which was issued during the pendency of the said Contempt Petition, has been missed by the Tribunal and unintended weightage has been given to the dismissal of the contempt petition. There exists a right to challenge the seniority order to the extant rules which includes a proper challenge to the legality and/or constitutional validity of the extant rules. Some of the Doctors at Sr.No.212,213,214 & 215 of order dated 7.5.1992 (Ex.'E' to the OA.) were not the parties to the case filed by Dr.P.P.C. Rawani & Ors. and even though some of them had been appointed much after the appointment of the applicants, they had been given the benefit of the dates of their initial appointment for the purpose of regularisation and seniority. The Tribunal has missed the said fact. In Rawani's case, the Supreme Court themselves fixed this date from the date of their initial appointment or 1.1.1973 whichever is later. As per service jurisprudence, a person is appointed on a regular basis on the date he joins the post. The applicants had been appointed long

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back then 21.9.1994. The decision of the UPSC to regularise the services of the applicants from 21.9.1994 is arbitrary, discriminatory without a notice to the affected parties, as such illegal, untenable and requires reconsideration. The Tribunal has erred in relying the case of Dr.Haque vs. Union of India & Ors. and failed to appreciate that the said judgement pertains to the Railways and the Apex Court itself had stated that the order passed in the case of Dr.P.P.C.Rawani could not be applied to the Railways. The case of the applicants pertains to the same Central Government Health Scheme to which Dr.P.P.C. Rawani belongs and also similarly placed like those Doctors in the case of Dr.P.P.C.Rawani & Ors.

The case of Chandrakishore & Ors. vs. State of Manipur was not at all considered by the Tribunal. The case of Union of India vs. Dr.H.B.Mahajan was relied on without going into the facts of the said case, which has no bearing in the present case. The applicants who were similarly placed to Dr.P.P.C.Rawani & Ors. belonged to the same Central Government Health Scheme, their appointment being in the same manner and regularisation through the UPSC, through the intervention of the Tribunal were not similarly treated resulting failure of justice. Hence, this Review Petition.

6. The respondents have resisted the claim of the applicants and prayed for dismissal of the Review Petition.

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7. After hearing the parties, the first point which is worth mentioning is that the underlined of the object of the provisions of review is neither to give a Court to write a second judgement not giving a second inning to a party who has lost the case. Therefore, utmost care ought to have exercised by the Court in granting the review.

8. The grounds of review which are mentioned under order Rule 47 (i) CPC, (1) Discovery of new and important matter or evidence, (2) error apparent on record, discovery of new and important matter or evidence, (3) Any other sufficient reason. Regarding discovery of new and important matter or evidence, on perusal of the grounds stated above, the applicant has not come to this Tribunal. The applicants' case is based on ground- error apparent on record. What is an error apparent on the face of record is cannot be defined preciously or exhaustively and it should be determined on the facts of the each case. Such error may be one of fact or law. However, no error can be said to be an error if it is not self-evident and requires an examination or argument to establish it. In other words, an error cannot be said to be apparent on the face of the record where one has to travel beyond the record to see if the judgement is correct or not.

9. An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of record. In Thungabhadra Industries Pvt. Ltd. vs. Govt. of A.P., the Supreme Court has observed as under :-

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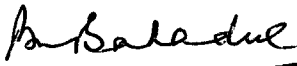
" A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out".

Keeping in view the said principle in mind, the claim of the applicants that the order passed by this Tribunal is erroneous and it deserves to be corrected is to be decided. As only apparent error can be corrected which are within the ambit of review and erroroneous decision which have been arrived at by the Tribunal after considering the arguments not agreeing with the contention of the applicants cannot be corrected in the review.

10. In AIR 1979 SC 1047 and AIR 1972 (Gujarat) 227, it has been held that an erroneous decision on merits cannot be said to be an error apparent on the face of the record. Similarly in AIR 1972 SC 1621 referred above Thungabhadra Industries Pvt. Ltd. vs. Govt. of A.P., an erroneous view of law cannot also be treated a ground for review. As such, the claim of the applicants that the order (dated 28.7.2000) deserves to be reviewed on the grounds mentioned in the review petition deserves to be rejected. In the result, review is dismissed with no order as to costs.

  
(S.L.JAIN)  
MEMBER (J)

mrj.

  
(B.N.BAHADUR)  
MEMBER (A')