

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1047/97

29.7.99
Date of Decision:

Dr.K.C.Bajaj

Applicant.

Applicant in person

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri Suresh Kumar


Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri. D.S.Baweja, Member (A)

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


(D.S.BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

DA.NO. 1047/97

Dated this the 29th day of July, 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member (A)

Dr.K.C.Bajaj,
Retired Joint Director,
(H&TW) Railway Board,
New Delhi, residing at
22/26, Amarjyoti,
Four Bungalows, Andheri(W),
Mumbai.

... Applicant

Applicant in person

V/S.

Union of India through
Chairman, Railway Board,
Rail Bhavan, New Delhi.

... Respondents

By Advocate Shri Suresh Kumar

O R D E R

(Per: Shri D.S.Baweja, Member (A))

This application has been filed by the applicant claiming payment of arrears of pay and allowance and post retirement monetary benefits consequent upon his promotion to the Junior Administrative Grade as allowed by the Railway Board w.e.f. 21.4.1978 on notional basis as per order dated 2.4.1996. As an alternative, without prejudice to the main relief, the applicant has also prayed for retrospective benefits of arrears of pay.

Q

and allowances etc. w.e.f. 26.8.1975 when he was actually due for promotion on the basis of his revised seniority.

2. The applicant joined Indian Railway Medical Service as Assistant Surgeon in 1951. He was promoted as Divisional Medical Officer in 1967 and thereafter promoted to Junior Administrative Grade as per order dated 14.4.1981 w.e.f. 4.12.1979. The applicant submits that a number of Divisional Medical Officers in senior scale were directly recruited through UPSC. These directly recruited Divisional Medical Officers were erroneously given seniority over the promotee Divisional Medical Officers by wrong application of quota rule on rotational basis. The issue of seniority of the promotees vis-a-vis direct recruits was agitated before the Hon'ble Supreme Court through Civil Writ Petition No. 8353/81 challenging seniority list dated 22.11.1979. This Writ Petition was decided by Hon'ble Supreme Court as per order dated 29.7.1985 quashing the seniority list dated 22.11.1979 and the appointments made to the post of Medical Superintendent based on this seniority list. It was further directed to the Railway administration to draw a fresh seniority list of Divisional Medical Officer in accordance with the principles laid down in the judgement and make fresh appointments from among the Divisional Medical Officers to the post of Medical Superintendent. Based on this ^{revised} judgement, the Railway administration issued a ^{revised} seniority list and gave retrospective promotions to the promotee Divisional Medical Officers who were still in service.

However, those who had already retired were not given any benefit. The retired Divisional Medical Officers who were adversely affected by non-implementation of the judgement by the Railway Ministry agitated the matter before Hon'ble Supreme Court through Civil Misc. Petition No. 2211/88. The Hon'ble Supreme Court allowed this petition as per order dated 29.8.1989 ^{as per the} laying down that/direction issued in the judgement dated 29.7.1985, the seniority list is to be revised irrespective of the fact that some persons mentioned therein have since retired. The applicant along with other promotee Divisional Medical Officers who were similarly situated approach Railway Board for implementation of the Supreme Court order dated 29.8.1989 but did not get any response. One of the promotee Divisional Medical Officer Dr. Nand Lal Chatterjee filed a Civil Misc. Petition before Calcutta High Court which was subsequently transferred to Calcutta Bench of the Tribunal and numbered as TA.NO.2052/86 seeking the relief of directing the Railway Board for implementation of the Supreme Court judgement and grant of arrears of pay and allowances etc. retrospectively based on the revised seniority list and promotion to the post of Medical Superintendent. This application was allowed by Calcutta Bench as per order dated 28.2.1990. The applicant further submits that some of the retired Divisional Medical Officers had filed a contempt petition before the Hon'ble Supreme Court for non-implementation

(v)

of the judgements dated 29.7.1985 and 29.8.1989. However, this contempt petition was withdrawn in view of the fact that the Calcutta Bench of the Tribunal had already given direction to Railway Board for implementation of the Supreme Court judgement in the case of Dr. N.L. Chatterjee. The applicant and the other similarly placed Divisional Medical Officers expected that Railway Board will grant the same benefits as allowed to Dr. N.L. Chatterjee as they are similarly placed. The Railway Board took a long time and finally issued orders promoting the applicant along with other promotee Divisional Medical Officers as per order dated 2.4.1996 making the promotion of the applicant in Junior Administrative Grade effective from 21.4.1978 on notional basis with the stipulation that payment of arrears shall not be admissible as the Divisional Medical Officers have not actually worked in ^{Administrative} grade. The applicant has filed the present OA. on 14.8.1997 feeling aggrieved by the order of the Railway Board due to non payment of arrears of the pay and allowances for retrospective promotion from 21.4.1978.

3. The applicant has advanced the following grounds in support of his prayer for the reliefs detailed above :- (a) The judgement of the Hon'ble Supreme Court dated 29.7.1985 cannot be applied discriminately in respect of promotees who had retired by denial of payment of arrears when the

other promotee Divisional Medical Officers in service have been allowed benefit of arrears for retrospective promotion. (b) The applicant is similarly situated as Dr.N.L.Chatterjee, the applicant in TA.NO. 2052/86 before the Calcutta Bench and therefore entitled for the benefits as allowed as per order dated 28.2.1990. (c) There is no higher responsibility attached to the post of Medical Superintendent, i.e. in Junior Administrative Divisional Grade as the post of Medical Officer and Medical Superintendent are interchangeable and down grading and up grading of posts is being done without any consideration of change of responsibility.(d) The applicant has also sought the relief of financial benefits retrospectively from 26.6.1975 alleging that Dr. Sukur Kumar Bose and Dr.V.D.Mathur were promoted from this date to Junior Administrative Grade and these two doctors were junior to the applicant according to the revised seniority list.

4. The respondents have contested the application through the written statement filed by the Ministry of Railways on several counts. The respondents have submitted that in the judgement of Hon'ble Supreme Court in the case of Dr.D.K.Mitra & Ors. in Civil Writ Petition No. 8353/81, the Hon'ble Supreme Court has only directed the respondents to prepare revised seniority list and order fresh promotions based on the revised seniority but has not given any direction with regard to grant of

consequential benefits. The respondents have further submitted that Dr.D.K.Mitra along with other 5 doctors which included the applicant had filed OA.NO. 454/91 before the Calcutta Bench of the Tribunal alleging non-implementation of the judgement of the Hon'ble Supreme Court dated 1.7.1985 in Civil Writ Petition No. 8353/81 and order dated 29.8.1989 in Civil Misc. Petition No. 2211/88 and non extension of the benefits arising out of the order of Calcutta Bench dated 28.2.1990 in TA.NO. 2052/86. The applicants in this OA. had also sought seniority above Dr. J.Bhat who had joined service on 2.7.1973 as ^adirect recruit in the post of Divisional Medical Officer. The respondents submit that this OA. was dismissed by the Bench as per order dated 11.8.1993 and the prayer for implementation of judgement of Hon'ble Supreme Court and extending benefits in order of Dr. N.L.Chatterjee were not allowed. The respondents further add that the applicant has wilfully and consciously suppressed this fact while filing the present OA. and therefore the present OA. deserves to be dismissed on this count alone. The respondents further add that the reliefs prayed for through the present OA. are the same and the identical pleadings have been advanced and therefore the present OA. deserves to be dismissed as principle of res-judicata is attracted. The respondents have also opposed the

(V)

present application on the plea that plural reliefs have been sought through the present OA. which is not permissible under Rule 10 of Central 1993 Procedure Rules of Administrative Tribunals Act, 1985.

5. The applicant has filed rejoinder reply. The applicant while controverting the submissions of the respondents in the written statement has contended that though the Hon'ble Supreme Court in its judgement dated 1.7.1985 has not specifically granted the relief of consequential benefits but the consequential benefits including the arrears of pay and allowances are implied in the judgement when the promotions have to be done again based on the revised seniority list. The applicant has also taken a stand that the issue agitated before the Calcutta Bench in OA.NO. 454/91 was not the same as raised by him in the present OA. In the present OA. he is seeking relief of arrears of pay and allowances instead of notional promotion. The applicant therefore pleads that he has not wilfully held back the details of the OA. filed by him before the Calcutta Bench. He has also averred that the Calcutta Bench in its order dated 28.2.1990 has not given any findings but has only stated that no interference is called for. The applicant has strongly pleaded through the rejoinder reply that the present application is not hit by the principles of res-judicata and therefore deserves to be decided on merits.

As regards the multiple reliefs, the applicant has contested the stand of the respondents that the relief of retrospective promotion has only sought as an alternative relief which is also sought in the judgement of the Hon'ble Supreme Court according to which the seniority list is to be revised.

6. We have heard the arguments of the applicant who has appeared in person and Shri Suresh Kumar, learned counsel for the respondents.

7. As detailed above, the respondents have opposed the application pleading that the same is not maintainable on several grounds. We will deliberate on these grounds before examining the merits in the reliefs prayed for.

8. The first ground is that the application is hit by principle of res-judicata as the same matter had been earlier agitated through OA.NO.454/91 before Calcutta Bench of the Tribunal praying for the same reliefs and ^{with} similar pleadings. The applicant however has contested this advancing the argument that the matter under challenge in the present OA. is distinct from what has been challenged through OA.No. 454/91 and therefore the present OA. does not attract the principle of res-judicata. The applicant has submitted that in the present OA. he has only sought the relief of payment of arrears of pay and allowances for retrospective promotion as allowed by the Railway Board as per

order dated 2.4.1996 in compliance with the judgement of the Hon'ble Supreme Court which directed to revise the seniority list of Divisional Medical Officers. Keeping these rival contentions in view, we have carefully gone through the present OA., OA.NO. 454/91 (copy made available by the applicant during the hearing) and the order of the Calcutta Bench dated 11.8.1993. We have no hesitation to conclude that the contention of the respondents has force and the present OA. attracts the principles of res-judicata. On going through OA.NO.454/91, we note that the applicant with others had sought the relief of the benefit of the order dated 28.2.1990 in TA.NO. 2052/86. The pleadings made in this OA. are based on the judgements of the Hon'ble Supreme Court in Civil Writ Petition No. 8353/81 and Civil Misc. Petition No. 2211/88. The relief prayed for was the promotion in the Junior Administrative Grade based on the revised seniority list to be framed as per the directions of the Hon'ble Supreme Court and then allow the promotion based on the revised seniority list with consequential benefits. In the present OA., the pleadings are more or less the same. The same judgements of the Hon'ble Supreme Court have been relied upon and the benefits as allowed in the case of TA.NO. 2052/86 are sought to be prayed for. Though the relief prayed for is with reference to the Railway

Board order dated 2.4.1996, as per which promotion to the applicant along with others has been granted retrospectively based on the revised seniority list as per the directions of the Hon'ble Supreme Court but it is in fact the same prayer as made earlier in the OA.NO. 454/91. The main prayer with regard to retrospective promotion though has been allowed by the Railway Board, the consequential benefits have not been allowed. The applicant had prayed for consequential benefits also along with retrospective promotion through OA. NO. 454/91. As stated earlier, OA.NO. 454/91 was dismissed by the Calcutta Bench. On going through the order dated 11.8.1993, we note that the Bench had gone into the contention of the applicant with reference to the judgements of the Hon'ble Supreme Court in the case of Civil Writ Petition No. 8353/81, Civil Misc. Petition No. 2211/88 and the earlier order of the same Bench of the Tribunal in case of N.L.Chatterjee in TA.NO. 2052/86 but did not find merit in ^{the same.} the Bench had not allowed the prayer on the ground that the same is barred by limitation and also on the fact that no such relief of arrears of pay had been allowed in the order of the Hon'ble Supreme Court in Civil Writ Petition No. 8353/81. Even though the Railway Board has now allowed the retrospective promotion based on the revised seniority list, the matter cannot be agitated for legal remedy

by the applicant for the payment of arrears when the relief of promotion retrospectively based on the judgements of the Hon'ble Supreme Court and Calcutta Bench in case of N.L.Chatterjee itself had been rejected earlier and prayer for payment of arrears was a part of relief prayed for in earlier OA.NO. 454/91. We are, therefore, unable to appreciate the contention of the applicant that the present OA. only challenging the Railway Board order dated 2.4.1996 in respect of not allowing the payment of arrears for retrospective promotion is distinct from OA.NO. 454/91. In the light of these observations, we are of the considered view that the present OA. is not maintainable as the principle of res-judicata is attracted.

9. On merits, the applicant has argued that he is entitled for the payment of arrears citing judgements of Hon'ble Supreme Court in the case of Narender Chadha & Ors. vs. Union of India & Ors. 1986 (2) SCC 157 and order of the Tribunal in the case of S.R.Raju vs. Director General, All India Radio & Ors., 1998 (37) ATC 268. The counsel for the respondents, on the other hand, ^{has} contested the claim of the applicant stating that the applicant is not entitled for the payment of arrears for retrospective promotion as this is a policy issue decided by the respondents. The counsel for the respondents relied upon the judgement of Hon'ble

Supreme Court in the case of State of Hayrana & Ors. vs. Rai Chand Jain & Ors., 1997(5) SCC 167. Since we have already held earlier that the present OA. is not maintainable on account of being hit by principle of res-judicate, we desist to consider the above referred judgements of the relief and go into merits for payment of arrears of pay.

10. As regards the promotion to Junior Administrative Grade from 1975 claimed by the applicant on the plea that his juniors had been promoted from this date and he was due for promotion, we note that the pleadings made are very sketchy. Except indicating the name of two doctors who are alleged to have been promoted from 26.6.1975, no details of seniority and the promotion orders of the alleged juniors have been brought on record. Further, it is noted from the Railway Board's order dated 2.4.1996 that the promotions are covered from 1978 and not from the earlier dates. We are, therefore, unable to understand as to how the applicant is seeking the promotion relying upon the Railway Board's letter dated 2.4.1996. Further, the cause of action for promotion of the alleged juniors arose when their promotion orders were issued. The applicant, however, has not indicated the date of promotion orders of the alleged juniors. In any way, the matter of promotion relating to the period of 1975 cannot be gone into in the present OA. filed in 1997. With reference to this

the
part of ~~relief~~, the OA. is highly time barred
and therefore not maintainable.

11. In the light of the above deliberations,
That OA is barred by limitation
we find ~~no merit~~ in the OA. and the same is dismissed
accordingly with no order as to costs.

D.S. Baweja
(D.S. BAWEJA)
MEMBER (A)

R.G. Vaidyanatha
29.7.99
(R.G. VAIDYANATHA)
VICE CHAIRMAN

mrj.