

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

O.A. Nos. 173/92 & 436/93

Dated: 8.10.96

I. O.A.No. 173/92

Between

Dr. K. Satyanarayana

.. Applicant

and

1. Union of India represented
by the Secretary, Railway Board,
Rail Bhavan, New Delhi.
2. General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
3. Dr. K.Raja Rajeswari,
Sr. Medical Superintendent,
South Central Railway,
Secunderabad.
4. Dr. K. Ramakrishnaiah,
Medical Superintendent,
South Central Railway,
Health Unit,
Dornakal Rly. Station.
5. Dr. S. Parsuramulu,
Dy. Chief Medical Officer (Health)
O/o Chief Medical Officer,
Secunderabad.
6. Dr. M. Ashok Kumar,
Medical Superintendent,
SC Railway, Health Unit,
GOCTY.
7. Dr. N. Gangaiah,
Medical Superintendent,
SC Railway, Health Unit,
Chilakalguda, Secunderabad.
8. Dr. R. Chandrasekhara Rao,
Medical Superintendent,
South Central Railway,
Health Unit, Chilakalguda,
Secunderabad.

.. Respondents

Mr. G.V. Subba Rao

.. Counsel for respondents

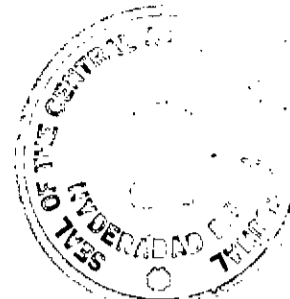
Mr. V. Bheemanna, SC

.. For respondents

II. O.A.436/93

Between

1. T. Ramakrishna Reddy,
Dy. Chief Medical Officer &
Technical Assistant to Chief
Medical Officer, SC Railway,
Secunderabad.



a Writ Petition (3456/84) in the High Court of Madhya Pradesh challenging the Railway Board's revised decision of February, 1982, to extend the principle of reservations to the upgraded posts of ADMOs to DMOs referred to in 2.1 supra. The case was transferred to Jabalpur Bench of the Tribunal (T.A. 139/86) which disposed of the case on 24.3.1987, by setting aside two circulars of 22.2.82 and 14/17.6.82 issued by the Board containing the extension/reiteration of the reservation policy to ^{the} 300 upgraded posts of Medical Officers. It was further directed that the two petitioners in the O.A., and those similarly placed, out of the 100 ADMOs should be placed in the grade of DMOs without any reservations on the basis of seniority-cum-suitability, and that if any other ADMOs had been promoted on the basis of the reservation policy, they should be reverted with prospective effect.

The matter was carried in SLP to ^{the} Supreme Court which affirmed on 8.12.1987 the judgement of the Jabalpur Bench.

b) While this was so, another Medical Officer filed a writ petition in High Court of Rajasthan (403/82) against the Railway Board's policy of applying reservations to the upgraded posts of ADMOs. The case was transferred to Jodhpur Bench of the Tribunal (TA 269/86) which disposed of the case on 13.4.87, rejecting the application, and holding that the Railway Board was well within its rights to issue the circulars of 22.2.82 and 14/17.6.82 supra.

c) In view of the divergent opinions expressed by A.P. High Court and ^{one of the} two coordinate benches of the Tribunal (Jabalpur and Jodhpur), the Board is stated to have filed a Review Petition in the SLP earlier disposed of by Hon. Supreme Court upholding the judgement of the Jabalpur Bench.

Neither of the parties in the instant OAs is in a position to indicate or able to state with certainty the exact status of the Review Petition. It is not known if the same is pending disposal or has been since disposed of.

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(Rs. 700-1600) to Divisional Medical Officers (Rs. 1100-1800). Certain criteria and norms were prescribed to identify and distribute the upgraded appointments among all Railways in the country.

1.1 The measure was implemented on the ground by effecting reduction of 300 posts of ADMOs and simultaneously adding an equal number of posts of DMOs. The department is of the view that this step was not a mere revision of scale or upgradation of posts but one involving promotion of all the beneficiaries of the measure viz., incumbent eligible ADMOs. They argue that DMO is a promotional post for ADMOs, and what was implied in the measure was a clear promotion of the ADMOs to a higher appointment on the upgraded higher scale.

2. Initially, the department ruled that the concept of reservation for SC/ST officers would not apply to such promotions which were to be given under this Cadre Review Scheme. This decision, communicated initially on 31.7.1981, was reiterated on 3.9.81. Aggrieved by this decision, some ST Medical Officers filed a writ petition in the High Court of A.P. (W.P. No. 5856/81), seeking a declaration that non-application of the reservation principle to the promotions under the Scheme was arbitrary and unconstitutional. As against this, certain OC Medical Officers too approached the High Court (W.P. 6960/81) for a direction not to extend reservations to the promotional posts.

2.1 In February, 1982, the Railway Board changed its earlier view and decided that reservations do apply in the matter of promotion to the upgraded posts. Consequent to this decision the second cited writ Petition (6960/81) was dismissed on merits on 15.4.1982 and the first petition (5658/81) was ipso facto dismissed on 20.2.1982 as being no longer necessary to be adjudicated.

3. Parallel to the proceedings in the High Court of Andhra Pradesh, certain litigation was carried on before this Tribunal as well, the details of which are as under:

a) Some of the Medical Officers of Central Railway filed

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(ii) the requirement of reservations had been duly fulfilled at the time of the initial recruitment of SC/ST officers as AMO/ Astd. Surgeon;

(iii) it would be incorrect if the principle of reservations was pressed once again at the time of promotions of the same persons from ADMOS to DMOS;

(iv) no new posts were being created nor were any promotions by selection on merit involved in the exercise in promoting ADMOS to DMOS;

(v) the date of their own initial recruitment was earlier than than the said respondent Rajarajeswari.

7. The official respondents meet the above arguments as under:

(a) It was quite necessary to apply the principle of reservations to the upgraded posts of ADMOS because it was not a case of simple revision of scales or upgradation of ADMOS as a category, but an actual promotion.

(b) The categories of ADMOS and DMOS are distinct and different from one another. A DMO's post is a promotional post for ADMOS and the same procedure as would have been applicable for direct recruitment to DMOS had to be gone through in promoting ADMOS to DMOS.

8. Dr. K. Satyanarayana, applicant in OA 173/92 raises a somewhat unrelated issue relating to promotions to Senior Administrative Grade. He complains that Medical Officers in Senior Class I in all Railways were promoted on 25.6.1991, from different dates; an officer, ^{Dr. Jagannath Rao,} his immediate junior, was so promoted (to Senior Administrative Grade) from 1.6.1990, while he, a senior to the said Jagannath Rao, was overlooked.

4. The applicants in Oⁿ 436/93, Dr. T.Ramakrishna Reddy and 11 others cite Dr. Mrs. K.Rajarajeswari as the first unofficial respondent (No.5). The sole applicant in Oⁿ 173/92, Dr. K. Satyanarayana, arraigns the same officer as the first unofficial respondent (No.3). Thus all the applicants in both the OAs question the promotion accorded to Dr. K.Rajarajeswari and those who, like her, belonged to SC/ST but were junior to her.

5. The career progression of the sole applicant in OA 173/92 and the first (and senior most) applicant in Oⁿ 436/93, vis-a-vis that of Dr. Smt. Rajarajeswari (Respondent 5/3 in the two cases) is as under:

	<u>K.Satya- narayana (173/92)</u>	<u>T RK Reddy (436/93)</u>	<u>Smt.Rajarajeswari (Respondent in both 173/92 and 436/93)</u>
- First appoint- ment (as Astt. Surgeon) Rs 335-650	2.8.65	-	-
- AMO (U.II) (Rs 350-900)	1.1.66	14.4.69	15.3.69
- ADMO (Rs 700-1600)	1.1.73	1.1.73	1.1.73
- DMO (Rs 3000-4500 revised)	3.4.87	19.10.87	4.4.79
- Jr. Admini- strative Grade (Rs 4500-5700)	4.11.89	4.11.89	2.4.85 (adhoc)
- Sr. Admini- strative Grade (Rs 5900-6700)	-	1.8.92	10.5.85 (adho

6. It is the common grievance of all the applicants in these OAs that:

(a) Reservations should not have been applied at the time of promotion from ADMO to DMO against the upgraded posts under the cadre review, because--

(i) the same was held to be impermissible by the Jabalpur Bench of this Tribunal;

11. We propose to confine our attention to the reliefs claimed by the applicants in these OAs, after detaching the same from the question of reservations.

(i) In OA 368/93, filed on 29.4.93, the applicants challenge the promotion to Sr. Administrative Cadre of Dr. Rajarajeswari but base their case on the date of promotion of the said Respondent to Divisional Medical Officer, and thereafter to 'regulate' the subsequent promotions given to her as well as to themselves. The claim thus rests primarily and relates back to a promotion given in April, 1979.

(ii) The applicant in OA 173/92, filed on 24.2.92, likewise bases his claims in reference to the promotions given to Dr. Rajarajeswari from ADMO to DMO, Medical Superintendent/Senior Medical Superintendent. The basic related question is her promotion to DMO in this case as well - an event which occurred, as already noted, in 1979.

12. (i) We are of the view that the applicants in both cases have been very remiss in the matter of safeguarding what they considered their own interests. No promptness was displayed at all by the applicants in pressing their claims, whatever be the merits, or lack of merit, in them. This is a serious failing which cannot be overlooked or glossed over. The law, after all, can help only those who are vigilant about their rights and claims.

(ii) It may be argued that the present applicants did not press their claims earlier since the matters involved in these OAs had already been agitated by similarly situated applicants, and were awaiting disposal by other courts/benches. This line of argument has limited validity because, firstly, claims advanced by someone in some other case, even if identical to theirs, cannot possibly create or reinforce any right of their own. By the same token, any judgment delivered in some other case cannot likewise give rise to, or strengthen, their own ^{rights and} as-yet-unpressed claims.

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The respondents explain that by 1.6.1990, the date on which promotions to Senior Administrative Grade were ordered, the applicant had already applied for voluntary retirement from 31.5.1990, and hence his case was not considered and his immediate junior was promoted. The applicant in his rejoinder counters this by saying that he proceeded on retirement from 8.6.1990 and was very much available for promotion on 1.6.1990, if the respondents had chosen to so promote him.

9. Another question raised by the same applicant relates to the promotion quota of 33-1/3% earmarked for ADMOs with five years of service and a post-graduate degree. Since he duly fulfilled ^{these} twin-criteria, he was senior to Rajarajeswari on this count as well.

The respondents counter this by stating that the applicant was duly promoted along with Jagannatha Rao from 3.4.1987 in the quota referred to, whereas Rajarajeswari had been promoted as DMO as early as 4.4.1979.

10. We have examined the facts and arguments of these cases carefully. As regards the basic issue of the applicability-or non-applicability - of reservation principle to the upgraded posts of ADMOs we shall have nothing to say since this aspect has been already adjudicated by a High Court and two benches of this Tribunal. It has ^{either} ~~received~~ ^{or is due to receive} the attention of the Supreme Court, once in an ~~PLI~~ and at one other time in a Review Petition. The finding of Hon' Supreme Court may have invested the question with a finality; or shall do so when the Review Petition, if not already disposed of, will be eventually disposed of.

It shall not, therefore, be appropriate or open to this bench to express any opinion, much less to adjudicate, on this aspect of the case at all. We refrain from expressing ^{any} opinion on the question of correctness, or error, in applying reservation for SC/ST in the matter of promotions from ADMOs to the upgraded posts of DMOs.

Q/s
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on the final disposal of the RP filed before the Hon. Supreme Court in the SLP filed against the judgment rendered by the Jabalpur Bench of this Tribunal in TA 139/86.

16. With the above observations, OAs 173/92 and 436/93 are dismissed and disposed of accordingly.

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

Pruthi
8/11/96
न्यायालय अधिकारी
COURT OFFICER
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद बेंच
HYDERABAD BENCH

0A 173 192 &

केस संख्या	0A 436 93
CASE NUMBER	0A 436 93
निर्णय का तारीख	8.10.96
Date of Judgment	8.10.96
प्रति तय्यार किया गया है	14.11.96
Copy No. 10	14.11.96
<i>[Signature]</i>	
सचिव (सूचना)	
Section Officer (J)	