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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A.541/99

Date: 13 oct 2000

Between:

1. Dr.Mrs. T. Seetha
2. Dr.C.G.K.Murthy
3. Dr.Mohammad Qudurtulla
4. Dr. B. Mohan Babu

.. Applicants

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1. Union of India
Secretary to Govt.
Ministry of Health and
Family Welfare,
Department of Health,
Nirman Bhavan,
New Delhi.
2. Deputy Director Administration(CGHS)
O/O Directorate General of
Health Services,
Nirman Bhavan,
New Delhi.
3. Additional Director,
Central Government Health Scheme,
Kendriya Swasthya Bhavan,
Begumpet, Hyderabad - 500016.
4. Dr.Mrs. A. Laxmi Kanthamma
Central Govt. Health Scheme,
M&A Dispensary No.1,
Charminar, Hyderabad.

.. Respondents

Counsel for the applicants : Mr. N. Ram Mohan Rao and
Mr. Siva

Counsel for the respondents: Mr. B.N. Sharma for R-1 to R-3

Coram:

Hon. Shri R. Rangarajan, Member (A)

Hon. Shri B.S. Jai Parameshwar, Member (J)

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(Per Hon. Shri B.S. Jai Parameshwar, Member(J))

Heard Mr. N. Ram Monah Rao, and Mr. Siva learned counsels for the applicants and Mr. B.N. Sharma, learned standing counsel for the respondents. Notice to Respondent No.4 served, called absent.

2. There are four applicants in this OA. The applicants and the respondent No.4 are working as Chief Medical Officers (Non Functional Selection Grade) in the Central Govt. Health Services. The applicants 1 to 3 were promoted to non-functional selection grade w.e.f. 1-1-95 and the applicant No.4 w.e.f. 1-1-96.

3. The applicants 1 to 4 are regular Doctors appointed through UPSC. The applicant No.4 is a regularised Doctor having worked earlier on an adhoc basis in the Central Health Services.

4. Earlier certain regularised doctors working in the Twin Cities had approached this Tribunal making grievance against posting as Medical Officers incharge of the Dispensaries. At that time they felt aggrieved against posting the regular doctors as Medical Officers incharge of the Dispensaries. They approached this Tribunal in OA 1543/98. An interim order was passed on 11-12-1998 in the said application. On that basis the Deputy Director (Administration) CGHS issued a list of Doctors who were to be posted as Medical Officers

incharge of the Dispensaries, in the Twin Cities. The list is at Annexure A-4 page 23. At page 24 is the list. In the said list applicant No.1 is at Sr.No.12, Applicant No.2 is at Sr.No.10, Applicant No.3 is at Sr.No.9 and Applicant No.4 is at Sr. No.8 whereas the respondent No.4 is at Sr.No.13.

5. On 8-12-98 the Ministry of Health and Family Welfare issued seniority list regarding placement of the officers in the cadre of Chief Medical Officer Non-functional Selection grade. The order is at Annexure A-3, page 20. The relevant portion in the order reads as follows :

"The placement of these officers in the Chief Medical Officer (non-functional selection grade) is personal to them and no change of present place of posting is involved. There will be separate seniority list in respect of these officers and their further promotions shall be regulated by such separate seniority list. "

In the said list the respondent No.4 was shown at Sr.No.11 and indicated that the date of promotion of respondent No.4 to the cadre of CMO(NFSC) as 1-1-1992.

6. The apprehension of the applicants is that the respondents while preparing the list dated 29-12-98 have taken the initial date of appointment as the criteria; that the respondents have failed to protect the interest of the regular doctors appointed through the UPSC and that they have violated or contravened the directions given by the Hon. Supreme Court in the

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case of Dr. P.P.C. Rawani & Ors. They further submit that the regularised doctors can only be accommodated against supernumerary posts as per the observations made in the said case. In case the date of appointment was the criteria for preparing the list dt. 29-12-98 then the applicant No.4 stood chances as he was appointed on 16-2-1975. Further they refer to the case of one Dr. B. Laxmi Rajyam whose name is at Sr.No.14 in the list annexed to the letter dt. 29-12-98 and submits that the said Dr.B. Laxmi Rajyam is senior to the respondent No.4 as she joined duties on 15-5-1975. Dr.B. Laxmi Rajyam has joined duties much after the applicants herein. Thus the date of appointment could not have been the proper criteria for placement in NFSG. Even indicating Dr. B. Laxmi Rajyam as junior to the applicants herein was not justified.

7. Hence they have filed this OA for the following reliefs :

- "(a) call for the records relating to and connected with Order No.A32012/1/97-CHS-II, dt. 8-12-1998 of the first respondent wherein Dr. A. Laxmi Kanthamma was promoted to Non-functional selection grade ignoring the claims of the applicants who are senior to her by virtue of joining the service earlier and quash or set aside the same insofar as it relates to the 4th respondent holding it as arbitrary, illegal, unjust and violative of Art. 14 and 16 of the Constitution of India; and
- (b) to alternatively declare that the applicants are senior to the respondent No.4 and are entitled to be promoted to the posts of Chief Medical Officers

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(Non-Functional Selection grade) w.e.f.
1-1-1992 and

(c) further direct the respondents to compute and release all the benefits that flow out of such declaration within a period of one month."

8. The Respondents have filed the reply. Their contention is that the letter dt. 29-12-1998 was issued by the Director General of Health Services only to consider the CMOS to be posted as incharge of the dispensaries in the twin cities of Hyderabad/Secunderabad the said and that list does not reflect the seniority of the doctors indicated therein; that list was prepared in in compliance with the interim order passed by this Tribunal in OA 1543/98, that relying upon the said list the applicants are attempting to mislead the Tribunal; that the impugned list dt. 8-12-98 has been prepared in accordance with the directions of the Hon. Supreme Court in the case of Dr. P.P.C. Rawani and others, the claim of the applicants for promotion with respect to respondent No.4 is totally misconceived; that the date of appointment was not considered as the criteria for the purpose of promotion to the cadre of CMO NFSG; and that in terms of the provisions of Govt. of India, Deptt. of Personnel & Training O.M No. 22011/7/86-Estt.(P) dt. 3-7-86 the relevant seniority of the direct recruits is determined by the order of merit in which they were

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selected for appointment on the recommendation of the UPSC or other selecting agencies. Accordingly Dr.B.Laxmi Rajyam being a regular cadre doctor was granted promotion/placement in the cadre of CMO(NFSG) w.e.f. 1-1-1992 on the basis of her seniority in the separate seniority list of regular doctors maintained by the Ministry. The Date of joining into service is not the criteria for preparing the seniority. The seniority of four applicants and Dr. Laxmi Rajyam.B. as per civil list of CMO(NFSG) is as under :

<u>S.No.</u>	<u>Name of the doctor</u>	<u>Seniority as per C.L. of CMO(NFSG) (as on 31-1-98)</u>
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1. Dr.Lakshmi Rajyam. B. S.No. 146

2. Dr. T. Seetha S.No. 195

3. Dr.Qudurtullah S.No. 200

4. Dr. Mohan Babu S.No. 203

Seniority as per Civil List of CMO(As on 30-6-1998)

1. Dr. CGK Murthy S.No. 8
From the above all the four applicants are junior to

Dr.Laxmi Rajyam B. and their contention for the date of promotion is misconceived. In respect of the regularised doctors the Hon. Supreme Court has given certain directions. The respondent No.4 is a regularised doctor and the promotion has been made strictly in accordance with the compliance of the directions given by the Hon. Supreme Court. The date of appointment is not the criteria for granting promotion. The letter dt. 29-12-98 is the list prepared for the local arrangement for posting as Medical Officers incharge of the dispensary in the twin cities of Hyderabad and the said list is operative only for the purpose of giving incharge ship of dispensaries.

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The applicants cannot claim promotion on the basis of the said list. Hence none of the applicants can claim the promotion w.e.f. 1-1-92. The promotion of respondent No.4 is in order and the applicants cannot claim to be senior to her on the basis of the local seniority list dt. 29-12-98.

9. During the course of arguments certain clarifications were also sought from the department. They specifically stated that the Ministry is not concerned with the list dt. 29-12-98 prepared by the Directorate General of Health Services to post the doctors as incharge of the dispensaries in the twin cities of Hyderabad. Further they submitted that certain doctors being aggrieved of the seniority list dt. 8-12-98 had approached the Principal Bench of this Tribunal in OA No. 325/99 and this OA can also be decided on the basis of the order passed by the Principal Bench on 13-1-2000. Thus they pray for dismissal of the OA.

10. The applicants are regular doctors whereas the respondent No.4 is a regularised doctor. She was regularised on the basis of the directions given by the Hon. Supreme Court in the case of Dr.P.P.C. Rawani and others v. Union of India & Ors. (1992)1 SCJ 221 The apprehension of the applicants that the list dt. 29-12-98 was prepared taking the date of appointment as criteria has been clearly explained by the respondents. Further their seniority in the merit panel has been explained by the respondents in the reply.

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The applicants have not disputed the said facts by filing any rejoinder.

11. Admittedly the list dt. 29-12-98 was prepared on the basis of the interim order in OA 1543/98 to enable the Directorate the post a Medical Officer as incharge of the dispensaries in the twin cities of Hyderabad. The said list cannot be considered as a seniority list reflecting seniority of the applicants ^{the} vis-a-vis Dr. B. Laxmi Rajyam and respondent No.4. O.A. 1543/98 was decided on 22-1-99. No further directions was issued in the said application in view of the fact that the Central Health Service by letter dt. 29-12-98 had communicated the seniority list of GDMO's (regular & regularised) working in the dispensaries in Hyderabad & Secunderabad. On the basis of that letter the learned counsel for the applicants therein submitted no further order was necessary in the said application. That means posting as incharge of the dispensaries in the city of Hyderabad was made taking due note of the impugned ^{list} letter dt. 29-12-98.

12. As already contended by the learned counsel for the respondents the Principal Bench of this ^{has} Tribunal taken into consideration the various contentions of the applicants as regards the impugned ^{order} letter dt. 8-12-98. In paras 8 to 12 the Principal Bench has analysed various contentions and has turned down the claim of the applicants. Paras 8 to 12 read as under :

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"8. It was strenuously contended by Mrs. Meera Chhibber that the interpretation adopted by the respondents was contrary to the letter and spirit of the directions given by the Supreme Court in Dr. P.P.C. Rawani's case(supra). She pointed out that in the case of Dr. M.A. Haque and others vs. Union of India and Others, (1993) 2 SCC 213 the question of inter se seniority between the regular and regularised doctors had come up before the Supreme Court and Court had determined the same in the following terms :

"10. In the result, we direct that the seniority of the direct recruits - both outsiders and insiders should be determined according to the dates of their regular appointment through the UPSC and the petitioner - applicants should be placed in the seniority list after those direct recruits who are recruited till this date. Among themselves, their seniority will be governed by the dates of their initial appointment. "

She pointed out that the Court had clearly observed that the seniority given to the petitioner-applicants therein, namely, regularised doctors will have to be below the outside doctors directly recruited through the UPSC. On that basis, the learned counsel argued that the regularised doctors who were appointed in 1976 could not be considered senior to the regular UPSC selected doctors of 1974 batch and, therefore, if the juniors have been given selection grade from 1-1-1992 then the applicants who are senior are also entitled to not only grant of the same but also from the same date i.e. from 1-1-1992.

9. At this stage we may also notice the reply filed by the department in regard to availability of selection grade to the regular doctors. According to respondent no.1 the total number of selection grade posts available are 330. Shri VSR Krishna, learned counsel for official respondents submitted that before the present OA was filed orders in regard to 224 posts had been issued. Since then 66 more posts have been filled. Action in regard to filling up the remaining vacancies is also in hand. In other words, all the selection grade posts which are calculated at 15% of the cadre strength are available to the regular doctors and none of these posts have been diverted to the regularised doctors.

10. It was, however, contended by Mrs. Chhibber that the applicants having been recommended enbloc by the UPSC on the same date i.e. 12-12-1974 rank enbloc senior to the regularised doctors whose initial date of appointment is later to 12-12-1974 and only after all the batch

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is granted selection grade that the cases of the regularised doctors could have been taken up. It was, however, pointed out on behalf of the private respondents that the batch seniority was also sought by the applicants in their affidavit before the Supreme Court but was not granted in the final direction and the material date had to be the date of appointment of the junior most regular doctor granted selection grade.

11. We have given careful thought to the aforesaid facts as well as the submissions and suggestion made by the contending parties. According to Rule 8 of the Central Health Services Rules, 1982 as amended upto 1.11.1992 in the Medical Officers' grade, 15% of the senior duty post starting from the grade of Senior Medical Officers (Rs.3000-4500) shall be converted to the post of Chief Medical Officer (non-functional selection grade) (Rs.4500-5700). It has been asserted by the respondents and not controverted by the applicants that 15% of such posts come to 330 only. We also find that none of the regularised doctors in the impugned order have been adjusted against any of these 330 posts. In other words, the selection grade posts for the regularised doctors lie outside the 15% quota calculated on the senior duty posts of the CHS cadre. Clearly, therefore, no prejudice has been caused to the applicants if we are only to view it in relation to the number of posts available to regular doctors. According to the applicants, however, the prejudice lies in the fact that the regularised doctors who not only did not make the grade through the UPSC but even were appointed on adhoc basis after the UPSC selected recruits have managed to get a higher pay scale even earlier. According to them as the regularised doctors are junior to them in terms of Dr. M.A. Haque's case (supra) the applicants are also entitled to the same benefits and from the date. We are unable to agree with this reasoning. The Supreme Court in Dr. P.P.C. Rawani's case(supra) had clearly intended that regular and regularised doctors will continue to be in distinct and separate categories. The Supreme Court had noted that "(T)he essence of the proposal made by them is that they may be treated to be a separate category with their own seniority list and entitled to promotion in accordance with that seniority list, the problem of conflict with the direct regular recruits being avoided by creation of appropriate number of supernumerary posts". Unforeseen and "unintended benefit has accrued to the regularised doctors because of date of appointment being the relative criteria

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i.e. when regular doctors get promoted even though their seniority is higher than their date of appointment. In other words while seniority is the criteria in respect of regular doctors inter se the criteria between the regular and regularised doctors is the date of appointment. The regularised doctors are, therefore, only the beneficiaries of this anomaly in the interse seniority of the regular doctors.

12. We quite see the heartburning and the discontentment amongst the regular doctors on account of the above anomalous position. The relief sought for by the applicant, however, are as follows :

- (a) Quash the order dt. 8-12-98
- (b) To declare that no point of time the posts of NFSG can exceed the posts of CMO even for regularised doctors as per CHS rules;
- (c) To declare that, entire batch of regularly appointed doctors has to be treated as one category for considering the promotion of regularized doctors as immediate junior
- (d) To direct the respondents to remove the anomalies on the basis of above declarations.

The above relief sought for, however, cannot be granted. The impugned order dt. 8-12-1998 does not affect the applicants inasmuch as it does not take away any of the selection grade posts available to them under Rule 8 of the CHS Rules. The posts of selection grade available to the regularised doctors is independent of Rule 8 in terms of direction no.(3) (b) of Supreme Court orders in Dr. P.P.C. Rawani's case (supra). There is no direction in Dr. P.P.C. Rawani's case that all regular doctors of each batch have to be treated as one category for considering the promotion of regularised doctors. We can also not give any direction to the respondents to remove the anomaly pointed out by promoting the applicants as it will entail amendment of Rule 8 of CHS Rules, involving creation of additional posts and would entail large scale financial implications. None of the relief sought for by the applicants can, therefore be granted by the Tribunal. "

13. Lastly the learned counsel for the applicants pressed into service the plea of discrimination. According to him 15% of the cadre strength are reserved for the regular doctors for consideration for promotion to non-functional selection grade. It is his submission that this 15% is earmarked for regular doctors whereas no such percentage is fixed for the regularised doctors. In fact the Principal Bench observed in its order that the beneficiary is largely the regularised doctors. When the regularised doctor has got a benefit, because of his earlier adhoc services in the Central Health Services, may get a chance of promotion to non functional selection grade. According to the respondents the regularised doctor will be granted promotion with reference to the promotion granted to the regularly recruited doctor who is immediately junior to the regularised doctor on the basis of respective date of appointment. The seniority is the criteria for the regular doctors, interse, as per panel position whereas the criteria between the regular doctors and regularised doctors is the date of appointment.

14. We have considered this aspect in greater detail.

15. In fact this aspect has not been considered by the Principal Bench. However, the bench has observed that it is the regularised doctors who are benefitted in the matter of promotion to the non functional selection grade. A regular doctor is appointed on the

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basis of his merit and performance in the competitive examination. The regular doctor is on a different footing than the regularised doctor in initial appointment.

16. The respondents may consider the feasibility or otherwise of extending 15% of cadre strength of regular and regularised doctors for promotion to non functional selection grade. This may, to certain extent, benefit the regular doctors, who are deprived class compared to the regularised doctors. We hope and trust that the respondents will consider the issue with an open mind, as per rules and take a suitable decision.

17. In this case the applicants claim for a declaration that they are senior to Respondent No.4. As already submitted the applicants are the regular doctors whereas the respondent no.4 is the regularised doctor. She got regular promotion to the post on the basis of her appointment and service. The applicants being regular doctors are governed by the panel issued by the UPSC. From the reply it is clear that the applicants are junior to Dr. B. Laxmi Rajyam who herself is junior to the respondent no.4. In that view of the matter the applicants cannot claim seniority by bypassing the respondent no.4. The observations made by the Principal Bench of this Tribunal squarely applicable to the facts and circumstances of the case.

18. The application is thus disposed off
with the above observations.

19. No order as to costs.


(B.S. JAI PARAMESHWAR)
Member (S)
B. 10. 1900
MD


(R. RANGARAJAN)
Member (A)
B. 10. 1900

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: HYDERABAD.

COPY TO

1. HDHNJ
2. HRRN (ADMN.) MEMBER
3. HBSJP(JUDL.) MEMBER
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5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

1ST AND 2ND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE-CHAIRMAN

THE HON'BLE MR. R. RANGARAJAN:
MEMBER (ADMN.)

THE HON'BLE MR. B.S. JAI PARAMESHWAR
MEMBER (JUDL.)

DATE OF ORDER

13/10/2000

MA/RA/CP NO.

IN
OA. NO.

541128

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

C.P. CLOSED

R.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

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