

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

Original Application No. 149/2003.

Jaipur, this the 1st day of ~~May~~ ^{June}, 2005.

**CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. A. K. Bhandari, Administrative Member.**

Dr. Krishna Chandra,
S/o Late Shri Rang Lal Saxena,
Aged about 71 years,
R/o U.I.T. Plot No.43, Jeevan Bihar (LIC),
Anasagar Circular Road, Ajmer (Rajasthan).

... Applicant.

By Advocate : Shri Rajvir Sharma.

Vs.

1. Union of India
Through General Manager,
Western Railway, Church Gate,
Mumbai (Maharashtra).
2. Railway Board through
Its Secretary Rail Bhawan,
New Delhi.

... Respondents.

By Advocate : Shri S. S. Hassan.

: O R D E R :

M. L. Chauhan, Judicial Member.

The applicant has filed this OA thereby praying for
the following reliefs :-

"(i) That the OA of the applicant may kindly be allowed and by an order/mandamus/direction your lordships may kindly be pleased to direct the non applicant to revise the seniority of the applicant in Class-I w.e.f. 9.5.1962 and he may be declared entitled to get all the consequential benefits by counting his services in Class-II for all purpose w.e.f. 9.5.1962. Accordingly the non applicant may kindly be directed to give the due notional promotions to the applicant and accordingly to pay the arrears of such promotional benefits. Non applicant may kindly be further directed to re determine the retrial benefits and his pension etc. may be ordered to be revised and accordingly respondent may kindly be directed to pay the arrears of such amount with interest of 12% per annum. The non applicant may kindly be further directed to pay the revised pension to the petitioner continuously.

(ii) Any other order deemed fit and proper may be passed in favour of the applicant and cost may also be awarded in favour of the applicant."

2. The facts of the case are that the applicant was initially appointed as Medical Officer Class-III post in the Railway Department (Western Railway) on February 1958. In 1959 he obtained Post Graduate qualification. Subsequently three posts of Assistant Medical Officer in Class-II were created on 21.1.1962. The eligibility qualification for the aforesaid three posts was Assistant Surgeon with Post Graduate qualification. Since the applicant fulfils the eligibility criteria, he was appointed on the post of Assistant Medical Officer Class-II vide order dated 19.4.62, which post he joined on 9.5.62. The selection has been termed as first selection. The second selection was directed to be held vide communication dated 13.6.62. Upon being asked to appear for the said selection, the applicant also

appeared for the same. The result of second selection was finalized on 8.11.63 in which the name of the applicant figured at Sl. No.25. Subsequently, the applicant was confirmed in Class-II post w.e.f. 30.12.63.

3. It is evident from the pleadings that the grievance was made by the applicant to the effect that asking him to appear for the second selection was unwarranted and his seniority should be reckoned in Class-II w.e.f. 9.5.62 on the basis of first selection. For that purpose he filed Writ Petition before the Hon'ble High court for Judicature of Rajasthan on 10.7.74. The said Writ Petition was dismissed on the ground of laches and delay of 12 years and also on merit. On merit it was observed by the Hon'ble High Court that the selection of 1962 was not a regular one. Against the said order passed by the learned single judge, special appeal was filed before the Division Bench which was also dismissed. The matter was carried out by way of SLP before the Apex court. The Apex court after issuing the notice on the limited question, whether the penal of 8.11.63 was ever brought to the notice of the applicant as it was the case of the applicant that he had already been selected and appointed in Class-II pursuant to the first selection and the second selection was unwarranted and he was not even aware about the penal prepared on 8.11.63 pursuant to the second selection and the same was not conveyed to him. The Apex Court after considering the reply filed by the

all

respondents dismissed the SLP filed by the applicant. Thus, the issue regarding granting of seniority to the applicant w.e.f. 9.5.62 pursuant to first selection stood finally determined and the applicant was not held entitled for seniority w.e.f. 9.5.62.

4. From the material placed on record, it is also evident that the applicant filed Civil Suit in the Court of Munsif. The said Civil Suit was dismissed on the ground of res-judicata. Thereafter the applicant filed appeal before the District Judge against the impugned order dated 27.5.85 passed by Additional Munsif No.1 North, Kota. The said appeal was transferred to the Jodhpur Bench of the CAT in view of the provisions contained in Section 29 (1) of the Administrative Tribunals Act, 1985 and the same was registered as TA No.2050/86. The said TA was disposed of by the Tribunal vide order dated 15.2.98 holding that the present OA is barred by the principle of res-judicata. At this stage, it would be useful to quote Para 10 and 11 of the aforesaid judgement, which is in the following terms :

"10. Though the appellant has also argued the case on merits in support of his claim, that is, his seniority in class II is to be computed from the date of his appointment on the basis of the first selection held on March 29, 1962, yet we would not enter into this arena as what falls for adjudication in the instant case is as to whether the judgment of the learned Munsif on the point of res judicata and disposing of the case on the basis of plea of res judicata is legally sustainable.

11. A perusal of the judgment dated August 6, 1980, rendered by Hon'ble Justice S. C. Agarwal leaves

little doubt on the point that the learned Judge has decided the writ petition filed by the petitioner not only on the ground of latches, but also on merits. In the writ petition filed by the petitioner he had raised the same point of reckoning his seniority from the date of selection held on March 29, 1962, which had been termed by him as first selection, but by the defendants as also by the High Court as ad hoc selection. The High Court had also ruled that the seniority of AMOs were to be computed on the basis of the regular selection and that the same had been correctly determined. The contention of the appellant for giving him a right of hearing prior to the correction of the earlier seniority list was also repelled. The special appeal filed by the appellant against the judgment of the learned Single Judge was rejected by the Division Bench vide their judgment dated May 14, 1981. The special leave petition had also admittedly, met the same fate in the Supreme Court. In view of the foregoing, it can be safely stated that the suit instituted by the appellant is barred by the principle of constructive res judicata. In view of the explanation IV to section 11 of the Code of Civil Procedure any further point which the petitioner now wishes to agitate would be deemed to have been constructively raised in the writ petition. As such the principle of constructive res judicata would debar the appellant from raising any such point. That being so, it would be inappropriate for us to touch upon the validity or otherwise of the assertion of the petitioner to the effect that the correct principle for determination of his seniority is on the basis of length of service or uninterrupted efficiation as AMO in class II from the date of his appointment on the basis of first selection and that so computed he would rank senior to Dr. R. d. Raje and Dr. K. G. Sikdar."

5. It appears that the matter was further carried out before the Hon'ble High Court by filing Writ Petition No.5713/2002 in which the similar grievance was made reckoning seniority from 9.5.62 and then granting promotion to the applicant in Class-I category as Divisional Medical Officer from earlier date so that he can get pensionary benefit on higher rate. However, the Writ Petition was dismissed as withdrawn vide order dated

27.1.03. At this stage, it would also be useful to quote order dated 27.1.03, which is in the following terms :-

" Learned counsel for petitioner prays to withdraw the writ petition with liberty to approach the appropriate forum.

The Writ petition stands dismissed as withdrawn."

It is thereafter that the applicant has filed this OA thereby praying for the aforesaid reliefs.

6. Notice of this application was given to the respondents. Respondents have filed reply thereby taking objection that the present OA is not maintainable in view of the decision rendered by the Hon'ble High Court of Rajasthan which has been affirmed by the Apex Court and the subsequent decision rendered in Civil Suit as well as in TA No.2050/86 decided on 15.2.88 by the CAT Jodhpur Bench and also the dismissal of the Writ Petition as withdrawn by the Hon'ble High Court on 27.1.03.

7. We have heard the learned counsel for the parties.

8. The facts as stated above, have not been disputed by the Learned Counsel for the applicant. Learned Counsel for the applicant argued that in view of the law laid down by the Apex court in the case of Union of India vs. Lalita S. Rao AIR 2001 SC 1793, which is based on the decision rendered by the Apex court in the case of Dr. A. K. Jain, 1987 Supp SCC 497, ad hoc officers who got

regularize prior to 1.10.84 by appearing in the selection test held by the UPSC are entitled to count ad hoc services for seniority. According to learned counsel for the applicant, the judgement was also made applicable even in respect of those Doctors who were not even party in that case. Thus, according to learned counsel for the applicant, the applicant is entitled for the relief as prayed for.

9. Though the submission made by the learned counsel for the applicant appears to be attracted but the same deserves outright rejection. Admittedly, the issue regarding reckoning of seniority of applicant w.e.f. 9.5.62 stood already concluded by the judgment rendered by the Single Judge of Hon'ble High Court of Rajasthan, which decision was affirmed by the Division Bench by judgment dated 14.5.1981. The Special Leave Petition also met the same fate in the Supreme Court. Thus, the issue so far as the applicant is concerned, stood already determined prior to the decision rendered by the Apex court in the case of Dr. A. K. Jain (supra). In case the applicant was of the view that his SLP has been wrongly dismissed by the Apex Court, the proper remedy available for him was to file Review Petition before the Supreme Court thereby praying that the applicant be also given benefit on the basis of decision rendered in the case of Dr. A. K. Jain (supra), which decision has been further followed in subsequent decision of the Apex Court in the

case of Union of India vs. Lalita S. Rao (supra). Having not done so, according to us, it is not permissible for the applicant to file either fresh Writ Petition before the Hon'ble High Court in the year 2002 which was dismissed as withdrawn on 27.1.03 and thereafter filing fresh OA in this Tribunal based upon the judgement rendered by the Apex court in the case of Dr. A. K. Jain (supra) which has been subsequently relied by the Apex court in the case of Lalita S. Rao (supra). That apart, the judgment rendered by the Jodhpur Bench in TA No.2050/86 decided on 15.2.98, the relevant portion of which has been reproduced herein above, has attained finality and it has been categorically held that the Suit as well as appeal arising out of the Civil Suit decided by the Additional Munsif No.1, Kota, which was transferred to the Tribunal is barred by the principle of res judicata as also by the principle of constructive res judicata. On the face of decision rendered by the Coordinate Bench of the Tribunal which has attained finality, it is not permissible for this Tribunal to grant relief contrary to the said decision. Thus, we are of the view that the present OA is only abuse of the process of the court and deserves outright rejection.

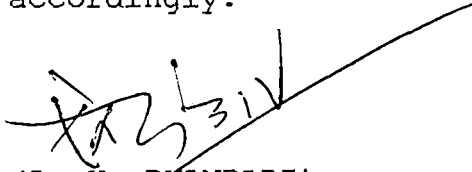
10. That apart, even if for argument sake it is held that the present OA is maintainable, the same is hopelessly time barred. The statutory limitation of one year has been stipulated under the Administrative

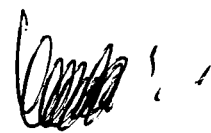
Tribunals Act, 1985 to file appeal when cause of action has arisen. Admittedly, the decision in the case of Dr. A. K. Jain was rendered by the Apex Court on 24.9.87 which was further clarified on 1.11.88. The cause of action in favour of the applicant has arisen at that time. The applicant could have agitated the matter within one year from the date of rendering the judgment by the Apex Court in the case of Dr. A. K. Jain and claim benefit of regularization of ad hoc services. The applicant has not explained why he slept over the matter and has not agitated the matter at the relevant time. According to us, the decision rendered by the Apex Court in the case of Lalita S. Rao in the year 2001 reaffirming the decision of Dr. A. K. Jain will not give any cause of action in favour of the applicant. Further we are also of the view that the earlier decision as upheld by the Supreme Court in the case of the applicant is in conformity with the Constitution Bench decision rendered by the Apex Court in the case of Direct Recruit Class II Engineering Officers Association AIR 1990 SC 1607, which stipulates that ad hoc services de hors the rule will not count for the purpose of seniority. Admittedly, in the instant case, the applicant was initially appointed as MO Class III and was further appointed on ad hoc basis as AMO Class-II which post he joined on 9.5.62 and no written test as provided in the relevant rule was held while appointing the applicant in the said capacity. The second selection was conducted in accordance with rules

hdy

and subsequently, the applicant was assigning seniority on the basis of second selection. Thus, it cannot be said that decision which was upheld by the Supreme Court in the case of the applicant that he is not entitled for seniority in the cadre of AMO Class-II w.e.f. 9.5.62 is not correct decision. In any case, if the applicant was of the view that he is entitled to benefit on the basis of judgment rendered by the Apex court in the case of Dr. A. K. Jain/ Lalita S. Rao, despite the decision to the contrary in the case of applicant as upheld by the Supreme Court, it was open for him to approach the Apex Court for the purpose of clarification being the competent forum to clarify its own orders which course has not been adopted by the applicant.

11. Viewing the matter from any angle, we are of the view that the present application is abuse of the process of Court and is not maintainable. Hence the same deserves outright rejection. The OA is dismissed accordingly.


(A. K. BHANDARI)
ADMINISTRATIVE MEMBER


(M. L. CHAUHAN)
JUDICIAL MEMBER

P.C./