

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : BILASPUR

Original Application No.203/00184/2018

Jabalpur, this Friday, the 04th day of October, 2019

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

1. Dr. P.K. Sardar, S/o Late Durga Prasad Sardar, aged about 57 years, presently working as Chief Medical Superintendent/BSP, R/o VB 3/2, Officers Colony, SECR, Distt – Bilaspur (C.G.) 495004, Mobile No. – 9752475501.
2. Dr. G.K. Chakraborty S/o Late A.K. Chakraborty, aged about 58 years, presently working as Medical Director/Central Hospital/SECR/BSP, R/o VB 3/1, Officers Colony, SECR, Distt – Bilaspur (C.G.) 495004.
3. Dr. C.K. Das, S/o Late Chitta Ranjan Das, aged about 58 years, presently working as CMS/Admin/CH/BSP, R/o VB/19/1, Officers Colony, SECR, Distt – Bilaspur (C.G.) 495004.
4. Dr. D. Rama Rao, S/o Shri V.D. Badviyya, aged about 56 years, presently working as Chief Health Director/SECR/HQ/BSP, R/o Qr. No.1422, Near Titali Chowk, Officers Colony, SECR, Distt – Bilaspur (C.G.) 495004.
5. Dr Biswajit Chakrabarty S/o Pranab Kumar Chakraborty, aged about 57 years, presently working as Chief Medical Superintendent/R, R/o Bunglow No.503, Shivnath Vihar Phase – I, Distt – Raipur (C.G.) 492008.
6. Dr. Kartik Chandra Bag, S/o Late Madanmohan Bag, aged about 57 years, presently working as ACMS/Admin/R, R/o Divisional Railway Hospital, NRS Colony, Raipur (C.G.) 492008.
7. Dr. Mrs Sugandha Raha, D/o Shri Madhukar Dattatraya Bade, aged about 55 years, presently working as Chief Medical

Superintendent/SECR/NGP, R/o Qr No.1/1, Mount Road, Railway Colony, Sadar, Nagpur (M.H.) 440001.

8. Dr. Balla Chandra Sekhar Rao S/o Balla Audulu, aged about 53 years, presently working as Additional Chief Medical Superintendent/NGP, R/o Qr No. 138, Mount Road, Railway Colony, Sadar, Nagpur (M.H.) 440001.

9. Dr. A.K. Das, S/o Shri Ajit Kumar Das, aged about 54 years, presently working as ACMS/SECR/BSP, R/o VB/9/2, Railway Officer Colony, Near Central Hospital, Bilaspur (C.G.) 495004.

10. Dr. Bijay Kumar Toppo, S/o Late Emil Toppo, aged about 56 years, presently working as ACM/BMY/SECR/R, R/o Qt No.203, Road No. 2R, WRS Colony, Raipur (C.G.) 492008.

11. Dr. Mrs Shanti Purty, D/o John Purti, aged about 51 years, presently working as Sr DMO/BMY/R, R/o Qt No.203, Road No. 2 R, WRS Colony, Raipur (C.G.) 492008.

12. Dr. Bholeshwar Jamkiar, S/o Duhshasan Jamkiar, aged about 54 years, presently working as ACMS/SECR/R, R/o 51, Shivnath Rail Vihar – II, WRS Colony, Raipur (C.G.) 492008 **-Applicants**

(By Advocate – Shri A.V. Shridhar)

V e r s u s

1. The Secretary, Railway Board, Ministry of Railway, Rail Bhawan, Raisena Road, Rafi Marg, New Delhi – 110001.

2. Union of India through the General Manager, South East Central Railway, New GM Building, Bilaspur, Chhattisgarh – 495004.

3. Chief Personnel Officer, H/Q Personnel Department, First Floor, GM Office, South East Central Railway, Bilaspur (C.G.) 495004.

4. Dr. Vadlapudi Govindarajulu.

5. Dr. Asim Kumar Acharjee.

6. Dr. Medabalimi Sowribala

Respondents No.4, 5 and 6 through the Secretary, Railway Board,
Ministry of Railway, Rail Bhawan, Raisena Road, Rafi Marg, New
Delhi – 110001
- Respondents

(By Advocate – Shri Vijay Tripathi)

(Date of reserving order : 17.09.2019)

ORDER

By Navin Tandon, AM.

The applicants are Medical Officers of Indian Railway, having faced the UPSC selection. They are aggrieved that Medical Officers, who were appointed on adhoc basis and regularised later through Union Public Service Commission (for brevity ‘UPSC’) have been placed above them in seniority list issued on 07.11.2017 (Annexure A-1).

2. Undisputed facts of the case are as under:

2.1 Twelve Medical Officers, who were appointed as Assistant Medical Officers (Grade-II) on adhoc basis between 14.01.1985 to 22.09.1986 and regularised on being selected by UPSC vide letter dated 17.03.1992, approached coordinate Bench of this Tribunal at Patna in O.A 38/1995 (**Dr. Mukund Kumar and Ors. vs. Union of India and another**). They were seeking seniority from the date they were appointed on adhoc basis. Relying upon the judgment dated 15.11.1993 [2001 (5) SCC 401 (1)] of Hon’ble Supreme

Court in **Union of India and another vs. P. Srinivasulu and aothers** in SLP (C) No.10714/93, the said relief was granted by the Tribunal on 28.06.2000 (Annexure A-2).

2.2 The order of the Tribunal was reviewed unsuccessfully by the respondent-department.

2.3 The respondent department filed writ petition in Hon'ble Patna Court at Patna in CWJC No.689 of 2003. After confirming that the applicants in the O.A are covered by **P. Srinivasulu** (supra), Hon'ble High Court vide its order dated 16.01.2003 (page 31,32 Annexure A-3) refused to interfere in the order of the Tribunal.

2.4 The respondent department approached Hon'ble Supreme Court in Civil Appeal No. 6113/2008. The same was dismissed on 18.01.2017 (pp 33 Annexure A-3) keeping question of law open.

2.5 Following the decision of Hon'ble Supreme Court dated 18.01.2017, the respondent department modified the seniority list provisionally on 29.06.2017 (Annexure A-4), inviting representations within one month. A large number of representations were received. However, rejecting the representations, the final seniority list was issued on 07.11.2017

(Annexure A-1), which is being impugned through this Original Application.

3. The applicants have put forward two main arguments. Firstly, there were only twelve applicants before the Patna Bench of Tribunal in O.A 38/1995. The orders of the Hon'ble Supreme Court is in personam. However, the relief has been granted by the respondent department to all the adhoc appointees. Secondly, a three judge Bench of Hon'ble Supreme Court in the matters of **Union of India and another vs. Lalita S. Rao**, in judgment dated 10.04.2001 (2001 (5) SCC 384) had decided that services rendered prior to regularisation would not be counted for the purpose of seniority for Medical Officers appointed on adhoc basis after 01.10.1984.

4. The following relief has been prayed for:

“8. RELIEF SOUGHT:

In view of the above referred facts and grounds the applicants pray for the following relief's:

8.1 That the learned Tribunal may kindly be pleased to call the entire records pertaining to the case of the applicants.

8.2 That, the Hon'ble Tribunal may kindly be pleased to quash the impugned list dated 07.11.2017 (Annexure A/1).

8.3 That, the Hon'ble Tribunal may kindly be pleased direct the respondents not to disturb the seniority position of the applicants.

8.4 Cost of the petition be awarded to the applicant.

8.5 Any other relief which the learned Tribunal deems fit and proper may be awarded.”

5. The respondents in their reply have submitted that the seniority list has been revised based on the decision of Hon’ble Supreme Court in Civil Appeal no.6113/2008. During the pendency of S.L.P, Hon’ble Supreme Court vide its order dated 04.04.2005 had allowed 242 respondents to join SLP. Out of the 242 added respondents, only 87 respondents were similarly situated as initial 12 applicants who approached Patna Bench of Tribunal. Therefore, benefit has been allowed to 99 adhoc IRMS officers of 1985-86 batch based on judgment of Hon’ble Supreme Court dated 18.01.2017.

5.1 Further, they have also stated that it was brought to the specific notice of Hon’ble Supreme Court in Civil Appeal No.61113/2008 that grant of seniority benefit to adhoc appointees of 1985-86 will be in violation of their order in the matters of **Lalita S. Rao** (supra), but Hon’ble Supreme Court dismissed the appeal filed by the respondent Department, thereby allowing the benefit to adhoc appointees.

6. Heard the arguments of learned counsels of both the parties, which were mainly on the lines of written pleadings and records placed before us.

FINDINGS

7. It is important to mention the important judgment in chronological order.

8. Hon'ble Supreme Court in the matters of **P. Srinivasulu** (supra) in the judgment dated 15.11.1993 has held as under:

1. Heard learned counsel for the parties.

2. The respondents were initially appointed as Assistant Divisional Medical Officers on ad hoc basis. Later on they went through the process of selection by UPSC and were selected to the said post on regular basis. The question before the Central Administrative Tribunal was whether the respondents were entitled to count the period of their service in ad hoc capacity towards seniority. The Tribunal answered the question in the affirmative and in favour of the respondents. This special leave petition by the Union of India is against the judgment of the Tribunal

3. The learned counsel for the Union of India has relied on the judgment of this Court in Dr M.A. Haque v. Union of India [(1993) 2 SCC 213 : 1993 SCC (L&S) 412 : (1993) 24 ATC 117] decided. We have been taken through the said judgment. In Dr Haque case [(1993) 2 SCC 213 : 1993 SCC (L&S) 412 : (1993) 24 ATC 117] the applicants before this Court had not appeared in any written examination or interview and had not gone through any process of selection by UPSC. The applicants in that case were regularised under the directions of this Court. It was in these circumstances that this Court refused to grant the applicants in Dr Haque case [(1993) 2 SCC 213 : 1993 SCC (L&S) 412 : (1993) 24 ATC 117] the benefit of their ad hoc service towards seniority. The facts in the present special leave petition are entirely different. The

respondents herein were selected through the Union Public Service Commission and were regularised. They have been rightly given the benefit of their ad hoc service towards seniority by the Central Administrative Tribunal. The special leave petition is dismissed.

9. The coordinate Bench of this Tribunal at Patna vide order dated 28.06.2000 in OA No.38/1995 had allowed the O.A. The operative para of the order reads as under:

“17. In view of the aforesaid discussions, we find and hold that the matter is no longer res Integra. The decision in Haque’s case is not applicable to the case of the applicants. Rather the case of the applicants is fully covered by the decision in Shrinivasalu’s case (supra). Accordingly, we allow this application with a direction to the respondents to grant the same benefit to the applicants as has been granted by the Hon’ble Supreme Court in the case of the Union of India and Anr. v. P. Shrinivasalu and Ors. in SLP (Civil) No. 10714/93, vide order dated 15.11.93. The O.A. is accordingly, disposed of with no order as to costs.”

10. The judgment of Hon’ble High Court of Judicature at Patna dated 16.01.2003 in CWJC No.689 of 2003 (**Union of India and others vs. Dr. Mukund Kumar**) is as under:

“This petition is directed against the order of the Central Administrative Tribunal dated 28 June 2000 (Annexure -2). The Union of India through the railway administration has filed the present writ petition. The delay of 2 & 1/2 years in challenging the order of the tribunal is explained as awaiting the result of a review application filed before the tribunal which was rejected recently. The petitioners or the applicants before the tribunal have filed a contempt action and, thus, the present writ petition has been filed.

The reliefs sought by the applicants before the tribunal were as below:

- “(i) For a direction to the respondents to determine the seniority of the applicants after taking into consideration their entire service including their initial ad-hoc period which was subsequently regularised through the Union Public Service Commission;*
- (ii) The Respondents may be directed to give promotion to the applicants with the senior scale of Divisional Medical Officers retrospectively from the date(s) of their ad hoc/temporary joining on the post of Assistant Medical Officer (Grade-II); and*
- (iii) Other relief of reliefs.”*

One of the inquiries made by the court from the learned counsel appearing for the railway was whether the tribunal has made an error in following the Shrinivasalu’s case noticed by the tribunal. The answer was that it had not. It is accepted by learned counsel for the petitioners that the initial ad hoc period of the respondent – applicants was subsequently regularised by the Union Public Service Commission.

In the circumstances, the court is unable to certify that the Central Administrative Tribunal has committed any error in reaching its decision.”

11. The respondent-Railways approached the Hon’ble Supreme Court in Civil Appeal No(s) 6113/2008, wherein vide order dated 18.01.2017, the Hon’ble Supreme Court has held as under:

“We have heard learned counsel for the parties.

We do not see any ground to interfere with the impugned order. The Civil appeal is accordingly dismissed. No costs.

Pending applications, if any, shall also stand disposed of.

However, the question of law is kept open.”

12. Meanwhile, a three judges Bench of Hon'ble Supreme Court in the case of **Lalita S. Rao** (supra) vide order dated 10.04.2001 has held as under:

“3.At the cost of repetition we would record our conclusions as under:

(1). All doctors appointed either as Assistant Medical Officer or as Assistant Divisional Medical Officer on ad hoc basis up to 1-10-1984, who were regularised by the Railway Administration in consultation with the Union Public Service Commission on the evaluation of their work and conduct and on the basis of their CRs in respect of a period subsequent to 1-10-1984 (sic 1982), pursuant to the direction of this Court in the case of Dr A.K. Jain [1987 Supp SCC 497 : 1988 SCC (L&S) 222] will not be entitled to count the services rendered prior to the regularisation for the purpose of determination of their seniority in the cadre. This has been so held in the interlocutory application filed by Dr Haque and answered by this Court in its judgment dated 18-2-1993, reported in Dr Haque case [(1993) 2 SCC 213 : 1993 SCC (L&S) 412 : (1993) 24 ATC 117] .

(2). Doctors who had been appointed by the Railway Administration on ad hoc basis or on temporary basis and had got themselves regularised prior to 1-10-1984, by appearing in the selection test held by the Union Public Service Commission then in their case the period prior to their regularisation could be counted for determining their seniority applying Principle 'B' of Direct Recruit Engineering Officers' Assn. case [Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348] and in fact, the Tribunal decided the case of Dr Srinivasulu on that basis and this Court upheld the said decision.

(3). If any doctor, who had been appointed subsequent to 1-10-1984 and had applied for selection by the Union Public Service Commission on obtaining relaxation of age pursuant to Direction 5 in Dr Jain case [1987 Supp SCC 497 : 1988 SCC (L&S) 222] and got selected thereby finally, in such a case the services rendered prior to such regularisation would not be counted for the purpose of his seniority in the

cadre, particularly when the Recruitment Rules did not provide for any ad hoc appointment and only provided for appointment to be made through the Union Public Service Commission. We have taken the date 1-10-1984 as the cut-off date since this Court in Dr Jain case [1987 Supp SCC 497 : 1988 SCC (L&S) 222] had considered the impasse and had directed regularisation of ad hoc doctors appointed up to 1-10-1984. The ad hoc appointees subsequent to 1-10-1984, even if got themselves regularised by appearing in the selection test conducted by the Union Public Service Commission in accordance with the Rules, it will not be in the interest of justice to apply Principle 'B' to their case as the statutory Recruitment Rules do not provide for any other mode of recruitment other than by the process of selection by the Union Public Service Commission."

13. It is evident that when the Patna Bench of the Tribunal passed the order on 28.06.2000 (Annexure A-2), the Hon'ble Supreme Court had already decided the case of **P. Srinivasulu** (supra) and, accordingly, the Patna Bench had adjudicated the case. However, by the time Hon'ble High Court of Patna adjudicated the CWJC No.689 of 2003, three judges Bench of the Hon'ble Supreme Court had already decided the case of **Lalita S. Rao** (supra). Perusal of the order clearly indicates that the judgment of **Lalita S. Rao** (supra) was not brought to the notice of Hon'ble High Court of Patna.

14. When the matter traveled to Hon'ble Supreme Court in Civil Appeal No.6113/2008, it has been brought out by the respondents in their reply that the case of **Lalita S. Rao** (supra) was brought to

the notice of Hon'ble High Court. However, perusal of the judgment of the Hon'ble Supreme Court does not indicate the same.

15. Hon'ble Supreme Court in the matters of Indian Oil Corporation Ltd. vs. State of Bihar and others (1986) 4 SCC 146 has held:

*“6. We are clearly of opinion that the view taken by the High Court was not right and that the High Court should have gone into the merits of the writ petition without dismissing it on the preliminary ground. As observed by this Court in **Workmen v. Board of Trustees of the Cochin Port Trust**, (1978) 3 SCC 119 the effect of a non-speaking order of dismissal of a special leave petition without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that this Court had decided only that it was not a fit case where special leave should be granted. This conclusion may have been reached by this Court due to several reasons. When the order passed by this Court was not a speaking one, it is not correct to assume that this Court had necessarily decided implicitly all the questions in relation to the merits of the award, which was under challenge before this Court in the special leave petition. A writ proceeding is a wholly different and distinct proceeding. Questions which can be said to have been decided by this Court expressly, implicitly or even constructively while dismissing the special leave petition cannot, of course, be reopened in a subsequent writ proceeding before the High Court. But neither on the principle of res judicata nor on any principle of public policy analogous thereto, would the order of this Court dismissing the special leave petition operate to bar the trial of identical issues in a separate proceeding namely, the writ proceeding before the High Court merely on the basis of an uncertain assumption that the issues must have been decided by this Court at least by implication. It is not correct or safe to extend the principle of res judicata or constructive res judicata to such an extent so as to found it on mere guesswork.*

*7. This enunciation of the legal position has been reiterated by this Court in **Ahmedabad Manufacturing & Calico Printing Co. Ltd v.***

Workmen, (1981) 2 SCC 663. The principles laid down in the two decisions cited above fully govern the present case.

8. It is not the policy of this Court to entertain special leave petitions and grant leave under Article 136 of the Constitution save in those cases where some substantial question of law of general or public importance is involved or there is manifest injustice resulting from the impugned order or judgment. The dismissal of a special leave petition in limine by a non-speaking order does not therefore justify any inference that by necessary implication the contentions raised in the special leave petition on the merits of the case have been rejected by this Court. It may also be observed that having regard to the very heavy backlog of work in this Court and the necessity to restrict the intake of fresh cases by strictly following the criteria aforementioned, it has very often been the practice of this Court not to grant special leave except where the party cannot claim effective relief by approaching the concerned High Court under Article 226 of the Constitution. In such cases also the special leave petitions are quite often dismissed only by passing a non-speaking order especially in view of the rulings already given by this Court in the two decisions aforecited, that such dismissal of the special leave petition will not preclude the party from moving the High Court for seeking relief under Article 226 of the Constitution. In such cases it would work extreme hardship and injustice if the High Court were to close its doors to the petitioner and refuse him relief under Article 226 of the Constitution on the sole ground of dismissal of the special leave petition.”

16. In the matters of **U.P State Road Transport Corporation vs. Ornaditya Verma and others** (2005) 4 SCC 424, Hon’ble Apex Court has held that the dismissal *in limine* does not amount to upholding the law propounded in the decision sought to be appealed against.

17. Hon’ble Apex Court had held in **Y. Satyanarayan Reddy vs. Mandal Revenue Officer**, (2009) 9 SCC 447 that:

*“23. It is well settled that the dismissal of a special leave petition in limine does not amount to a clear affirmation of the High Court decision and it does not constitute any binding precedent. (See **Workmen v. Board of Trustees of the Cochin Port Trust**, (1978) 3 SCC 119, **Indian Oil Corpn. Ltd. v. State of Bihar**, (1986) 4 SCC 146, **Supreme Court Employees’ Welfare Assn. v. Union of India**, (1989) 4 SCC 187, **CIT v. Shree Manjunatheaware Packing Products & Camphor Works**, (1998) 1 SCC 598, **P. Nallammal v. State**, (1999) 6 SCC 559 and **U.P. SRTC v. Omaditya Verma**, (2005) 4 SCC 424).”*

18. Perusal of the above cited judgments very clearly brings out that when Hon’ble Supreme Court dismisses an Appeal with a non speaking order, it does not mean that all facets of law has been examined by Hon’ble Supreme Court. It also does not imply that the contentions raised in Special Leave Petition on the merits of the case have been rejected by Hon’ble Supreme Court.

19. In the instant matter we find that the three judges Bench of Hon’ble Supreme Court in the case of **Lalita S. Rao** (supra) vide order dated 10.04.2001 has held that the services rendered by the adhoc appointees, who were appointed after 01.10.1984, prior to their regularisation through UPSC, will not be counted towards seniority. However, it is presumed that the said order of the Hon’ble Supreme Court was not brought to the notice of Division Bench of two Judges of Hon’ble Supreme Court at the time of deciding the Civil Appeal No.6113 of 2008 vide order dated

18.01.2017. The said Civil Appeal was dismissed by passing the following order:

“We have heard learned counsel for the parties.

We do not see any ground to interfere with the impugned order. The Civil appeal is accordingly dismissed. No costs.

Pending applications, if any, shall also stand disposed of.

However, the question of law is kept open.”

20. Therefore, the right cause of action would be to follow the law laid down by three Judge Bench of Hon’ble Supreme Court in the matters of **Lalita S. Rao** (supra).

21. In this view of the matter, the impugned seniority list (Annexure A-1) deserves to be quashed and set aside as it is contradictory to the verdict laid down by the Hon’ble Supreme Court in the matters of **Lalita S. Rao** (supra).

22. In the result, the O.A is allowed. The impugned seniority list issued on 07.11.2017 (Annexure A-1) is quashed and set aside. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

Am/-