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Court : Central Administrative Tribunal CAT Delhi

Decided On : Jan-13-2000

Judge : V R Vice-, a a R.K.

Appellant : Dr. D. Bora and ors.

Respondent : Union of India (Uoi) and ors.

Judgement :

1. This OA has been filed by the Central Health Service Regularly Appointed Doctors' Forum (hereinafter) referred to as to 'the regular doctors') impugning the order passed by respondents dated 8.12.1998 granting non-functional selection grade (hereinafter referred to as 'the selection grade') to the Central Health Service doctors who though initially appointed on adhoc basis were regularised on the basis of the directions of the Supreme Court in the case of Dr. P.P. C. Rawani and Ors. v. Union of India and Ors., (1992) 1 SCJ 221=(1992) I SC331=1992(1) SLJ 69 (SC) (hereinafter referred to as 'the regularised doctors').

2. The main contention of the applicants is that respondent No. 1 by the impugned order dated 8.12.1998 has violated the directions given by the Apex Court in Dr. Rawani's case (supra). The case of the applicants is that they are doctors who had been selected and appointed through the UPSC in accordance with the relevant rules. As per the Supreme Court's orders in Rawani's case adhoc appointed doctors who had been regularised by virtue of the order of the Supreme Court were to be given promotion only against supernumerary posts at par with regularly recruited doctors; instead they have gone far ahead of the applicants and while the

regularised doctors have been given selection grade, the applicants though appointed earlier and hence senior have not been granted the same benefits.

3. In order to appreciate the issues and contentions raised in the QA; some background and history of the case is essential. The private respondents were originally appointed as adhoc Group 'B' doctors under the Central Health Service Rules, 1963 between 1968 and 1977. Their appointment became necessary as adequate number of nominees were not available for appointment through the UPSC. After the first year they continued in service in consultationf with the UPSC. In the year 1982, the Central Health Service Rules, 1982 came into force and under those rules the posts in the cadre were classified as Medical Officer, Senior Medical Officer and Chief Medical Officer. All these posts were placed in Group 'A' and Group 'B' was totally abolished. These adhoc doctors made repeated representations to gain regularisation but failing to obtain relief from the cadre controlling authority, they moved the Delhi High Court in WP No. 1144/83. This WP was, however, dismissed.

The matter was then taken to the Supreme Court which by order dated 14.7.1986 gave liberty to the Govt. of India to request the UPSC to conduct special examination under Rule 8(2) of the 1982 Rules for selection/regularisation of the appellants only from their original dates of appointment. Some of the adhoc doctors who were appointed by the UPSC on a regular basis as fresh entrants moved the Supreme Court in Writ Petition No. 1228/86 seeking direction that their services rendered earlier on an adhoc basis should also be counted towards their seniority. The Supreme Court on 9.4.1987 disposed of Civil Appeal No.3519/84 titled as Dr. P.P.C. Rawani v. Union of India and Writ Petition No. 1228/86 holding that orders for regularisation of appointments be issued and that it will take effect from the respective dates of the applicants original appointment. A review petition against this order was dismissed. As the orders of the Supreme Court were not immediately complied with a Contempt Petition No. 8076/88 was filed. The same was disposed of on 29.10.1991. In this order notice was taken of the pleas made by the regular doctors who had not been heard earlier and who had submitted an intervention application. The Supreme Court observed as follows: "3. After hearing all the counsel, we were inclined to think that while the appellants should get their

rights which were declared by this Court in its earlier orders, there should be at the same time be no prejudice to the doctors appointed through regular recruitment by the Union Public Service Commission" (1) Each of the appellants will be treated as regularised in Group A of the Central Health Service from January 1, 1973 or the date of his first initial appointment in the service (though as adhoc Group B doctor), whichever is later.

(2) In order to ensure that there is no disturbance of the seniority and promotional prospects of the regularly recruited doctors there will be a separate seniority list in respect of the appellants and their promotions (about which directions are given below) shall be regulated by such separate seniority list and such promotions will only be in supernumerary posts to be created as mentioned below.

(3) (a) Each of the appellants will be eligible for promotion to the post of Senior Medical Officer or Chief Medical Officer or further promotional posts therefrom taking into account his seniority in the separate seniority list which is to be drawn up as indicated above.

(b) The promotion of any of the appellants to the post of Senior Medical Officer, or Chief Medical Officer and further promotional post therefrom will be on par with the promotion of the regularly recruited doctor who is immediately junior to the concerned appellant on the basis of their respective dates of appointment. In other words, if a regularly recruited doctor, on the basis of the seniority list maintained by the department, gets a promotion as Senior Medical Officer or Chief Medical Officer or further promotion thereafter, then the appellant who was appointed immediately earlier to him will also be promoted as a Senior Medical Officer or Chief Medical Officer or further promotion therefrom (as the case may be) with effect from the same date.

(4) In order that there may be no conflict or any possibilities of reversion, the post to which an appellant will be promoted (whether as Senior Medical Officer or Chief Medical Officer or on further promotion therefrom) should only be to a supernumerary post. Such number of supernumerary posts should be created by

the Government as may be necessary to give effect to the above directions. No promotion will be given to any of the appellants in the existing vacancies which will go only to the regularly appointed doctors.

(5) The appellants hereby agree to give up all monetary claims on account of revision of scales, regularisation or promotion to which they would be entitled till October 31, 1991.

(6) Apart from the appellants there are certain, doctors who fall in the same category but who had not filed writ petitions before the High Court. They have filed directly writ petitions before this Court bearing Nos. 2620-2659 of 1985 and intervention applications.

The intervention applications are allowed and rule nisi is issued in the writ petitions of which the other parties take notice. These interveners and writ petitioner have to be granted the same relief as the appellants. It is made clear that all these applicants and petitioners will be entitled to the same relief as the appellants for all purposes of seniority and promotion. All monetary claims on account of revision of scales, regularisation or promotion till October 31, 1991 are given up by these applicants and petitioners as well.

4. In this background the applicants state that though the Supreme Court in its directions had made it abundantly clear that regularised doctors would gain promotion only against supernumerary posts and would not be promoted against regular vacancies, the department did not create any supernumerary posts and the regularised doctors are being placed against normal existing vacancies thus depriving the regular doctors of their promotion prospects. As a result the regularised doctors are stealing a march over the regular doctors contrary to the letter and spirit of the order of the Supreme Court.

5. The official-respondents as well as the private respondents deny the aforesaid allegations. According to them, the regularised doctors are not impinging on the regular cadre posts to which the applicants are entitled. It is the case of both the official and private respondents that the impugned order has been issued in accordance with the Supreme Court's directions that the regularised doctors will

be granted promotion with reference to the promotion granted to the regularly recruited doctor who is immediately junior to the regularised doctors on the basis of respective date of appointment as provided in direction 3(b) extracted above.

6. We have heard the counsel. As we see it, the genesis of the present controversy can be seen from the basis on which the DPC has proceeded in recommending the grant of selection grade as in the impugned order to the regularised doctors. In reply to para 4.11 the official respondents have stated as follows: "The DPC held on 22.1.98 found that on the regular cadre Dr. (Kum) M.S. . Jayalakshmi, S.No. 181/97 (the regular doctor seniority List of 1997 whose date of appointment is 5.9.75 and Dr. A.K. Chakraborty, S.No. 219/97 (the regular cadre doctor Seniority List of 1997) whose date of appointment is 3.1.76 have been promoted as CMO (NFSG) w.e.f. 1.1.92 & 1.1.95 respectively. Accordingly, the committee adopted the criteria (in pursuance of the Judgment of the Supreme Court) of promotion of CMOs regularised cadre whose date of appointment is on or before 5.9.75 and 3.1.76 for the purpose of promotion/placement into CMO (NFSG) w.e.f. 1.1.92 & 1.1.95.

7. While particulars of Dr. (Ku) M.S. Jayalakshmi are not available on file it appears from a list enclosed by the applicants in the rejoinder in regard to UPSC recommended doctors that Dr. A.K. Chakraborty was recommended for appointment by the UPSC on 12.12.1974 along with a large number of other doctors but his actual date of appointment in CHS was 3.1.1976. The same was the case in respect of Dr. (Ku.) M.S.Jayalakshmi who though recommended for appointment on 12.12.1974 actually joined on 5.9.1975. The seniority of Dr. (Ku.) M.S.Jayalakshmi and Dr. A.K. Chakraborty in the list of regular UPSC selected doctors, however, remained as their order of merit. Thus, even though they joined the service at a later date, they retained their interse seniority vis-a-vis other regular doctors as per the recommendation of the UPSC. As per the CHS Rules 15% of the senior duty posts in the Central Health Service will be in the selection grade. As the grant of selection grade is personal and is non-functional, it is not dependant on any earmarked posts in selection grade unlike in the grade of Senior Medical Officers and Chief Medical Officers. Thus, when Dr. (Ku). M.S. Jayalakshmi was considered and found fit for grant of selection grade on the basis

of her seniority no. 181 amongst regular doctors, the respondents following the aforesaid directions of the Supreme Court in Dr. P.P.C. Rawani's case (supra) considered all the regularised doctors whose date of appointment was prior to 5.9.1975 for grant of selection grade. They were also granted selection grade from 1.9.1992 i.e. the date from which Dr. (Ku.) M.S. Jayalakshmi, the junior most regular doctor, was granted selection grade. Similarly, when Dr. A.K. Chakraborty Serial No. 219 was granted selection grade amongst the regular doctors all regularised doctors with an appointment date earlier to 3.1.76 got the selection grade from the same date Dr.

Chakraborty got namely 1.1.1995. The anomaly has thus arisen because a number of regular doctors, who were recommended for appointment by the UPSC on 12.12.1974 along with Dr. Chakraborty could not get selection grade because they were Junior to Dr. Chakraborty. On the other hand their date of appointment was in most cases prior to 3.1.1976. Thus it came about that many regular doctors did not get the selection grade even though their dates of appointment were earlier to the regularised doctors.

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 Ors. v. Union of India and Ors., (1993) 2 SCC 213=1993 (3) SLJ 64 (SC). the question of inter se seniority between the regular and regularised doctors had come up before the Supreme Court and the 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 outsider 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 V.S.R. 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 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. Hague's case (supra) the applicants are also entitled to the same benefits and from the same 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 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 inter se seniority of the regular doctors.

12. We quite see the heart burning 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: (b) To declare that at no point of time the posts of NFSG can exceed the posts of CMO even for regularized 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 regularised 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 dated 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 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. In the result, finding no scope for interference, the OA is dismissed. No order as to costs.

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