

Union of India

Vs

Dr.Akhilesh Chandra Agrawal

(K. Venkataswami, A. P. Misra JJ)

27.02.1998

JUDGEMENT

K.VENKATASWAMI J

1.These two appeals by special leave arise out of one order of the Central Administrative Tribunal, Allahabad Bench, dated 23.1.96 made in O.A.No.1744 of 1993.

2.Civil Appeal No.14747/96 was preferred by the Union of India and Civil Appeal No.14573/96 was filled by the aggrieved individuals against one and same order of the Central Administrative Tribunal.

3.The subject-matter of dispute before the Tribunal related to a letter dated 17.10.93 issued by the Deputy Director Admn.(CGHS), New Delhi, to the Deputy Director, CGHS, Kanpur. The letter impugned before the Tribunal reads as follows:-

"No.A-32018/4/93/CHS.II

Directorate General of Health Services

New Delhi, dated the 12.10.93

17.10.93

To

The Deputy Director,

CGHS, 117/617, Pandu Nagar,

Kanpur.

Sub: CGHS, Kanpur-Clarification regarding fixation of seniority of Chief Medical Officers - Reg.

Sir,

I am directed to refer to your letter No.2-3/90-CGHS/KNP/1876, dated the 27th August, 1993 on the subject mentioned above and to say that the Ministry of Health & Family Welfare, to whom the case was referred, have clarified that for the purpose of inter-se-comparison between initially regularly appointed doctors and beneficiaries in terms of Dr. Rawani's case judgement, precedence will be given to those who have an earlier date/deemed date of regular appointment. The actual date of issue of orders of organisation is not relevant in these cases.

Yours faithfully,

(Lala Ram)

Deputy Director Admn. (CGHS)

Copy to:--

Additional Director, CGHS."

4.Shortly put the facts leading to the filing of O.A.No.1744/93 before the Tribunal are the following:-

The first appellant and the members of the second appellant were all originally appointed as ad hoc Group 'B' Doctors under the Central Health Services Rules, 1963 between the year 1968 to 1977. After the first year of service those doctors continued in service in consultation with the Union Public Service Commission. In the year 1982 the Central Service Rules, 1982 came into force and under those Rules the posts were classified as Medical Officers, Senior Medical Officers and Chief Medical Officers. All these Medical Officers were brought under one Group, namely, Group 'A'. Group 'B' was totally abolished. In spite of the appellants making repeated representations for regularisation, they could not get any response from the authorities, which made them to move the Delhi High Court in W.P.No.1144/83 for regularisation. The Delhi High Court dismissed the Writ Petition. However, this Court granted leave and the appeal was numbered as Civil Appeal No.3519/84. At the instance of Union of India, this Court by an order dated 14.7.86 gave liberty to the Government of India to request the Union Public Service Commission to conduct a special selection under Rule 8(2) of the 1982 Rules for selection/regularisation of the appellants only from their original dates of appointments. Some of the appellants, who were appointed by the Union Public Service Commission on a regular basis as fresh entrants, moved this Court in Writ Petition No.1228/86 seeking direction from this Court that their services rendered on ad hoc basis to be counted. This Court on 9.4.87 disposed of Civil Appeal No. 3519/84 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 their original appointments. A Review Petition filed by the Union of India was dismissed by this Court on 15.9.87. In spite of this Court's

order, the Union of India did not give effect to the orders of this Court, which made the appellants to move this Court in Contempt Petition in CMP No.8076/88. The Contemte 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 supernumerary posts to be created as mentioned.

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, 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 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 31.10.1991.

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.2620-2659/1985 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 petitioners 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 purpose of seniority and promotion. All monetary claims on account of revision of scales, regularisation or promotion till 31.10.1991 are given up by these applicants and petitioners as well."

5. On the basis of the order of this Court, the Union of India issued orders on 11.12.91 stating that Senior Medical Officer will be promoted as Chief Medical Officer on completion of six years of regular service as Senior Medical Officer or on completion of ten years of combined regular service as Medical Officers and Senior Medical Officers of which atleast two years would be as Senior Medical Officers on the basis of seniority-cum-fitness subject to their securing Bench Mark of "good" on 18.12.92 the Union of India issued a further order stating that since the Officers on

promotion were adjusted against combined sanctioned strength, no supernumerary post was necessary. In these circumstances, it appears that the Deputy Director, CGHS, Kanpur, sought a clarification from the Director General of Health Services on 27.8.93. In reply to that, the letter impugned before the Tribunal came to be issued.

6. The Tribunal accepting the contentions of the respondents herein (directly recruited doctors) held that the impugned letter was in violation of the directions given by this Court and, therefore, the same was illegal and not sustainable in law. The Tribunal was of the view that the fact that the regularised doctors were to be accommodated in the supernumerary posts to be created, will show that they will not carry with them the administrative powers. The Tribunal observed as follows:-

"The result, therefore, is that when a regular post of Chief Medical Officer falls vacant, it shall go to the directly recruited medical officer. Naturally, such post of Chief Medical Officers will carry the administrative power as well. Since, no prejudice is to be caused to the regularised medical officer, he shall be posted as Chief Medical Officer but only on super-numerary post. In our opinion, such super-numerary post which is different than the regular post, will not carry with it the administrative powers. "This view of the Tribunal, according to the appellants, in C.A.No.14573/96 is prejudicial to their interest and by reason of the order of the Tribunal they are to take orders from their juniors, which was not the spirit or intent of the order of this Court. According to them, the letter impugned before the Tribunal was quite in accordance with the directions given by this Court and the construction put on that letter by the Tribunal was wrong.

7. From the narration of the facts, it is evident that the appellants, who are to be considered as regularised doctors, have consistently succeeded before this Court at every stage in establishing their seniority. As noticed above, this Court while giving directions in unmistakable terms has stated that the regularised doctors will take their seniority on and from 1.1.73 or the date of their first initial appointment in the service (though as ad hoc Group 'B' doctors), whichever is later. In view of this direction read with directions 2 and 3 (supra), which was arrived at after a prolonged discussion, the view taken by the Tribunal that the impugned letter dated 17.10.93 was in violation of the directions given by this Court is totally uncalled for. Likewise, the view taken by the Tribunal that those appointed in the supernumerary posts cannot claim the administrative powers as that will go only with regular posts is also wrong. The Tribunal treated supernumerary posts as different one from the regular posts. This view of the Tribunal cannot be sustained in view of a decision of this Court in D.K.Reddy & Anr.Vs.Union of India & Ors.[JT 1995 (4) S.C.432]. This Court while considering a similar question repelled an argument similar to the view taken by the Tribunal by observing as follows:-

"As a result of such an exercise, if need arose appellants no.1 could be treated to have been holding supernumerary post in Junior Time Scale Grade of Group 'A' posts and in all other promotional cadres. He cannot be treated to be outside the sanctioned strength of posts in Junior Time Scale grade of Group 'A' or other promotional posts as contended by learned counsel for respondents. Otherwise, the very creation of supernumerary posts would become otiose and meaningless."

8. The two reasons given by the Tribunal to hold the impugned letter as not sustainable in law, cannot be accepted as correct one. It is not in dispute that there was no quarrel between the two groups regarding the seniority or promotion. Both sides agreed that so far as promotion and

seniority are concerned, they are given in accordance with the directions of this Court, but only regarding the administrative responsibilities/powers the directly recruited doctors claimed that they alone should be given such administrative powers irrespective of the seniority which was accepted by the Tribunal. We do not think that the Tribunal was right in conceding the claim of the directly recruited doctors on this aspect.

9. In the result, the order of the Tribunal is set aside and the letter impugned before the Tribunal does not suffer from any illegality. The appeals are allowed. There will be no order as to costs.