

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 3289/2002

New Delhi, this the 16th day of September, 2008

**HON'BLE MR. L.K.JOSHI, VICE CHAIRMAN (A)
HON'BLE MRS. MEERA CHIBBER, MEMBER (J)**

Shri Rama Kant Dixit,
R/o D-324, Laxmi Nagar,
Delhi-92

... Applicant

(By Advocate: Shri G.D. Gupta, Senior counsel with Shri Surinder
Kumar Gupta)

Versus

1. Union of India
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi
(through its Secretary)
2. The Director General Health Services
Govt. of India,
Nirman Bhawan, New Delhi
3. The Secretary,
Department of Indian System of Medicine & Homeopathy,
Indian Red Cross Society Building
Red Cross Road, New Delhi-110001
4. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110001

... Respondents

(By Advocate: Shri S.M. Arif with Shri Ravinder Kumar Sharma, for
respondents 1-3)

ORDER

Mr. L.K.Joshi, Vice Chairman (A)

The issue to be decided in this case is whether the Applicant, an Ayurvedic Physician is eligible for regularization in his post from 30.07.1980 when he was appointed on ad hoc basis to that post or he would be regularized from 18.12.1997, when his appointment on regular

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basis was approved by the Union Public Service Commission (for short UPSC).

2. The Respondents had issued an advertisement for filling up 17 regular posts of General Duty Medical Officers (for short JDMOs) Grade-III, Ayurvedic Physicians. The Applicant who obtained degree of Bachelor of Integrated Medicinal System (BIMS) in the year 1974 was sponsored by the employment exchange for the aforesaid post. Interview for the post was held in June, 1980 and a Selection Board comprising Director General Health Services, Deputy Director of Central Government Health Services (for short CGHS), Dr. Bhagwan Dass, an expert of the CGHS and one other doctor was set up. The Board selected 12 candidates in the first instance, including the Applicant against the 17 regular vacancies. Orders were issued on 29.04.1985 terminating the services of seven ad hoc Ayurvedic Physicians with effect from 30.04.1985. This list included the name of Dr. R.K. Dixit also, the Applicant herein. The Applicant challenged the order of termination of his service in a joint suit bearing number 178/1985 before a Civil Court. The Court granted interim injunction restraining the Respondents from dispensing with the services of the above mentioned seven Ayurvedic Physicians. The suit number 178/1985 was transferred to the Tribunal bearing T. No. 699/1986. The aforesaid petition was decided by an order dated 25.07.1991. The Tribunal held as follows :

“2. The appointing authority is bound by the unilateral terms and conditions which it has imposed upon itself. The appointments were ad hoc until filling up of the posts by the nominees of the U.P.S.C. In this connection reference may be made to the case of Dr. Sunits P. Shere in which the termination of ad-hoc employment was held to be arbitrary. The services of the applicants cannot, therefore, be terminated. The termination order in these circumstances is illegal and vitiated. Even when the nominees of the U.P.S.C. are available, the Department should consider adjusting the applicants against vacant posts, if any. Their cases may be considered by the U.P.S.C. after condonation of age to the extent of ad-hoc service.”

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3. The Respondents moved an application for clarification which was decided on 19.03.1993 in which the learned Bench observed as follows :

“In case the applicants are adjusted or regularized the law will follow its own course and the applicants were entitled to count the earlier period towards service on the same has been allowed to others. Obviously, the applicants will get benefit of the same and it is not expected that the respondents will act against the law or they will discriminate the applicants service to the service of similarly placed other persons. I never opinioned (sic) that the judgement is quite clear.”

4. The Applicants thereafter made several representations to the Respondents for implementation of the order dated 25.07.1991 of this Tribunal. The Respondents issued an order dated 18.12.1997 by which the services of the Applicants were regularized with effect from 21.08.1997.

5. The order issued by the Respondents regularizing the service of the Applicant from 21.08.1997 was challenged in OA No.49/1999, **Dr. Rama Kant Dixit** (applicant herein) **vs. Director General Health Services and others**. The Tribunal by its order dated 20.11.2000 decided the matter thus :

“11. **For the detailed discussions above, we are afraid we cannot grant any relief prayed for by the applicants. We are bound by the decision of the Hon'ble Supreme Court.** In the circumstances, we can only direct the respondents to take up the case of the applicants once against with UPSC for its reconsideration taking into account the long service put in by the applicants. We do so accordingly. The OA is allowed to this extent only. There shall be no order as to costs.”

Following the directions of the Tribunal in the above OA, the UPSC communicated the following views to the first Respondent :

“I am directed to refer to your letter No.A.18011/1/99-ISM(E.I) dated 9th July, 2001 on the above subject and to say that the Commission have reconsidered the case of retrospective regularization of Dr. R.K. Dixit and Dr. Prem

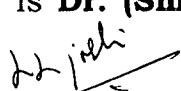
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Kumar from the dates of their initial appointment on ad hoc basis, consequent to the order dated 20th November, 2000, in original Application No. 49/1999, of the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi, taking into account the long service put in by the applicants.

2. However, keeping in view the various orders of the Hon'ble Supreme Court of India, the instructions of the Department of Personnel and Training, the policy of the Commission, and the various precedents, regarding normally giving only prospective effect to the recommendations of the Commission and also keeping in view the fact that ten other similarly placed officers were also similarly appointed, the Commission could not agree to the retrospective regularization of Dr.R.K. Dixit and Dr.Prem Kumar from the dates of their initial appointment on ad-hoc basis."

This order has been challenged before us.

6. On the above factual matrix, the learned senior counsel after taking us through the facts of the case, has contended that the UPSC has failed to take into account the clarificatory order of this Tribunal dated 19.03.1993, which has been quoted in the preceding paragraph. It is contended that the Applicants were not appointed as direct recruits by the UPSC. They were recruited on being sponsored by the employment exchange by a committee comprising senior officers and experts of the Respondents. The UPSC, the fourth Respondent herein proceeded to regularize them after considering their Annual Confidential Reports (for short ACRs) since 1990 as mentioned in the order dated 18.12.1997 and regularized them only from 1997 and not from 1990. The learned senior counsel has placed reliance on **Union of India and another vs. P. Srinivasulu and others** decided on 15.11.1993 by the Honourable Supreme Court arising from the petitions for Special Leave to Appeal (Civil) No. 10714/1993 to buttress his argument that the benefit of ad hoc service has to be given. Reliance has also been placed on **Direct Recruit Class II Engineering Officers Association vs. State of Maharashtra and others**, (1990) 2 SCC 715. Another case relied upon is **Dr. (Smt.) Rekha Khare vs. Union of India and others** decided on



21.04.1997 arising out of SLP (Civil) No.23881/1996, Civil Appeal No.2969/1997.

7. The learned senior counsel would forcefully contend that the issue has already been decided by the Honourable Supreme Court in **Dr. P.P.C. Rawani and others vs. Union of India and others**, (1992) 1 SCC 331. It is contended that this judgment has dealt with the entire issue in detail and considered every aspect of the matter and settled the controversy regarding the date of regularization as well as the seniority. In view of this, the view of the fourth Respondent (UPSC) in the impugned letter dated 20.08.2001 is not sustainable.

8. Per contra, Mr. Arif, the learned counsel defending the Respondents would vehemently contend that the OA is barred by res judicata because the issue has already been decided in OA No.49/1999, which was by the same Applicant as in the instant OA on the same grounds. He contends that the filing of the present OA is a gross abuse of judicial process. It is argued that the Tribunal cannot sit in appeal over its order in OA No.49/1999. It has been pointed out that the relief claimed in OA No.49/1999 was as follows :

“(a) quash the action of the respondents as mentioned in the letter dt. 18.12.97 while restricting the regularization of the applicants in service as Ayurvedic Physicians only from 18.12.1997 while holding that the applicants are entitled to be regularized from their initial date of appointment viz. 30.7.1980.”

It is contended that this is the same relief which is claimed in the case in hand also.

9. The learned counsel defending the Respondents would further contend that the Tribunal in its order dated 20.11.2000 in OA No.49/1999 had clearly stated that “we are afraid we cannot grant any relief prayed for by the applicants. We are bound by the decision of the



Hon'ble Supreme Court." He would contend that the Tribunal had only directed the Respondents to take up the case of the applicants with the UPSC taking into account the long service put in by the applicants. The OA was allowed only to that extent. The learned counsel would further point out that the Tribunal had considered the judgment of the Honourable Supreme Court in Direct Recruit Class II Engineering Officers Association (cited supra) and had accepted the contention of the Respondents that it would not be applicable to the case of the applicants in that case, one of whom is the Applicant before us. The learned Bench had also relied on the judicial precedent of **Hindustan Shipyard & others vs. Dr. P. Sambasiva Rao and others**, (1996) 7 SCC 499 in which the Honourable Supreme Court held as follows :

“.... The court can only direct the ad hoc appointees to be considered for regularization by a selection Committee constituted in accordance with rules for direct appointment but cannot itself direct them to be regularized.”

The learned counsel has also cited the order of this Tribunal in OA No.2999/1992, **Hakim Syed Ahmed vs. Union of India and others**, which was also a similar case. It is stated that in this case, after discussing the case of Dr. P.P.C. Rawani (cited supra), the prayer of the applicants for regularization from the date of ad hoc appointment was rejected.

10. We have heard the arguments of the parties' counsel and have gone through the records placed before us with their assistance.

11. The only judgment of the Honourable Supreme Court in Dr. P.P.C. Rawani (cited supra), which is available is based on the application by some doctors of Central Health Service for clarification of an earlier order passed by the Honourable Supreme Court in Civil Appeal No.3519/1984. The grievance of the applicants, including Dr. P.P.C. Rawani was that the respondents had not given proper effect to the directions given by the

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Honourable Supreme Court in their order dated 9.04.1987. Thereafter, the Honourable Supreme Court has given certain directions to the Union of India. From this, it is not possible to decipher the ratio laid down by the Honourable Supreme Court in Dr. P.P.C. Rawani (cited supra). The Tribunal in its order in OA No.2999/1992, adverted to above, has also observed as follows in so far as the judicial precedent of Dr. P.P.C. Rawani (cited supra) is concerned :

“8. Learned counsel for the applicant further placed reliance upon the judgement of the Apex Court in Dr. P.P.C. Rawani & Ors. vs. Union of India & Ors., reported in (1992) 1 SCC 331. We have carefully gone through the aforesaid judgement and do not find anything therein to support the case of the applicant. The aforesaid judgement has been delivered in a Miscellaneous Petition filed by the petitioners and some intervenors in a case already disposed of by the Hon’ble Supreme Court on 9.4.1987 in which some directions had been given. What were those directions are not clear from a reading of the judgement in the Misc. Petition (supra). It appears that the Union of India had faced certain difficulties in giving effect to the judgement of the Apex Court dated 9.4.1987 and the Apex Court in the Misc. Petition clarified the same. The difficulty arose only in respect of the inter-se seniority to be given to the petitioners in the main Writ Petition and those who had already been appointed. While clarifying the earlier judgement the Apex Court, in order to ensure that there was no disturbance of the seniority and the promotional prospects of the regularly recruited doctors, directed that there will be a separate seniority list in respect of the original appellants and their promotions shall be regulated by that separate seniority list and such promotions will only be in supernumerary posts, to be created.”

The order in the aforesaid OA has also considered at length the judicial precedents in the case of **Dr. M.A. Haque & Ors. vs. Union of India & Ors.**, (1993) 2 SCC 213, **Dr. A.K. Jain vs. Union of India**, 1988 SCC (L&S) 222 and Direct Recruit Class II Engineering Officers Association (cited supra). The relevant paragraph of the order clarifies the issues involved in this case and is quoted in extenso below :

“10. Another judgement relied upon by the applicant’s counsel is the one delivered by the Apex Court in Dr. M.A. Haque & Ors. vs. Union of India & Ors., reported in (1993) 2 SCC 213. That case related to some Medical officers who

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had been recruited by the Railways on ad hoc basis pending regular recruitment to the posts through the UPSC. Although, from time to time the UPSC had recruited candidates on regular basis there remained some vacancies unfilled, either because the doctors recruited were less in number than the number of vacancies or some of those who were selected did not join the services, or between the date of advertisement by the UPSC and that of the empanelling, some more vacancies occurred. Whatever might be the reasons, the fact was that some vacancies always remained unfilled, with the result that every time the ad hoc Medical Officers and others like them were continued on ad hoc basis as a stop gap arrangement till the next recruitment by the UPSC. In the meantime some of them in fact appeared before the UPSC in pursuance to the advertisement notices issued from time to time and were selected and others like the petitioners in that case either failed to be selected or did not care to appear but they continued to serve on ad hoc basis. Writ petitions were filed in the Apex Court for the regularization of their services and by the judgement order dated 24.9.197 passed by the Apex Court in Dr. A.K. Jain vs. Union of India, reported in 1988 SCC (L&S) 222, the Apex Court directed that the services of all doctors appointed on ad hoc basis upto 1.10.1984 shall be regularized **in consultation with the UPSC** on the evaluation of their work & conduct and on the basis of their confidential reports in respect of a period subsequent to 1.10.1982. The Railways were given the liberty to terminate the services of those who are not so regularized on recommendation of the UPSC. The petitions of those doctors who had been appointed subsequent to 1.10.1984 were dismissed. Writ petitions, subsequent to the decision in the case of Dr. M.A. Haque & Ors. (Supra) came to be filed by those who had been regularized in pursuance to the earlier judgement dated 24.9.1987 in Dr. A.K. Jain's case claiming seniority over some other persons. The question of fixing of seniority had been kept pending in view of the judgement of the Constitution Bench of the Apex Court in Direct Recruit Class-II Engineering Officers Association Vs. State of Maharashtra, reported in (1990) 13 ATC 348. In the aforesaid Direct Recruits' case the Constitution Bench laid down certain guidelines for fixing seniority, one of the guidelines being that once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation and, as a corollary to the above rule, where the initial appointment is only ad hoc and not according to rules and is made as a stop-gap-arrangement, the officiation in such post cannot be taken into account for considering the seniority. Another guideline laid down was that if the initial appointment is not made by following the procedure laid down by the rules but the appointee continues on the post uninterruptedly till the regularisation of his service in accordance with the rules the period of officiating service will be counted."

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12. We have also perused the order of the Honourable Supreme Court in P. Srinivasulu (cited supra). In the aforesaid case, the Respondents before the Honourable Supreme Court including P. Srinivasulu had been selected through the UPSC and were regularized. It is clearly mentioned in the facts of the case that they were initially appointed on ad hoc basis and later they went through the process of selection by the UPSC and were selected to the said post on regular basis. The question in the aforesaid case was whether they were eligible to count the period of their service in ad hoc capacity towards seniority. The facts of this case are distinct from the instant case in which the Applicants were selected on ad hoc basis and later, on the directions of this Tribunal regularized in consultation with the UPSC. This case would not in any way advance the cause of the Applicant. The facts in Dr. (Smt.) Rekha Khare are totally different from the facts in the instant case and we feel no need to consider this case at all. A similar question regarding counting of seniority from the initial date of ad hoc appointment as LDC had arisen in OA No.1060/2007, **Shri Jagla Paswan vs. Union of India and another** and three other related OAs, which was decided on 18.07.2008. The learned Bench had noted the OM No.22011/04/91-Estt.(D) dated 1.07.1991, which directs that regularization of ad hoc officers would be with effect from the date indicated on the letter of UPSC conveying its decision for regularization of ad hoc employees. The aforesaid memorandum is also quoted in the order, which is reproduced below:

“ New Delhi : 1.7.1991.

Office Memorandum

Subject: Question as to the date from which appointment is to treat as regular in the case of a Govt. servant who is already holding a post of ad hoc basis and is later selected for regular appointment thereto.

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The undersigned is directed to say that a question recently arose as to the date from which an appointment should be deemed regular when a Government servant who is already holding a post on ad hoc basis is later selected by the UPSC for regular appointment thereto. The question has been examined and it has been decided that in such cases the appointment may be treated as regular from the date of advice of UPSC, i.e., the date of the Commission's letter conveying their recommendations in the matter.

All Ministries/Departments are requested to bring the above decision to the notice of all concerned for information and suitable action."

The Tribunal held as follows :

"42. Since applicant's whole relief is that their seniority should be counted from the initial date of ad hoc appointment as LDC and that is not permissible, in view of settled law as discussed above, OA is found to be bereft of merit. The same is accordingly dismissed. No order as to costs."

13. We have also perused the letter of appointment dated 25.07.1980 which is annexed with the MA No.2434/2004 in this OA. The letter of appointment also very clearly states that the Applicant has been selected for appointment to the post of Ayurvedic Physician on ad hoc basis, pending filling up of the posts by the nominees of the UPSC. Clearly, this appointment was on ad hoc basis and it was a stop gap arrangement.

14. We had pointedly asked the learned senior counsel regarding the import of the order of the Tribunal in OA No.49/1999, referred to in preceding paragraphs to the operative part of the order i.e. paragraph 11 in which the Tribunal had stated that no relief could be granted as prayed for by the applicants. However, no reply has been given to this query by the Applicant.

15. We are in agreement with the learned counsel for the Respondents that the issues raised in this OA have already been decided in OA No.49/1999, filed by the same Applicant as in the present case. The prayer of the Applicant had been disallowed by the Tribunal in the

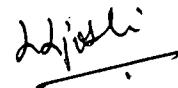
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aforesaid OA. As per the instructions of the DoP&T and the law laid down by the Honourable Supreme Court, the Respondents were right in regularizing the service of the Applicant from the date of recommendation of the UPSC, the fourth Respondent herein.

16. On the basis of the above, the OA is dismissed as being without merit. There will be no order as to costs.



(Meera Chhibber)
Member (J)



(L.K. Joshi)
Vice Chairman (A)

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