

(21)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(1) O.A.No.2225/2002

with

(2) O.A.No.2221/2002

New Delhi, this the 13th day of April, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI R.K.UPADHYAYA, MEMBER (A)

O.A.No.2225/2002:

1. Dr. Anju Gupta
W/o Dr. Rakesh Gupta
r/o 14, Gopal Nagar
Near Tilak Nagar
Delhi - 18.
2. Dr. Gulvinder Singh Jolly
w/o Kulwant Singh Jolly
r/o 16/21-A, Tolak Nagar
New Delhi - 110 018.
3. Dr. Desh Raj
s/o Sh. Gaindan Lal
r/o 104, R, Sec-4, D12
Area, BKS, Marg
Gole Market,
New Delhi.
4. Dr. Hitesh Lal
s/o Mr. O.P.Lal
r/o A-I, /207, Janakpuri
New Delhi - 110 058.
5. Dr. Seema Grover
w/o Dr. Anil Taneja
r/o 297, Type IV Quarters
Laxmi Bai Nagar
New Delhi.
6. Dr. Yoginder Gupta
s/o Shri Jagan Nath
r/o 26, Anuradha Apartments
A-2, Paschim Vihar
New Delhi.
7. Dr. Drupad Indria Dutta
s/o Late Dr. Indreswar Dutta
r/o E-14/12, Phase I
DLF, Gurgaon
8. Dr. Neera Rani Gupta
w/o Mr. N.Kumar
r/o 22, Sewa Nagar Market
Defence Road
New Delhi - 110 003.
9. Dr. Shashank Chaudhary
s/o Dr. Vinod Rai Chaudhary
r/o Chaudhary Villa, 66A/4
New Rohtak Road, Karol Bagh
New Delhi - 110 005.

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10. Dr. Puneet Chibber
s/o Col. S.C.Chibber
r/o VB 106, Virender Nagar
Janakpur
New Delhi - 110 058.

(All working as Specialist Grade-II in various Hospitals of Govt. of N.C.T. of Delhi) .. Applicants

(By Advocate: Sh. G.D.Gupta, Sr. Advocate with Sh. K.N.R.Pillai and Sh. S.K.Sinha)

Versus

1. The Chief Secretary
Govt. of NCT of Delhi
I.P.Sachivalaya
New Delhi.
2. The Secretary (Medical)
Govt. of NCT of Delhi
I.P.Sachivalaya
New Delhi.
3. Director of Health Services
Govt. of NCT of Delhi
Karkar Dooma, Shahdara
Delhi.

... Respondents

(By Advocate: Sh. Ajesh Luthra with Sh. Anil Singhal proxy for Ms. Pratima Gupta for official respondents and Sh. Rajeev Kumar for private respondents)

O.A.No.2221/2002:

1. Dr. Deepak Batra
s/o Shri K.L.Batra
Junior Specialist
M.B.Hospital
Delhi.
r/o 174, Ram Vihar
Delhi - 110 092
2. Dr. Rekha Dewan
w/o D.K.Dewan
Junior Specialist
Ambedkar Hospital
Delhi.
r/o UU-188, Vishakha Enclave
Pitampura, Delhi.
3. Dr. Nidhi Agarwal
w/o Dr. Lalit Maini
Junior Specialist
Lok Nayak Hospital
New Delhi.
r/o 22, Samachar Apartments
Mayur Vihar
Delhi - 110 091.
4. Dr. P.S.Sarangi
s/o late Shri B.B.Sarangi
Junior Specialist
ODU Hospital

New Delhi.
r/o B II/304, Param Puneet Apartments
Sector-6, Dwarka
New Delhi - 110 045.

5. Dr. Santosh
w/o Dr. Rakesh Kumar
Junior Specialist
Ambedkar Hospital
Delhi
r/o 120-D, Sunder Apptts.
GH-10, Paschim Vihar
Delhi - 110 087.
6. Dr. Rajiv Ranjan Kumar
s/o Shri Ambika Garain
Junior Specialist
DDU Hospital
New Delhi.
r/o 2/108, Doctors Hostel
West Kidwai Nagar
New Delhi - 110 023.
7. Dr. R.S. Sickund
s/o late Maj. Surjit Singh
Junior Specialist
Lok Nayak Hospital
New Delhi.
r/o 466, Sector-37
Noida - 201 303.
8. Dr. Namita Arora
w/o Shri Sanjay Arora
Junior Specialist
Lok Nayak Hospital
New Delhi.
r/o 180 Mandakini Enclave
Alakhanda
New Delhi - 110 019.
9. Dr. Vijay Kumar
s/o Shri Shyam Lal
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LBS Hospital
Delhi.
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Laxmi Nagar, Vikas Marg
Delhi - 110 092.
10. Dr. Ranjana Gupta
w/o Dr. R.K. Gupta
Junior Specialist
L.B.S. Hospital
Delhi
r/o D-307, Anand Lok, CGHS
Mayur Vihar Phase-I
Delhi - 110 091.
11. Dr. L.C. Gupta
s/o Shri B.R. Gupta
Junior Specialist
L.B.S. Hospital
Delhi

r/o 55 UDAP Colony
Nehru Nagar
Delhi - 110 065.

12. Dr. I.P. Singh
s/o late Dr. D.P. Singh
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Mayur Vihar Phase I
Delhi - 110 091.
13. Dr. Mukula Mohile
w/o Dr. Jayanta Das
Junior Specialist
Patel Nagar Hospital
New Delhi.
r/o B-22, DDA, MIG Flats
Saket
New Delhi - 110 017.
14. Dr. Anuradha Khanna
w/o Dr. Ashwani Khanna
Junior Specialist
AA Ali Hospital
Delhi.
r/o E-202, Greater Kailash-I
New Delhi - 110 048.
15. Dr. Mamta Pandey
w/o Shri Bharat Pandey
Junior Specialist
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Delhi.
r/o B-104/1, Western Avenue
Maharani Bagh
New Delhi - 110 055.
16. Dr. Madhu Dayal
w/o Dr. Sunil Dayal
Junior Specialist
DDU Hospital
New Delhi.
r/o B-7, Galaxy Apprts.
Vikaspuri
New Delhi - 110 018.
17. Dr. Anjali Sethi
w/o Dr. R.S. Sethi
Junior Specialist
DDU Hospital
New Delhi
r/o C-3/153, Janakpuri
New Delhi - 110 058.
18. Dr. Maninder Kaur Chhabra
w/o Dr. Harvinder Chhabra
Junior Specialist
DDU Hospital
New Delhi
r/o Residential Complex
Indian Spinal Injuries Centre
Sector-C, Vasant Kunj
New Delhi.

19. Dr. Monica Pandit
w/o Dr. Neeraj Pandit
Junior Specialist
L.B.S. Hospital
Delhi
r/o 90, Prashant Appts.
41, Patparganj
Delhi - 110 092.
20. Dr. Sunita Bhatt
w/o Dr. Vikas Bhatt
Junior Specialist
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Delhi
r/o 369/C Pkt. II
Mayur Vihar, Phase I
Delhi - 110 091.
21. Dr. Renu Mahaldar
w/o Dr. Anil Motta
Junior Specialist
LBS Hospital
Delhi.
r/o 414, Ashirwad Enclave
Delhi - 110 092.
22. Dr. Anita Rajorhia
w/o Dr. Virendra Bhardwaj
Junior Specialist
Patel Nagar Hospital
New Delhi.
r/o B-92, Sector-36
Noida (U.P.).
23. Dr. Kavita Goyal
w/o Shri C.P.Goyal
Junior Specialist
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New Delhi.
r/o 38, Manohar Kunj
Gautam Nagar
New Delhi.
24. Dr. Bithi Choudhary
w/o Dr. D. Choudhary
Junior Specialist
N.C.Joshi Hospital
New Delhi.
r/o D-668, Chittaranjan Park
New Delhi - 110 019.
25. Dr. Bharti Rastogi
w/o Dr. Prabhat Rastogi
Junior Specialist
Malviya Nagar Hospital
New Delhi.
r/o E-235, Greater Kailash-II
New Delhi.
26. Dr. Urvashi Gupta
w/o Dr. Deepak Gupta
Junior Specialist
N.C.Joshi Hospital

New Delhi.
r/o 6B/4, NEA, Old Rajinder Nagar
New Delhi - 110 060.

27. Dr. Sunita Mohan
w/o Dr. Virender Mohan
Junior Specialist
Malviya Nagar Hospital
New Delhi.
r/o F-92, Ansari Nagar West
New Delhi.
28. Dr. Chandra Prabhakar
s/o Shri G.Lal
Junior Specialist
N.C. Joshi Hospital
New Delhi.
r/o 88-D, Pocket-E
AIIMS, Mayur Vihar Phase III
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29. Dr. Rakesh Sawhney
s/o Shri L.R. Sawhney
BJRM Hospital
Delhi.
r/o 21, Doctor's Apartments
Vasundhara Enclave
Delhi - 110 096.
30. Dr. Meera Saini
w/o Dr. Subhash Saini
Junior Specialist
BJRM Hospital
Delhi
r/o H-18, Ashok Vihar Phase-I
Delhi - 110 052.
31. Dr. Urvashi Razdan
w/o Shri Kuldip Kaul
Junior Specialist
BJRM Hospital
Delhi.
r/o 93, Vaishali Pitampura
Delhi - 110 034.
32. Dr. Lalit Mohan Madan
s/o Shri R.L. Madan
Junior Specialist
M.B. Hospital
Delhi.
r/o D-44, Phase-I
Ashok Vihar
Delhi - 110 052.
33. Dr. Saroj Agarwal
d/o Shri N. Agarwal
Junior Specialist
M.B. Hospital
Delhi.
r/o PU-II, Pitampura
Delhi - 110 088.
34. Dr. Abil Khari
s/o Shri Raja Ram
Junior Specialist

M.B. Hospital
Delhi.
r/o WP-7, Wazirpur
Ashok Vihar
Delhi - 110 052.

35. Dr. Kartik Saxena
s/o Lt. Col. K.N. Saxena
Junior Specialist
SGM Hospital
Delhi.
r/o 5-B/1, Tilak Nagar
New Delhi - 110 018.

36. Dr. Neelam Prasad
w/o Dr. Pradeep Govil
Junior Specialist
AA Ali Hospital
Delhi.
r/o C-198, DDA Flats
Saket
New Delhi - 110 017.

37. Dr. Gunpreet S. Sethi
s/o Dr. R.S.Sethi
Junior Specialist
S.G.M. Hospital
Delhi
r/o B-2B/16, Janakpuri
New Delhi - 110 058.

38. Dr. Saurabh Kumar
s/o Shri S.S.Ghosh
Junior Specialist
S.G.M. Hospital
Delhi
r/o C-33 FF, Sector-I
Rohini, Delhi - 110 085.

39. Dr. Ashok Sharma
s/o Dr. S.C.Sharma
Junior Specialist
S.G.M.Hospital
Delhi
r/o B-5/57, Sector-8
Rohini
Delhi - 110 085.

40. Dr. Vevek Rana
s/o Dr. R.S.Rana
Junior Specialist
Ambedkar Hospital
Delhi
r/o BG 40, Shalimar Bagh East
Delhi - 110 088.

... Applicants

(By Advocate: Sh. G.D.Gupta, Sr. Advocate with Sh.
K.N.R.Pillai and Sh. S.K.Sinha)

Versus

1. Govt. of NCT of Delhi
through
Principal Secretary
Department of Health & Family Welfare

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Delhi Sachivalaya
I.P.Estate
New Delhi - 110 002.

2. Central Health Service
Regularly appointed Doctor's Forum
Regd. Office
G-106, Dilshad Colony
Delhi.

.. Respondents

(By Advocate: Sh. Ajesh Luthra with Sh. Anil Singhal proxy for Ms. Pratima Gupta for official respondents and Sh. Rajeev Kumar for private respondents)

ORDER

Justice V.S. Aggarwal:-

By this common order, two Original Applications No.2225/2002 and 2221/2002 can conveniently be disposed of together. The controversy in both the applications is identical. Therefore, for the sake of convenience, we are taking the facts in the case of Dr. Anju Gupta (OA No.2225/2002).

2. It is alleged that the Health Services in the National Capital Territory of Delhi were in jeopardy. It was because of the fact that the Hospitals and Dispensaries were grossly deficient due to non-availability of Doctors and Specialists. The posts of Medical Officers and Specialists in the Health and Family Welfare Department of Govt. of NCT of Delhi were in the past being filled by taking them from the Central Health Services of the Central Government. The posts created in the Government of National Capital Territory of Delhi in the various Hospitals and Dispensaries were encadred in the Central Health Services. However, the appointments made were grossly deficient because the Central Government was unable to encadre all the persons. As a result, the posts created by the Delhi Administration, have accumulated.

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3. An advertisement appeared in the Hindustan Times dated 10.8.1999 for filling up certain posts of Junior Specialists pertaining to the different disciplines. The operative part of the same reads:

"Applications are invited for in respect of following posts under Govt. of N.C.T. of Delhi.

96 posts of Jr. Specialists in various hospitals under Govt. of N.C.T. of Delhi as per following details,

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to be filled up on contract basis for a period of 1 year or till regular appointments are made, whichever is earlier, on consolidated salary of Rs.15,000/- p.m. The candidate should be below 35 years of age and must possess Post Graduate Qualification in the concerned speciality. 120 posts of Medical Officers for various Institutions/Hospitals of Govt. of N.C.T. of Delhi to be filled up on contract basis for a period of 1 year or till regular appointment is made, whichever is earlier, on a fixed salary of Rs.10,000/- p.m. The candidate should be below 30 years of age and should possess Bachelor's Degree in Medicine (MBBS)."

4. In pursuance thereto, the applicants had applied. The operative part of the representative order which had been passed was to the following effect:

"The Government of NCT of Delhi is pleased to appoint Dr. Gulvinder Singh to the post of Junior Specialist (Medicine) in Medical Institutions under Govt. of NCT of Delhi on the following terms and conditions:-

1. The post is purely on contract basis for a period of six months or till regular appointment is made, which ever is earlier. The appointment can be terminated at any time (on either side) by giving one month's notice or by paying one month's salary without assigning any reason or failure

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to complete the initial period of three months to the satisfaction of the Competent Authority."

In other words, the advertisement was to fill the posts on ad hoc/contract basis. Even the appointment order indicated that the appointment was on contract basis for a period of six months or till regular appointment is made.

5. It is not in dispute that on earlier occasion, OA 2746/99 had been filed and it was disposed of on 19.10.2000 along with another Original Application No.2843/99. Those applications were allowed and it was directed that the respondents shall continue the applicants in service paying the same pay scales as are being paid to the regularly appointed Junior Specialists Gr.II in the Government of India with all attendant benefits, from the date of their respective initial appointment on contractual basis.

6. By virtue of the present applications, the applicants seek a direction to encadre the posts and regularise their services in consultation with Union Public Service Commission on the basis of their past performance and service record from the date of their initial appointment.

7. The applications have been contested. On behalf of the respondents, a preliminary objection had been taken that the present applications are barred under Order 2 Rule 2 of the Code of Civil Procedure. The learned counsel for the respondents had raised

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this point on 28.7.2003. When this question had been raised, applicants' learned counsel had prayed for time to go through this controversy.

8. Thereafter, MA 229/2004 in OA No.2221/2002 had been filed by the applicants' counsel and the applicants pleaded that when they filed the Original Applications on earlier occasion, they had completed less than one year of service and at that time they were not entitled to put in a claim for regularisation. The Supreme Court in the case of Dr. A.K.Jain & Ors. v. Union of India, JT 1987 (4) SC 445 had divided the persons into two groups, namely, those who had completed three years of service and those who had not completed such service. It was directed that those persons with over three years of service should have their cases referred to the Union Public Service Commission but the other petitions had been dismissed. Therefore, according to the applicants, the bar of Order 2 Rule 2 of Code of Civil Procedure is not attracted because when the earlier Original Application was filed, they were not entitled to claim regularisation.

9. During the course of submissions, it was further urged that the Code of Civil Procedure does not apply to the proceedings under the Administrative Tribunals Act. It is true that under Section 22 of the Administrative Tribunals Act, a Tribunal is not bound by the procedure laid down by the Code of Civil Procedure. However, it prescribes that it shall be guided by the principles of natural justice and subject to other provisions of the Act.

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10. In face of the specific provisions in the Administrative Tribunals Act, we have no hesitation in concluding that strict provisions of the Code of Civil Procedure will not apply. All the same, the Central Administrative Tribunal will not be a Court to which the Code of Civil Procedure applies, still it has the trappings of a Court trying or hearing Writ Petitions. Order 2 Rule 2 of the Code of Civil Procedure is based on principles of natural justice. It is specifically prescribed that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the case of action; but a plaintiff can relinquish any portion of his claim where a person omits to sue in respect of or intentionally relinquishes any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. We find no reason why a broad principle should not be made applicable to the proceedings before the Central Administrative Tribunal.

11. A similar question had arisen before the Delhi High Court in the case of SHRI SANDEEP AND OTHERS v. DELHI SUBORDINATE SERVICES SELECTION BOARD AND OTHERS, Civil Writ Petition No.7386/2000, decided on 22.7.2002. The Delhi High held:

"12. It stands admitted that the petitioners in the earlier Original Applications had not prayed for the reliefs which had been sought for in the Original Applications filed by them. Cause of action for the petitioners arose in March 1999 when their services were sought to be terminated in terms of their offers of appointment. The petitioners specifically sought for two reliefs which had been adjudicated upon; pursuant whereeto they had been granted some

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relief. The judgement of the Tribunal, as modified by this court, has been upheld by the Apex Court.

The judgment of the Tribunal, thus, merged in the judgment of this court. In Kunhayammed & Ors. v. State of Kerala & Anr., (2000) 6 SCC 359, the Apex Court has clearly laid down the legal meaning of 'merger' in the following terms:-

"42. "To merge" means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individuality. (See Corpus Juris Secundum, Vol. LVII, pp. 1067-68)".

13. The grievances of the petitioners raised in the writ petition was the same; cause of action wherefor, as noticed hereinbefore, arose in March, 1999 itself, which they could have raised at the earliest stage. It is not in dispute that the principles of res judicata/constructive res judicata apply to the proceedings under the Administrative Tribunals Act, 1985. New contentions, however, cannot be permitted to be raised in a subsequent Original Application filed under Section 19 of the Administrative Tribunal Act, if such contentions could have and ought to have been raised in the first application.

Furthermore, having regard to the principles contained in Order 2 Rule 2 of the Code of Civil Procedure, reliefs cannot be sought for in piecemeal unless leave therefor is sought for and granted. Once the principles of constructive res judicata are held to be applicable, the Tribunal had no jurisdiction to entertain the second application even on a question, which was not raised before it. Subsequent decision of a coordinate bench in a different matter on a question which was not raised, cannot clothe the Tribunal with the jurisdiction to entertain a second Original Application particularly when even a review on that ground would not have been maintainable. Furthermore, even an application for review would not have been maintainable having regard to the fact that the

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judgment of the Tribunal merged with the judgment of this Court and as such, even a review application could have been filed only before this court and not before the Tribunal. Question No.1 is answered accordingly."

12. The attempt now being made to wriggle out of the same is that the applicants had not completed three years of service and consequently could not apply for regularisation when the earlier application was filed. They rely on the decision of the Supreme Court in the case of **Dr. A.K.Jain (supra)**. We have no hesitation in concluding that this is an afterthought. When the earlier OA was filed in this Tribunal, no such permission had been taken that such a right should be permitted to be reagitated subsequently. Otherwise also, the decision of the Supreme Court referred to and so much thought of by the learned counsel had been arrived, as was the facts at the time of the decision. The Supreme Court did not lay down a general principle as to when a person has to approach for filing the petition before the Tribunal. The Apex Court had not legislated. Therefore, the contention of the applicants that cause of action had arisen subsequently, must be rejected. We hold that both the applications ~~are~~ barred by the principles of Order 2 Rule 2 of the Code of Civil Procedure.

13. The second contention raised was that applicants are entitled to regularisation and encadrement. If the applicants do not have a right for regularisation, the second limb of the plea becomes redundant.

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14. Strong reliance was being placed on the letter of 24.4.1998 written from the Ministry of Health & Family Welfare to the Principal Secretary (Medical), Govt. of NCT of Delhi. It reads:

"Dear Shri Ramesh Chandra,

Please refer to the meeting held on 16.4.98 in the Chamber of Secretary (H), Ministry of Health & Family Welfare regarding posts of Specialists in GNCT Delhi in CHS.

As no final decision could be taken on the issue regarding, the encadrement of these posts in CHS, keeping in view the observations of the former PM as Minister of Health & Family Welfare. Till such time these posts are encadred in CHS, the Ministry of Health will not be in a position to initiate the recruitment process as they would continue to be under the control of Govt. of NCT only, for all practical purposes. Therefore, it is suggested that till such time a decision is taken on the issue of encadrement of the posts of Specialists in GNCT, Delhi in CHS, if considered necessary and expedient, the Govt. of NCT may go in for regular/adhoc/contract appointment."

It was clearly pointed to the Principal Secretary (Medical), Govt. of National Capital Territory of Delhi that till such time the posts were encadred in Central Health Scheme, the Ministry of Health will not be in a position to initiate the recruitment process. But it was stated that the respondents, i.e., Govt. of National Capital Territory of Delhi may go in for regular/adhoc/contract appointment. Though regular appointment was permitted but the Govt. of National Capital Territory of Delhi had chosen to adopt the latter course. The applicants had been appointed on contract basis. Consequently, the said letter can be ^{not} relied upon to urge that a right had accrued to the applicants pertaining to the relief claimed.

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15. Learned counsel for the applicants relied upon the decision in the case of Dr. G.P.Sarabhai & Others v. Union of India & Others, 1983 LAB.I.C. 910 [Civil Writ Petition No.5/1981, decided on 13.8.1982]. In the afore-cited case, certain petitioners were appointed as Junior Medical Officers in E.S.I. Corporation initially on ad hoc basis for a period of one year. The appointment letter indicated that maximum period of the selection was one year and it was contemplated that selection would be regularised by the Union Public Service Commission and they were continued from time to time. It was in the backdrop of these facts that the Division Bench of the Delhi High Court had given the decision referred to and relied upon by the learned counsel. But the same had been considered by the Delhi High Court in the case of Sh. Sandeep & Others v. Delhi Subordinate Services Selection Board & Ors., C.W.P. No.7386/2000 decided on 23.7.2002. The decision in the case of Dr. G.P.Sarabhai and Others (supra) was referred to and it was held that question, therefore, for consideration was whether the petitioners who were appointed as Doctors in the ESI Corporation, and had been continued for about seven years, could be asked to compete with the new entrants. It was held that they were not required to re-apply. The decision was held to be having no application where the petitioners had undergone selection process with new entrants. It will have no application in the present case also because the applicants had been appointed purely on ad hoc and on contractual basis in different Original Applications and consequently, they cannot be asked to re-apply or claim a right for regularisation. As

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would be noticed hereinafter under the Tibbia College (Take-over) Act, of 1997, the appointment can only be made in consultation with the Union Public Service Commission. The appointment cannot be made de hors the rules and therefore, in the peculiar facts of the present case, the decision in the case of Dr. G.P.Sarabhai (supra) has no application.

16. On behalf of the respondents, it was vehemently contended, in our view successfully that a person who is appointed on ad hoc basis or even on contract basis, cannot claim regularisation as of right. The regularisation cannot be made de hors the rules.

17. In the case of Dr. Chanchal Goyal (Mrs.) v. State of Rajasthan, (2003) 3 SCC 485, a similar situation had cropped up before the Supreme Court. Certain persons had been appointed on temporary basis for a period of six months. Certain orders of extension were issued. On 1.10.1998, services of Dr. Chanchal Goyal were terminated on the ground that the candidates selected by the Public Service Commission were available. The question for consideration before the Supreme Court was as to whether she could claim regularisation as in the case of the applicants. The Supreme Court repelled the argument of Dr. Chanchal Goyal and held:

"8. Unless the initial recruitment is regularized through a prescribed agency, there is no scope for a demand for regularisation. It is true that an ad hoc appointee cannot be replaced by another ad hoc appointee; only a legally selected candidate can replace the ad hoc or temporary

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appointee. In this case it was clearly stipulated in the initial order of appointment that the appellant was required to make room once a candidate selected by the Service Commission is available."

Thereupon the Supreme Court went on to hold:

"10. In J&K Public Service Commission v. Dr. Narinder Mohan [(1994) 2 SCC 630] it was, inter alia, observed that it cannot be laid down as a general rule that in every category of ad hoc appointment if the ad hoc appointee continued for a longer period, rules of recruitment should be relaxed and the appointment by regularisation be made. In the said case in para 11 the position was summed up as under: (SCC pp. 640-41, para 11)

"11. This Court in A.K.Jain (Dr.) v. Union of India [1987 Supp SCC 497] gave directions under Article 142 to regularize the services of the ad hoc doctors appointed on or before 1-10-1984. It is a direction under Article 142 on the peculiar facts and circumstances therein. Therefore, the High Court is not right in placing reliance on the judgment as a ratio to give the direction to the PSC to consider the cases of the respondents. Article 142 - power is confided only to this Court. The ratio in P.P.C. Rawani (Dr) v. Union of India [(1992) 1 SCC 331] is also not an authority under Article 141. Therein the orders issued by this Court under Article 32 of the Constitution to regularize the ad hoc appointments had become final. When contempt petition was filed for non-implementation, the Union had come forward with an application expressing its difficulty to give effect to the orders of this Court. In that behalf, while appreciating the difficulties expressed by the Union in implementation, this Court gave further direction to implement the order issued under Article 32 of the Constitution. Therefore, it is more in the nature of an execution and not a ratio under Article 141. In Union of India v. Dr. Gyan Prakash Singh [1994 Supp(1) SCC 306] this Court by a Bench of three Judges considered the effect of the order in A.K.Jain case [1987 Supp SCC 497] and held that the doctors appointed on ad hoc basis and taken charge after 1-10-1984 have no automatic right for confirmation and they have to take their chance by appearing before the PSC for recruitment. In H.C. Puttaswamy v. Hon'ble Chief Justice

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of Karnataka High Court [1991 Supp (2) SCC 421] this Court while holding that the appointment to the posts of clerk etc. in the subordinate courts in Karnataka State without consultation of the PSC are not valid appointments, exercising the power under Article 142, directed that their appointments as a regular, on humanitarian grounds, since they have put in more than 10 years' service. It is to be noted that the recruitment was only for clerical grade (Class III post) and it is not a ratio under Article 141. In State of Haryana v. Piara Singh [(1992) 4 SCC 118] this Court noted that the normal rule is recruitment through the prescribed agency but due to administrative exigencies, an ad hoc or temporary appointment may be made. In such a situation, this Court held that efforts should always be made to replace such ad hoc or temporary employees by regularly selected employees, as early as possible. The temporary employees also would get liberty to compete along with others for regular selection but if he is not selected, he must give way to the regularly selected candidates. Appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc or temporary employee. Ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee. He must be replaced only by regularly selected employee. The ad hoc appointment should not be a device to circumvent the rule of reservation. If a temporary or ad hoc employee continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State. It is to be remembered that in that case, the appointments are only to Class III or Class IV posts and the selection made was by subordinate selection committee. Therefore, this Court did not appear to have intended to lay down as a general rule that in every category of ad hoc appointment, if the ad hoc appointee continued for long period, the rules of recruitment should be relaxed and the appointment by regularisation be made. Thus considered, we have no hesitation to hold that the direction of the Division Bench is clearly illegal and the learned Single Judge is right in directing the State Government to notify the vacancies



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to the PSC and the PSC should advertise and make recruitment of the candidates in accordance with the rules."

18. Similar situation had arisen before the Supreme Court in the case of Union of India & Ors. v. Harish Balkrishna Mahajan, 1996(6) SLR S.C. 669. Therein Harish Balkrishna Mahajan was appointed on monthly basis. This Tribunal had directed that he should be regularised in consultation with Union Public Service Commission. The Supreme Court allowed the appeal and held:

"2. The respondent was temporarily appointed as a Medical Officer on monthly basis in the Central Government Health Scheme on August 10, 1982. During the unfortunate strike of the doctors as trade unionists, unmindful of the ethical and medical code of conduct, he was appointed and even continued in the service till August, 1987. When his services were terminated, he had gone to the Tribunal and filed OA No.701/89. The Tribunal in the impugned order dated 21.12.1994 directed the appellants to regularise the service of the respondent in consultation with the Public Service Commission. Thus, this appeal by special leave.

3. The controversy is no longer res integra. In similar circumstances, this Court had considered the entire controversy in J and K Public Service Commission & Ors. vs. Dr. Narinder Mohan and Ors. [(1994) 2 SCC 630] : [1994(1) SLR 246 (SC)]. Admittedly, the post of doctors in the Central Government Health Scheme are required to be filled up by recruitment through Union Public Service Commission. Therefore, the direction to consider the case of the respondent in consultation with the Public Service Commission for regularisation is in violation of the statutory rules and Article 320 of the Constitution of India. The only course known to law is that the Union of India shall be required to notify the recruitment to the Public Service Commission and Union Public Service Commission shall conduct the examination inviting the applications from all the eligible persons including the persons like the respondents. It would be for the respondent to apply for and seek

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selection in accordance with Rules. Therefore, the direction is in violation of Article 320 of the Constitution."

19. Identical view was expressed by the Apex Court in the case of Dr. Surinder Singh Jamwal & Anr. v. The State of Jammu & Kashmir & Ors., JT 1996 (6) S.C. 725. The decision of the Supreme Court in the case of Jammu & Kashmir Public Service Commission v. Dr. Narinder Mohan, 1994 (2) SCC 630 was relied upon, and it was held that the applicant therein could apply afresh only.

20. This Tribunal had considered this controversy in the case of Dr. Divpreet Sahni & Others v. Government of NCT of Delhi & Others, O.A.No.988/2001, decided on 19.9.2002. Herein also the said persons had been appointed firstly on ad hoc basis for a period of six months. It was reiterated that they could continue with ad hoc appointment subject to the appointment of regular incumbents, and when regular incumbents became available, the question for consideration was as to if the said persons had gained any such right or not? The applications were dismissed holding:

22. it was clearly mentioned that appointments were to be made on ad-hoc basis. When a suggestion of ad-hoc appointment is made, only few persons would apply. On the other hand, when regular appointments are notified, a large number of eligible candidates are tempted to apply. To this extent, the applicants in these OAs have been selected from amongst a much lesser number of competitors than would have been the case if regular selection had been notified. Further, there is always the likelihood of favouritism when departmental committees are set up to interview candidates from the open market. When UPSC gets associated, objectivity and impartiality also steps

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in. That is precisely the reason why the UPSC and for that matter the State Public Service Commissions have been set up as constitutional bodies who devise their own procedure albeit in consultation with the department concerned, for selecting candidates for various services. We have in the foregoing paragraphs also noticed, after a discussion of the various Court cases relied upon by the applicants, that nothing will assist their case, whether it is the case of Dr. Jitender Singh (supra) or that of Medical Officers (Unani), or for that matter any other case. Consideration of the candidature of the applicants in the manner sought by them treating them as forming a separate block and by directing the UPSC to consider their claims wholly on the basis of their performance in ad-hoc service, is something unknown to the relevant rules and the procedure. Following of such a hybrid procedure cannot be sustained in law, and for this reasons are available in plenty in the cases of J&K Public Service Commission & Others (supra) and Shri Sandeep & Others (supra)."

21. The Supreme Court in the case of State of Madhya Pradesh & Another v. Dharam Bir, (1998) 6 SCC 165 further held that when ad hoc appointments are made they would continue to do so even after passage of time. The findings of the Supreme Court read:

"34. The respondent having worked in an ad hoc capacity on the post of Principal might have gained some administrative experience but the same cannot be treated as equivalent to his knowledge in the field of Engineering. A compounder, sitting for a considerably long time with a doctor practising in modern medicine, may have gained some experience by observing the medicine prescribed by the doctor for various diseases or ailments but that does not mean that he, by that process, acquires knowledge of the human anatomy or physiology or the principles of pharmacology or the field of action of any particular medicine or its side effects. The compounder cannot, merely on the basis of experience, claim a post meant exclusively for persons having MBBS or other higher degrees in medicine or surgery. The plea of experience, therefore, must fail. Moreover, this would amount to a relaxation of the Rule relating to educational qualification.

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Power to relax the Rule vests exclusively in the Governor as provided by Rule 21. This power cannot be usurped by the court or the tribunal."

22. At this stage, it is relevant to mention the decision rendered by the Supreme Court in the case of Ahmedabad Municipal Corporation v. Virendra Kumar Jayantibhai Patel, (1997) 6 SCC 650. The Supreme Court in that case went on to conclude that even sympathetic consideration will not outway the legal position.

23. Large number of decisions have been cited at the Bar further on behalf of the applicants, in support of their claim of the decisions rendered by the Supreme Court and of this Tribunal, namely, the case of Dr. Jitender Singh and Others v. Union of India, decided by this Tribunal in OA No.1259/90 with some connected OAs; Dr. Rekha Khare v. Union of India & Ors., Civil Appeal No.2969/97, decided by the Supreme Court on 21.4.1997; Union of India & Ors. v. Ms. Anshul Sharma & Ors., CWP No.319/2001, decided on 13.2.2002 by the Delhi High Court. Strong reliance has been further placed on the decisions of the Supreme Court in the case of J & K Public Service Commission, etc. v. Dr. Narinder Mohan & Ors. etc. etc., JT 1993(6) SC 593; State of M.P. & Anr. v. Dharam Bir, (1998) 6 SCC 165; and State of Karnataka & Ors. v. G. Halappa & Ors., 2002 (IV, Apex Decision (SC) 644.

24. All these decisions had been considered by the Division Bench of the Delhi High Court in the case of Shri Sandeep & Ors (supra). The facts therein were identical to the present case before us. The Delhi High

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Court held that the relief claimed could not be acceded to. Some of the decisions of the Supreme Court to which we have referred to above were held to be not applicable because therein the Apex Court had acted under Article 142 of the Constitution, which are not to be treated as precedent.

25. In face of the same, it becomes unnecessary for this Tribunal again to individually consider each of the said decision and following the ratio deci dendi of the decision of the Delhi High Court in the case of Shri Sandeep & Ors (supra), we find that the said claim for regularisation keeping in view that the appointment had been made purely on contract basis, cannot be acceded.

26. Learned counsel for the applicants in that event had contended that it was virtually a regular appointment because after the names were called, the applicants were selected and they could not be taken to be backdoor entrants.

27. We have no hesitation in rejecting the said claim. In the advertisement, it was clearly mentioned that the appointment is to be made on ad hoc/contract basis. When such an advertisement is issued, few persons would only apply. More would be interested when regular appointment is notified. Thus, if the applicants were selected when the appointments were to be made on ad hoc basis/contract basis, they cannot contend that it was a general selection conferring a right on the applicants for regularisation. Even the Union Public Service Commission had not been consulted at the relevant time. The same question had been considered by a Bench of this


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Tribunal in the case of MS. SHALINI BANSAL & ORS. v. UNION OF INDIA & OTHERS, and the identical conclusion had been arrived by this Tribunal in OA No.1229/2001, decided on 19.9.2002. We are in respectful agreement with that view point.

28. For these reasons, the applications must be held to be without merit. They must fail and are accordingly dismissed.


(R.K. Upadhyaya)
Member (A)


(V.S. Aggarwal)
Chairman

/NSN/