

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

(11)

OA No.3197/2001 Date of decision: 20.09.2002

Hakim Syed Ahmed .. Applicant

(By Advocate: Shri S.S. Tiwari)

versus

Union of India & Others .. Respondents

(By Advocate: Shri Madhav Panicker)

CORAM:

The Hon'ble Shri M.P. Singh, Member(A)

The Hon'ble Shri Shanker Raju, Member (J)

1. To be referred to the Reporter or not? Yes


(M.P. Singh)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
O. A. No. 3197/2001

(12)

New Delhi, this the 20th September, 2002

Hon'ble Shri M. P. Singh, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

Hakim Syed Ahmed
84/4, Hauz Rani
New Delhi .. Applicant
(Shri S. S. Tiwari, Advocate)

Versus

Union of India, through

1. Secretary
Department of ISM&H
Ministry of Health & Family Welfare
Red Cross Road, New Delhi
2. Director
IRCS, Annex Building
Red Cross Road, New Delhi
3. Additional Director
CGHS/Central Zone
Nirman Bhavan, New Delhi .. Respondents

(Shri Madhav Panicker, Advocate)

ORDER
Shri M. P. Singh, Member (A)

By the present OA, applicant seeks directions to the respondents to count his ad hoc service w.e.f. 1.1.87 as regular for all purposes including that of seniority and further time bound promotions to the post of Senior Medical Officer (Uhani) w.e.f. 1.1.91 and Chief Medical Officer (Uhani) w.e.f. 1.1.97 in terms of the judgement of the Hon'ble Supreme Court in the case of Dr. P. P. C. Rawani vs. UOI & Ors. as well as in the case of Shri Rudra Kumar Sain Vs. UOI & Ors and also give the applicant all the consequential benefits according to him consequent to his seniority being fixed w.e.f. 1.1.87.



2. Briefly stated, applicant who was initially appointed on monthly wage basis w.e.f. 1.1.87 as a Medical Officer (Unani), was subsequently appointed and taken over on the strength of CGHS, Delhi on ad hoc basis w.e.f. 1.1.87 vide order dated 28.6.89. Applicant made a representation on 19.8.92 requesting for promotion in the senior scale MO(Unani) CGHS. He was informed on 14.9.92 that his request can be sent to DGHS for consideration only after he is appointed on regular basis. According to the applicant he was allowed to cross EB w.e.f. 1.1.96 fixing his pay at Rs.2900 and that he has been working in the department for the last 14 years and is due for three time bound promotions for the post of SMO, CMO and Senior CMO in accordance with the Rules. As per FR 25 and order passed by the Delhi High Court on 11.10.2000 in CWP No.4467/1998, only formal order of fixing his seniority w.e.f. 1.1.87 and pay fixation order for the post of time bound promotions is required to be issued by the respondents. He was regularised by order dated 1.1.2001. Aggrieved by this, he has filed this OA seeking the aforesaid reliefs.

3. Respondents have opposed the OA and have stated in their reply that in pursuance of orders dated 21.7.1999 of the Delhi High Court in CWP No.4467/1998, applicant's ACR dossier was sent to UPSC for the purpose of regularisation of his ad hoc service in the post of Medical Officer (Unani) and as per the recommendations of UPSC, his ad hoc services were regularised w.e.f. 19.1.2000 i.e. the date of recommendations of the UPSC. It is stated by them that the applicant will be considered for first time bound promotion from the level of MO to the level of Senior MO on completion of 4 years of regular service on seniority-cum-fitness

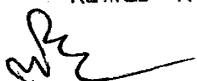
W.M.

in terms of instructions contained in OA dated 25.1.1999 issued by the respondents. The representation of the applicant dated 11.1.2001 was considered in consultation with DoPT and he was on 4.6.2001 informed/that the ad hoc service rendered by him will not count towards seniority. According to the respondents, crossing of EB by a Government servant does not amount to appointment on regular basis or confirmation. EB is a time bound process which is admissible to even ad hoc employees after reaching at a particular stage of pay scale, subject to certain terms and conditions. It has no bearing whatsoever on regularisation of service or confirmation. Case of applicant is not covered by Ravani's (supra) case as has been held by this Tribunal in a similar application No.49/99 filed by Dr. R.K. Dixit and other ad hoc physicians working under Department of ISM&H. The case of Dr. Dixit and others was taken up with UPSC who did not agree to their retrospective regularisation from the date of their appointment on ad hoc basis, vide UPSC's letter dated 20.8.2001. In view of this position, the present OA be dismissed.

(14)

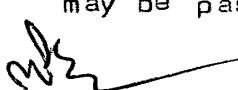
4. We have heard the learned counsel for the parties and perused the records.

5. During the course of the arguments, the learned counsel for the applicant has contended that applicant's case for regularisation with effect from the date of his initial appointment is covered by the judgement of the apex court dated 2.11.99 in the case of Ajit Kumar Rath Vs. State of Orissa (1999) 9 SCC 596.



His contention is that judgement in the case of Dr. R. K. Dixit (supra) is not applicable to applicant's case as the contesting parties therein did not rely upon the judgement in the case of Ajit Kumar Rath, Rudra Kumar Sain and P. P. C. Ravani (supra). The applicant was appointed as Group 'A' Medical Officer (MO, for short) on ad hoc basis and was getting all the allowances as per Rules at par with regular Group 'A' MOs, whereas in the case of Dr. Dixit etc. they were recruited to Group B and were regularised in Group 'A' posts. According to the learned counsel, vide letter dated 7.5.1992 issued by the respondents, MOs of CGHS have been regularised and given the benefit of their ad hoc service in terms of the judgement of the Hon'ble Supreme Court in the case of P. P. C. Ravani (supra), whereas the applicant who is also a Group 'A' MO of CHS was not considered for regularisation. (15)

6. Applicant had earlier filed OA 2999/92 in which he had sought regularisation of his services w.e.r. the initial date of his engagement viz. 1.1.1987 and all the consequential benefits including promotion etc. Vide order dated 7.7.98, that OA was dismissed. The reliance placed by the applicant in the case of Ravani (supra) had been discussed/considered in the aforesaid judgement dated 7.7.98. Delhi High Court in their order dated 11.10.2000 in Civil Writ No.4467/98 filed by the applicant against the judgement of the Tribunal have neither reversed the order of the Tribunal nor have they upheld the order. They have only observed in their clarificatory order dated 20.4.2001 in CM No.2458/01 in CW No.4467/98 filed by the applicant that "However, it will be open for the parties to impugn any subsequent order which may be passed in an appropriate forum in accordance with law".



The learned counsel for the applicant contended that it is because of this clarificatory order of the Hon'ble High Court, he is claiming the same relief which was sought for by the applicant in the earlier OA No.2999/92. (16)

7. During the course of the arguments, the learned counsel for the applicant has submitted that the Constitution Bench judgement of the Hon'ble Supreme Court dated 4.4.2002 in the case of Chandra Prakash & Ors. Vs. State of UP & Anr. 2002(1) SC SLJ 359 has deplicated the view taken by the Supreme Court in CA No.4438-42-of 1995 decided on 23.3.95 and 26.7.96. In view of this position, the applicant is entitled for regularisation from the date of his initial appointment. However, we find that in that case, the facts of the case are that in U.P. Provincial Medical Services (PMS) for a considerable length of time regular appointments were ^{not} made and with a view to meet the need for doctors, appointments were ~~being~~ ^{but} ~~being~~ made on temporary basis ⁱⁿ ~~in~~ consultation with the State Public Service Commission. In the meanwhile pursuant to advertisements issued by the Public Service Commission (PSC), selections were made by the Commission to fill up the vacancies in the PMS during the years 1972 and 1989. Thereafter the question of inter-se seniority arose between the temporary doctors originally appointed and the doctors appointed on regular basis through PSC. The stand of the temporary doctors was that they were appointed to permanent vacancies in consultation with PSC and having continued for a considerable length of time in service, their original appointment ought to be deemed as regular. It is an admitted position in the present case that the applicant was not appointed

pwz

originally on temporary basis and in consultation with UPSC and thus the judgement of the Supreme Court (supra) is not applicable in the present case. (17)

8. The learned counsel next contended that there should be separate seniority lists for those who have been appointed initially on ad hoc basis and regularised later on and direct recruits. We cannot think of such a situation where there should be two separate seniority lists in the same grade, one for the persons appointed initially on ad hoc basis de hors the rules and later on regularised from the date of initial appointment and the other for the persons appointed through direct recruitment on regular basis. In our opinion, it would be rather an unworkable proposition and against the basic rules and instructions issued by the DoPT. Therefore we are unable to agree with this contention and the same is rejected.

9. It is an admitted position that the reliance placed by the applicant in the case of Ravani (supra) has already been discussed in detail in OA 2999/92 filed by the applicant earlier and was rejected by the Tribunal. It is also an admitted position that the High Court has neither reversed nor upheld the judgement of the Tribunal dated 7.7.98 in OA 2999/92. Again, as per the extant instructions seniority shall be counted from the date of regularisation done in consultation with UPSC. Moreover, the relief sought for by the applicant in the present OA



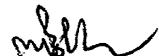
(18)

had already been claimed by him in the aforesaid OA 2999/92. The Tribunal had considered but rejected the same. The applicant cannot agitate the same matter again which had already been adjudicated by the Tribunal. In view of this position, we are unable to grant the reliefs prayed for by the applicant.

10. In the result, for the reasons recorded above, we find no merit in the present OA and the same is accordingly dismissed. No costs.

S.Raju

(Shanker Raju)
Member(J)



(M.P. Singh)
Member(A)

/gtv/