

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 988/2001
WITH
O.A. NO. 3371/2001
O.A. NO. 3374/2001
O.A. NO. 1229/2001 AND
O.A. NO. 13/2002

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New Delhi, this the 19th day of September, 2002

HON'BLE MR. KULDIP SINGH, MEMBER (J)
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

O.A. NO. 998/2001:

1. Dr. Divpreet Sahni,
S/o Mr. K.B. Singh,
R-709, New Rajinder Nagar,
New Delhi : 110 016
2. Dr. Anil Kumar,
S/o Mr. Mohan Lal,
D-144, Street No. 7B, Ashok Nagar,
Delhi - 110 093
3. Dr. Monisha Batra
W/o Mr. Vivek Soin
R-704, New Rajinder Nagar, New Delhi
4. Dr. Ashu Chakravarty,
W/o Mr. D. Vashishtha,
J-251, Saket, New Delhi
5. Dr. Ravinder Kumar,
O/o Mr. O.P. Rahilla,
H.No.506, Sector 4
Gurgaon 122 001
6. Dr. Richa Chandra,
O/o Dr. Dinesh Chandra
6/11. M.A.M.C. Campus, Kotla Road,
New Delhi - 110002
7. Dr. K.S. Kumar,
S/o Mr. Lehri Lal
E-1/5, Sector 16,
Rohini, New Delhi-110 085
8. Dr. Urvashi Sinha,
W/o Mr. Vikas Saxena,
88, Vivekanandapuri, New Delhi-07
9. Dr. Abhijit Chakravarty,
S/o .
10. Dr. Kavita Dhalla,
W/o Dr. Naveen Dhalla,
R/o 3358/11, Dhalla Niwas,
Daryaganj, Delhi
11. Dr. Abhilasha, W/o Anil Arora,
R/o WP-199C
Pritampura, Delhi-34

DR

12. Dr. Sangeet Saikia,
W/o Mr. R. Das, 107-C,
MIG, DDA Flats, Rajouri
Garden, New Delhi-21
(By Advocate : Sh. L. Nageshwar Rao, ... Applicants
Shri S.D. Singh)

(P)

Versus

1. Government of NCT of Delhi
through
its Chief Secretary,
5 Sham Nath Marg, Delhi - 110 054
2. The Principal Secretary,
Health & Family Welfare Department,
Government of NCT of Delhi
5 Sham Nath Marg,
Delhi - 110 054
3. The Director of Health Services,
Government of NCT of Delhi
E-block, Saraswati Bhawan,
Connaught Place, New Delhi.
4. The Union Public Service Commission,
through Secretary Dholpur House,
Shah Jahan Road,
New Delhi
(By Advocate : Smt. Avnish Ahlawat through Sh. Mohit
Madan) Respondents

O.A. NO.3371/2001:

1. Ms. Manisha Malhotra,
D/o Shri O.P. Malhotra,
R/o D-II/29, Ansari Nagar,
New Delhi - 110 029
2. Dr. Anjali Gupta,
W/o Shri Rajeev Gupta,
R/o 122B/1A, Gautam Nagar,
New Delhi - 110 014
3. Dr. Kunal Puri, CAS (Dental)
S/o Shri ...
GNCT Delhi, Delhi-92
4. Ms. Monika Kelkar,
D/o Mr. OP Kelkar,
R/o 45/1, Rajpura Road,
Civil Lines,
Delhi - 110 054
5. Anshuma Gupta,
CAS (Dental)
GNCT, Delhi
(By Advocate : Sh. P.P. Khurana, ... Applicants
Shri K.C. Mittal)

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Versus

(3)

1. The Government of NCT of Delhi,
IP Estate,
New Delhi (Through its Chief Secretary)
2. Principal Secretary,
Department of H & FW,
Government of NCT of Delhi
IP Estate, New Delhi
3. Director of Health Services,
Government of NCT of Delhi
IP Estate,
New Delhi
4. The Secretary, UPSC,
Shahjahan Road, New Delhi Respondents
(By Advocate : Smt. Avnish Ahlawat through Sh. Mohit
Madan and Sh. Amit Rathi for Respondent 4)

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O.A. NO. 3374/2001 :

1. Ms. Anjula Yadav,
D/o Shri D.S. Yadav,
R/o 9/6035, Jain Mandir Gali,
Gandhi Nagar, Delhi
2. Ms. Navita Mittal,
W/o Mr. Sanjay Kumar,
R/o 3H/137, Nehru Nagar,
Ghaziabad
3. Dr. Neeraj Aggarwal,
S/o Dr. S.D. agarwal,
R/o 30, Kotla Road,
New Delhi - 110 002 ... Applicants
(By Advocate : Sh. P.P. Khurana, Sr. Counsel with Shri
K.C. Mittal

Versus

1. The Government of NCT of Delhi,
IP Estate,
New Delhi (Through its Chief Secretary)
2. Principal Secretary,
Department of H & FW.
Government of NCT of Delhi
IP Estate, New Delhi
3. Director of Health Services,
Government of NCT of Delhi
IP Estate,
New Delhi
4. The Secretary, UPSC,
Shahjahan Road, New Delhi Respondents
(By Advocate : Shri Ajesh Luthra and Shri K.R.
Sachdeva for respondent No. 4)

O.A. NO. 1229/2001 :

1. Ms. Shalini Bansal,
D/o Shri R.K. Bansal,

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R/o 15, Vivekanand Puri,
New Delhi - 110 007

2. Anil Mittal,
S/o Shri O.P. Mittal,
R/o 44/5, Suchitra Vihar,
Pitam Pura, Delhi
3. Bhavna Gupta,
W/o Dr. Deepak Gupta,
B-37, Preet Vihar,
Delhi

(By Advocate : Sh. P.P. Khurana, Sr. Counsel with Shri
K.C. Mittal

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Applicants

Versus

1. The Government of NCT of Delhi,
IP Estate,
New Delhi (Through its Chief Secretary)
2. Principal Secretary,
Department of H & FW.
Government of NCT of Delhi
IP Estate, New Delhi
3. Director of Health Services,
Government of NCT of Delhi
IP Estate,
New Delhi
4. The Secretary, UPSC,
Shahjahan Road, New Delhi

.... Respondents
(By Advocate : Smt. Sumedha Sharma for respondents
1 to 3 and Shri K.R. Sachdeva for respondent No.4)

O.A. No. 13/2002 :

1. J.N. Dash,
S/o Shri P.C. Dash
R/o 110, Sidharth Enclave,
New Delhi - 110014
2. Smita Chowdhary,
D/o Shri Virender Singh,
201, Rouse Avenue, New Delhi

.... Applicants
(By Advocate : Sh. P.P. Khurana, Sr. Counsel with Shri
K.C. Mittal

Versus

1. The Government of NCT of Delhi,
IP Estate,
New Delhi (Through its Chief Secretary)
2. Principal Secretary,
Department of H & FW.
Government of NCT of Delhi
IP Estate, New Delhi
3. Director of Health Services,
Government of NCT of Delhi

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IP Estate,
New Delhi

4. The Secretary, UPSC,
Shahjahan Road, New Delhi Respondents
(By Advocate : Smt. Avnish Ahlawat through Sh. Mohit
Madan and Sh. Amit Rathi for Respondent 4)

(29)

O R D E R

BY S.A.T.. RIZVI, MEMBER (A):

All these five OAs raise similar/identical issues of law and fact. We are, therefore, taking these up together for passing this common order.

2. Briefly stated, the facts relevant for the purpose of adjudication of these OAs are as follows.

3. OA No.988/2001 which would constitute the lead case for the purpose of describing the facts and circumstances has been filed by 12 applicants whereas the other OAs, namely, OA Nos. 3371/2001, OA 3374/2001, OA 1229/2001 and OA No.13/2002 have been filed respectively by 5, 3, 3 and 4 applicants. These applicants have been appointed as Civil Assistant Surgeon Grade-I (Dental) (CAS Gr-I) in 1998 in pursuance of advertisement issued by the respondents on 15.5.1998 and modified on 25.7.1998 and 7.8.1998 (A-1) after being interviewed by a Committee. They were appointed initially for a period of six months purely on ad-hoc basis with the further stipulation that their ad-hoc appointment could continue for a longer period subject, however, to the appointment of regular incumbents. As and when candidates became available for regular appointment, the services of the applicants were to be terminated even before the expiry

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of the aforesaid period of six months. Yet another condition stipulated in the appointment letter (A-4) provided that their ad-hoc appointment could be terminated at any time on either side by giving one month's notice without assigning any reason. Further, the applicants were not to be granted any claim or right for regular appointment to the post. Ad-hoc appointments of the applicants have been continued/extended from time to time. Lastly, their term of appointment has been extended upto 31.12.2001 by orders issued on 8.1.2001 (A-14). 23 vacancies were notified in the aforesaid advertisement against which the Committee recommended a total of 35 names. According to the applicants, the services rendered by them, after appointment as above, have been satisfactory and without blemish. They are also qualified to hold the post of CAS Gr-I (Dental) in terms of the relevant Recruitment Rules. In these circumstances, they pray for a direction to the respondents to regularise their services on the post of CAS Gr-I (Dental) from the date of their initial appointment in consultation with the UPSC (respondent 4). They also seek a direction to the respondents to treat them as a separate block and not to compel them to compete with other aspirants and further to consider them for regularisation as above purely on the basis of their performance, work and conduct. They also seek a direction quashing the advertisement No.3 issued by the respondents (A-15) notifying 27 vacancies (SC-4, ST-2, OBC-8 and General-13) in the post of CAS Gr-I (Dental/Dental Surgeon).

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4. The applicants in OA No. 988/2001 had earlier filed OA No. 2111/2000 (A-12) seeking a different set of reliefs which are for the sake of convenience reproduced below:

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"(a) xxxx xxxx xxxx xxxxx

(b) to issue appropriate order or orders, direction or directions:

i) directing the Respondents to grant to the Applicants leave, increments, maternity leave and also the benefits of service conditions as are admissible to regularly appointed Civil Assistant Surgeon Grade-I (Dental) from the date of their initial appointment.

ii) further directing the respondents to treat the Applicants as having continued in service from the date of their first appointment ignoring the break given in their service and they shall be so continued till regular appointments are made to the post.

iii) directing the respondents that in the event of posts of Civil Assistant Surgeons Grade-I (Dental) being filled by regular recruits, the same shall first be posted in vacant posts and only after all the vacant posts are filled, should regular recruits replace the present Applicants and such replacement shall be on the basis of last come first go.

iv) directing the Respondents to grant the Applicants age relaxation to the extent of the service put in on contract basis in case the applicants are candidates before UPSC for the post of Civil Assistant Surgeons Grade-I (Dental).

(v) xxxx xxxx xxxx xxxxx"

In this OA a status-quo order was issued on 12.10.2000 (A-13), and finally orders were passed by the Tribunal on 22.5.2001 (page 10 of the rejoinder to the reply filed by R-1 to R-3). The OA was allowed with a direction to the respondents to extend to the applicants therein the

benefits granted in Dr. Sangeeta Narang's case and in Dr. Paliva's case with effect from the date of their initial appointment. Having obtained the aforesaid reliefs, the present OA (988/2001) has been filed by the same applicants seeking reliefs outlined in para 3 above.

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5. In support of their case, the applicants have relied on the judgement dated 8.10.1991 (A-16) delivered by the Principal Bench of this Tribunal in OA No.1259/1990 (Dr. Jitender Singh & Others vs. UOI) with seven other OAs. The aforesaid case dealt with Medical Officers (Allopathic) appointed on ad-hoc/temporary basis as in the OAs under consideration. The Tribunal gave relief to those applicants in the following terms:-

(i) The respondents are directed to refer the cases of the applicants and those similarly situated to the Union Public Service Commission for the purpose of regularisation of their service as Medical Officers. They should be treated as forming a separate block for the purpose of regularisation. Regularisation should be based on the evaluation of work and service records of the applicants and those similarly situated. The respondents shall do the needful in the matter within a period of four months from the date of receipt of this order.

(ii) After the services of the applicants are regularised through the Union Public Service Commission, their seniority shall be reckoned from the dates of their initial appointment on ad-hoc basis as Medical Officers, after condoning the technical breaks in their ad-hoc service. The service rendered by them during the period of operation of the stay order passed by the Tribunal shall also count as service for the purpose of regularisation.

(iii) After regularisation of the services of the applicants as indicated in (i) and (ii) above, the respondents will be at liberty to post the applicants as Medical Officers at places where vacancies exist. Till they are so regularised, the respondents are directed

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to accommodate the applicants at their present places of posting in the Hospitals at Delhi. The interim orders already passed in these cases are hereby made absolute.

(iv) Till the applicants are so regularised, they should be entitled to the same pay scales, allowances and benefits of leave, increments etc., and other benefits of service conditions as are admissible to regularly appointed Medical Officers. In the facts and circumstances, we do not direct the respondents to pay them arrears of pay and allowances for the Post Period."

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When the matter was taken by the Union of India before the Supreme Court, that Court by its order of 3.5.1993 (A-16) confirmed the aforesaid reliefs granted by the Tribunal except in regard to the relief at serial No.

(ii) above, containing the Tribunal's direction to reckon the seniority of the applicants in that OA from the dates of their initial appointment. The Supreme Court in its aforesaid order clarified that the aforesaid direction regarding fixation of seniority from the date of initial appointment shall be modified to imply that the fixation of seniority would be in accordance with the extant rules.

6. In addition to the case referred to in the above paragraph, the applicants have also relied on the judgement delivered by this Tribunal on 16.3.2001 (A-17) in OA No.2590/2000 (Dr. Anita Nanda & 17 others vs. Govt. of NCT of Delhi) which relates to Medical Officers (Homoeopathy). The Tribunal in that case directed the respondents to send the record of the applicants to the UPSC to enable the Commission to consider their regularisation against the post of Medical Officer (Homoeopathy) as per rules. The aforesaid order passed

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by this Tribunal has, however, been stayed by the High Court on 25.7.2001 vide Annexure R-II to the counter filed on behalf of respondents 1 to 3.

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7. The learned counsel appearing on behalf of the applicants submitted that non-consultation with the UPSC is the only deficiency in the procedure followed in recruiting/appointing the applicants on ad-hoc basis. Since the posts were widely advertised, it cannot be said that the applicants' entry in service is back door entry. The applicants were interviewed by a Committee set up by the Government of NCT of Delhi. It could be presumed that the aforesaid Committee discharged its duties and responsibilities in a fair and proper manner and to this extent the applicants can be said to have been properly selected. The applicants are in possession of all the qualifications laid down in the relevant Recruitment Rules. The applicants have also been performing satisfactorily throughout. For these reasons, according to him, the present OAs are fully covered by the decision of this Tribunal dated 8.10.1991 (A-16 Colly.), which has been up-held by the Supreme Court on 3.5.1993 (A-16 Colly.). Thus, according to the learned counsel, barring the issue of fixation of seniority from the date of initial appointment, the applicants in the present OAs are also entitled to the reliefs given by the Tribunal in the aforesaid case. The respondents should accordingly be directed to refer the cases of the applicants to the UPSC for the purpose of regularisation of their service as CAS Gr/I (Dental). For this purpose, the applicants should be treated as a separate block and regularisation

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should be carried out on the basis of evaluation of work and the service record of the applicants. The applicant's plea based on Dr. Anita Nanda's case (supra) has not been pressed by the learned counsel as the Tribunal's order made in that case stands stayed w.e.f. 25.7.2001.

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8. The respondents have disputed the claim of the applicants on several grounds. According to the learned counsel appearing on their behalf, once the Recruitment Rules framed under the proviso to Article 309 of the Constitution and duly notified are available and hold the field, the respondents are bound to follow the same in letter and in spirit so as to dis-allow back door entry to individuals. The method permitted to be followed by this Tribunal in Dr. Jitender Singh's case (supra) is a hybrid procedure, which is not in consonance with the relevant Recruitment Rules notified on 12.7.1993 (Annexure R-1 to the counter filed on behalf of respondents 1 to 3), which provide that the posts of CAS Gr-I (Dental) are to be filled by direct recruitment in consultation with the UPSC. The filing of two OAs including the earlier OA No.2111/2000 by the applicants in OA No.988/2001 has been termed by the learned counsel as abuse of the process of law. From the nature of reliefs sought by the applicants in OA No.988/2001 in the aforesaid earlier OA No.2111/2000, it is clear that the applicants were fully aware that they will have to give way as soon as regularly appointed incumbents became available. It was in view of this position that these applicants had in the aforesaid OA sought the relief of age relaxation in case they decided to become candidates

before the UPSC for regular appointment as CAS Gr-I (Dental). The relief of regularisation in consultation with the UPSC now sought in OA No.988/2001 could as well have been sought in the same OA. Since the applicants failed to seek the relief of regularisation in OA No.2111/2000 it should be presumed, consistently with the provisions of order II rule 2 of the CPC that they have relinquished their claim for regularisation. The learned counsel has further submitted that in the letters of appointment issued to the applicants it was made clear that their appointment was purely on ad-hoc basis and that their services were to be dispensed with upon regularly selected incumbents becoming available. It was also made clear then that the applicants will not be allowed to prefer any claim for regular appointment on the basis of experience gained during ad-hoc service. There could be no objection, therefore, to their service being terminated in accordance with the aforesaid conditions stipulated in the letters of appointment.

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9. The learned counsel appearing on behalf of the UPSC (respondent No.4) has urged that the Commission is bound to initiate the process of recruitment strictly in conformity with the Recruitment Rules notified by the Government on receipt of a requisition from the indenting department. The Commission has been vested with powers to devise its own procedures for making selections. Following the prescribed procedure, the UPSC held a combined recruitment test for six posts of Dental Surgeon for the Ministry of Health, Government of India and 23 posts of CAS Gr-I (Dental)/(Dental Surgeon) for the

Department of Health, Government of NCT of Delhi together with four posts of Dental Surgeon for the Department of Health of the Government of Pondicherry. The test was held on 2.12.2001 in pursuance of the advertisement issued on 10.2.2001. Barring three applicants in OA No. 988/2001, all others in that OA had applied in pursuance of the aforesaid advertisement No.3. However, none of them appeared in the recruitment test held by the Commission on 2.12.2001. The result of the combined recruitment test has been declared on 26.2.2002. A total of 66 candidates qualified for interview for the 23 posts of CAS Gr-I (Dental)/(Dental Surgeon) for the Department of Health and Family Welfare, Government of NCT of Delhi. The Commission has no role to play in the context of contractual/ad-hoc appointments made by the various Departments/Organisations of the Government. All the same, when the case of ad-hoc appointments made not in accordance with the instructions of the DOP&T came to the Commission's notice, the Government of NTC of Delhi was addressed in the matter inviting attention of that Government to the instructions in question imposing restrictions on making of ad-hoc appointments. The DOP&T's OM dated 23.7.2001 dealing with ad-hoc appointments has conveyed the decision of the Government that no appointments are to be made on ad-hoc basis by direct recruitment from open market.

10. The learned senior counsel appearing on behalf of the applicants in these OAs has, in support of the applicants' claim that the orders of this Tribunal dated 8.10.1991 confirmed by the Supreme Court on 3.5.1993

should be applied in their case has relied on the following judgements rendered by the Apex Court, Delhi High Court and this Tribunal from time to time:-

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- (1) 1987 Sup SCC 497 (Dr. A.K. Jain v. Union of India),
- (2) (1992) 1 SCC 331 (Dr. P.P.C. Rawani & Others vs. UOI & Others and Dr. Harbans Singh & Others vs. Union of India and Others) decided by a 3 Judges Bench of the Supreme Court on 29.10.1991,
- (3) 1995 Supp (4) SCC 111 (Baseruddin M. Madari & Others vs. State of Karnataka and Others) decided by a 3 Judges Bench of the Supreme Court on 4.4.1994,
- (4) (2002) 4 SCCs 234 (Chandra Prakash and Others vs. State of U.P. and Others) decided by a Constitution Bench (5 Members) of the Supreme Court on 4.4.2002,
- (5) 1983 LAB.I.C. 910 (Dr. G.P. Sarabhai and Others vs. Union of India and Others) decided by a 2 Member Division Bench of the Delhi High Court on 13.8.1992,
- (6) OA No.957/1991 (Dr. M. Srinadhachery vs. UOI) decided by the Hyderabad Bench of CAT on 28.1.1994,
- (7) (1992) 2 SCC 29 (Karnataka State Private College Stop-Gap Lecturers Association vs. State of Karnataka and Others) decided by a 3 Judges Bench of Supreme Court on 29.1.1992,
- (8) (1991) 1 SCC 28 (Jacob M. Puthuparambil & Others vs. Kerala Water Authority and Others) decided by a 2 Member Division Bench of Supreme Court on 19.9.1990.

11. Before we deal with the other judgements relied upon by the learned counsel for the applicants, we would like first to take up the judgement rendered by the Hyderabad Bench of this Tribunal in Dr. M. Srinadhachery's case (supra). This case dealt with

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Ayurvedic Physicians appointed in the CGHS. The Tribunal had in this case relied on the judgement of the Principal Bench dated 8.10.1991 (OA No.1259/1990), a reference to which has already been made in an earlier paragraph. The respondents were accordingly directed to refer the cases of the applicants to the UPSC for the purpose of regularisation as Medical Officers (Indian Medicine) under the CGHS. The applicants were to be treated as a separate block for the purpose of regularisation which in turn was to be carried out on the basis of evaluation of work and service record. It appears that when Medical Officers (Unani) appointed on ad-hoc basis and who had continued to work for 2 to 3 years approached the Principal Bench of this Tribunal, the relief of regularisation claimed by them was rejected on 7.7.1998. The matter was thereupon agitated before the Delhi High Court in CWP No.4467/1998. That Court was made aware of the aforesaid decision of this Tribunal in the case of Ayurvedic Physicians appointed in the CGHS. The Court noted that the ACR dossiers of the petitioners had already been forwarded to the UPSC and decided the matter with a direction that the respondent-department shall pass appropriate order on the basis of the recommendations of the Commission. Consequently the services of two Medical Officers (Unani) were regularised vide Ministry of Health & Family Welfare, Government of India's letter dated 1.1.2001, a copy of which has been filed on behalf of the applicants. The implementation of the orders of the High Court in the aforesaid case has been vehemently pleaded as an important ground for granting the relief of regularisation to the applicants

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in these OAs in consultation with the UPSC and on the basis of evaluation of the performance and service record of the applicants. We would like to make it clear right at this stage that the aforesaid judgement of the Delhi High Court will not constitute a binding judicial precedent inasmuch as the matter was not agitated before the High Court in the back-ground of relevant Recruitment Rules. The Court was, in the peculiar circumstances of the case, inclined to adopt a certain decision which had already been taken by the Tribunal in respect of Ayurvedic Physicians and that is about all. Further, the Tribunal's aforesaid order dated 28.1.1994 itself placed reliance on the judgement of this Tribunal in the case of Dr. (Mrs) Sangeeta Narang and Others vs. Delhi Administration and Others (ATR 1988 (1) CAT 556) and the judgement of the Supreme Court in Dr. A.K. Jain and Others vs. UOI (supra) and Jacob M. Puthuparambil vs. Kerala Water Authority (supra). We shall readily see that the aforesaid judgements and orders have been passed in the peculiar circumstances of each case and cannot, therefore, be pressed into service for deciding the OAs at hand. Insofar as the aforesaid orders passed by the Supreme Court are concerned, we can readily see, after a perusal of the same, that these have been passed in exercise of the jurisdiction conferred on the Supreme Court under Article 142 of the Constitution. Courts below, including this Tribunal, cannot exercise the aforesaid jurisdiction.

12. In the case of Dr. A.K. Jain (supra), the Supreme Court gave directions under Article 142 to

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regularise the services of ad-hoc Doctors. Such directions are issued on the basis of peculiar facts and circumstances of a case. After noting this position, the Supreme Court in paragraph 11 of J&K Public Service Commission & Others vs. Dr. Narinder Mohan and Others (1994) 2 SCC 630) decided on 7.12.1993 also observed that the High Court was not right in placing reliance on the said judgement as a ratio to give directions to the PSC. Powers under Article 142 of the Constitution are available only to the Supreme Court.

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13. In the same paragraph 11 of the Supreme Court Judgement in J&K Public Service Commission & Others case (supra), the Court has also held that the ratio in Dr. P.P.C. Rawani and Others vs. UOI and Others (supra) is also not an authority under Article 141. The orders passed in that case were more in the nature of an execution and not a ratio under Article 141.

14. In the circumstances brought out in the preceding paragraphs, the applicants cannot successfully seek assistance from the Supreme Court's judgement in Dr. A.K. Jain's case (supra) and Dr. P.P.C. Rawani (supra).

15. Shri Mittal, learned counsel appearing on behalf of the applicants, inter alia, placed reliance on Dr. G.P. Sarabhai and Others case (supra). We have perused the same and find that in that case also the petitioners had challenged the issuance of advertisement by the UPSC for making regular appointments. However, that case is

distinguished. The petitioners therein had been appointed on ad-hoc basis before the Recruitment Rules came into force in September 1979: UPSC advertised the posts soon thereafter. Section 17 (3) of the Employees State Insurance Act provided for appointment on ad-hoc basis for a maximum period of one year. At the time of appointment of the petitioners on ad-hoc basis it was contemplated that their selection would be regularised through the UPSC. The Commission themselves had agreed to the continuance of the petitioners beyond the aforesaid maximum period of one year. The petitioners had appeared before the UPSC but could not be selected. The petitioners and others were interviewed by the Commission. It was in these circumstances that it was held that the petitioners would form a separate class by themselves. In the present case, Recruitment Rules relevant for the purpose of regular appointment were already available and the applicants were appointed on a clear understanding that they will have to give way to incumbents to be appointed on regular basis.

16. In Karnataka State Private College Stop-Gap Lecturers Association vs. State of Karnataka and Others (supra), the Supreme Court has not discussed the matter in the back-ground of any Recruitment Rules. The petitioners/teachers had worked for 8 to 10 years on temporary basis. The policy of reservation also stood in the way of their regularisation in service. The matter has clearly been decided by having regard to the peculiar facts and circumstances of the case and in exercise of jurisdiction conferred on the Supreme Court under Article 2

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142 of the Constitution. This case will, therefore, not assist the applicants in the OAs at hand.

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17. In (Jacob M. Puthuparambil & Others vs. Kerala Water Authority and Others (supra), again the matter has been decided by the Supreme Court by having regard to the peculiar facts and circumstances of that case. The services of the petitioners recruited in the HP Department of the Government had been transferred to Kerala Water and Waste Water Authority set up under an ordinance of 1984 later replaced by an Act of 1986. The authority made recommendations to the State Government for regularising the services of the petitioners. It was held that the authority alone was competent to regularise their services without waiting for State Government's approval. The petitioners had served for a reasonably long period and possessed requisite qualification for the job. The question of their regularisation was examined with reference to the powers available to the State Government under Section 8 (1) of the aforesaid Act of 1986. The authority had adopted the Kerala State Subordinate Services Rules 1958, but it had done so without the State Government's prior approval. It was, therefore, held that in the circumstances the relevant rules, insofar as they were applied to the staff members of the authority lacked statutory flavour or force. The relevant rule was thus interpreted by the Court consistently with the spirit and philosophy of the Constitution particularly Article 141 of the Constitution. Clearly here again the decision rendered by the Supreme Court can be said to have been made in

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exercise of the jurisdiction conferred on the Court under Article 142 of the Constitution. The applicants' case cannot, in the circumstances, be advanced in any manner by relying on this judgement of the Supreme Court.

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18. In Baseruddin M. Madari & Others vs. State of Karnataka and Others (supra) again the rule position was not discussed, nor were the conditions attached to the letters of appointment. It is also not a case, like the case of some of the applicants in the OAs at hand in which the petitioners in the first instance did not seek regularisation and did so later only as an after thought. We have also noted that in deciding the aforesaid matter, the Supreme Court had placed reliance on Karnataka State Private College Stop-Gap Lecturers Association (supra). Needless to say that this case has also been decided by the Court in exercise of the jurisdiction conferred on the Court under Article 142 of the Constitution. No assistance will, therefore, be available to the applicants by relying on the Supreme Court Judgement in this case.

19. Chandra Prakash and Others vs. State of U.P. and Others has been relied upon by the learned counsel appearing on behalf of the applicants only to bring home his contention that the judgement rendered by a 3 Judges Bench will always hold good in preference over judgements delivered by Division Benches of the same or smaller number of Judges. Several decisions of that Court referred to in the preceding paragraphs have been delivered by Division Benches consisting of 3 Judges. We

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have carefully noted the ratio of the judgement laid down in Chandra Prakash and Others (supra). However, the same will not, in our view assist the applicants inasmuch as all the decisions rendered by the Supreme Court on which reliance has been placed on behalf of the applicants, whether rendered by two Judges Benches or 3 Judges Benches have been made by the apex Court in exercise of the jurisdiction conferred under Article 142 of the Constitution by having regard to the peculiar facts and circumstances of the cases dealt by them.

(36)

20. The learned counsel appearing on behalf of the respondents has relied on J&K Public Service Commission and Others (supra) to bring home their contention that regular appointments can be made only in accordance with the relevant Recruitment Rules and by following the procedure of recruitment laid down by the UPS in consultation with the Departments concerned. In that case certain persons were appointed on ad-hoc basis in violation of statutory rules and were subsequently regularised in service by purportedly relaxing the rules. The Court held such an action to be ultra vires the rules. It also held that the ad-hoc appointees should be replaced by persons regularly recruited in accordance with the rules. The Public Service Commission cannot be ignored where appointments are required to be made through it. Mere continuance for some years does not entitle ad-hoc appointees to regularisation.

21. On behalf of respondents, the learned counsel has also placed reliance on Shriek Shandy & Ors vs. Delhi

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Subordinate Services Selection Board & Ors (C.W.P. No. 7386 of 2000) with connected Writ Petitions decided by the Delhi High Court on 23.7.2002. While dealing with these Writ Petitions, the High Court had occasion to deal with the case of Dr. Jitender Singh decided by the Tribunal and to which a reference has been made in paragraph 5 above. The High Court, inter alia, posed the following question to be answered by it:-

(32)

"Whether the Tribunal erred in not following the decision in Dr. Jitender Singh & Ors. v. Union of India, in OA No. 1259/1990?"

After examining the matter and noting that the Tribunal's decision in Dr. Jitender Singh's case (supra) had been ratified except in relation to fixation of seniority by the Apex Court, the High Court held that the apex Court did not lay down any law within the meaning of Article 141 of the Constitution. The case of Dr. G.P. Sarabhai & Ors was also noticed by the High Court while dealing with the aforesaid Writ Petitions. The Court found that "in the facts and circumstances of the said case, it was held that the petitioners therein were not required to re-apply for the said posts keeping in view the statute and the statutory rules operating in that case."

22. We have carefully considered the rival contentions raised on behalf of the parties and have also kept in view the ratio of the various judgements rendered by the Tribunal, the High Court and the Supreme Court in cases already adverted to in the preceding paragraphs. The applicants in these OAs have been appointed on ad-hoc basis some time in the latter part of 1998. No doubt,

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they have been appointed in pursuance of an advertisement issued in May/July/August 1998 and as many as 234 candidates were interviewed out of whom a total of 35 including the applicants in these OAs were recommended for ad-hoc appointment. The vacancies then available were shown as 23. The interview in question was conducted, however, by the Departmental Authorities without UPSC's participation. The letters of appointment issued to the applicants clearly show that their appointment was made on ad-hoc basis for a limited period. It was indicated that they were to be replaced by regularly selected incumbents in due course. It was also clarified to them that no right will accrue to them on account of service rendered in ad-hoc capacity. The term of their appointment was extended from time to time. They have all accepted the aforesaid position without any demur. In these circumstances when they approached the Tribunal in OA No.2111/2000 they did not seek the relief of regularisation, being aware of the fact that they would be replaced by regularly selected incumbents. Barring three applicants in OA No. 988/2001, all others had offered their candidature in pursuance of the advertisement issued by the UPSC for regular recruitment on 10.2.2001. It is a different matter that subsequently those who had offered their candidature as above refrained from appearing in the recruitment test held by the UPSC for regular selection on 2.12.2001. Instead of participating in the recruitment process initiated by the UPSC in accordance with the relevant Recruitment Rules, the applicants have filed these five OAs starting with OA No.988/2001 which was filed at the earliest opportunity

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on 23.4.2001. It cannot, therefore, be said that they had worked in ad-hoc capacity for a long period by the time they decided to agitate the matter before this Tribunal seeking regularisation. We also find that this is a case of back door entry inasmuch as in the first advertisement issued on 15.5.1998, 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 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

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(25)

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).

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23. In the back-ground of the detailed discussions contained in the preceding paragraphs, we find no merit in these OAs which are dismissed. There shall, however, be no order as to costs.

(S.A.T. RIZVI)
Member (A)

(KULDIP SINGH)
Member (J)

/pkr/

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