

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1113/99

New Delhi this the 25th day of May, 2000.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN
HON'BLE MRS. SHANTA SHAstry, MEMBER (ADMNV)

Dr. Ajay Kumar Sachdev,
Associate Professor of
G.I. Surgery, G.B. Pant Hospital,
New Delhi
S/o Shri P.K. Sachdev,
R/o 8/6, West Patel Nagar,
New Delhi-110 008.

...Applicant

(By Shri R. Venkataramani, Senior Counsel with
Shri C.A. Brijesh, Counsel)

-Versus-

1. Union of India through the
Secretary, Ministry of
Health and Family Welfare,
Nirman Bhawan,
New Delhi.
2. Union Public Service Commission,
through its Secretary,
Shahjahan Road,
New Delhi.
3. Dr. Adarsh Chaudhary,
Professor of General Surgery,
G.B. Pant Hospital,
New Delhi.
4. Dr. Anil Kumar Aggarwal,
Assistant Professor of
General Surgery,
G.B. Pant Hospital,
New Delhi.

...Respondents

(Respondent No.1 through Sh. V.S.R. Krishna, Counsel)

(None for respondent No.2)

(Respondents No.3&4 through Mrs. Meera Chhibber, Counsel)

O R D E R

By Reddy, J.-

Though record is voluminous, the facts are in a
short compass.

2. The applicant, after qualifying himself as



MBBS Doctor in 1980, has taken his Master's Degree in Surgery (General Surgery) in the year 1984. He also completed his Ph. D. in Gastro Intestinal Surgery (GI Surgery) in 1998 from Delhi University. Thereafter he joined as a Senior Resident at Safdarjung Hospital, New Delhi in 1984. During the period 1984 to 1986 he continued as Senior Resident. Thereafter he worked as Research Associate during the period 14.2.90 to 10.2.93 in the GI Surgery, in the same hospital. He was appointed as Assistant Professor of G.I. Surgery in the Central Health Service and posted in the department of GI Surgery, G.B. Pant Hospital, on ad hoc basis, on 11.2.93. He was later appointed as Associate Professor, on ad hoc basis, on 1.4.95 and continued till 8.12.97. The UPSC advertised the post of Associate Professor in the department of GI Surgery and the applicant had applied for the said post but he was not called for interview. He, therefore, filed OA No.2611/97 before the Principal Bench of the Central Administrative Tribunal, seeking a direction to consider him for interview. During the pendency of the OA, he has been duly selected and consequently the OA has been withdrawn.

3. Though the post of Assistant Professor in GI Surgery was created in 1989, but the said post was not advertised for 7 years. In case the said post was advertised, the applicant being the only suitable candidate would have been appointed as Assistant Professor in 1989 and in 1993 he would have been eligible to be appointed as Associate Professor and by now the applicant would have been posted as Professor GI Surgery as per the statutory rules of the Central Health Service. He has been in the department of GI Surgery since its inception (1986) and continued to be

Copy

(3)

working as Assistant Professor in 1993 till he was appointed as Associate Professor on regular basis in 1997. The applicant, therefore, prays that his period of service from the date of his working as Assistant Professor on ad hoc basis should be counted for the purpose of seniority in the post of Associate Professor.

4. It is also submitted by the applicant that the respondents entrusted to R-3 a Professor in General Surgery with the ^{authority of the} Head of the Department of GI Surgery in the G.B. Pant Hospital. The applicant instead, is ^{the} ^{only} specialist in the GI Surgery and he should have been posted as Head of the Department of the GI Surgery.

5. The present OA is, therefore, filed aggrieved by the action of the respondents 1 and 2, as indicated supra. 6. The respondents have raised preliminary objections as to the maintainability of the OA on the grounds of plurality of reliefs and for non-joinder of necessary parties. On merits, it is averred that as the appointment of the applicant as Assistant Professor GI Surgery being only on ad hoc basis, the ad hoc service will not be counted for the purpose of seniority. His seniority would commence only from the date of his regular appointment as Associate Professor in 1997. It was also stated that the applicant does not possess the qualification of superspeciality and the Ph.D. Degree in G.I. Surgery cannot be equated with M.Ch. It is further averred that there was no post of HOD as such and that it was entirely for the Head of the Hospital as to who should be made the Head of each department and no one could claim as a matter of right to be entrusted with the functions of the Head of

Department. R-3 being the seniormost Professor in the Department, in the normal course he was given the duties of the HOD and the same cannot be questioned.

7. We have given careful consideration to the pleadings as well as the contentions raised by the learned Senior Counsel appearing on behalf of the applicant and the learned counsel appearing on behalf of the official and private respondents.

8. The contention of the learned counsel for the respondents regarding plurality of reliefs, is absolutely devoid of force, as the question of seniority of the applicant is inter-linked with his right for consideration of his claim to the Head of the Department. This objection, therefore, is not tenable.

9. Assuming that the NCT of Delhi is a necessary party to the proceedings, it is clear from the record that the applicant has filed an application for impleading the NCT Delhi as a party to the case, but even though it was served with the notice of the said application, it has not chosen to contest the case. It has, on the other hand, directed the G.B. Pant Hospital to contest the case, who has also not filed any reply nor contested the matter. In the circumstances, the applicant cannot be faulted for not making the NCT of Delhi as a party to the proceedings.

10. Now we will consider the case on merits. The first relief relates to the claim of counting ad hoc service for the period from 1993-97 towards his seniority. Regarding this aspect the facts are broadly, undisputed.



G.B. Pant Hospital is a superspeciality hospital. Prior to 1986, there was no department of GI Surgery in any of the Hospital in the Government in Delhi under CHS. Only in 1986, a separate superspecialty in the department of GI surgery was started in GB Pant Hospital. However, it is curious to note that there was no Doctor possessing speciality in GI Surgery who was posted in this department. The department came to be entrusted to two faculty members, Dr. Professor R.C. Aranya and Dr. Adarsh Chaudhary, both of them are of the General Surgery cadre. In 1986 a post of Assistant Surgeon was sanctioned in the Superspeciality, for the first time. As no steps were taken by the Government to fill up the same regularly, the applicant was appointed as an Assistant Professor on ad hoc basis in 1993 and he has been working in this department since then. This department was stated to have been recognised by the Medical Council of India for starting M.Ch. Course (Superspeciality course in the GI Surgery).

11. It is contended by the learned Senior Counsel appearing for the applicant that the applicant was appointed as an Assistant Professor in 1993 against a clear vacancy by Central Government in public interest because of persistent demands at the instance of the Medical Council of India. It is also stated that after the applicant was appointed seats in the M.Ch were increased from one to two. These facts were stressed by the learned counsel to show that the appointment of the applicant to the post of Assistant Professor was made for a specific purpose and in the interest of the department and hence not as a stop gap arrangement. It is true that a reading of the correspondence between MCI Delhi University and the hospital



(6)

in the letter dated 12.2.92 and 29.6.93 etc. reveals that the Government was intent to take steps for recognition of the superspeciality department by the MCI and to increase the seats from one to two. It is also undeniable that the services of the applicant with Ph.D in GI surgery were utilised as a Guide and Teacher to the M.Ch students. It may thus justifiably be argued that the appointment of the applicant as an Assistant Professor was not really ad hoc, in the sense of filling up a post as a stop gap arrangement. But, we should not lose sight of the fact that admittedly no statutory rules have been framed by the Government governing the appointment of the Assistant Professor or Associate Professor in GI Surgery though the post of Assistant Professor has been sanctioned in 1989. Though the draft rules have been suggested by the Government of NCT of Delhi in 1994 for appointment to the post of Director and Professor, Associate Professor and Assistant Professor stipulating the essential qualifications and experience at various levels in GI Surgery in G.B. Pant Hospital, no statutory rules have been framed. Pending the framing of the rules, Govt. thought of the ad hoc appointment in the post of Assistant Professor, by merely nominating him as such without any sort of selection process. In the counter-affidavit filed by the official respondents it is stated that after recommendations of the Tikku Committee in 1991 as all the posts in Superspeciality have to be filled up only at the entry level of the Associate Professor and as the CHS Rules having been accordingly amended in 1996, a requisition was sent soon thereafter to the UPSC for filling up the post of Associate Professor on regular basis. Thus, a plausible explanation was given by the respondents for not filling up the post of Assistant Professor or Associate

(Signature)

(7)

Professor in the Superspeciality till 1996. However, it is found that at every stage the respondents had been guilty of inordinate delay in filling up the post of Associate Professor on regular basis. However, though the Tikku Committee's recommendations have been made in November, 1991, why soon thereafter, within a reasonable time action should not have been taken by the respondents for amending the rules, in the Superspeciality of GI Surgery? Why a delay of five years had occasioned occurred in framing the rules, there is no explanation. But, it must be kept in mind that these and others, may be valid reasons for blaming the Govt. in neglecting the superspeciality department and thus patient care was made a casualty, but they do not even in a remote ^{way} ~~way~~ could be held as depriving the applicant of his rights of seniority. At this stage, after a lapse of about 8 years, it is not possible to either set right the things that should have happened long years back. Law is well settled that an ad hoc appointee who was not appointed as per the relevant statutory rules but was appointed until the Rules are ^{framed} ~~blamed~~ and without a process of selection will not be entitled for counting the period of ad hoc service for the purpose of seniority in the post to which he was regularly appointed. He will be regularised only w.e.f. the date when he was appointed according to the rules. Hence, the applicant could not have been appointed on regular basis in 1993 in view of the Tikku Committee's recommendations. His appointment by the Govt. in Public Interest would not alter the character of ad adhoccism as there is no element of consideration of other eligible candidates even as per the draft rules suggested by the Govt. as there may be several candidates available in the



(8)

country, if not in the hospital. Thus, it has to be held that he was only appointed on a temporary arrangement and not with a view to appoint him on regular basis in 1993.

15. This question is no more res-integra. In the Constitution Bench of the Supreme Court, in The Direct Recruit Class II Engineering Officers' Association v. The State of Maharashtra & Others JT 1990 (2) SC 264, the learned Judges held that:

" If an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequal as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority."

16. To summarise the Court has also clearly stated in the corollary to conclusion 'A' as follows:

"(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to the rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority."



(9)

This view was subsequently clarified in Dr. Anuradha Bodi v. Municipal Corporation of Delhi and Others, 1998 (5) SCC 293, which has been cited by the learned counsel for the first respondent. The learned counsel for the applicant also places reliance on para 25 of this judgement. In this paragraph it was reiterated that the initial appointment should have been made as per the procedure laid down in the "rules" but if there is any deficiency in following the procedure as required under the rules and the same has been rectified at the time of regularisation, the period of ad hoc service could also be counted. But in the instant case as there were no rules governing the appointment of the Assistant Professor in the GI Surgery, hence the applicant could not get the benefit of adhoc service.

17. The learned counsel for the respondents, however, submits that the The Direct Recruit's case (supra), as explained in Satbir Singh and Dr. Anuradha's case is inapplicable and indeed irrelevant on the facts of the instant case. If the counsel submits that the recruitment rules have been framed, on one hand and no recruitment rules have been framed, on the other. Admittedly, as no recruitment rules had been framed in the present case the only decision that is applicable is I.K. Sukhija v. Union of India & Others, 1997 (6) SCC 406. Paragraph 14 of the judgement is relied upon by him, which reads as under:

"The only reason for making their appointments as temporary and ad-hoc was that the draft recruitment rules could not be finalised till 1975. There was unusual spurt in the construction activity between 1970 and 1977, which necessitated giving of urgent temporary

OOR

(10)

promotions. For all the reasons stated above, it is not possible to accept that the appointments of the appellants as AEs, though temporary and ad-hoc service, were by way of stop-gap arrangements only."

18. We have carefully examined the judgement of I.K. Sukhija, but we are of the view that the decision was rendered in view of the peculiar facts of the case, which are singularly absent in our case. In the said case the question of ad hoc promotion of Junior Engineers to Assistant Engineers (Electricals) in P&T Department arose, where no statutory rules were framed but draft rules were prepared. The appellants therein were promoted during 1970 to 1977 and were regularised in 1978 after the statutory rules were framed under Article 309 of the Constitution. The facts make it clear that though the appellants were promoted on ad hoc basis all the Junior Engineers who were eligible as per the draft rules were duly considered by the DPC and their promotions were made according to their placement in the merit list and not according to their seniority and the promotions were made against regular vacancies. On the facts of the said case the Supreme Court held that they were entitled for seniority from the dates of their initial promotion, as though they were termed as ad hoc were in fact regular because they were promoted after following the selection process in which the merit was assessed. If we consider the facts in the instant case this factual matrix is singularly absent. It is not the case of the applicant that any process of selection was made by the DPC after considering all the eligible candidates for the post of Assistant Professors GI Surgery. He was in fact nominated. Hence, the above case has no application to the present case. The point raised has to be rejected.



(11)

19. The next grievance of the applicant is that, he being the only qualified faculty member in the Superspeciality of GI Surgery, he should be the Head of the Department of GI Surgery. To consider the claim of the applicant, it is necessary to recall certain facts. When the department of GI Surgery was started as a separate superspecialty in 1986, there was no faculty member possessing the superspeciality. Professor R.C. Aranya and Dr. Adarsh Chaudhary, R-3 were the two faculty members and both were from general surgery cadre. Professor R.C. Aranya was entrusted with the ^{function of faculty} Head of Department, GI Surgery since the inception of the department. Only in 1993 the applicant joined as a third faculty member. In 1994, when Dr. Aranya was about to superannuate, the Govt. of Delhi has decided that the post of Professor and Head of the Department, GI Surgery and other posts had to be filled up, on priority basis, in the interest of patient care and in view of the fact that no other GI Surgery department existed till date in CHS, the said posts should be filled up by direct recruitment, initially. The Government also suggested the qualifications and experience at various levels for direct recruitment. However, as seen in the preceding paragraphs, no action was taken for filling up any of the posts in the superspeciality till 1996. Annexure R-3 has been continuing as the Head of the Department. Thus in the Department of superspeciality we find no qualified and experienced faculty member in the Department.

20. No doubt the applicant with Ph.D. in GI Surgery was the only Faculty Member who could be said to be a specialist in GI Surgery, but, it should be remembered

U.B.A.

(12)

that he was appointed on ad hoc basis, and could not be considered as a regular faculty member till he was appointed as Associate Professor in 1997 by selection by UPSC.

21. R-3 claims that he was the founder of the department and indeed responsible for the recognition of the department by MCI as well as for sanctioning of seats in M.Ch. This claim is, however, not substantiated. The fact, however, remains that he has been working in the department from 1986. However, as rightly pointed out by the learned counsel for the applicant, R-3 was appointed as Assistant Professor in General Surgery on the basis of his qualifications in Surgery but he was posted in the department of GI Surgery. But it should be noted that Dr. Aranya was the Professor and HOD since the inception of the department and his services to the department cannot be minimised. Only on the retirement of Dr. Aranya R-3 has taken charge as HOD. The Annexures filed by him only go to show that he contributed certain articles on the topic of GI Surgery. But it should not be lost sight of that these articles were the result of collective effort and the contribution of the entire department of GI Surgery in the GB Pant Hospital. R-3 does not prefer himself to be qualified in G.I. Surgery. His working and experience in the department cannot also be equated to a recognised, special training in G.I. Surgery department as the department in the hospital was in its nascent stage. A dispute was also raised whether the applicant's Ph.D. Degree issued by the Delhi University could be recognised as equivalent to M.C.H. in GI Surgery. In our view, this point is not relevant for the purpose of determination of the

(13)

issue before us. The fact remains that he has been appointed by the UPSC as Associate Professor on the basis of his qualification in GI Surgery.

22. The issues involved in this case, being essentially relating to Public Interest and patient care in the Government Hospital, the narrow adversarial interests should be eschewed and the matter has to be looked at keeping in mind the broad interests of the public. In this case we are not on the issue whether R-3 was validly appointed as HOD GI Surgery, as it is admitted by all sides that no such post exists under the Recruitment Rules. Hence the only question is whether it is fit and proper to entrust the department of superspeciality to the care of the general surgeons. In our view, it is not. It should be entrusted to the hands of the qualified and experienced faculty members, like Director-Professor, Professor etc. in GI Surgery.

23. Considering the entire gamut of facts and particularly keeping in mind the public interest we are of the view, that whatever may be the reasons for the Government for not appointing the faculty members in the superspeciality by direct recruitment in 1994 itself, it is necessary to appoint the Director-Professor, in GI Surgery immediately and hand over the department to his care. Till then, we are of the view, that R-3 may be continued as he was looking after the department since 1994 ^{as} applicant was only an Associate Professor, appointed only in 1997.



(14)

24. We, therefore, direct the first respondent to take immediate steps to fill up the post of Director-Professor, ^{and} Professor in the superspeciality of GI Surgery, in the GB Pant Hospital, in accordance with the decision taken by the Government, in the proceedings dated 19.05.1994, by way of direct recruitment, in accordance with the recruitment rules, within a period of six months from the date of receipt of a copy of this order and entrust the duties of the Head of the Department, to the Director-Professor in G.I. Surgery,

25. The O.A. is accordingly disposed of. No costs.

Shanta Shastray
(SMT. SHANTA SHAstry)
MEMBER (ADMNV)

Chandrapuram Reddy
(V. RAJAGOPALA REDDY)
VICE-CHAIRMAN (J)

'San.'