

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.49/1999

New Delhi, this the 20th day of November, 2000

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

1. Dr. Rama Kant Dixit
D-324, Gali No.11
Laxmi Nagar, Delhi-110092
2. Dr. Prem Kumar
1, CGHS Dispensary
Laxmi Bai Nagar, New Delhi .. Applicants

(By Shri B.S.Charya, Advocate)

Versus

1. Director General Health Services
Nirman Bhavan, New Delhi
2. Secretary
Indian System of Medicines
Red Cross Building, New Delhi
3. Secretary
Ministry of Health & Family Welfare
Nirman Bhavan, New Delhi .. Respondents

(By Shri Madhav Panickar, Advocate)

ORDER

By Shri M.P. Singh

The applicants have assailed the order dated 18.12.97 by which they have been regularised as Ayurvedic Physicians (APs, for short) instead of 30.7.1980 which is the date of their initial appointment to the said post.

2. Briefly stated, the applicants were appointed on ad hoc basis as APs based on the recommendations of the Selection Board from 30.7.80 and 7.8.1980 respectively. When they were sought to be terminated from service with effect from 30.4.85, they alongwith some other similarly placed persons filed a suit before the Civil Court which granted interim injunction. Thereafter the suit

[Signature]

9

(No.178/85) was transferred to this Tribunal and numbered as T 699/86. This was disposed of by order dated 25.7.91 holding that their cases may be considered by the UPSC after relaxation of age to the extent of ad hoc service. Thereafter the applicants represented to the respondents for their regularisation from initial date of appointment. An MP No.2609/91 in T No.699/86 seeking some clarification was moved. That MP was disposed by order dated 19.3.93 with the following observation:

"In case the applicants are adjusted or regularised, the law will follow its own course and the applicants were entitled to count their earlier period towards service as the same has been allowed to others. Obviously, the applicants will get benefit of the same and it is not expected that the respondents will act against the law or they will discriminate the applicants service to the service of similarly placed other persons"

3. Since the respondents failed to implement the judgement in T No.699/86, applicants continued to make representations which ultimately resulted in the impugned order dated 18.12.97. Applicants seek to quash this order and direction to the respondents to regularise their services with effect from 30.7.80 with all consequential benefits.

4. Respondents have opposed the claim. In their counter they have submitted that the applicants were appointed on ad hoc basis as APs under the Central Government Health Scheme with effect from 30.7.80 and 7.8.80 respectively. Their services were terminated from 30.4.85 on appointment of regular incumbents through UPSC. However, by the order of the Court, their termination orders were kept in abeyance till further

[Handwritten signature]

(10)

orders. In the meantime Dr. S.K. Pathak alongwith the applicants filed Suit No.175/85 in Civil Court, which was transferred to the Tribunal (T No.699/86) and the same was disposed on 25.7.91 as stated supra. Respondents would contend that regularisation will have to be as per the instructions of DoP&T on the subject according to which the ad hoc appointees can be appointed on regular basis with effect from the date of the letter of UPSC vide which such regularisation has been approved by them.

5. In the meantime one of the APs Dr. M.Srinadhachary had filed OA No.957/91 before the Hyderabad Bench of the Tribunal. It was disposed of by order dated 28.1.94 directing the respondents to refer the case of the applicant therein and those similarly placed APs to UPSC for the purpose of regularisation as Medical Officers in Indian Medicine under CGHS. Respondents filed RA 76/95 which was disposed of by order dated 3.11.95 to the following effect:

"After the services of the applicants are regularised through UPSC, their seniority shall be fixed in accordance with the extant rules."

Accordingly, in consultation with UPSC, the services of the applicants were regularised w.e.f. 21.8.97 by the impugned order. In view of this position, the OA deserves to be dismissed.

6. Heard the learned counsel for the parties and perused the records.



(11)

7. Learned counsel for the applicants places reliance on the judgement of the apex court in the case of Direct Recruit Class II Engg. Officers Assn. Vs. State of Maharashtra & Ors. 1990(2) SCC 715, in support of the claim of the applicants. In para 47(B) of the this judgement, the apex court has held as under:

"If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted"

The learned counsel for the applicants would further contend that the aforesaid ratio was followed in a catena of judgements pronounced by the Hon'ble Supreme as also this Tribunal and, therefore, regularisation of the applicants with effect from 18.12.97, according to the counsel, is illegal and arbitrary. Even the representations of the applicants dated 13.5.98 followed by reminders have not yielded any result.

8. On the other hand, it is the case of the respondents that the judgements cited by the applicants are not applicable to the case of the applicants.

9. The learned counsel for the respondents also drew our attention to the judgement of Hon'ble Supreme Court in the case of Hindustan Shipyard Ltd. & Ors. Vs. Dr. P. Sambasiva Rao & Ors. (1996) 7 SCC 499. The appellants in this case challenged the order of the Andhra Pradesh High Court dated 8.9.93 and the apex court has held as under:



...The court can only direct the ad hoc appointees to be considered for regularisation by a Selection Committee constituted in accordance with rules for direct appointment but cannot itself direct them to be regularised" (2)

10. The apex court further held that "the decision in Dr. A.K. Jain Vs. UOI 1987 Supp SCC 497 on which reliance has been placed on behalf of the respondent medical officers does not lend any assistance to them. In that case it was directed that the regularisation of the AMO/ADMOS who were appointed on ad hoc basis upto 1.10.84 shall be made in consultation with the UPSC on the evaluation of their work and conduct on the basis of their CRs in respect of a period subsequent to 1.10.82. In M.A. Haque (Dr.) V. UOI (1993) 2 SCC 213, this court has deprecated the practice of bypassing of the UPSC which would open a back door for illegal recruitment without limit. The direction given by the High Court that the respondent MOs should be regularised w.e.f. 1.4.86 cannot, therefore, be upheld".

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


(M.P. Singh)
Member(A)


(Kuldip Singh)
Member(J)

/gtv/