

Central Administrative Tribunal
Principal Bench

O.A. No. 1481 of 1997

New Delhi, dated this the 28 November, 2000

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Miss Surekha Sama,
D/o Shri R.M. Sama,
Presently working as Sister-Tutor,
School of Nursing,
Deen Dayal Upadhyay Hospital,
Hari Nagar, New Delhi.
R/o House No. 75, Sector 16A,
Faridabad-121002.
(Haryana)

.. Applicant

(Shri R.R. Singh with Ms. Chitra
Gera)

Versus

Government of NCT of Delhi through

1. Secretary (Medical),
5, Shamnath Marg,
Delhi.
2. Principal Hospital Coordinator-
cum-Joint Secretary (M),
1, Jawaharlal Nehru Marg,
New Delhi.
3. Vice Principal,
College of Nursing,
Dr. LNJP Hospital,
New Delhi.
4. Mrs. Ellen Beck,
Sister Tutor
5. Mrs. R. Rojha,
Sister-Tutor

(R-4 & 5 C/o Respondent No.3) .. Respondents

(By Advocate: Shri Rajinder Singh for
R-1 to 3
Shri S.R. Singh for R-4&5)

ORDER

MR. S.R. ADIGE, VC (A)

Applicant impugns the seniority list dated
27.5.97 (Annexure A-1) and seeks seniority above
Respondents No. 4 & 5.



2. Heard both sides.

3. Upon being nominated by the Employment Exchange, applicant was invited by letter dated 15.5.87 (Annexure A-2) for interview as Sister Tutor in Maulana Azad Medical College, New Delhi and by letter dated 20.1.88 (Annexure A-3) she was offered the post of Sister Tutor. It was made clear in that letter that the appointment was on purely ad hoc basis, till such time as a regular candidate reported for duty. Applicant joined duty on 21.1.88 and continued as per her own admission in Para 1 of her O.A. on ad hoc basis till she was regularised on 1.11.89.

4. Meanwhile Respondents 4 and 5 were regularly appointed as Sister Tutors on 28.8.89 and 25.10.89 respectively.

5. Applicant's claim can succeed only if she is allowed to count the ad hoc service rendered by her from 21.1.88 to 1.11.89 towards seniority.

6. The circumstances in which ad hoc service can be permitted to be counted towards seniority has been spelt out in detail by a three member Bench of



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the Hon'ble Supreme Court in State of West Bengal & Others Vs. Aghore Nath Dey & Ors. and connected cases reported in (1993) 24 ATC 932.

7. Relevant extracts from that ruling are given below:

"It is also to be noted that the Constitution Bench in Direct Recruit case while considering Narender Chadha case laid emphasis on an unusual situation existing therein that promotees had worked continuously for a long period of nearly 15 to 20 years without being reverted and taking into account this fact, the Constitution Bench confirmed the principle of counting towards seniority the period of continuous officiation. The decision in Narender Chadha cannot be applied to cases where initial appointment was not according to rules.

Conclusions (A) and (B) of the Constitution Bench in Direct Recruit case have to be read harmoniously, and conclusion (B) cannot cover cases which are expressly excluded by conclusion (A).

It is clear from conclusion (a) that to enable seniority to be counted from date of initial appointment and not from date of confirmation, the incumbent of the post has to be initially appointed 'according to rules'. The corollary set out in conclusion (a) lays down that 'where initial appointment is only ad hoc and not according to rules and made as a stop gap arrangement, the officiation in such posts cannot be taken into account for considering the seniority'. Thus the corollary expressly excludes the category of cases where initial appointment is only ad hoc and not according to rules, being made only as a stop gap arrangement. The case of the writ petitioners squarely falls within the corollary.

Conclusion (B) was added to cover a different kind of situation, where appointments are otherwise regular except for the deficiency of procedural

(A)

requirements laid down by the rules. This is clear from opening words, namely, 'if the initial appointment is not made by following the procedure laid down by the rules' and the latter expression 'till regularisation of his service in accordance with the rules'. In order to reconcile (B) with (A), (B) is to be read to cover cases where initial appointment is made against an existing vacancy, not limited to a fixed period of time or purpose by the appointment order itself, and there is deficiency in procedural requirements prescribed by the rules, for adjudging suitability of the appointee for the post being cured at the time of regularisation, the appointee being eligible and qualified in every manner for a regular appointment on the date of initial appointment in such cases. Decision about the nature of appointment, for determining whether it falls in this category, has to be made on the basis of the terms of initial appointment itself and the provisions in the rules. In such cases, the deficiency in the procedural requirements laid down by the rules has to be cured at the first available opportunity, without any fault of the employee, and the appointee must continue in the post uninterrupted till regularisation of his service, in accordance with the rules. The appointee, in such cases, is not to blame for the deficiency in the procedural requirements under the rules at the time of his initial appointment, and the appointment not being limited to a fixed period of time is intended to be a regular appointment, subject to the remaining procedural requirements of the rules being fulfilled at the earliest. In such cases also, if there be any delay in curing defects on account of any fault of the appointee, the appointee would not get the full benefit of the earlier period on account of his default, the benefit being confined only to the period for which he is not to blame. This category of cases is different from those covered by the corollary in conclusion (A) which relates to appointment only on ad hoc basis as a stop gap arrangement and not according to rules."

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8. Applicant's counsel has contended that applicant's initial appointment on 20.1.88 although on ad hoc basis was made in accordance with rules and she is, therefore, entitled to count the period of ad hoc service towards seniority. A perusal of relevant file No. F8(9)/86 Misc/TRC Vol. II which was shown to us reveals that the Selection Board had recommended applicant's name for appointment as Sister Tutor on ad hoc basis, because the post was a reserved one, and clearance for its dereservation had not been received. Applicant's counsel sought to argue that the post against which applicant was appointed on 20.1.88 was in fact an unreserved one, and relied upon an unsigned document which he claimed was an extract from the Roster Register (Annexure A/7), but if so, there was no reason in the appointment letter dated 20.1.88 to state that applicant's appointment was purely ad hoc basis.

9. Applicant has also relied upon a list attached with respondent's reply to O.A. No. 1606/94 filed by Respondents I & II in that O.A. in which applicant is shown at Sl. No. 11 while Respondents No. 4 & 5 are shown at Sl. No. 13 and 14. This list and applicant's position at Sl. No. 11 was also noticed by C.A.T. P.B. in its order dated 11.10.94 disposing of O.A. No. 1606/94 and

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connected O.A., but there is nothing to indicate that this a seniority list.

10. Indeed respondents issued a tentative seniority list (Annexure A-5) in which applicant was shown below Respondent No. 4 & 5. Objections to the same were invited, and after the disposal, the impugned seniority list dated 27.5.97 was issued.

11. In the present case, applicant's appointment on 20.1.88 as Sister Tutor on ad hoc basis, clearly not being in accordance with rules, the post being a reserved post, and the appointment on ad hoc basis being clearly limited to a fixed period till the appointment of a regular candidate, as clearly stated in the appointment order itself, it is clear that it was an ad hoc, stop gap arrangement and is, therefore, squarely hit by the corollary to Conclusion (A) in the Direct Recruits' case (1990) 2 SCC 715.

12. In the light of the aforesaid three Member Bench ruling ^{of State Supreme Court} in Aghore Nath Dey's case (supra) we find ourselves unable to grant applicant's prayer, and the rulings cited by applicant's counsel namely JT 2000 (9) SC 299 Rudra Kumar Sain Vs. U.O.I.; the Direct Recruits' case (supra); Keshav Deo Vs. State

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of U.P. 1999 (1) SCC 280; and AIR 1977 SC 2057 do not advance applicant's case.

13. The O.A., therefore, fails and is dismissed. No costs.

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)

S. R. Adige
(S. R. Adige)
Vice Chairman (A)

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