

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1784/97
OA 1785/97
OA 1787/97

(35)

This the 21st day of August, 2000

Hon'ble Mr. Justice V.Rajagopala Reddy, VC (J)
Hon'ble Sh. Govindan S.Tampi, Member (A)

OA 1784/97

Dr. H.K.Pal
s/o Dr.Priya Gopal pal
r/o Block B-12A/40C,
NOIDA (UP)

OA 1785/97

Dr. Neeraj Pandit
s/o Sh. Uday Shankar Sharma
r/o 90, Prashant Appartments
41, I.P.Extension, Delhi

OA 1787/97

Dr. L.N. Gupta
s/o Sh. Ram Narain Gupta,
r/o A-7/4, M.S. Flats, Peshwa Road
Gole Market, New Delhi.

By Advocate Sh. G.D.Gupta.Applicants

VERSUS

1. Union of India through the Secretary to the Government of India, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi.
2. The Director General of Health Services, Government of India, Nirman Bhawan, New Delhi.
3. The Union Public Service Commission through its Secretary, Dholpur House, Shahjehan Road, New Delhi.

.....Respondents

By Advocate Sh. V.S.R.Krishna, counsel for respondent No. 1 & 2.

By Advocate Sh. K.R.Sachdeva, counsel for respondent No. 3.

ORDER

By Hon'ble Sh. Govindan S.Tampi, Member (A)

Following three OAs are being disposed of by
this combined order as the cases are similar in nature
and the issue for determination is the same.

(3b)

- i) OA No. 1784/97 filed by Dr. H.K.Pal
- ii) OA No. 1785/97 filed by Dr. Neeraj
Pandit. and
- iii) OA No. 1787/97 filed by Dr. L.N.Gupta

2. For the sake of convenience of record the
brief facts in each of the cases are given below :-

a) OA No. 1784/97

Dr. H.K.Pal, a qualified Neurosurgeon, responded to an advertisement in the Employment News dated 19-12-92, was duly interviewed, appointed on 11-05-93 and joined duties as Specialist Grade-II in NeuroSurgery in Safdarjung Hospital on 2-7-93. Though the appointment was originally for six months, it was continued and in April 1995, he was transferred to Dr. Ram Manohar Lohia Hospital, where he is presently working as a Neuro Surgeon. The appointment, though indicated as ad hoc, was made after going through a regular selection process, like advertisement interview by a high powered body, and he possessed all the qualifications for the purpose. Instead of regularising him in the post it was advertised on Employment News dated 24-30/5/97. He applied for it, under protest, on 22-7-97, as he was

h

already holding one of the two vacancies advertised for, and the interview was fixed for 6-8-97. His plea is that as he was selected on the basis of a proper selection on 2-7-93, he should have been regularised from that date as he was continuously working on it, instead of calling for fresh selection. Reliefs sought by him are :-

- i) quashing of the advertisement of May 1997
- ii) declaring him eligible for regularisation without any fresh selection process, wherein he has to compete with others, and
- iii) giving him the benefit of regularisation from 2-7-93 when he joined Safdarjung Hospital as Specialist Grade II.

b) OA No. 1785/97

Dr. Neeraj Pandit a trained Cardiologist applied for the post of Cardiologist/Physician in Specialist Grade II in August, 1992, was interviewed and appointed as such on 10-09-92 and joined duties in Dr. Ram Manohar Lohia Hospital on 18-9-92. Though the appointment originally was for six months, he has been continuing since then and had been attending all duties, including V.V.I.P. duties, that too efficiently :-

He was fully qualified and experienced for holding the post of Specialist Grade II (Cardiologist), but instead of regularising him in the post, he was occupying since 18-9-92, the post was advertised in the Employment News of 24-30/05/1997. He applied for the post under protest, as he should

have been regularly appointed, haing been holding one of the posts, advertised for. Interview for the same was fixed for 7-8-97. He has come with this application seeking the following reliefs :-

- i) quashing of the advertisement of Employment News of 24-30/05/97.
- ii) declaring him eligible for regularisation without his being asked to compete with others and
- iii) giving him the benefit of regularisation from 18-09-92 when he joined Dr. Ram Manohar Lohia Hosital as Cardiologist (Specialist Grade II).

(c) OA No. 1787/97

Dr. L.N. Gupta duly qualified in Neuro Surgery was a Pool officer in the concerned department between 28-11-89 and 29-01-90, when he was appointed as Neuro Surgeon (Specialist Grade II) (He is continuing in that post since then and would have been eligible for promotion to Specialist Grade-I in 1998.) On his applying for the post, he was interviewed and posted on a purely temporary and ad hoc post for a period of six months and has been continuing since then, by way of extensions. He was fully qualified for being appointed to the post even then. Consequent to the advertisement as well as the circular dated 19-12-92, he applied for the post of Neuro Surgeon (Specialist Grade -II) selected and joined the post on

11-05-93 without any break in between. Instead of regularising him from 30-01-1990 or at least 11-05-93, UPSC advertised the post in the Employment News dated 24-30/05/1997. He applied for the same under protest and the interview was scheduled for 6-8-97. He is aggrieved that the Department was proceeding to fill the post, without regularising him, from 1990 or at least from 1993 as he has been occupying the seat. Reliefs sought by him are :-

i) quashing of the advertisement dated

24-30/05/97

ii) regularisation of his case as a Neuro Surgeon (Specialist Grade-II) from 30-01-90 without directing him to compete with freshers for appointment in 1997.

3. In reply to the OAs, the respondents 1 & 2 state that the applicants have not exhausted the Departmental remedies before approaching the Tribunal. The applications, therefore, are premature and deserve to be dismissed. Further the applicants were originally appointed on the clear understanding that the appointment was temporary and that it would not give them any right to claim seniority and eligibility for confirmation, promotion etc. The applicants, therefore, cannot escape the responsibility for appearing for the interview by UPSC. The applicants' postings were made purely on ad hoc basis and any claim by them for seniority vis-a-vis regularly appointed individuals would be a clear abuse of law. These are back door entries and, therefore, cannot be sanctified. The respondents have correctly acted in

advertising the posts and making selection, accordingly and the persons selected can claim the seniority only from that selection.

(AO)

4. After detailing the circumstances in which the relevant advertisements came to be issued, UPSC the respondent No. 3 urge that they had acted in pursuance of the requisition by the relevant Deptt. and it was a correct procedure. Regularisation of any ad hoc appointment in a post which as per the Recruitment Rules is expected to be filled by direct recruitment as per UPSC recommendation, amounts to legalising back door entry and cannot be permitted argue the UPSC.

5. Heard the parties on 2nd & 3rd August, 2000. Shri G.D.Gupta, learned counsel for all the applicants, vehemently argued that his clients having come through a regular process of selection, including advertisement and interview and having been qualified to hold the post from the dates of their initial appointments in 1993, should get the benefit of the continuous service. They have been selected by the UPSC in 1997 to the posts which they were already working from 1993 (and in Dr. Gupta's case from 1990). There was no ground to consider their case as back door entry or temporary and they should correctly get the benefit of their ad hoc service for all purposes. He sought to rely upon the decision of the Apex Court in Civil appeal No. 2969 of 1997 (Dr. Smt. Rekha Khare Vs. Union of India); Union of India Vs. Jitender Singh and Jacob Puthuparmbil Vs. Kerala Water Authority etc. According to him, his clients were correctly entitled to get a special treatment as a separate block, from the UPSC, in selection, keeping

in view of the above judgments and their earlier continuous ad hoc service, more so as the earlier advertisement by the Health Ministry in 1982, was done, keeping the UPSC also informed, in terms of Rule-4 of the UPSC (Exemption-cum-cadre) Regulations.

6. Replying for the respondent No.3 i.e. UPSC, the learned counsel, Sh. R.K.Sachdeva stated that in respect of recruitment to posts required to be filled on UPSC's recommendation, any appointment in any different manner made was a back door entry and was d'hors the rules. The same does not bestow any special right for those who gained entry through back door. He also pointed out that the first appointment order itself made it clear that it was purely an ad hoc appointment and thus a stop-gap arrangement. It, therefore, did not give any right to the applicants, as claimed by them.

7. Shri V.S.R.Krishna, learned counsel for the respondents 1 & 2 strongly refuted the case of the applicants. Inviting our attention to the relevant advertisement by the Ministry of Health and Family Welfare of 1992 and the appointment order issued to the applicants, he pointed out that the appointments were purely ad hoc in nature and were for six months, or till a regular appointment was made, whichever was earlier, a fact known to and accepted by the applicants. In effect it was only a stop-gap arrangement. The same would not, by any stretch of argument, give a right to the applicants to claim that the said ad hoc and stop-gap service to be added to the regular service, which arose only from the UPSC selection. The said ad hoc appointments were clearly d'hors the recruitment rules and d'hors the conditions

of recruitment. They do not at all have the sanctity of regular appointment based on UPSC's recommendation. The decision in Khare's case, referred by the applicant was not of universal application as it was decided by the Apex Court, in terms of its inherent powers under Article 142 of the Constitution. Applicants cannot get any support for their case from that decision. The issue under dispute has been well settled by the decision of the Apex Court in J.K.PSC and other Vs Dr. Narinder Mohan (1994 (24) ATC.67) and reiterated in Harish Balakrishna Mahajan Vs. Union of India (1997) 3 SCC.194) The decision in the case of Anuradha Bodi Vs. Delhi Municipal Corporation ((1998) 5 SCC.293) is also relevant. In view of the settled law, the applicant's cases deserve to be dismissed, urges Sh. Krishna.

8. We have considered the facts and circumstances, as brought out in the applications and deliberated on the rival contentions. The point that calls for determination is whether an individual appointed purely on ad hoc basis originally, but through a selection process, following an advertisement, later selected subsequently on the basis of the recommendation of the UPSC can claim the benefit of their earlier ad hoc service, to be added to their regular service for the purposes of seniority, promotion etc. All the three applicants - two neuro surgeons and one cardiologist - were appointed in 1993 as Specialist Grade -II, on the basis of an advertisement and interview and were continuing in that post. They were selected for the same posts by UPSC in 1997. They are seeking regularisation in the grade from 1993 onwards, keeping

in view their continuous service.

9. First things first. The applicant's case starts from their initial appointments. based on the advertisement placed by the Ministry of Health and Family Welfare in December 1992. The relevant portion of the advertisement as produced by the applicants themselves reads as below :~

"Applications are invited in the prescribed proforma for filling up the posts of Neurologists and Neurosurgeons in the Central Health Scheme in the grade of Rs. 3700-125-4700-150-5000 on adhoc basis from the eligible officers, initially for a period of six months or till the posts are filled on regular basis whichever is earlier". The appointment order issued to Dr. H.K.Pal, the applicant in OA 1784/97, describes the appointment as being on a purely temporary and ad hoc basis for a period of six months w.e.f. the date of his joining the post or till the post is filled on regular basis, in accordance with the provisions of the Central Health Service Rules, as amended from time to time, whichever is earlier on the following terms and conditions".

Conditions No.(V) stipulates as below :~

"The period of ad hoc appointment will not bestow on him any claim or right for regular appointment in the CHS and that the period of ad hoc appointment rendered by him will not count for the purpose of seniority and for eligibility for promotion confirmation etc." Identical are the expressions used in the cases of the other two applicants as well.

What emerges therefrom is that the appointing authority and the Ministry of Health and Family Welfare had considered the appointments only as an ad hoc and temporary and stop-gap arrangement, and that regular appointments were to follow on a later date and that only such regular appointment would bestow a right on the appointees. This is the only interpretation possible and any other reading is contrary and misplaced in the circumstances of the cases. It is true that the appointees were continuing in the job till they were selected by the UPSC in 1997. This was on the basis of extension orders for the ad hoc appointment for six months or till such time the post is filled on a regular basis, whichever is earlier. The appointing authority had made its position clear all through and the applicants were also aware of it and had accepted the situation. In the above view of the matter, to describe the appointment as "so called ad hoc" and to raise the plea that nothing turned on it is totally untenable. Having been appointed on a ad hoc and temporary post, when it was clearly mentioned that regular appointments were to follow, and when the applicants have been duly cautioned that they are likely to forfeit the posts once the regular appointments are made, the applicants cannot, in law or equity or fairness, turn round and say that they should be considered as having been regularised from the date of their initial ad hoc appointments, sustained by six monthly conditional extensions. They have not to our mind, established their claims or case, as the only inference which can arrived at goes against them.

10. When the recruitment rules provide for

direct recruitment to posts which are to be filled up on the basis of recommendation by the UPSC, the highest constitutional body in respect of group A appointments, any arrangements made in the meanwhile to meet the exigencies of service shall be treated as only stop-gap arrangements. Nothing more gets attached to those postings. They are only appointments made *d'hors* the rules and *d'hors* the UPSC's authority and cannot be sustained. Such appointments do not have the sanction of law of regularisation and do not confer on the ad hoc appointees, in stop-gap arrangement, any right for counting the service so tendered along with their subsequent regular service. The plea raised on behalf of the respondents is valid and is accordingly upheld.

(A5)

11. We have also had the benefit of perusing the decisions cited before us. First of the citations, raised by the applicants relates to Khare's case. The same, though also concerns a medical doctor like the applicants, has been issued by the Apex Court, exercising their inherent jurisdiction under Article 142 of the Constitution and in the special circumstances of the case, the same cannot come to the rescue of the applicants, as has been correctly pointed out on behalf of the respondents. Applicants' reliance on the decision of the apex Court in the case of Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others (1991) 1 Supreme Court Cases 28, is also misplaced, as in the said group of cases, what was required to be done was the regularisation of those who originally joined the PHED of Kerala, and were transferred to Kerala Water Authority en masse, with the creation of the latter. The same is clear

2

from the first direction in the operative portion of the order which directs the authority to immediately regularise the services of all Ex. PHED employees as per resolution of January 30, 1987, without waiting for State Government's approval. In the cases before us the matter being agitated is the regularisation of those who were appointed as ad hoc and temporary basis for a fixed period of six months, but continued on six monthly extensions. The decision cited by the applicants is, therefore, clearly not applicable in this case. On the other hand, the point in question has been raised and settled in the case of JK Public Service Committee & Ors. Vs. Dr. Narinder Mohan (1994) 27 Adm.Tribunal cases 50) by the Apex Court holding that regularisation of persons appointed on ad hoc basis in violation of statutory rules by purportedly relaxing rules was illegal. We quote paras 11 to 13 of the said order.

11. " This Court in Dr. A.K.Jain Vs. Union of India gave directions under Article 142 to regularise the services of the ad hoc doctors appointed on or before 1-10-1984. It is a direction under Article 142 on the peculiar facts and circumstances therein. Therefore, the High Court is not right in placing reliance on the judgment as a ratio to give the direction to the PSC to consider the cases of the respondents. Article 142 power is confided only to this Court. The ratio in Dr. P.P.C. Rawani Vs. Union of India is also not an authority under Article 141. Therein the orders issued by this Court under Article 32 of the Constitution to regularise the ad hoc appointments had become final. When contempt petition was filed for non-implementation, the Union had come forward with an application expressing its difficulty to give effect to the orders of this Court. In that behalf, while appreciating the difficulties expressed by the Union in implementation, this Court gave further direction to implement the order issued under Article 32 of the Constitution. Therefore, it is more in the nature of an execution and not a ratio under Article 141. In Union of India Vs. Dr. Gyan Prakash Singh this Court by a Bench of three Judges considered the effect of the order in

A.K.Jain case and held that the doctors appointed on ad hoc basis and taken charge after 1-10-1984 have no automatic right for confirmation and they have to take their chance by appearing before the PSC for recruitment. In H.C. Puttaswamy vs. Hon'ble Chief Justice of Karnataka this Court while holding that the appointment to the posts of clerk etc. in the subordinate courts in Karnataka State without consultation of the PSC are not valid appointments, exercising the power under Article 142, directed that their appointments as a regular, on humanitarian grounds, since they have put in more than 10 years service. It is to be noted that the recruitment was only for clerical grade (Class-III post) and it is not a ration under Article 141. In State of Haryana Vs. Piara Singh, this Court noted that the normal rule is recruitment through the prescribed agency but due to administrative exigencies, an ad hoc or temporary appointment may be made. In such a situation, this Court held that efforts should always be made to replace such ad hoc or temporary employees by regularly selected employees, as early as possible. The temporary employees also would get liberty to compete along with others for regular selection but if he is not selected, he must give way to the regularly selected candidates. Appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc or temporary employee. Ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee. He must be replaced only by regularly selected employee. The ad hoc appointment should not be a device to circumvent the rule of reservation. If a temporary or ad hoc employee continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State. It is to be remembered that in that case, the appointments are only to Class-III or Class-IV posts and the selection made was by subordinate selection committee. Therefore, this Court did not appear to have intended to lay down as a general rule that in every category of ad hoc appointment, if the ad hoc appointee continued for a long period, the rules of recruitment should be relaxed and the appointment by regularisation be made. Thus considered, we have no hesitation to hold that the direction of the Division Bench is clearly illegal and the learned Single Judge is right in directing the State Government to notify the vacancies to the PSC and the

(A)

PSC should advertise and make recruitment of the candidates in accordance with the rules."

12. " It is difficult to accept the contention of Shri Rao to adopt the chain system of recruitment by notifying each year's vacancies and for recruitment of the candidates found eligible for the respective years. It would be fraught with grave consequences. It is settled law that the Government need not immediately notify vacancies as soon as they arose. It is open, as early as possible, to inform the vacancies existing or anticipated to the PSC for recruitment and that every eligible person is entitled to apply for and to be considered of his claim for recruitment provided he satisfies the prescribed requisite qualifications. Pegging the recruitment in chain system would deprive all the eligible candidates as on date of inviting application for recruitment offending Articles 14 and 16."

13. " Accordingly, we set aside the directions issued by the Division Bench of the High Court and confirm those of the Single Judge and direct the State Government of J & K to notify the vacancies to the PSC which would process and complete the selection, as early as possible, within a period of six months from the date of the receipt of this order. The State Government should on receipt of the recommendation, make appointments in the order mentioned in the selection list within a period of two months thereafter. Since the respondents have been continuing as ad hoc doctors, they shall continue till the regularly selected candidates are appointed. They are also entitled to apply for selection. In case any of the respondents are barred by age, the State Government is directed to consider the cases for necessary relaxation under Rule 9 (3) of the age qualification. If any of the respondents are not selected, the ad hoc appointment shall stand terminated with the appointment of the selected candidate. The direction sought for by Dr. Vinay Rampal cannot be given. His appeal is accordingly dismissed and the State appeal is also dismissed. The appeals of the PSC are accordingly allowed but in the circumstances parties are directed to bear their own costs."

12. The same has been reiterated by the apex Court in Union of India & Ors. V. Arish Balakrishna

Mahajan (1997) 3 S.C.C. 194, para 3 of the said decision is reproduced below :-

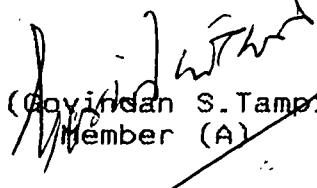
"The controversy is no longer res integra. In similar circumstances, this Court had considered the entire controversy in J & K Public Service Commission Vs. Dr. Narinder Mohan. Admittedly, the posts of doctors in the Central Government Health Scheme are required to be filled up by recruitment through Union Public Service Commission. Therefore, the direction to consider the case of the respondent in consultation with the Public Service Commission for regularisation is in violation of the statutory rules and Article 320 of the Constitution of India. The only courses known to law is that the Union of India shall be required to notify the recruitment to the Public Service Commission and the Union Public Service Commission shall conduct the examination inviting the applications from all the eligible persons including the persons like the respondents. It would be for the respondent to apply for and seek selection in accordance with Rules. Therefore, the direction is in violation of Article 320 of the Constitution".

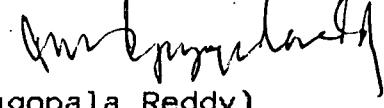
13. Further in the case of Dr. Anuradha Bodi and Others Vs. Municipal Corporation of Delhi and others (1998) Supreme Court Cases 293, the Apex Court has held that the regularisation of service from the date of recommendation by the UPSC was the correct decision. Same is the decision of the Court in the case of Dr. Deepak Satwa & Ors. Vs. Union of India in CWP 661/95.

50

14. In view of the above findings and the settled position in law, as laid down by the Apex Court, it is clear that the applicants can have the benefit of regularisation only from the dates, they have been recommended for appointment by the UPSC, and not from 1963, when they were appointed on a purely ad hoc basis, in a stop-gap manner.

15. The applications in the result fail and are accordingly dismissed. No order to costs.


(Govindan S. Tamai)
Member (A)


(V. Rajagopala Reddy)
Vice-Chairman (J)

/vikas/