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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 1788/97

New Delhi, This the 21<sup>st</sup> day of August, 2000

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

Dr. Arvind Kumar Srivastava  
s/o Shri J.B.Lal Srivastava  
r/o E-21, Mirdard Lane, MAMC Campus  
New Delhi - 110 002.

.....Applicant

By Advocate Sh. G.D.Gupta

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)

Dr. Arvind Kumar Srivastava is the applicant in the OA 1788/97. Though it was heard along with OAs 1784, 1785 and 1787/97, it is being dealt with separately, as the issue for determination in this case is slightly different.

2. Dr. A.K.Srivastava, a qualified neurosurgeon was working as Sr. Resident in Neurosurgery during June 1991 to January and as Pool Officer from February to June 1993. In pursuance of the advertisement dated 19-12-92 in Employment News,

he applied for was interviewed and appointed as Specialist Grade II in Dr. Ram Mahonar Lohiya Hospital on 23-06-93. It was an ad hoc appointment for six months or till the post was filled up on regular basis. His term was extended to 22-06-94, but it was terminated on 2-3-94, when one doctor, who was on deputation returned, and he was relieved on 5-3-94. He continued as Pool Officer in Neurosurgery Surgery and was returned to the post of Specialist Grade II on 15-6-95 without any fresh interview. He is continuing there since then. At the time of original selection itself he was fully qualified for the post and he was appointed through a selection process, though it was not through UPSC. Instead of treating his continuous service since 1993, and regularising him, the post he was holding was advertised in the Employment News dt. 24-30/05/97. He applied for the post under protest on 21-07-97 and the interview was fixed for 6-8-97. There were two posts in Grade II and one in Grade I and they were in R.M.L. Hospital and he was occupying one of them. He has, therefore, come before the Tribunal seeking directions that he be regularised against one of the posts, keeping in view his continuous service from 1993-1997, instead of subjecting him to another interview. He has also claimed that while three persons - Dr. L.N.Gupta, Dr.H.K.Pal, and himself - were working as specialist grade II, only two posts in grade II have been advertised and one in grade I. He could be considered for being regularised against the specialist grade I post, as he rightly fulfilled all the requisite conditions.

3. In reply to the OAs, the respondents 1 & 2 state that the applicants have not exhausted the Department remedies before approaching the Tribunal. The applications, therefore, are premature and deserve to be dismissed. The applicant was originally appointed on the clear understanding that the appointment was temporary and that it would not give him any claim to seniority and eligibility for confirmation, promotion etc. The applicant, therefore, cannot escape the responsibility for appearing before the UPSC. The applicant's posting was purely on ad hoc basis and any claim for seniority vis-a-vis regularly appointed individual would be an abuse of law. His was a back door entry and, therefore, cannot be sanctified. The respondents have correctly acted in advertising the posts and making selection. The persons selected can claim the seniority only from that selection.

4. After detailing the circumstances in which the 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. Sh. G.D.Gupta, the learned counsel for the applicant, vehemently argued that his client having come through a regular process of selection, including advertisement and interview and having been qualified

to hold the post from the date of his initial appointment in 1993, should get the benefit of the continuous service. He had been selected by the UPSC in 1997 to the posts which he was already working from 1993. There was no ground to consider his case as back door entry or temporary and he should correctly get the benefit of his 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 Puthuparambil Vs. Kerala Water Authority etc. According to him, his client was 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. He further stated that his client was denied regular selection by the UPSC on the wrong calculation of the vacancy and, therefore, his case should be considered separately, the next vacancy by the UPSC treating him as a special block.

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 by way of recruitment 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 a purely 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, the learned counsel for the respondents 1 & 2 strongly rejected the case of the applicant. Insisting 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 appointment was 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 applicant to claim the said ad hoc and stop-gap service to be added to the regular service, which resulted from the UPSC selection. The said ad hoc appointment was clearly d'hors the recruitment rules and d'hors the conditions of recruitment. It does not at all have the sanctity of regular appointment based on UPSC's recommendation. The decision in Khare's case 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 in dispute has been well settled by the decision of the apex Court in J.K.PSC and other is 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 the counsel.

8. In view of the settled law, the applicant's case deserves to be dismissed, urges the counsel. He also produced a letter dated 4-8-2000 indicating that the vacancy position had been correctly worked out and that no vacancy existed in the general category to consider the case of the applicant.

9. We have considered the matter in depth. Applicant's case starts from his initial appointment based on the advertisement placed in the Employment News dated 19-12-92 by the Ministry of Health and Family Welfare, bearing No.A-12026/15/92-CHS. The relevant points as reproduced by the applicant reads as below :-

"Applications are invited in the prescribed proforma for filling up the posts of Neurologists and Neuro Surgeons in the Central Health Scheme in the grade of Rs. 3700-125-4700-150-5000 on ad hoc 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 the applicant describes the appointment as being "as 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 a regular basis in accordance with the provisions of the Central Health Services Rules, 1982, as amended from time to time whichever is earlier as the following terms and conditions. Conditions got as to state. " The period of adhoc 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. 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 is 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 appointee were continuing in the job will 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 applicant was 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 applicant has been duly cautioned that he is likely to forfeit the posts once the regular appointments are made, the applicant cannot in law or equity or fairness turn round and say that he should be considered as having been regularised from the date of his initial ad hoc appointments, sustained by six monthly conditional extensions.

10. In fact, in his case, though the applicant was given one extension upto June 94, he was

terminated in March 94, as a regular officer, who was on deputation returned; and only in June 1995, he was re-appointed, but once again on ad hoc (Specialist Grade-II). Undoubtedly, therefore, he has been only holding an ad hoc post on a temporary basis. He has not been able to convince us that otherwise is the case.

11. 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.

12. We have also had the benefit of perusing the decisions cited before us. First of the cases, 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 resume 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 petitioners, 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 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 case before us the matter being agitated is the regularisation of one who was 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 applicant is, therefore, clearly not applicable in his 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

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

13. We are also not convinced that the vacancy position has been incorrectly reported especially in view of the letter dt. 4-8-2000, submitted by the learned counsel in the Court. Therefore, we are not in a position to pass any order in that regard. We are, however, sympathetic to the case of the applicant, on account of his continuous service in the Department for the last few years, which would deserve to be kept in mind.

14. In view of the above findings we hold that the applicant has not made a case for himself and the application has, therefore, to fail. However, while disposing the application. We would suggest to the respondents to consider the case of the applicant, when the next vacancy arises, in the general category for the post of Specialist Grade-II in Neurosurgery, by giving relaxation in the upper age limit, keeping the period of service already rendered by him.

Subject to the above observation, the OA is dismissed. No costs.

(Govindan S. Tampi)  
Member (A)

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