CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1460/94
O.A. No.1461/94
O.A. No.1462/94
O.A. No.1463/94
O.A. No.1464/94
O.A. No.1465/94

16

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri R.K. Ahooja, Member(A)

New Delhi, this the 16 day of August, 1999

In the matter of:-

O.A. No.1460/94

Dr. (Mrs.) Babli Basu
Demonstrator, Armed Forces
Medical College, Pune
R/o 113, Lullanagar
Pune

....Applicant

(By Advocate: Shri Ajit Pudessary

Versus

Union of India
Through the Secretary
Ministry of Defence
South Block, New Delhi

....Respondent

(By Advocate: Shri V.S.R. Krishna)

O.A. No.1461/94

Dr. (Mrs.) S.P. Kasbekar
Demonstrator, Armed Forces
Medical College, Pune
R/o 951, Nana Peth, Sunny Climes
Ardesir Irani Road
Pune

....Applicant

(By Advocate: Shri Ajit Pudessary

Versus

Union of India
Through the Secretary
Ministry of Defence
South Block, New Delhi

....Respondent

(By Advocate: Shri V.S.R. Krishna)

O.A. No.1462/94

Dr. (Mrs.) P. Vatsala Swamy
Demonstrator, Armed Forces
Medical College, Pune
R/o D-1/12, Brahma Memories
Bhonsle Nagar
Pune

....Applicant

(By Advocate: Shri Ajit Pudessary

Versus

Union of India
Through the Secretary
Ministry of Defence
South Block, New Delhi ....Respondent

(By Advocate: Shri V.S.R. Krishna)

O.A. No.1463/94

Dr. B.M. Athanikar
Demonstrator, Armed Forces
Medical College, Pune
R/o 1545, Sadashiv Peth
Prashant Tilak Road
Pune ....Applicant

(By Advocate: Shri Ajit Pudessary

Versus

Union of India
Through the Secretary
Ministry of Defence
South Block, New Delhi ....Respondent

(By Advocate: Shri V.S.R. Krishna)

O.A. No.1464/94

Dr. (Mrs) Irene Judah
Demonstrator, Armed Forces
Medical College, Pune
R/o 55, St. Patrick's Town
Sholapur Road
Pune ....Applicant

(By Advocate: Shri Ajit Pudessary

Versus

Union of India
Through the Secretary
Ministry of Defence
South Block, New Delhi ....Respondent

(By Advocate: Shri V.S.R. Krishna)

O.A. No.1465/94

Dr. (Mrs.) Ulka P.Chobhe
Demonstrator, Armed Forces
Medical College, Pune
R/o 71, Karve Road
Chandrapurna, Pune ....Applicant

(By Advocate: Shri Ajit Pudessary

Versus

Union of India
Through the Secretary
Ministry of Defence
South Block, New Delhi ....Respondent

(By Advocate: Shri V.S.R. Krishna)

(18)

O R D E R

[Hon'ble Shri R.K. Ahooja, Member(A)]

The issues raised in all the six OAs are the same and, therefore, they are all being disposed of by this common order.

2. The applicants in all the OAs were initially appointed on an ad-hoc basis as Medical Demonstrators in the Armed Forces Medical College, Pune from various dates in 1970. They continued to work as such with short breaks in service till they came to be regularised to the post of Medical Demonstrators after due selection by the Union Public Service Commission. The applicants wanted that their ad-hoc service should be regularised. Failing to obtain satisfaction from the respondents, they filed O.A. No.1398/89, 1757/91, 1758/91, 1759/91 through their Association of Civil Medical Demonstrators. These were disposed of by a common order dated 6.12.1991. One of the relief sought for in the said OAs was that the applicants will be entitled to count the ad-hoc service rendered by them for pension. In regard to this prayer the Tribunal in its order directed the respondents to take action as per observations made in para 11 of the order. The relevant observation in paragraph 11 reads as follows:-

> "As regards the general principle of counting of ad-hoc service followed by regular appointment in accordance with the rules, the law as it has evolved and has since crystallized to a very great extent is well known and no general directions need or can be issued by the Tribunal."

3. Alleging that the respondents had failed to take action on the directions of the Tribunal, the applicants filed a Contempt Petition No.411/92 which was disposed of by an order dated 24.9.1994. Observing that respondents had taken a decision though adverse to the petitioners, the Tribunal held that no complaint of non-compliance of its direction could be made. The Tribunal further noted that the learned counsel for the petitioners had submitted that the petitioners would be challenging the decisions of the respondents including decision No.4 in appropriate proceedings. Granting this liberty contempt proceedings were brought to a close.

4. The OAs before us now are for the said relief and have been filed in pursuance of the liberty granted by the Tribunal in its order dated 25.1.1991 in CCP No.411/92 in O.A. No.1398/89.

5. The case of the applicants in brief is that the respondents had resorted to recruitment on an ad-hoc basis in view of the time taken in regular selections to be made through the UPSC. The applicants were fully qualified for the said posts. They were recruited for six months in the first instance but were reemployed after a technical break. There were regular posts available and their adhoc service finally culminated in regular appointments as they were found suitable by the UPSC. The impugned letter of the Ministry of Defence dated 24.6.1993 (Annexure'A') states that in accordance with the established policy, ad-hoc service can be counted as qualifying service for pension only if it is continuous and followed without interruption by

regularisation. The applicants submit that there are only two requirements, namely, that the ad-hoc service should be continuous and secondly that it should be followed by regular appointment. They state that their ad-hoc service has to be considered as continuous because the gaps are only by way of technical breaks and not on account of non-availability of vacancies.

6. The respondents in their reply have stated that ad-hoc service in respect of the applicants cannot be counted for any purpose since the applicants were initially appointed on purely ad-hoc basis on stop-gap arrangements. No regular process of selection was done and the recruitment rules were not followed in the appointment of the applicants. They also take a preliminary objection that the OAs are barred by res-judicata as the claims of the applicants were agitated in the earlier OAs No.1398/89, 1757-59/89 and were rejected by the Tribunal.

7. Having gone through the orders of the Tribunal dated 6.12.1991 in O.A. No.1398/89 as well as CCP No.411/92 in O.A. No.1398/89, we do not find that the present OAs are barred by res-judicata. In respect of the relief regarding the counting of ad-hoc service for qualifying service, the observation of the Tribunal was that the rules and law on the subject were well known and no general direction could be given or issued by the Tribunal. There was thus no adjudication on this point. We can only read this observation to mean that the respondents were to decide the matter according to the settled law and rules. By the impugned letter at

Annexure A-1 the respondents gave their understanding of the law and rules that ad-hoc service could be counted only if it was continuous and that the applicants were not entitled because their ad-hoc service was not unbroken. Now the applicants claim that their ad-hoc service has to be deemed to be continuous since the breaks given were only technical in nature. On this point there was neither any claim nor any adjudication in O.A. No.1398/89. Therefore, the claim still remains to be decided.

9. Even so, on merits, we do not find the case of the applicants to be strong. One of the relief sought for in O.A. No.1398/89 was of regularisation and seniority on the basis of their ad-hoc service. However, the Tribunal observed in paragraph 11 that the counsel for the applicant would not press for this aspect of the case. It was also stated by Shri Ajit Pudessary, learned counsel for the applicants before us also that he was not making a claim for seniority on account of ad-hoc service rendered by the applicants. Now if the so called technical breaks in the ad-hoc service of the applicants cannot be overlooked for the purpose of regularisation and seniority, we do not see how they can be ignored for purpose of counting this period towards qualifying service for pension.

10. Rule 13 of the CCS (Pension) Rules reads as follows:-

> "Subject to provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively

22

or in an officiating temporary capacity:
Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post: ...."

11. The applicants were not appointed in a substantive capacity till the selections had been made by the UPSC. They have already given up their claim for counting the ad-hoc period of service as regular service whether in officiating capacity or temporary capacity. In this situation the ad-hoc service rendered by them can only be deemed as a stop-gap arrangement. The technical breaks can be overlooked only if a claim can be made for regular service to be counted for seniority. On the other hand, if the ad-hoc service cannot be converted into regular service whether on an officiating or a temporary basis, the intervening breaks cannot be overlooked. Thus, by giving up their claim for seniority and regularisation, the applicants cannot turn around and try to get the benefit of qualifying service by stating that the breaks were technical in nature and should be overlooked.

12. Rule 13 of the CCS (Pension) Rules, as reproduced above, provides for no exception in regard to breaks in officiating or temporary service on whatever count and hence even if it was to be said that the breaks were of technical nature, in terms of Rule 13 the applicants will still not be able to get the benefit of their ad-hoc service which has been followed by a break before regularisation.

On

13. Shri Ajit Pudessary has cited in support of his case the judgment of the Hon'ble Supreme Court relying on the Direct Recruit Class II Engg. Officers' Association v. State of Maharashtra AIR 1990 SC 1607. It was held therein that if once initial appointment is made by following the procedure laid down by the rules and the appointee continues in the post till regularisation, the period of officiating service will be counted towards seniority. This is of no help to the applicants firstly because the applicants have already given up their claim towards seniority and secondly because in the same judgment the Apex Court has stated that where the initial appointment is only ad-hoc and not according to the rules, is only as a stop-gap arrangement, the service in such post cannot be taken into account for counting the seniority. The learned counsel then cited Rattanlal and Ors. Vs. State of Haryana AIR 1987 SC 478, in which the Supreme COurt deprecated the practice of the State Government to appoint teachers on ad-hoc basis at commencement of theyear and terminating their services during summer vacation. We do not see how this decision is applicable in terms of the relief sought in the present O.A. as the applicants are not asking for regular appointment. It has already been given to them. What they are asking for is regularisation of past service.

14. The learned counsel also cited the case of K,S.P. College Stop-Gap Lecturers Association Vs. State of Karnataka and Ors. AIR 1992 SC 677. That case related to the practice of the management of privately managed

24

Degree Colleges of not making regular selection but of following a practice of ad-hoc appointments with one or two days break in service. The Supreme Court in its order struck down the direction of the Government to break service for a day or two and to fix salary of temporary employees and directed that regular selection should be made within six months of the occurrence of the vacancy. Here the applicants had not sought this relief at the appropriate time for converting their ad-hoc service into regular service. As already said, if the ad-hoc service is not converted into regular service, the breaks of whatever nature occurring in the ad-hoc service of the applicant cannot be overlooked for counting towards qualifying service.

15. In the result, we dismiss all the OAs. There will be no order as to costs.

(R.K. AHOOJA)
MEMBER(A)

(V.RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

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Original judgement in OA 1460/94

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