

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1988/94

New Delhi this the 16th day of September, 1999.

HON'BLE MR. JUSTICE V.RAJAGOPALA REDDY, VICE-CHARIMAN(J)
HON'BLE MRS. SHANTA SHASTRY, MEMBER (A)

Sh. H.C. Bansal,
S/o Sh. P.L. Bansal,
R/c A-2521, Netaji Nagar,
New Delhi.

...Applicant

(By Advocate Shri S.S. Tiwari)

-Versus-

1. Union of India through
the Secretary,
Ministry of Health and
Family Welfare,
Nirman Bhawan,
New Delhi.

4. Dr. (Mrs.) S.P. Datya

2. Director General of Health Services,
Nirman Bhawan,
New Delhi.

3. Director,
Central Govt. Health Services,
Ministry of Health and
Family Welfare,
Nirman Bhawan,
New Delhi.

...Respondents

(By Advocate Shri S.M. Arif)

O R D E R

By Reddy, J.

The applicant, a Homeopathy Physician, seeks a declaration to count his ad hoc service prior to his regularisation for reckoning his seniority in the cadre.

2. The applicant was initially appointed as Homeopathy Physician in Central Government Health Scheme (CGHS for short) under the Directorate General of Health Services ^{Nagpur} ~~Delhi~~ w.e.f. 15.10.75, on ad hoc basis. The applicant continued to work without break till he was regularised by order dated 8.1.79 (Annexure C) in consultation with the UPSC. It is the grievance of the applicant that the period of ad hoc service from 19.4.75

15.10.75

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to the date when he was regularised in 1979 should be counted for seniority. It is contended by the learned counsel for the applicant that as the ad hoc appointment was as per rules, he was entitled for the counting of the ad hoc period of service for the purpose of fixation of his seniority.

2. The learned counsel for the respondents raises an objection as to the maintainability of the OA on the ground of Limitation under Section 21 of the Administrative Tribunals Act, 1985. It is the case of the respondents that the order of regular appointment having been passed in 1979 appointing the applicant on regular basis and the applicant was appointed as such from the same date, the limitation for questioning the said order starts from the said date. The OA filed in 1994 is, therefore, barred by limitation. The learned counsel for the respondents also contended that in fact a seniority list was also published in 1988 but it was not challenged by the applicant. The learned counsel for the applicant, however, submits that as the seniority list has been circulated only on 29.4.94, fixing the seniority of the applicant with effect from the date of his regular appointment and the impugned order rejecting the representation made by the applicant against the said seniority list having been rejected by an order dated 13.5.94 the OA cannot be said to be barred by limitation. The learned counsel for the applicant submits that the limitation starts from the date of the order whereby his representation was rejected.

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3. It is not disputed that the applicant was regularly appointed by an order dated 8.1.79. It is his case that his seniority should reckon from the date of his ^{ad-} appointment. The applicant relies upon the seniority list of Senior Medical Officers (Homeopathy)/Assistant Advisors (Homeopathy)/Medical Officers which was published on 29.4.94 and submits that the limitation starts from the date when his representation, questioning his place shown in the seniority list, was rejected. We do not agree, in our view, as the adverse order appointing the applicant in 1979 on a regular basis, was passed in 1979 the limitation starts from that date. The preparation of the seniority list cannot be but on the basis of the date of appointment and the length of service in the grade concerned. Some times seniority lists are not prepared for a number of years, as in this case. If the applicant was aggrieved that his regular appointment should be reckoned from the date of his ad hoc appointment, he should have questioned the order of appointment within the period of limitation. Section 21 of the Limitation Act makes it manifest that limitation starts from the date when the adverse order was passed. In the circumstances, we are of the view that the OA is hit by Section 21 of the Act and is liable to be dismissed on this ground alone.

4. We however, proceed to consider the case on its merits:

It is not in dispute that the applicant was appointed purely on an ad hoc basis by an order dated 26.8.75 as Homeopathy Physician in the CGHS Delhi under

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Delhi Directorate. The order itself contained that the post was temporary and it was liable to be terminated as soon as the candidate recommended by the UPSC joins. Thus, appointment was co-terminus ^{with} ~~and~~ the selection of regular candidate as per rules in consultation with the UPSC. It is also not disputed that even prior to 1975 there were recruitment rules for the post of Homeopathy Physician in CGHS, Delhi. Thus, the appointment of the applicant was not in accordance with the rules. By an order dated 19.12.75, he was posted in the CGHS, Nagpur. Thereafter, the UPSC having considered the candidates for appointment on regular basis as per rules, the applicant was appointed on regular basis as Homeopathy Physician in the CGHS under the Directorate General of Health Services. It is thus clear that the ad hoc appointments are not made following the procedure as per the recruitment rules. Hence, the appointment of the applicant was made as a stop gap arrangement till the regular appointments were made by the UPSC as per the rules. The case of the applicant is, therefore, covered by the ratio mentioned in conclusion 'A' of the decision of the Constitution Bench of the Supreme Court in The Direct Recruits Class II Engineering Officers Association v. State of Maharashtra & Ors., JT 1990 (2) SC 264. As per the above conclusion in cases where appointments are made on ad hoc basis and not according to rules and made only as a stop gap arrangement, the officiation in such a post cannot be taken into account for considering the seniority. Accordingly, the applicant's seniority was considered and he was placed in the seniority list taking his appointment from 1979. The decision cited by the learned counsel for the applicant in 1993 (3) SCC 371, is

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of no help to him. This decision explains the conclusions arrived at by the Supreme Court in the The Direct Recruit Class II Engineering Officers Association's case (supra) stating that the conclusion 'A' would enable seniority to be counted from the date of initial appointment if the employee was initially appointed according to rules. Its corollary proceeds to explain that where the initial appointment was made as a stop gap arrangement the officiation in such post cannot be counted for seniority. Conclusion 'B' applies where the initial appointment was made according to rules but the procedure laid down in the rules was not strictly followed. Meaning thereby, where there was deficiency in the procedural requirement for adjudging the suitability of the appointee for the post which would be cured at the time of regularisation. Since, in the present case, the applicant's appointment was made as a stop gap arrangement until the regular appointment was made as per rules, i.e., in consultation with the UPSC, the applicant is not entitled for counting his ad hoc period. This is evident from the Annexure R-1 filed along with the counter, the letter dated 15.12.78 addressed by the UPSC to the Director General of Health Services wherein the recruitment to the post of Homeopathy Physician in the CGHS has been considered. The decision in Dr. P.P.C. Rawani & Ors. vs. Union of India & Ors. Writ Petition (C) 2620-59/1985 has no application to the facts of the present case. The decision was rendered by the Supreme Court and directions were given for considering the appointments of Staff Doctors in Central Health Service and in consideration of the proposals made by the respondents in the said case. In view of the Full Bench

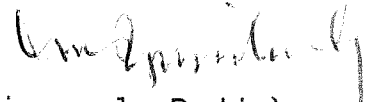
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decision rendered subsequently in The Direct Recruit's case (supra) we are constrained to follow the law laid down therein.

5. In the circumstances, the OA fails, both on the grounds of limitation as well as on merits. The O.A. is accordingly, dismissed. No costs.



(Smt. Shanta Shastry)
Member (A)



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

'San.'