

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.634/2000

This the 4/5 day of March, 2003

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HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE-CHAIRMAN (J)

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

R.K.Verma S/O S.S.Verma,
R/O D-171-B, Brij Vihar,
Ghaziabad (UP).

... Applicant

(By Mrs. Raj Kumari Chopra, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Health
and Family Welfare, Nirman Bhawan,
New Delhi.
2. Chairman,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.
3. Principal & Medical Suptd.,
Lady Hardinge Medical College,
Shaheed Bhagat Singh Marg,
New Delhi-110001.

... Respondents

(By Mrs. Pratima K. Gupta, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

Applicant was initially appointed as Statistician in the Department of Preventive and Social Medicine (PSM) under respondent No.3 w.e.f. 1.7.1976 vide memorandum dated 3.7.1976 (Annexure A-4) in the pay scale of Rs.425-700. The post of Statistician is a Group "C" post. A post of Statistician-cum-Lecturer was created in the Department of PSM in 1980 which is a non-medical teaching cadre Group "A" post. Applicant was appointed as Statistician-cum-Lecturer in the pay scale of Rs.700-1300 in the same department on 16.5.1985 on ad hoc basis for a period of six months or till regular

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incumbent joined, whichever was earlier (Annexure A-1). Applicant's appointment as such was extended for a further period of six months from 18.11.1985 vide Annexure A-7 dated 16.7.1986 on existing terms and conditions. It is claimed that applicant has been functioning as Statistician-cum-Lecturer Group "A" continuously since 1.7.1976. Recruitment Rules for the post of Statistician-cum-Lecturer (non-medical) were published on 4.7.1994 (Annexure R-IV). Method of recruitment for this post under these rules is "Transfer on deputation failing which by direct recruitment". Age limit for recruitment to this post has been prescribed as "Not exceeding 35 years (Relaxable for Government Servants upto 5 years in accordance with instructions or orders issued by the Central Government)". It is claimed that applicant fulfills all requirements laid down in the recruitment rules except that of age limit. Through the present application, applicant has sought direction to respondents not to revert him to the post of Statistician-cum-Lecturer (non-medical) Group "A" from the date of his appointment as ad hoc Lecturer.

2. In their reply, respondents have stated that applicant was appointed as Statistician-cum-Lecturer on ad hoc basis. He is continuing as such. The post of Statistician-cum-Lecturer is a Group "A" post in the teaching cadre (non-medical). Applicant has not undergone the process of regular selection through the Union Public Service Commission (UPSC) as per the recruitment rules. Applicant has been holding the post of Statistician (Group "C" post) on regular basis prior to his ad hoc appointment on the post of Statistician-

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5 cum-Lecturer (Group "A" post) and holder of a Group "C" post cannot be considered for promotion directly to a Group "A" post. As such, he is not eligible for promotion to the post of Statistician-cum-Lecturer for which method of recruitment is by way of direct recruitment under the recruitment rules.

3. The learned counsel of applicant contended that though applicant had been initially appointed as Statistician in 1976, he has been working on the post of Statistician-cum-Lecturer (Group "A") from day one, i.e., 1.7.1976. She contended that the Medical Council of India has prescribed in March, 1973 the minimum requirements for a Medical College, which, among others, prescribe one post of Statistician-cum-Lecturer under the Department of PSM at a College. This is a mandatory requirement but respondents failed to create such a post till 1980. The post was created in 1980 but not filled till applicant was appointed against that on ad hoc basis in 1985. Again, recruitment rules for filling up the post were not published till 4.7.1994. Now that the recruitment rules are there, applicant is age barred although he has completed 26 years of service on the post. The learned counsel further stated that one Shri Pushp Kumar was appointed as Statistician on 26.11.1966. He was promoted on ad hoc basis to the post of Lecturer in Statistics and Demography w.e.f. 26.2.1980 in the absence of notified recruitment rules. Recruitment rules for that post were notified on 11.8.1982 wherein the mode of recruitment to the post was kept as direct recruitment. These rules were amended in 1986 and the mode of recruitment was amended to "Promotion failing

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which by transfer on deputation and failing both by Direct Recruitment". On the basis of that amendment, Shri Pushp Kumar was appointed on regular basis in the post of Lecturer in Statistics and Demography w.e.f. 4.6.1987. He was also placed in the higher pay scale of Rs.10000-15200. According to the learned counsel, whereas respondents have favoured Shri Pushp Kumar to the extent of amending the recruitment rules by providing promotion as method of recruitment, applicant has been denied such concession even though he has been working as a Lecturer since 1976 on ad hoc basis.

4. The learned counsel relied on **Uma Shankar Prasad v. Union of India & Ors**, (1993) 23 ATC 900 (CAT, Calcutta); and **The Konch Degree College, Conch Jalaun etc. v. Ram Sajiwani Shukla & Anr.**, JT 1997 (2) SC 756, to contend that long officiation of applicant on the post of Statistician-cum-Lecturer entitles him to deemed regularisation. In the former case, applicant had been promoted on ad hoc basis as Vice Principal. He continued as such for more than a decade and was allowed to cross the efficiency bar. Presumption was drawn that his work and conduct was satisfactory. It was held that he was entitled to regularisation and that Limited Departmental Competitive Examination was not meant for such post. In the latter case, the respondent had held a temporary post for more than 20 years but another person who did not possess minimum qualifications for the post was appointed. It was held that a temporary post of more than 20 years had to be made permanent post against which the respondent had to be continued vis-a-vis the person who did not have qualifications.

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5. The learned counsel of respondents, on the other hand, contended that the recruitment rules do not provide for promotion from Group "C" post to Group "A" post. Applicant has not undergone the due process for selection to the post conducted by the UPSC. As such, the question of regularising applicant on the post of Statistician-cum-Lecturer does not arise.

6. We have considered the rival contentions. So far as Shri Pushp Kumar is concerned, he was promoted on ad hoc basis from the post of Statistician to the post of Lecturer in Statistics and Demography w.e.f. 26.2.1980 in the absence of notified recruitment rules. The recruitment rules for the post were notified on 11.8.1982 and amended in 1986 providing for the method of recruitment to the post as promotion failing which by transfer on deputation, and failing both, by direct recruitment. We find that the post of Statistician in the case of Shri Pushp Kumar was already a feeder grade for the post of Lecturer in Statistics and Demography. The post of Statistician is not a feeder grade for the post of Statistician-cum-Lecturer. Whereas the post of Statistician-cum-Lecturer is a Group "A" post, Lecturer in Statistics and Demography is a Group "B" post. Shri Pushp Kumar was appointed on regular basis in the post of Lecturer in Statistics and Demography w.e.f. 4.6.1987 when there existed a provision for promotion to the post from the post of Statistician. So far as applicant is concerned, admittedly, he had been appointed as Statistician w.e.f. 1.7.1976, which is a Group "C" post. He was appointed as Statistician-cum-Lecturer in the

Department of PSM on 16.5.1985 on ad hoc basis. His ad hoc appointment has been extended from time to time. The recruitment rules for the post of Statistician-cum-Lecturer (non-medical) Group "A" (non-ministerial) do not provide for promotion as the method of recruitment. Method of recruitment for the post under these rules is transfer on deputation failing which by direct recruitment. Applicant had been appointed on the post of Statistician (Group "C" post) initially in 1976 and later on appointed on ad hoc basis to the post of Statistician-cum-Lecturer (Group "A" post) in the absence of any recruitment rules. The recruitment rules for the post came into existence in 1994. Applicant had obviously not gone through the mill as per the provisions of the recruitment rules. Differential treatment between cases of applicant and Pushp Kumar at the hands of respondents can be attributed to variant facts of these cases. In any case, applicant chose not to take timely exception in this regard. Having acquired his right, if at all he had, he cannot raise it up vis-a-vis Pushp Kumar here and now.

7. The ratio in the case of **Uma Shankar Prasad** (supra) is not applicable to the present case as that involved regularisation of services of the applicant therein who had been promoted on ad hoc basis. The post in question herein cannot be filled in on the basis of promotion as per the recruitment rules. In the case of **Konch Degree College** (supra), the issue was of filling up of a temporary post of a Lecturer by a qualified person vis-a-vis a non-qualified person. The judgment thereof is also not applicable to the present case, facts being distinguishable.

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8. However, the ratio in the matter of Dr. (Mrs.) Sangita Narang & Ors. v. Delhi Administration & Ors., [1988] 6 ATC 405 (CAT, New Delhi) is certainly applicable to the facts of the present case. Applicants therein were Junior Medical Officers appointed on ad hoc basis. The respondents were directed to continue with the services of the applicants till consultation with the UPSC and they were held to be entitled to the same pay and allowances and other benefits as regularly appointed Junior Medical Officers.

9. In the present case, applicant, though appointed on the post of Statistician on 1.7.1976, has been discharging the functions of the post of Statistician-cum-Lecturer since that very day. He was ultimately appointed as such on ad hoc basis w.e.f. 16.5.1985. His services could not be regularised as such as he has not been recruited as per the provisions of the recruitment rules promulgated in 1994. Respondents have not denied the claim that applicant has been discharging the functions of Statistician-cum-Lecturer since 1976. It has also not been denied that he fulfils the academic qualifications for the post.

10. Having regard to the facts and circumstances of the case as discussed above, although the services of applicant cannot be deemed to have been regularised on the post of Statistician-cum-Lecturer, respondents are directed to take expeditious action in consultation with the UPSC to fill up the post by considering relaxation of age limit under the recruitment rules in respect of

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applicant to the extent he has served on the post of Statistician-cum-Lecturer with respondents. Whereas applicant shall have to compete with other applicants, respondents are directed to give due weightage to applicant for his past experience on the post of Statistician-cum-Lecturer. If applicant is selected for the post of Statistician-cum-Lecturer in this manner, respondents shall accord regularisation of services of applicant since 1994, with notional benefits since 1994 and actual benefits from 29.3.2000 when the OA was filed.

11. Before parting with the case, we have to express our anguish and consternation on the inaction of respondents in the case. They have been causing inordinate delay in taking effective steps at each stage, such as creation of the post of Statistician-cum-Lecturer as required as per recommendations on minimum standards prescribed by the Medical Council of India, promulgation of the recruitment rules for the post, and filling up of the post. How can such lethargy be tolerated in the present day governance? Such gross neglect on the part of respondents has to be deprecated in the strongest terms.

12. The OA is allowed in the above terms. No costs.

V. K. Majotra
(V. K. Majotra)

Member (A)

/as/

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)