

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

O.A. No. 951/91 199
T.A. No.

DATE OF DECISION 6-5-97

Dr. Prem Lata Choudhry & Ors Petitioner

Shri Ashok Aggarwal Advocate for the Petitioner(s)

Versus

ESIE through Director General Respondent
and others

Shri Vivek Gambhir Advocate for the Respondent(s)

CORAM

The Hon'ble Shri S.R. Adige, Member (A)

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not? *yes*

2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

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Central Administrative Tribunal
Principal Bench

O.A. 951/91
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New Delhi this the 6th day of May, 1997

Hon'ble Shri S.R. Adige, Member(A).

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

1. Dr. Prem Lata Choudhry,
W/o Dr. A.P. Choudhry,
R/o 4802, Bharatram Road,
24, Darya Ganj,
New Delhi.

2. Dr. Shankar Lal,
S/o Shri K.K. Vig,
R/o 3284, Street Darwali,
Mori Gate,
Delhi.

...Applicants.

By Advocate Shri Ashok Aggarwal.

Versus

1. Employees State Insurance Corporation,
through Director General,
Kotla Road,
New Delhi.

2. Dr. Amar Singh,

3. Dr. R.S. Karothiya,

4. Dr. Pradeepta Kishore Sinha,

5. Dr. Mrinal Sircar,

6. Dr. (Miss) Latha Arvindam,

(Respondents 2 to 6 through Director
General, ESIC, Kotla Road, N.Delhi.)

...Respondents.

By Advocate Shri Vivek Gambhir.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicants have challenged the validity of the seniority
dated 31.5.1980
list issued by the respondents/ and submit that they
have been denied their due seniority in the category of IMO
Grade-II from the date of their initial appointment
and consequential benefits.

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2. The brief facts of the case are that applicant 1 has been employed by Respondent 1 on 19.11.1984 and applicant 2 on 11.2.1985 as IMO Grade-II on ad hoc basis in the pay scale of Rs.650-1200. They were given regular appointment through U.P.S.C. in the same grade w.e.f. 29.4.1986 and were given the pay scale of Rs.2200-4000 (old scale - Rs.700-1400). On 8.10.1990, they have been promoted to the post in the scale of Rs.3000-4500. The applicants submit that when they were on ad hoc basis, the respondents attempted to terminate their services which was challenged in the High Court which was later transferred to the Tribunal as T.No.491&492/86. Interim orders of stay of the termination orders were continued were granted by the Court and/and the cases were finally decided on 19.2.1987 (Dr.(Mrs) Prem Lata Choudhari Vs. Union of India, 1987(3) ATC 879).

3. The main contention of Shri Ashok Aggarwal, learned counsel for the applicants, is that the services rendered by the applicants on ad hoc basis, prior to their being regularised should be counted towards seniority and for other consequential benefits. In other words, their contention is that Respondent 1 cannot arbitrarily exclude the ad hoc period of service put in by them but they are entitled to count the ad hoc service/for the purposes of seniority from the date of their initial appointment. The learned counsel submits that the appointment of the applicants under Section 17(3) of the E.S.I.C. Act cannot be considered to be irregular, the ad hoc appointment was followed by selection through UPSC without any break, other

similarly situated persons have been granted the benefits of ad hoc service by the Delhi High Court in Dr Marwah's (Delhi High Court(1983) Lab. IC. 910) case/against which SLP has been dismissed by the Supreme Court and the respondents had issued Office Order dated 15.6.1995 giving continuity of service with all consequential benefits. Therefore, for all these reasons, the learned counsel submits that the respondents cannot deny the applicants seniority from the date of initial appointment on ad hoc basis. The applicants rely on the following judgements:

- (1) Union of India Vs. P. Srinivasalu & Ors. (SLP No. 10714/93), decided on 18.3.1993.
- (2) A.K. Jain & Ors. Vs. UOI & Ors. 1987 (Supp) SCC 497
- (3) H.B. Sharma Vs. UOI, 1996 III AD(Delhi) 637
- (4) Delhi Water Supply and Sewage Disposal Committee & Ors. Vs. R.K. Kashyap & Ors., 1989 Supp(1) SCC, 194.
- (5) Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra. 1990(2) SCC 715.
- (6) Baleshwar Dass Vs. State of U.P. 1980(4) SCC 226.

4. The respondents have filed their reply controverting the above claims. They have submitted that at the time of the appointment of the applicants on ad hoc basis, their appointment was for a period of 90 days which is not in the case of O.A. 1603/87 which was subsequently dealt with by the Supreme Court in SLP (UOI Vs. Dr. P. Srinivasalu & Ors. (supra)) (C) No. 10714/93/. Before their regular selection, the applicants' services were terminated but they were continued in service by virtue of the interim stay orders passed by the High Court till regular selection. They have submitted that under Section 17(3) of the Employees' State Insurance Act, 1948 (hereinafter referred to as 'the ESIC Act') every appointment to posts corresponding to Class I or Class II posts under the Central Government shall be made in consultation with the U.P.S.C. Under the proviso to this sub-section

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this method of appointment can be dispensed with when temporary appointments are made for an aggregate period not exceeding one year. On 22.6.1984, applicant No.1 was issued a memorandum informing her that her candidature has been sponsored by the Regional Employment Officer for the post of Junior Insurance Medical Officer on a temporary and ad hoc basis not exceeding 90 days at a time. For this, she was asked to appear for interview before the Selection Committee on 6.7.1984. The learned counsel has further submitted that this/^{selection} did not involve the UPSC or/^{any regular} Board or taking any written test. After her selection by this Committee, she was offered the post of Insurance Medical Officer, Grade-II on a purely temporary and ad hoc basis subject to the following terms and conditions:

(a) His/Her services are liable to be terminated on one month's notice in writing on either side provided that if her/her services are terminated forthwith and on such termination, he/she shall be entitled to claim a sum equivalent to the amount of his/her pay plus all allowances for the period of notice at the same rates which he/she receives or as the case may be, for the period by which such notice falls short of one month. No notice will be necessary if the appointment continued for 90 days on the expiry of which it will stand automatically terminated.

(b) Private practice of any kind including Laboratory and consultant practice is prohibited.

(c) He/She will not be entitled to any travelling allowances, etc. for joining the post.

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(e) The above appointment will not confer on him/her any benefit of seniority or claim for regular appointment or the further continuance in the services of the ESI Corporation and placement in the ESIC Medical Cadre.

(f) to (j) (not relevant)

Shri Gambhir, learned counsel for the respondents, therefore, submits that the applicant had been clearly informed that her appointment being on a purely temporary and ad hoc basis will not confer on her any benefit of seniority or claim for regular appointment or for further continuance in the services of the ESI Corporation. On this basis, he has also submitted that the case of Dr Marwah is distinguishable. At that time, no regulations had been framed and the applicants had continued in service on ad hoc basis for the periods from six to eight years, ^{in that case} but here the applicants had about nine months ad hoc service. He further submits that at the time of offer of ad hoc appointment to the applicants, it was clearly intended that they were to be appointed on ad hoc basis till regular persons are appointed in accordance with the provisions of Section 17(3) of the ESIC Act. He relies on the judgement of the Tribunal in Prem Lata Choudhary's case (supra) in which it has been held that merely by continuing for more than one year, it does not become regular service. The learned counsel has distinguished the judgement of the Supreme Court in Srinivasulu's case (supra), on the grounds (1) that it is an offshoot of Jain's case (supra) and there is no letter of appointment as given to the applicant, in Jain's case who continued for a long period whereas the applicants

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had only nine months of ad hoc service. He also submits that as per the terms and conditions of the appointment, it is clear that the applicants' appointments were on ad hoc basis till regular selected candidates were available for which the ESIC had already sent requisition to the UPSC at the time of their appointment. He relies on the following judgements:

- (a) Director General, ESIC & Anr. Vs. Shri Trilok Chand & Ors., SLP (C) Nos. 7393-96/91, decided on 10.12.1993.
- (b) D.N. Aggarwal Vs. State of M.P., 1990(2) SCC 553.
- (c) V. Sreenivasa Reddy Vs. Govt. of A.P., 1995 SCC (Suppl) (1) 572.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. In this case, Section 17(3) of the ESIC Act reads as follows:

"(3) Every appointment to posts corresponding to Class I or Class II posts under the Central Government shall be made in consultation with the Union Public Service Commission.

Provided that this sub-section shall not apply to an officiating or temporary appointment for an aggregate period not exceeding one year."

It is clear from the above proviso that for every appointment to posts including that of IMO Grade-II with the respondents, it has to be done in consultation with the UPSC. However, the proviso to the sub-section provides that an appointment on officiating and temporary basis can be made for a period not exceeding one year.

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without consultation with the UPSC. In Prem Lata Choudhary's case (supra), this Tribunal has held as follows:

"...In our view, the respondents are neither prohibited from continuing the applicants in service in consultation with the UPSC as Insurance Medical Officers Grade II nor will such continuance result in automatic regular appointment or permanent appointment after the Regulations are made....."

It was also noted that among the petitioners in that case, the present applicants, namely, Dr. (Mrs) Prem Lata Choudhary and Dr. Shankar Lal, have since been selected by the UPSC for appointment and they have been accordingly appointed on regular basis. It was observed ^{that} whether they are entitled to claim the benefits of their earlier service for the purpose of reckoning their seniority, is a matter which does not concern them in that case. In compliance with the order of the Tribunal and ^{appellate orders of} the Supreme Court in this case, the respondents have issued Office Order No. 446 of 1995 dated the 15th June, 1995. In this order, the applicants have been treated to be in continuous service of the respondents, given regular pay scale of Rs.2200-4000 (revised) from the date of their initial appointment along with arrears. In this order, the following paragraphs have been included:

"The CAT New Delhi had, however, refrained from commenting on the question of their seniority and had given the direction to regularise these doctors through the UPSC/Recruitment Regulations.

The above benefits are being granted to the Doctors concerned in the light of the judgement dated 19.2.1987 by the CAT New Delhi. Their regular appointment shall be reckoned from the date he/she was selected by the UPSC/ESIC Selection Board in accordance with the rules and regulations applicable to such doctors".

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It is also stated that the other terms and conditions of the appointment are as laid down in the offer of appointment to the post of IMO Grade-II on regular basis. In this case, the applicants have been appointed on ad hoc basis on the specific terms and conditions reproduced in paragraph 4 above. These conditions stipulated that they were being appointed on a purely temporary and ad hoc basis and would not entitle them for any benefit of seniority or claim for regular appointment. At the time of ad hoc appointment, the respondents had initiated the procedure for regular appointment of the IMOs in accordance with the regulations.

6. ^{18/}~~Supra~~ The Supreme Court in Director General, ESIC & Anr. Vs. Trilok Chand & Ors. (Supra), has dealt with a similar situation where the respondents have been appointed on casual and ad hoc basis as LDCs on the express condition that their appointment was of a casual nature, to continue only till candidates were available as a result of the regular selection held for the purpose. The Supreme Court set aside the order of the Tribunal in which the claim of the respondents that they should be regularised was accepted. In another case D.N. Aggarwal Vs. State of M.P. (supra), the Supreme Court has also referred to the facts where the appointment of the appellants had been made on ad hoc basis. The appointment orders had made it clear that the appointments were in the special circumstances and that they will not be deemed to determine seniority for any purpose whatsoever. In this case also, no appointments could be made as Assistant Engineers except by way of either direct recruitment through the Public Service Commission or promotion through the selection made by the DPC as per the quota assigned to different

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categories. The Supreme Court held that the appointment of the appellants by the DPC on 22.11.1972 could not relate back to 22.7.1971 which was made on ad hoc basis and hence they were not interested to claim the officiation between these dates for being counted for the purpose of their seniority (see also the observations of the Supreme Court in V. Sreenivasa Reddy's case (supra)). We are of the view that the judgements of the Supreme Court in these two cases apply to the facts in the present case as regards the terms and conditions of appointment of the applicants. Under Section 17(3) of the E.S.I.C. Act, the appointment to the post of IMO Grade-II has to be made in consultation with the U.P.S.C. By the proviso to this sub-section a temporary or officiating appointment can be made without such consultation. If the contentions of the applicants were to be accepted, then it would mean that the entire process of selection contemplated under sub-section (3) of Section 17 would be bye-passed by resorting to the proviso to the Section. This cannot be the intention of the legislature. The proviso only enables the respondents to make temporary or ad hoc appointments upto one year till the regular appointments are made under the sub-section.

7. Further, in this case it is also relevant to note that the respondents had already notified the UPSC to make the selection in accordance with the Act and the Regulations. Therefore, the terms and conditions of appointment of the applicants on ad hoc basis are relevant which clearly shows that their ad hoc officiating appointment made under the proviso to this sub-section cannot confer on them any seniority from the date of their initial appointment. We are fortified in the view we have taken

by a recent judgement of the Supreme Court in Smt. Ram Sakhi Devi Vs. State of U.P. & Ors., JT 1997(4) SC 363 decided on 20.3.1997 wherein it has been held as follows:

"If Section 33-A (of the U.P. Intermediate Education Act, 1921) route is adopted as a routine, the entire process of selection contemplated under the Act would be given a decent burial and illegal appointments would gain legitimacy. Under these circumstances, we do not think that the counsel is right in contending that the appellant could be regularised under Section 33-A of the Regulation".

In the present case, if the claim of the applicants is accepted then it would mean that the route of appointment through the proviso, which is meant for limited purposes and period, shall supersede the method of selection through U.P.S.C under ~~the~~ subsection (3) of Section 17 of the ESIC Act. *JS*

8. We have also considered the other judgements relied upon by the learned counsel for the applicants. In particular, he had relied on the judgement of the Delhi High Court in H.B. Sharma Vs. Union of India (supra) wherein following other judgements of the Supreme Court mentioned therein, it was held that the petitioner and all other similarly placed, who have continued uninterruptedly till the regularisation of service by the DPC or the UPSC would be entitled to get the benefit of the continuous uninterrupted service for determination of their seniority. Consequently it was also held that they would be entitled to promotion from the date when they were given current duty charge to the post of Assistant Commissioner vide order dated 13.5.1986 and all consequential benefits. After careful consideration of these judgements and the particular facts and circumstances of this case, we are

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unable to agree with the learned counsel for the applicants that in all such cases such a direction can be given. As mentioned above, in this particular case the question of determination of seniority on the appointment of the applicants on regular basis has to be considered taking into account also the terms and conditions of the offer of appointment on ad hoc basis on 14.11.1984. The ad hoc period the applicants have worked is only for a period of nine months after which they have continued on the basis of the stay order from the Court/Tribunal. In A.K. Jain's case (supra) the disputes related to doctors who have been appointed in the year 1968 and thereafter until 1984 and the directions given were in the particular facts and circumstances of the case which do not appear to be applicable in the present case (see also observations of the Supreme Court in V. Sreenivasa Reddy (supra)).

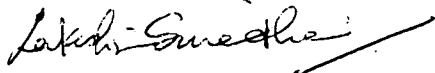
Having also considered the cases relied upon by the applicants, we are of the view that the facts in the present case are covered by the decisions of the Supreme Court discussed in detail in paragraphs 5 and 6 above and the other cases relied upon by the applicants will not assist them.


9. We, therefore, find that the applicants are not entitled to count their ad hoc service for the purposes of seniority. As mentioned above, the respondents have already passed the Office Order dated 15.6.1995 giving them the other consequential benefits due to them. In the circumstances, the action of the respondents cannot be faulted and we do not find any justification for interference in the matter.

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10. In the result, the application fails and is dismissed.

No order as to costs.


(Smt. Lakshmi Swaminathan)
Member(J)


(S.R. Adige)
Member(A)

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