

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH**Original Application No.2625/2004****With****Original Application No.2540/2004****New Delhi, this the 27th day of May, 2005****Hon'ble Mr. Justice V.S. Aggarwal, Chairman****Hon'ble Mr. M.K.Misra, Member (A)****O.A.No.2625/2004:**

Shalini Samson
D/o Sh. Samson Samuel
Staff Nurse
Aruna Asaf Ali Govt. Hospital
5, Rajpur Road
Delhi - 110 054.

Residential Address:-

Shalini Samson
C-521, Mahaveer Enclave
Part-III, Gali No.45
Uttam Nagar
Delhi - 110 059. &
Others as per list attached.

... Applicants

(By Advocate: Sh. G.D.Bhandari)

Versus

Government of NCT of Delhi, through

1. The Chief Secretary
9th Level, Delhi Sachivalaya
I.P.Estate
New Delhi - 110 002.
2. The Secretary (Health)
Govt. of NCT
9th Level, Delhi Sachivalaya
I.P.Estate
New Delhi - 110 002.
3. The Medical Superintendent
Aruna Asaf Ali Govt. Hospital
Old Police Line
5, Rajpur Road
Delhi - 110 054.

... Respondents

(By Advocate: Ms. Sumedha Sharma)

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O.A.No.2540/2004:

Ramanand Tiwari
O.T. Assistant
Aruna Asaf Ali Govt. Hospital
Old Police Line
5, Rajpur Road
Delhi - 110 054.

Residential Address:-

Ramanand Tiwari
WZ-1366, Nangal Raya
Delhi - 110 046.

& Others as per list attached.

... Applicants

(By Advocate: Sh. G.D.Bhandari)

Versus

Government of NCT of Delhi, through

1. The Chief Secretary
9th Level, Delhi Sachivalaya
I.P.Estate
New Delhi - 110 002.
2. The Secretary (Health)
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3. The Medical Superintendent
Aruna Asaf Ali Govt. Hospital
Old Police Line
5, Rajpur Road
Delhi - 110 054.

... Respondents

(By Advocate: Ms. Sumedha Sharma)

ORDER

By Mr. Justice V.S.Aggarwal:

By this common order, we propose to dispose of the following
two Original Applications:

1. Original Application No.2625/2004
2. Original Application No.2540/2004

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As common questions are involved, therefore, for the sake of convenience, we are taking the facts from OA 2625/2004 entitled **Shalini Samson v. Government of NCT of Delhi & Others.**

2. The relevant facts are that Directorate of Health Services, Government of NCT of Delhi, advertised certain posts of nursing/paramedical staff inviting applications for different categories. It was mentioned that the same are to be filled up on short-term basis for a period of 89 days and are likely to be extended for another period of 89 days or till regular appointments are made. The operative part of the same is:

"WALK IN interviews will be held for appointment to the following nursing/paramedical posts s.no.1 to 3 on 19.9.02 and s. no.4 to 13 on 20.9.02 at 9.00 am on short term contract basis for a period of 89 days (likely to be extended for another 89 days) or till regular appointments are made, whichever is earlier.

The candidates should come with neatly typed bio-data, original certificates, a set of attested copies of all the documents, two passport size photographs, caste certificate, proof of date of birth and a demand draft of Rs.20/- for General category and Rs.10/- for Reserved category candidates, which is non-refundable, and payable to "The Medical Superintendent, Aruna Asaf Ali Govt. Hospital, at Delhi."

These posts have already been notified to the Staff Selection Board and short-term contract appointment will not give any right for regularization without competing in the necessary recruitment process.



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The salary of the contract employees are
as per provisions of GFR."

3. The applicants plead that the posts were duly sanctioned and this was advertised to escape the legal liabilities and to circumvent the well established norms and rules. Applicants after completing their educational qualifications had obtained the requisite training and were eligible. They submitted their applications. A DPC had been constituted for conducting a selection and consequently the results were declared. They were permanent posts but to exploit the helpless and jobless applicants, the method of contract was adopted. The applicants were selected and the appointment letter was issued. The representative order in the case of Jabeen Bano, applicant, reads:

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"On the recommendation of the Selection Committee of the Aruna Asaf Ali Govt. Hospital, vide their minutes of meeting dated 20.9.2002 and with the prior approval of Pr. Secy. (H) dated 12.12.2002 Shri/Mrs./Miss Jabeen Bano is hereby offered a post of Staff Nurse on short term contract basis for a period of 89 days only or till a regular candidate joins the post whichever is earlier subject to the following conditions. He/She will be paid monthly basic pay plus DA only in the respective pay scale of Rs.5000/- plus DA.

1. He/She is being found medially fit by the Medical Board of the hospital.
2. He/She will submit the attested copies of his/her academic qualifications, professional qualifications along with the original for verification.
3. He/She will submit his/her recent two passport size photos duly attested.

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4. The offer of appointment is a short term contract basis for a limited period of 89 days only on relieving basis or regular candidate joins the post whichever is earlier. The recruitment of the post had already been notified by the TRC Department of Health & Family Welfare Department, Delhi Secretariat, Delhi Government. The process of selection/appointment is in progress. No claim for regularization of the said post will be entertained in any circumstances.

5. He/She will submit an affidavit in this effect, on the prescribed format duly attested by the first class Magistrate, or Notary or Oath Commissioner of Delhi Govt. of NCT of Delhi."

4. By virtue of the present application, a direction is claimed to regularize the applicants and to make payment of salary to them in the prescribed pay scale of the post with ancillary allowances.

5. The applications have been contested.

6. Respondents plead that regular appointment to the post of Staff Nurse is made by Government of NCT, Delhi on the recommendations of Technical Recruitment Cell. Pending recruitment to the post on regular basis, a few individuals were appointed on short-term contract basis. Posts were advertised in daily newspapers and it is thereafter that on temporary contract basis, the applicants were appointed. It is claimed that the applicants have no basis to claim the relief.

7. The learned counsel for the applicant had argued that the advertisement was as per the rules. Though the appointment was made on a particular scale but the perks were not being given of their posts. He strongly relied upon the decision of this Tribunal in the

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case of **PRADEEP KUMAR v. GOVT. OF NCT OF DELHI & OTHERS,**

(OA No.1878/2002, decided on 5.5.2003), wherein, the following order had been passed:

"2. During the course of submissions, learned counsel for the applicant has drawn our attention to the decision of this Tribunal in case of Dr. Aparna Sehgal & Others vs. Govt. of NCT of Delhi & Ors., in OA 2108/1999 decided on 8.5.2000 who are similarly situated persons. The Tribunal had passed the following orders in the said Judgement:

"9. This being so, according to us, the judgement in Dr. Sangeeta Narang as well as Dr. Paliya's cases are squarely applicable to the present case also. We, therefore, direct the respondents that the applicants should be continue in service till regular appointments are made to the post and applicants should be treated as having continue in service from the date of their first appointment ignoring the artificial break of one or two days in their service. In the event of the posts being filled by regular recruits, the same shall be adjusted against vacant posts and only after all the vacant posts are filled should regular recruits replace the present applicants and such replacements shall be on the basis of last come first go. Respondents are further directed to grant age relaxation to the applicants to the extent of the service put in by them on contract basis in case they apply for regular appointment. We also direct the respondents to grant to the applicants same scale of pay and allowances, leave, increment, medical facilities and also other benefits of service conditions as are applicable to other MOs (H) from the date of their initial appointment. He be permitted to file a contempt petition in accordance with law and subject to aforesaid, does not press the present application."

3. It is not in dispute that the applicant is similarly situated. We, therefore, dispose of the present application on the same terms as in the case of Dr. Aparna Sehgal (supra) making it clear that, as conceded at the bar, arrears, if

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any, would be confined due from the date of filling of the present application, i.e. 18th July, 2002."

8. We have considered the relevant submissions. So far as the claim for regularization is concerned, necessarily the regular appointment can only be effected in terms of the recruitment rules. Indeed, regularization de hors the rules will not be permissible.

9. Learned counsel for the applicants relied upon the decision in the case of **DR. G.P. SARABHAI & OTHERS V. UNION OF INDIA & OTHERS**, 1983 LAB.I.C. 910 [Civil Writ Petition No.5/1981, decided on 13.8.1982]. In the afore-cited case, certain petitioners were appointed as Junior Medical Officers in E.S.I. Corporation initially on ad hoc basis for a period of one year. The appointment letter indicated that maximum period of the selection was one year and it was contemplated that selection would be regularized by the Union Public Service Commission and they were continued from time to time. It was in the backdrop of these facts that the Division Bench of the Delhi High Court had given the decision referred to and relied upon by the learned counsel. But the same had been considered by the Delhi High Court in the case of **SH. SANDEEP & OTHERS V. DELHI SUBORDINATE SERVICES SELECTION BOARD & ORS.**, C.W.P. No. 7386/2000 decided on 23.7.2002. The decision in the case of **Dr. G.P. Sarabhai & Others (supra)** was referred to and it was held that question, therefore, for consideration was whether the petitioners who were appointed as Doctors in the ESI Corporation, and had been continued for about seven years, could be asked to compete with the



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new entrants. It will have no application in the present case also because the applicants had been appointed purely on ad hoc and on contractual basis.

10. On behalf of the respondents, it was vehemently contended, in our view successfully that a person who is appointed on ad hoc basis or even on contract basis, cannot claim regularization as of right. The regularization cannot be made de hors the rules.

11. In the case of **DR. CHANCHAL GOYAL (MRS.) VS. STATE OF RAJASTHAN**, (2003) 3 SCC 485, a similar situation had cropped up before the Supreme Court. Certain persons had been appointed on temporary basis for a period of six months. Certain orders of extension were issued. On 1.10.1998, services of Dr. Chanchal Goyal were terminated on the ground that the candidates selected by the Public Service Commission were available. The question for consideration before the Supreme Court was as to whether she could claim regularization as in the case of the applicants. The Supreme Court repelled the argument of Dr. Chanchal Goyal and held:

“8. Unless the initial recruitment is regularized through a prescribed agency, there is no scope for a demand for regularization. It is true that an ad hoc appointee cannot be replaced by another ad hoc appointee; only a legally selected candidate can replace the ad hoc or temporary appointee. In this case it was clearly stipulated in the initial order of appointment that the appellant was required to make room once a candidate selected by the Service Commission is available.”

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Thereupon the Supreme Court went on to hold:

"10. In J&K Public Service Commission vs. Dr. Narinder Mohan [(1994) 2 SCC 630] it was, inter alia, observed that it cannot be laid down as a general rule that in every category of ad hoc appointment if the ad hoc appointee continued for a longer period, rules of recruitment should be relaxed and the appointment by regularization be made. In the said case in para 11 the position was summed up as under: (SCC pp.640-41, para 11).

"11. This Court in A.K. Jain (Dr.) v. Union of India [1987 Supp SCC 497] gave directions under Article 142 to regularize 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 P.P.C. Rawani (Dr.) v. Union of India [(1992) 1 SCC 331] is also not an authority under Article 141. Therein the orders issued by this Court under Article 32 of the Constitution to regularize 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 [1994 Supp (1) SCC 306] this Court by a Bench of three Judges considered the effect of the order in A.K. Jain case [1987 Supp. SCC 497] 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 High Court [1991 Supp.(2) SCC 421] this court while holding that the appointment to the posts of

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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 v. Piara Singh* [1992] 4 SCC 118] 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, as early as possible. The temporary employees also would get liberty to compete along 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 regularization 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 recommended 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 long period, the rules of recruitment should be relaxed and the appointment by regularization 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

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advertise and make recruitment of the candidates in accordance with the rules."

12. Similar situation had arisen before the Supreme Court in the case of **UNION OF INDIA & ORS. v. HARISH BALKRISHNA MAHAJAN**, 1996(6) SLR SC 669. Therein, Harish Balkrishna Mahajan was appointed on monthly basis. This Tribunal had directed that he should be regularized in consultation with Union Public Service Commission. The Supreme Court allowed the appeal and held:

"2. The respondent was temporarily appointed as a Medical Officer on monthly basis in the Central Government Health Scheme on August 10, 1982. During the unfortunate strike of the doctors as trade unionists, unmindful of the ethical and medical code of conduct, he was appointed and even continued in the service till August, 1987. When his services were terminated, he had gone to the Tribunal and filed OA No. 701/89. The Tribunal in the impugned order dated 21.12.1994 directed the appellants to regularize the service of the respondent in consultation with the Public Service Commission. Thus, this appeal by special leave.

3. The controversy is no longer res integra. In similar circumstances, this Court had considered the entire controversy in J and K Public Service Commission & Ors. Vs. Dr. Narinder Mohan and Ors. [(1994) 2 SCC 630]: [(1994)(1) SLR 246 (SC)]. Admittedly, the post of doctors in the Central Government Health Scheme are required to be filled up by recruitment through Union Public Service Commission. Therefore, the direction to consider the case of the respondent in consultation with the Public Service Commission for regularization is in violation of the statutory rules and Article 320 of the Constitution of India. The only course known to law is that the Union of India shall be required to notify the recruitment to Public Service Commission and Union Public Service Commission shall conduct the examination inviting the applications from all the eligible

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persons including the persons like the respondents. It would be for the respondent to apply for and seek selection in accordance with Rules. Therefore, the direction is in violation of Article 320 of the Constitution."

13. Identical view was expressed by the Apex Court in the case of **DR. SURINDER SINGH JAMWAL & ANR. VS. THE STATE OF JAMMU & KASHMIR & ORS.**, JT 1996 (6) SC 725. The decision of the Supreme Court in the case of **JAMMU & KASHMIR PUBLIC SERVICE COMMISSION VS. DR. NARINDER MOHAN**, 1994 (2) SCC 630 was relied upon, and it was held that the applicant therein could apply afresh only.

14. This Tribunal had considered this controversy in the case of **DR. DIVPREET SAHNI & OTHERS VS. GOVERNMENT OF NCT OF DELHI & OTHERS**, OA No. 988/2001, decided on 19.9.2002. Herein also the said persons had been appointed firstly on ad hoc basis for a period of six months. It was reiterated that they could continue with ad hoc appointment subject to the appointment of regular incumbents, and when regular incumbents became available, the question for consideration was as to if the said persons had gained any such right or not? The applications were dismissed holding:

"22.....it was clearly mentioned that appointments were to be made on ad hoc basis. When a suggestion of ad hoc appointment is made, only few persons would apply. On the other hand, when regular appointments are notified, a large number of eligible candidates are tempted to apply. To this extent, the applicants in these OAs have been selected from amongst a much lesser number of competitors

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than would have been the case if regular selection had been notified. Further, there is always the likelihood of favouritism when departmental committees are set up to interview candidates from the open market. When UPSC gets associated, objectivity and impartiality also steps in. That is precisely the reason why the UPSC and for that matter the State Public Service Commissions have been set up as constitutional bodies who devise their own procedure albeit in consultation with the department concerned, for selecting candidates for various services. We have in the foregoing paragraphs also noticed, after a discussion of the various Court cases relied upon by the applicants, that nothing will assist their case, whether it is the case of Dr. Jitender Singh (supra) or that of Medical Officers (Unani), or for that matter any other case. Consideration of the candidature of the applicants in the manner sought by them treating them as forming a separate block and by directing the UPSC to consider their claims wholly on the basis of their performance in ad hoc service, is something unknown to the relevant rules and the procedure. Following of such a hybrid procedure cannot be sustained in law, and for this, reasons are available in plenty in the cases of **J&K Public Service Commission & Others (Supra)** and **Shri Sandeep & Others (supra).**"

15. The Supreme Court in the case of **STATE OF MADHYA PRADESH & ANOTHER VS. DHARAM BIR**, (1998) 6 SCC 165 further held:

"34. The respondent having worked in an ad hoc capacity on the post of Principal might have gained some administrative experience but the same cannot be treated as equivalent to his knowledge in the field of Engineering. A compounder, sitting for a considerably long time with a doctor practicing in modern medicine, may have gained some experience by observing the medicine prescribed by the doctor for various diseases or ailments but that does not mean that he, by that process, acquires knowledge of the human anatomy or physiology or the principles of pharmacology or the field of

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action of any particular medicine or its side effects. The compounder cannot, merely on the basis of experience, claim a post meant exclusively for persons having MBBS or other higher degrees in medicine or surgery. The plea of experience, therefore, must fail. Moreover, this would amount to a relaxation of the Rule relating to educational qualification. Power to relax the Rule vests exclusively in the Governor as provided by Rule 21. This power cannot be usurped by the Court or the Tribunal."

16. At this stage, it is relevant to mention the decision rendered by the Supreme Court in the case of **AHMEDABAD MUNICIPAL CORPORATION VS. VIRENDRA KUMAR JAYANTIBHAI PATEL**, (1997) 6 SCC 650. The Supreme Court in that case went on to conclude that even sympathetic consideration will not out-way the legal position.

17. Large number of decisions have been cited at the Bar further on behalf of the applicants, in support of their claim of the decisions rendered by the Supreme Court and of this Tribunal, namely, the case of **DR. JITENDER SINGH AND OTHERS V. UNION OF INDIA**, decided by this Tribunal in OA No. 1259/90 with some connected OAs: **Dr. Rekha Khare vs. Union of India & Ors.**, Civil Appeal No. 2969/97, decided by the Supreme Court on 21.4.1997; **Union of India & Ors. Vs. Ms. Anshul Sharma & Others**, CWP No. 319/2001, decided on 13.2.2002 by the Delhi High Court. Strong reliance has been further placed on the decisions of the Supreme Court in the case of **J & K Public Service Commission, etc. vs. Dr. Narinder Mohan & Ors. etc. etc.** JT 1993(6) SC 593; **State of M.P. &**

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Anr. Vs. Dharam Bir, (1998) 6 SCC 165; and **State of Karnataka & Ors. Vs. G. Halappa & Ors.**, 2002 (IV Apex decision(SC) 644.

18. All these decisions had been considered by the Division Bench of the Delhi High Court in the case of **Shri Sandeep & Ors. (supra)**. The facts therein were identical to the present case before us. The Delhi High Court held that the relief claimed could not be acceded to. Some of the decisions of the Supreme Court to which we have referred to above were held to be not applicable because therein the Apex Court had acted under **Article 142** of the Constitution, which are not to be treated as precedent.

19. Keeping in view the aforesaid, the said claim seeking regularization must fail. When the advertisement clearly mentioned that it was not a regular appointment and the applicants were also fully conscious that it was not a regular appointment, taking stock of the totality of the facts and legal position on the subject, indeed, the question of regularization will not arise.

20. In all fairness to the applicants' learned counsel, though reliance was placed on certain earlier decisions of the Tribunal, but keeping in view the later pronouncements of the Supreme Court, it becomes unnecessary to go into the same.

21. The only other plea raised was that the applicants are not being given certain perks of the regular employees. Perusal of the record reveals that the applicants have been appointed in the pay scale of Rs.5000-8000 as was advertised plus DA. If certain perks are attached to the regular posts, which had been denied to the

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applicants, it would be in the fitness of things that the applicants may, in the first instance, represent to the respondents in detail and, thereafter only in case the claim is rejected, they may take recourse in law.

22. Resultantly, both the applications are disposed of with the following directions:

- a) the claim of the applicants seeking regularization de hors the rules must fail and is dismissed.
- b) the applicants pertaining to other perks may represent the appropriate authorities.


(M.K.Misra)
Member (A)


(V.S.Aggarwal)
Chairman

/NSN/