

**CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH**

**Original Application No.2657/2004**

**New Delhi, this the 5<sup>th</sup> day of August, 2005**

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman  
Hon'ble Mr. S.A.Singh, Member (A)**

Dr. Sudha Goel  
D-40, Mansarovar Garden  
New Delhi – 110 015. ... Applicant

**(By Advocate: Sh. Pinaki Mohapatra, proxy for Sh. C. Harishanker)**

Versus

1. Union of India  
Through Secretary  
Department of Health  
Ministry of Health & Family Welfare  
Nirman Bhawan  
Maulana Azad Road  
New Delhi – 110 001.
2. Union Public Service Commission  
Through The Secretary  
Dholpur House  
Shah Jahan Road  
New Delhi. ... Respondents

**(By Advocate: Sh. V.S.R.Krishna, for R-1 and Ms. JyotiSingh, for R-2)**

**O R D E R**

**By Mr. Justice V.S.Aggarwal:**

For the post of Medical Officer, Recruitment Rules have been framed, in exercise of the power conferred under the proviso to Article 309 of the Constitution, for the Central Health Services Rules 1996. Rule 8 of the said Rules reads:

**“8. Filling of Duty Posts by Transfer on Deputation (including short term contract):**

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(1) Notwithstanding anything contained in rule 7, where the Government is of the opinion that it is necessary or expedient so to do, it may for reasons to be recorded in writing and in consultation with the Commission, fill not more than twenty duty posts in all, in the grades of Medical Officer/Senior Medical Officer in General Duty Sub-Cadre and Specialist Grade II (Junior Scale) in the Non-Teaching Specialist Sub-Cadre and Public Health Sub-Cadre by transfer on deputation of suitable officers holding analogous posts under the Central Government (including Ministries of Railway and Defence)/State Governments/Union Territories and by Short Term Contract of suitable officers holding analogous posts under the statutory bodies, autonomous bodies, semi-government organizations, universities or recognized Research Institutions.

(2) The period of deputation/contract shall be for a period not exceeding three years, which may, in special circumstances be extended upto five years, as the Government may think fit."

2. On 30.7.2001, Rule 8 was amended and the amended Rule, with which we are presently concerned, reads:

"3. For rule 8 of the said rules, the following shall be substituted, namely:-

**"8. Filling of duty posts by deputation (including short term contract)/absorption:**

(1) Notwithstanding anything contained in rule 7, where the Government is of the opinion that it is necessary or expedient so to do, it may for the reasons to be recorded in writing and in consultation with the Commission, fill not more than one hundred, duty posts in all, in the grades of Medical Officer or Senior Medical Officer or Chief Medical Officer in the General Duty Medical Officer sub cadre and Specialist Grade II (Junior and Senior Scale) or Specialist Grade I in the Non-Teaching and Public Health Sub Cadres and Assistant Professor or Associate Professor or Professor in the Teaching sub cadre by deputation of suitable officers holding analogous posts under the Central Government (including Ministries of Railways and Defence) or

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State Governments or Union Territories and by Short Term Contract of suitable officers holding analogous posts under the statutory bodies, autonomous bodies, semi-government organizations, universities or recognized Research Institutions.

Provided that of the one hundred posts earmarked for deputation (including short term contract) in all the four sub-cadres mentioned above, it may be open to the Central Government, in consultation with the Commission, to consider absorption against fifty posts and only officers of Central Government or State Government or Union Territories shall be eligible for being considered for appointment on absorption basis.

(2) The period of deputation/contract shall be for a period not exceeding three years, which may, in special circumstances be extended upto five years, as the Central Government may think fit.

(3) For appointment to duty posts on absorption basis, the officers shall fulfil the minimum educational and other qualifications prescribed for the posts in the Schedule V to these rules".

3. In this process, by virtue of the amendment and the proviso to Sub-Rule (1) to Rule 8, it is open to the Central Government, in consultation with the Union Public Service Commission, to consider absorption of 50 posts and only officers of Central, State and Union Territories shall be eligible for being considered for absorption. Thus, out of the posts that are filled up on deputation, absorption could not be made above to 50 posts.

4. A requisition was issued to fill up the posts in the Central Health Service on transfer on deputation/absorption basis vide

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letter of 19/20.9.2001. The requisition, by virtue of which the applications were called, reads:

“The Ministry of Health and Family Welfare has amended the recruitment rules for the Central Health Service to permit appointment to the cadre by **transfer on deputation/absorption** from amongst officers holding analogous posts under Central Government (including Ministries of Railways and Defence) or State Governments or Union Territories, and by **Short Term Contract** from the suitable officers holding analogous posts under the statutory bodies, autonomous bodies, semi-government organizations, universities or recognized Research Institutions under Central/State Governments participating units of CHS. The details of posts i.e. scale of pay of posts and allowances admissible, place of posting, qualification and experience required for the posts is at Annexure-I. The officers selected for appointment on deputation to CHS may either retain their grade pay in the scale applicable to them plus deputation allowance and other allowances as admissible in the parent cadre, OR draw their pay in the appropriate grades in CHS. The period of deputation will be governed by CHS Rules as amended from time to time. The terms of deputation will be governed by standard term of deputation as prescribed by Government of India from time to time.

2. Officer of the Central/State Government, appointed on deputation may be considered for absorption in CHS as per the provisions of CHS Rules 1996 against fifty posts earmarked for absorption after assessing his/her performance on deputation for a minimum of two years.”

5. The applicant had also applied for the post. It appears from the letter of 26.2.2002, written by the Deputy Secretary to the Govt. of India, Ministry of Health & Family Welfare to the Secretary, Union Public Service Commission that they had found 28 officers eligible for absorption in Central Health Service.

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6. The Union Public Service Commission had considered the names and recommended the case of the applicant to be absorbed from the candidates who were on deputation. It is not in dispute so far as the Union of India is concerned, who took up an objection, that she has not completed two years deputation and, therefore, she cannot be so absorbed.

7. The applicant, by virtue of the present application, claims that she has been found fit by the UPSC and thus directions should be issued to the respondents to appoint her on absorption basis as Medical Officer with consequential benefits.

8. She contends that interview was held on 8.1.2003. Five candidates were recommended including the applicant. She contends that Paragraph 2 of the letter dated 19/20.9.2001 is applicable to Central and State Governments only and does not apply to the applicant, who is a Pondicherry cadre officer. She also contends that the requirement of two years deputation is not a part of the Central Health Service Rules, 1996 as amended. Instructions cannot override the Rules. It does not prescribe that there should be two years on deputation, as a principle condition, for appointment as Medical Officer. On equitable grounds, it is the plea of the applicant that the Confidential Reports were written by her borrowing department. She had served with the respondents for more than 9 months in the year 2002-2003. The applicant had served with the respondents for one year and nine months on deputation. It is on these broad facts that the relief, as referred to above, is being so claimed.

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9. Respondent No.1 (Union of India) contested the application. It is reiterated, vide communication of 19/20.9.2001, which was clearly stated that officer of Central/State Government appointed on deputation might be considered for absorption in Central Health Services. But he/she should have two years minimum period of deputation. The applicant had applied and the Ministry had forwarded 28 cases for appointment on deputation and 28 cases for absorption in CHS. Names of only those officers were sent for absorption, who have completed two years on deputation. The applicant had not completed two years on deputation. Her claim was only sent for appointment on deputation. The UPSC recommended her case straightaway for absorption. When the matter was examined in the Ministry, with the approval of the then Minister for Health and Family Welfare, it was decided not to absorb the applicant. The UPSC had again recommended her name for absorption. In the meantime, the applicant requested that her claim should be considered even on deputation basis. It is insisted that not only the instructions are valid but also that the applicant has no right to be absorbed when she has not completed the requisite minimum period of two years on deputation.

10. The UPSC had filed a separate reply. It, of course, supports the case of the applicant. It is pointed that the Selection Committee had recommended 13 persons, out of which 4 were on deputation basis and 9 on absorption basis. It is pointed that in case of absorption, there is no condition in the recruitment rules

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for assessment of performance of the officer on deputation for two years.

11. So far as the plea that Paragraph 2 of the letter of 19/20.9.2001 is only applicable to Central and State Government employees, the same necessarily must be rejected. We have already reproduced the said letter in extenso. It clearly pointed that officers of Central and State Governments must complete two years on deputation in Central Health Service. The applicant is an employee of Pondicherry. It cannot be stated that she is not an employee of State Government. If she is a Pondicherry cadre officer, it must be taken as that she is an employee of State Government. In the context, the expression 'State' necessarily would include the Pondicherry.

12. The mainstay of the argument is that the requisition is contrary to the recruitment rules because it is contended that in the recruitment rules, there is no provision that the deputation should be for a period of two years.

13. We need not dwell into all the precedents on the subject but we refer with advantage to the well-known decision of the Supreme Court in the case of **UNION OF INDIA v. K.P. JOSEPH AND OTHERS**, AIR 1973 SC 303. The Supreme Court held that administrative instructions cannot override the statutory rules but if the rules are silent on any particular point, to fill up the gaps and supplement the Rules, administrative instructions, which are not inconsistent with the Rules, can be issued. The findings of the Supreme Court in this regard are:

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“9. Generally speaking, an administrative Order confers no justiciable right, but this rule, like all other general rules, is subject to exceptions. This Court has held in **Sant Ram Sharma v. State of Rajasthan**, (1968) 1 SCR 111 = (AIR 1967 SC 1910) that although Government cannot supersede statutory rules by administrative instructions, yet, if the rules framed under Art. 309 of the Constitution are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service.”

14. Thus, where the Rules are silent, to supplement the same, instructions can be issued which are not inconsistent with the Rules. The Rule, as amended, clearly indicates that 50 posts can be filled up from officers who are on deputation. It must be admitted that expression 'two years' does not figure there. The Rule is silent as to what is the minimum period that a person must serve in the Central Health Service on deputation before he/she becomes eligible for absorption.

15. Once the Rule is silent, indeed, it could be supplemented by instructions, which provides that she/he must perform two years period on deputation. This is not inconsistent with the amended Rules, which we have reproduced above. Consequently, it must follow that the instructions/requisition, was not inconsistent with the Statutory Rules.

16. Not only that, in pursuance of the advertisement of 19/20.9.2001, the applicant had applied being fully conscious of the fact that she does not have two years period of working in Central Health Service on deputation. At the initial stage, even she

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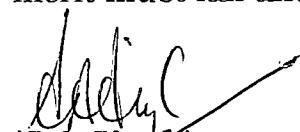
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did not challenge the said instructions. After finding that some how UPSC had, in our considered opinion, made a mistake and had recommended her case, she has taken recourse to litigation. Indeed, she applied being fully aware of the nature of the offer and, therefore, she cannot be allowed to blow hot and cold.

17. A feeble attempt has been made to state that the applicant had completed the said period. But, in our considered opinion, the same has to be seen on the date when the applicant applied for the post. She applied for the same in the year 2001 and had joined on deputation as Medical Officer only on 15.6.2001. The objection that she has not completed two years on deputation and thus, the recommendations of UPSC, which were not binding, were validly rejected.

18. No other arguments had been advanced.

19. For these reasons, the Original Application being without merit must fail and is dismissed.

  
(S.A. Singh)  
Member (A)

  
(V.S. Aggarwal)  
Chairman

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