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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 688/2004

NEW DELHI THIS 18TH DAY OF FEBRUARY 2005

HON'BLE SHRI SHANKER RAJU, MEMBER (J)
HON'BLE SHRI S.A. SINGH, MEMBER (A)

1. Dr. Sujata Sarabhai
W/o Dr. Abhitabh Gupta,
R/o B 18, First Floor,
Kailash Colony, New Delhi -18
2. Dr. Savita Arora, W/o Dr Pradeep Grover,
R/o B/127, SFS Sheikh Sarai Phase-I,
New Delhi - 110017.

.....Applicants

(By Advocate: Ms. Jyoti Singh)

Vs.

1. Union of India through Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi
2. Director General Health Services,
Office of DGHS,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi
3. Medical Superintendent, Safdarjung Hospital,
New Delhi
4. Secretary, UPSC, Dholpur House,
New Delhi

.....Respondents.

(By Advocate: Shri VSR Krishna)

ORDER (ORAL)**BY HON'BLE SHRI SHANKER RAJU, MEMBER (J)**

Applicants impugn respondent's order dated 18.12.2003 wherein their request for protection of pay and regularization has been turned down. The applicants through this OA have sought protection of pay of Rs.12,375/- plus NPA of Rs.3093/- with other allowances and accord of seniority from 19.01.2001 on ad hoc basis as Plastic Surgeon (Specialist Grade-II).

2. Applicants in response to Government of India Ministry of Health and Family Welfare advertisement dated 20.8.2000 applied for the post of Specialist Grade II Plastic Surgery having five years experience after obtaining the first post graduate degree. With the concurrence of the UPSC the applicants were appointed to the post of Plastic Surgeon on ad hoc basis in the pay scale of Rs.12000-350-16500/- with allowances on 19.12.2000 respectively. They have continued uninterruptedly. When advertisement issued by UPSC invited applications for regular appointment to the post of plastic Surgeon Grade II (non teaching sub cadre of CHS), the pay scale assigned to the post was Rs. 10000-15200/- plus NPA as a Group 'A' post. Applicants were recommended by the UPSC for appointment on selection vide order dated 06.5.2002. Subsequently Memorandum dated 10.10.2002 appointed the applicants to the post of temporary posts on officiating basis for a probation of one year with stipulation in the order that as the applicants are working as Plastic Surgeon on ad hoc basis the date of their regular appointment may be taken as 6/5/2002 when the UPSC recommended their names. Applicants accepted the terms & Conditions of the appointment and had continued on regular basis and preferred a representation for pay protection which by a bald order in consultation with the Ministry of Finance was turned down giving rise to present OA.

3. Learned counsel for the applicant contended that though the subsequent appointment of the applicants was through a direct open competitive process by the UPSC, yet it has all the elements of regularization otherwise a directly appointed person on temporary post on officiating basis on probation has to be appointed on regular basis.



After the appointment, and on joining even the appointment was ante dated which shows that applicants were regularized and by virtue of the fact that they had performed the similar duties though on ad hoc basis from 2001 as Specialist Grade II. The earlier appointment was against permanent post and as the same had involved process through UPSC the aforesaid appointment cannot be treated to be fortuitous as such the aforesaid period rendered as specialist Grade II has to be counted towards seniority.

4. In the above analogy the learned counsel for the applicants by relying upon the decision of apex court in the case of **P.V.T. Phillip Vs. P. Narasimha Reddy AIR 1993 SC 2403** and also on a decision of High Court Delhi in the case of **Kewal Krishan Vs Lalit Kala Akadami & Ors. 77(1999) DLT 110** contended that once the applicants who had been continuing on ad hoc basis in the higher scale of Rs.12000- 16500/- their pay has to be protected on personal basis.

5. On the other hand the respondents' counsel Shri V S R Krishna vehemently contested the applicants' plea and stated that having accepted the terms and conditions the applicants cannot now question the pay scale as they cannot get more pay than what is attached to the post to which the applicants have been regularly appointed.

6. Moreover it is stated that ad hoc officiation of the applicants was on the direction of the High Court, as such prior to the amending of CHS Rules 1996 Specialist Sub Cadre of CHS were to be made in the scale of pay of Rs.12000-16500 with five years experience were entitled on ad hoc basis a higher pay scale but on amendment of rules Specialist Sub cadre of CHS Grade II was bifurcated in the junior scale with pay scale of Rs. 10000-15200/- and Grade II senior scale of Rs. 12000- 16500/- which would be a promotional post on seniority cum basis.

7. On careful consideration of rival contentions of the parties we are of the considered view that as a quasi judicial authority to executive is obligated to pass reasoned and speaking orders to show application of mind. Request of the applicants for their pay protection as well as for regularization has been turned down in a very slipshod manner by a non speaking order where no reasons have been recorded. Principles



of natural justice and fair play requires a decision to be with reasons so that that it can be scrutinized if challenged ~~in the court~~ in a judicial review.

8. Moreover, we find that the respondents have appointed applicants on ad hoc basis in higher pay scale and were continued with this ad hoc officiation of the applicants continuously and thereafter they were appointed on regular basis. If it ~~is~~^{is a} case that applicants on their appointment on 10.10.2002, irrespective of their working on ad hoc basis, the regular appointment would be construed and to initiate from the date of joining or 10.10.2002, the situation would have been different. We do not find any order passed by the respondents or decision taken wherein their ad hoc officiation was terminated, rather it is strange that the direct recruitment and appointment thereof of the applicants had been effected from 06.5.2002 i.e. the date of recommendation of UPSC. Aforesaid period from 6.5.2002 to 10.10.2002 is a period when applicants had officiated on ad hoc basis.

9. If the government has taken into consideration the period of ad hoc towards regular appointment to count ~~as~~^{to} seniority than the earlier period for of ad hoc officiation falls on same footing and is required to be treated alike for which a decision was to be taken. Applying different standard and view would be hit by principle of acquiescence and waiver..

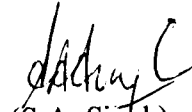
10. In so far as pay protection is concerned a temporary status Group 'C' casual labour in Railways on being repatriated to his parent department in open line where he retained lien in Group 'D' post, a full bench of this tribunal in **Aslam Khan Vs UOI 1997 – 2001 AT Full Bench Judgement 157** protection of pay in Group 'C' has been given. Protection of pay in the case where his regularization from adhoc is his right in the light of the decision of the apex court and Delhi High Court (supra).

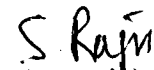
11. Waiver of fundamental right is not permissible and more particularly when the action is malafide or against law.

12. On the above analogy regularization of the applicants from back date for their right for pay protection on personal basis has to be re-examined.



13. In this view of the matter OA stands disposed of. Order dated 18.12.2003 is quashed. Matter is remanded back to the respondents for re-examination. A detailed and reasoned order shall be passed within three months from the date of receipt of copy of this order. Till then status quo of the pay scales of the applicants shall be maintained. No costs.


(S.A. Singh)
Member (A)


(Shanker Raju)
Member(J)

Patwal/