

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

CA/17/11

O.A. No. 1468/92

199

T.A. No.

3-10-97

DATE OF DECISION

Smt. S. Nanda

Petitioner

Shrim. M. Sudan

Advocate for the Petitioner(s)

Versus

VOI & Ors.

Respondent

Shri K. R. Sachdeva

Advocate for the Respondent(s)

CORAM

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

The Hon'ble Shri S.P. Biswas, Member (A)

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

*No*

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

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

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

(12)

OA No.1468/92

New Delhi this the 3rd day of October, 1997.

Hon'ble Mrs Lakshmi Swaminathan, Member(J)

Hon'ble Mr. S.P. Biswas, Member(A)

Smt. S. Nanda

... Applicant

(By Advocate : Sh. M.M. Sudan)

Versus

1. Union of India,  
Through the Secretary,  
Ministry of Health and  
Family Welfare, Nirman Bhawan,  
Maulana Azad Road,  
New Delhi-11.

2. Director General of Health Services,  
Government of India, Nirman Bhawan,  
Maulana Azad Road,  
New Delhi-110011

... Respondents

(By Advocate: Sh. K.R. Sachdeva)

ORDER

Hon'ble Mrs Lakshmi Swaminathan, Member(J)

The applicant who has been appointed by the respondents as <sup>a</sup> Public Health Nurse on ad-hoc basis with effect from 22.1.1981, has filed this Original Application seeking a direction to the respondents to regularise her services with all benefits of seniority and other consequential benefits.

2. The brief facts of the case are that the applicant has been working on ad-hoc basis as Public

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Health Nurse with effect from 22.1.1981 continuously.

She is to retire from service on 30.6.1998. Sh. M.M. Sudan, learned counsel, has submitted that the main claim of the applicant is that her continuous services although on ad-hoc basis, should be taken into account and she should be regularised. He has relied on the Full Bench Judgement of this Tribunal in Hem Raj & Ors. Vs. Union of India with connected matters, decided on 27.9.1996 (Full Bench Judgements (CAT-PB) Volume 1991-96 Page 232). At the time of hearing, the learned counsel for the respondents Shri K.R. Sachdeva, had submitted that the applicant was appointed on ad-hoc basis as she was over-aged by four years and, hence, not eligible for direct recruitment according to the rules. On this point, Shri Sudan, learned counsel, has submitted that taking into account the fact that the applicant had remained in ad-hoc service for over 16 years, the respondents may be suitably directed to exercise their power of relaxation under the recruitment rules, as the respondents have only stated that she is over-aged and in all other respects the applicant was qualified to hold the post of Public Health Nurse.

3. The respondents have submitted that the applicant has no cause of action as she was only appointed on ad-hoc basis which does not confer any right on her for regular appointment to the post. They have stated that as per the recruitment rules, the post is to be filled by 100% direct recruitment and she was appointed on ad-hoc basis initially for a period of six months or till the vacancy is filled on regular basis, whichever is earlier. Shri K.R. Sachdeva, learned counsel, has submitted that the Tribunal by interim

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order dated 3.6.1992 had directed the respondents to maintain status quo of the applicant as on that date which has been extended from time to time and that is how the applicant has continued as ad-hoc Public Health Nurse for all these years after June, 1992. To our specific query, the learned counsel could not, however, state whether the respondents had between 22.1.1981, when the applicant was first appointed on ad-hoc basis and the order of the Tribunal dated 3.6.1992, got any other person on regular basis to replace the applicant and end the term of ad-hoc appointment of the applicant as per the terms of the initial O.M. dated 22.1.1981. He relies on Union of India & Ors. Vs. Mahender Singh and Ors. (1996(8) Scale 721 SLJ 1997(2)SC 24) and Dr. Kishore Vs. State of Maharashtra and Ors. (1997(1)SLJ P-142). The learned counsel has submitted that following these decisions of the Supreme Court, the applicant has no right for regularisation of her services with effect from the date of her ad-hoc appointment.

4. From the facts given above, it is seen that although the applicant was appointed on ad-hoc basis as Public Health Nurse w.e.f. 22.1.1981, till the interim order passed by the respondents on 3.6.1992, i.e. for a period of about 11 years, the respondents themselves have continued the applicant in that capacity. Thereafter, by virtue of the Tribunal's order, the applicant has continued in that post since 3.6.1992 till date. The learned counsel for the respondents has stated that the reason why the applicant

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was initially appointed on ad-hoc basis was on account of her being overaged. It is also relevant to note that it is not the case of the respondents that in the meantime they have selected any other suitable candidate in accordance with the recruitment rules to replace the applicant. The applicant is to retire from service w.e.f. 30th June, 1998. Even after the Tribunal had granted the interim order, the respondents made no efforts whatsoever to have the interim order of 3.6.1992 reviewed or modified which can, therefore, be taken to mean that they were content in letting the status quo situation continue and are otherwise satisfied with her work. Even at present, the respondents have not submitted that the applicant is not otherwise qualified to hold the post as Public Health Nurse on regular basis, except the fact that she was overaged at the time of appointment as a direct recruit.

5. No doubt, it is settled law that a person holding a post on ad-hoc basis till a regular candidate selected in accordance with the rules is appointed, does not have a right for regularisation of the services with effect from the date of the ad-hoc appointment. However, in the present case, the appointee has continued on this post satisfactory for a long time and it is not disputed that even now no regularly selected candidate is available to replace her, and there is a power of relaxation under the rules itself. In the case of Hem Raj and Ors (<sup>supra</sup>), the Full Bench of this Tribunal after referring to a number of decisions of the Supreme Court, came to the

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conclusion that the applicants were continuing in the posts on ad-hoc basis for a number of years, as duly selected persons were not available to man those posts and had in the circumstances held as follows :-

" Normally where an employee initially appointed on regular basis in Group -D Service as per the Recruitment Rules has been given ad-hoc promotion/appointment to Group-C post purely on ad-hoc basis till a regular selection and appointment is made he cannot be regularised against the provisions of the Recruitment Rules, for, if that is done, the Recruitment Rules would be rendered nugatory. But in such cases where ad-hoc appointee continued for a long time and where no regularly selected candidate is awaiting posting and if the circumstances are such that his reversion to a group-D post after such a long officiation in a Group-C post would cause undue hardship or is inequitous, the Government or the appropriate authority as the case may be can regularise his services by making suitable exception or provision without offending the reservation policy of the State. In appropriate cases the Tribunal also can direct the Competent Authority to consider such regularisations".

That situation seems to be the same in the present case also. Therefore, although normally the applicant would not have a right to be regularised in the post against the provisions of the recruitment rules so as to render the rules nugatory, since she has continued on ad-hoc basis for over 16 years in the circumstances mentioned

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above, it will appear to be in the fitness of things if the respondents consider the applicant's case for regularisation of her services by exercising the power of relaxation, which is also provided in the rules. This may be done immediately considering the fact that she is to retire in June, 1998.

O.A. disposed of as above. No order as to costs.

  
(S.P. BISWAS)  
Member(A)

  
(SMT. LAKSHMI SWAMINATHAN)  
Member(J)