

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A.No. 2999/1997

DATE OF DECISION 07-7-98

(15)

Hakim Syed Ahmed

..... Petitioner

Sh.S.S.Tiwari, Advocate for the
Petitioner(s)

VERSUS

Union of India


..... Respondent

Sh. N.S.Mehta, Advocate for the
Respondents

CORAM

Hon ble Shri K. Mulhukumar, Member (A)
Hon ble Shri T.N.Bhat, Member (T)

1. To be referred to the Reporter or not? *yes.*
2. Whether it needs to be circulated to other
Benches of the Tribunal?


(T. N. BHAT)
Member (T)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 2999/92

New Delhi, this the 7th day of July, 1998

Hon'ble Shri K.Muthukumar, Member (A)
Hon'ble Shri T.N. Bhat, Member (J)

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In the matter of:

Hakim Syed Ahmed.
s/o Sh. S.K. Hussain.
r/o 84/4, Hauz Rani.
New Delhi.

....Applicant

(By Advocate: Shri S.S.Tiwari)

Versus

Union of India through

1. Secretary.
Ministry of Health & Family Welfare.
Nirman Bhawan.
New Delhi.

2. Director General.
Health Services.
Nirman Bhawan.
New Delhi.

3. The Deputy Director (Admn.),
DGHS/CGHS-I Section.
Nirman Bhawan.
New Delhi.

....Respondents

(By Advocate: Shri N.S.Mehta)

O R D E R

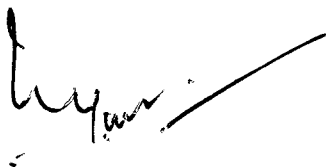
delivered by Hon'ble Shri T.N. Bhat, Member (J)-

The applicant, who has passed his Bachelor's Degree in Unani Medicine, was appointed on ad hoc basis as a Unani Physician in the Central Government Health Service (CGHS, for short) w.e.f. 28.6.1989. Prior to that he had been appointed w.e.f. 1.1.1987 for different spells of 90 days each with artificial breaks in between. However, it was from 28.6.1989 that he was taken on the strength of C.G.H.S. but on ad hoc basis in the pay scales of Rs. 2200-4000/-.

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2. The applicant now seeks regularisation of his services w.e.f. the initial date of his engagement viz 1.1.1987 and also claims all the consequential benefits including promotion etc. The applicant relies upon the judgement of this Tribunal in the case of Dr. (Mrs.) Sangeeta Narang & Ors. in which the Tribunal had directed the Government to send the service records of all the doctors working on ad hoc basis to the Union Public Service Commission (UPSC. for short) so that they can be regularised in accordance with the rules. The applicant had made several representations to the respondents but only one of his representations elicited response in the form of a letter dated 14.9.1992 wherein the respondents have stated that the applicant's case can be forwarded to the Ministry of Health and Family Welfare for promotion only after the applicant is appointed on regular basis.

3. Respondents have contested the claim of the applicant on the ground that having been appointed only on ad hoc basis with a clear stipulation that his services can be terminated at any time even without notice, the applicant cannot claim regularisation. It is further averred that when in response to the advertisement notice issued by the UPSC the applicant applied, his name was considered but he was not found fit and suitable and for this reason the UPSC did not recommend his name for appointment to the post of Unani Physician.

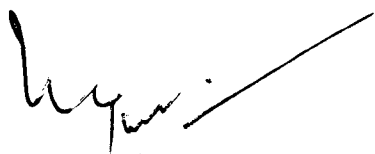


4. The applicant has also filed a rejoinder in which he has reiterated his claim for regularisation on the basis of ad hoc service for a long period.

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5. We have heard the arguments advanced by the learned counsel for the parties and have perused the material on record.

6. As already indicated, the applicant has based his claim for regularisation solely on the ground that he has been working on ad hoc basis right from the year 1987. This OA was filed in the year 1992. The applicant's claim, according to his learned counsel, would be covered by the judgement of the Tribunal in Dr. (Mrs.) Sangeeta Narang's case. But unfortunately, a copy of that judgement has not been shown to us. However, the learned counsel for the applicant has furnished to us a copy of judgement dated 15.12.1997 delivered by a Bench of this Tribunal in OA 2832/92 (Hakim Wadudul Hasan vs. UOI & Ors), on a perusal of which we find that a direction was given to the respondents to examine the claim of the applicant in that case for the post of Unani Physician in accordance with the recruitment rules notified on 7.1.1975 (and not the amended recruitment rules of 24.9.1996) and if the applicant therein is found eligible he shall be entitled to all the consequential benefits. There is no view expressed that mere continuance in service on ad hoc basis for any length of time would entitle the applicant in that O.A. to automatic regularisation.



7. According to the contents of para 4.4 of the O.A., the Tribunal had in the case of Dr. (Mrs.) Sangeeta Narang & Ors. directed the Government to send the service records of all the doctors who are working on ad hoc basis to U.P.S.C. so that their regularisation in accordance with the rules would be considered. We find that the respondents had referred the names of 9 candidates, which included the applicant's name also, to the U.P.S.C. vide letter dated 19.7.1991. In response thereto the UPSC conveyed by their letter dated 9.12.1992 that since there were only 4 vacancies out of which 2 were reserved for scheduled caste and scheduled tribe candidates, selection was held for the remaining 2 posts and 2 persons were selected, namely, Dr. Mohd. Tahir and Dr. Prabhu S. Hulinayak. We, therefore, find much substance in the contention of the learned counsel for the respondents that the applicant's case was considered even by the UPSC but he did not make the grade and was, therefore, not recommended for appointment by the U.P.S.C.

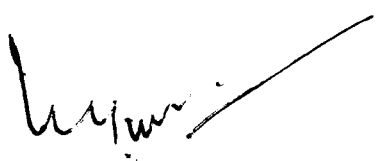
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8. Learned counsel for the applicant further placed ~~the~~ reliance upon the judgement of the Apex Court in Dr. P.P.C. Rawani & Ors. vs. Union of India & Ors., reported in (1992) 1 SCC 331. We have carefully gone through the aforesaid judgement and do not find anything therein to support the case of the applicant. The aforesaid judgement has been delivered in a Miscellaneous Petition filed by the petitioners and some intervenors in a case already disposed of by the Hon'ble Supreme Court on 9.4.1987 in which some

directions had been given. What were those directions are not clear from a reading of the judgement in the Misc. Petition (supra). It appears that the Union of India had faced certain difficulties in giving effect to the judgement of the Apex Court dated 9.4.1987 and the Apex Court in the Misc. Petition clarified the same. The difficulty arose only in respect of the inter-se seniority to be given to the petitioners in the main Writ Petition and those who had already been appointed. While clarifying the earlier judgement the Apex Court, in order to ensure that there was no disturbance of the seniority and the promotional prospects of the regularly recruited doctors, directed that there will be a separate seniority list in respect of the original appellants and their promotions shall be regulated by that separate seniority list and such promotions will only be in supernumerary posts, to be created.

9. The above observations do not have any application to the instant case.

10. Another judgement relied upon by the applicant's counsel is the one delivered by the Apex Court in Dr. M.A. Haque & Ors. vs. Union of India & Ors., reported in (1993) 2 SCC 213. That case related to some Medical officers who had been recruited by the Railways on ad hoc basis pending regular recruitment to the posts through the UPSC. Although, from time to time the UPSC had recruited candidates on regular basis there remained some vacancies unfilled, either because the doctors recruited were less in number than the



number of vacancies or some of those who were selected did not join the services, or between the date of advertisement by the UPSC and that of the empanelling, some more vacancies occurred. Whatever might be the reasons, the fact was that some vacancies always remained unfilled, with the result that every time the ad hoc Medical Officers and others like them were continued on ad hoc basis as a stop gap arrangement till the next recruitment by the UPSC. In the meantime some of them in fact appeared before the UPSC in pursuance to the advertisement notices issued from time to time and were selected and others like the petitioners in that case either failed to be selected or did not care to appear but they continued to serve on ad hoc basis. Writ petitions were filed in the Apex Court for the regularisation of their services and by the judgement order dated 24.9.1987 passed by the Apex Court in Dr. A.K.Jain vs. Union of India, reported in 1988 SCC (L&S) 222, the Apex Court directed that the services of all doctors appointed on ad hoc basis upto 1.10.1984 shall be regularised in consultation with the UPSC on the evaluation of their work & conduct and on the basis of their confidential reports in respect of a period subsequent to 1.10.1982. The Railways were given the liberty to terminate the services of those who are not so regularised on recommendation of the UPSC. The petitions of those doctors who had been appointed subsequent to 1.10.1984 were dismissed. Writ petitions, subsequent to the decision in the case of Dr. M.A.Haque & Ors.(Supra) came to be filed by those who had been regularised in pursuance to the earlier judgement dated 24.9.1987 in Dr. A.K. Jain's case

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claiming seniority over some other persons. The question of fixing of seniority had been kept pending in view of the judgement of the Constitution Bench of the Apex Court in Direct Recruit Class-II Engineering Officers Association Vs. State of Maharashtra, reported in (1990) 13 ATC 348. In the aforesaid Direct Recruits' case the Constitution Bench laid down certain guidelines for fixing seniority, one of the guidelines being that once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation and, as a corollary to the above rule, where the initial appointment is only ad hoc and not according to rules and is made as a stop-gap-arrangement, the officiation in such post cannot be taken into account for considering the seniority. Another guideline laid down was that if the initial appointment is not made by following the procedure laid down by the rules but the appointee continues on the post uninterruptedly till the regularisation of his service in accordance with the rules the period of officiating service will be counted.

11. Examining the claim of the petitioners in Dr. M.A. Haque's case the Apex Court held that since the petitioners had admittedly not been regularly appointed through the UPSC according to the rules but were directed to be regularised by following the procedures laid down by the Apex Court, it was obvious that they were not appointed to their posts according to the rules and, therefore, under no circumstances

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would they fall within the scope of the guidelines laid down in the Direct Recruits' case. In the instant case, as already indicated, although the name of the applicant was considered by the UPSC, his name was not recommended, for the obvious reason that he was not found suitable. Therefore, the guidelines laid down in Direct Recruits' case (supra) would not be attracted.

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12. As in the instant case so in the case of M.A. Haque (supra) reliance was placed by the petitioners upon the decision of the Apex Court in Dr. P.P.C. Rawani vs. Union of India and it was urged on behalf of the petitioners in that case that the course adopted by the Apex Court in Rawani's case (supra) should be followed. After considering the rival contentions, the Hon'ble Supreme Court held:

" We have gone through the said decision and have anxiously considered whether the course adopted there should be adopted in the present case. We are conscious of the fact that the petitioner-applicants have been serving the Railways from the year 1968. It is also possible, as contended on their behalf, that many of the outside direct recruits have joined the services long after 1968 and some of them might have even taken initial instructions from the petitioner-applicants. We are also conscious of the fact that candidates in service have a disadvantage as against the fresh candidates in the tests particularly when they face the tests after a long lapse of time. As against this, however, we cannot lose sight of the fact that the recruitment rules made under Article 309 of the Constitution have to be followed strictly and not in breach. If a disregard of the rules and the by-passing of the Public Service Commissions are permitted, it will open a back-door for illegal recruitment without limit. In fact this Court has, of late, been witnessing a constant violation of the recruitment rules and a scant respect for the constitutional provisions

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requiring recruitment to the services through the Public Service Commission. It appears that since this Court has in some cases permitted regularisation of the irregularly recruited employees, some Governments and authorities have been increasingly resorting to irregular recruitments. The result has been that the recruitment rules and the Public Service Commissions have been kept in cold storage and candidates dictated by various considerations are being recruited as a matter of course. What is further, in the present case, some of those like the petitioner-applicants who were initially recruited on ad hoc basis, have exerted themselves and taken pains to appear for the tests before the UPSC and have enrolled themselves through regular channel unlike in Dr. Rawani case..... We are, therefore, of the view that the direction given in Dr. Rawani's case has to be confined to the special facts of that case and cannot be extended to other cases. In any case, this court should not give any such direction to the Railways. If, however, the Railways decide to follow that course, they can do so and nothing prevents them in doing it. We would rather refrain from creating a precedent by giving such directions."

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13. Thus, the Apex Court refused to apply the directions in Dr. P.P.C. Rawani's case to other cases and on facts identical to those of the instant case the Apex Court further held that the guidelines laid down in Direct Recruits' case (supra) were also not attracted.

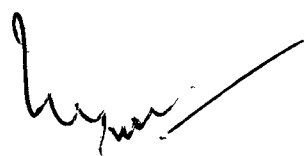
14. We may at this stage refer to some other judgements delivered after the judgement of the Apex Court in the Direct Recruits' case. In Keshav Chander Joshi & Ors. Vs. Union of India & Ors. [1992 Suppl.(1) SCC 272], the Apex Court explained the judgement in Direct Recruits' case (supra) and held that proposition (B) laid down in Direct Recruits case was based on the earlier judgement of the Apex Court in

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Narender Chadha's case and that it presupposes deemed relaxation of recruitment rules. It was further held that where relaxation is subject to prior fulfilment of certain conditions, which are not satisfied, this proposition cannot be invoked. In such circumstances, according to Hon'ble Judges constituting the Bench, corollary of proposition (A), already referred to in para 10 of this judgement, would become applicable and benefit of ad hoc service would be inadmissible. Amplifying this principle it was held that only that service would count for seniority which an employee puts in after he becomes a Member of the relevant Service and for this, appointment must be according to rules and within the prescribed quota. Unless these conditions are satisfied, the appointment has to be treated as ad hoc, which cannot be counted for seniority or promotion.

15. Proceeding further, the Hon'ble Supreme Court in the K.C. Joshi judgement (supra) held that if the initial appointment is not made by following the procedure laid down by the rules, but the appointee continues in the post till the regularisation of his service in accordance with the rules, the period of officiating service will be counted, but in that case there should be some power vested in the appointing authority to relax the recruitment rules and the power of relaxation should also be exercised in accordance with the rules provided ^{-ing} for relaxation.



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16. The other judgement which we may cite in support of our view is the one delivered by a Full Bench of this Tribunal in the case of Ashok Mehta & Ors. vs. Regional Provident Fund Commissioner & Ors., reported in (1993) 24 ATC 493. In para 9 of the judgement, the Full Bench has held:

"Principle 'B' laid down by the Supreme Court in Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra will apply as explained by the Supreme Court in Keshav Chandra Joshi v. Union of India only to cases where the initial appointment is made deliberately in disregard of the rules and the incumbent allowed to continue in the post for long periods of about 15 to 20 years without reversion till the date of regularisation of service in accordance with rules, there being power in the authority to relax the rules".

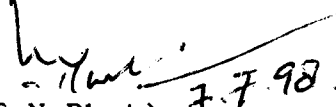
17. In the instant case, as already indicated, the applicant had, till the time of filing this O.A., worked on ad hoc basis just for 2 or 3 years after 1989 when he was taken on the strength of C.G.H.S. It is also not the case of the applicant that there was any relaxation clause in the recruitment rules so as to attract the application of the judgements of the Apex Court in Narender Chadha and Direct Recruits cases. The ad hoc appointment of the applicant has also not culminated in regularisation of his services. The Direct Recruits case judgement would, therefore, not be of any help to him.

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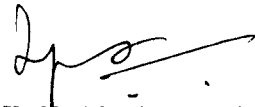
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18. In view of the above, we find ourselves unable to agree with the contentions made by the applicant's counsel that the applicant's continuance on ad hoc basis for two or three years after 1989 would by itself be reason enough for the regularisation of his service, especially so when the applicant's name was considered by the UPSC but was not recommended.

19. In the result, we find no merit in this O.A. which is accordingly dismissed, but without any order as to costs.


(T. N. Bhat)
Member (J)

7.7.98.


(K. Muthukumar)
Member (A)

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