

Central Administrative Tribunal  
Principal Bench: New Delhi

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OA No. 2343/93 Of ..... decided on 4.11.1997

Name of Applicant: Dr. Ashok Kumar Taneja & 23 others

By advocate: ... Shri M. L. Ohri

Versus

Name of Respondents: Employees State Insurance Corporation, etc; .....

By advocate: ... Shri G. R. Nayyar

Coram


Hon'ble Mr. Justice K. M. Agarwal, Chairman  
Hon'ble Mr. N. Sahu, Member (A)

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

Y

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

N

  
(N. Sahu)  
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 2343 of 1993

New Delhi, this the 4<sup>th</sup> day of November, 1997

Hon'ble Mr. Justice K.M. Agarwal, Chairman  
Hon'ble Mr. N. Sahu, Member (Admnv)

1. Dr. Ashok Kumar Taneja, S/o Shri Dharambir,  
R/o B-5, Harsh Apartment, Piragarhi, Delhi.
2. Dr. Alka Gupta, W/o Dr. R.K. Gupta, R/o House  
No. 614, GH-13, Paschim Vihar, Delhi.
3. Dr. Balraj Bhandari, S/o Dr. K.S. Bhandari,  
R/o B-13/21, Double Storey Qtr., Devnagar,  
Karol Bagh, New Delhi-110 015.
4. Dr. Girish Arora, S/o Shri V.D. Arora, R/o 40-CLIG  
D.D.A. flat, G&J.U. Block, Pritampura, Delhi.
5. Dr. Abha Jain, W/o Dr. Nagesh Jain, R/o M.I.G.  
-33-C, Pocket-C, Ashok Vihar, Phase-3, Delhi.
6. Dr. Shyam Sunder Gupta, S/o D.R. Gupta,  
R/o AI/216-A, Lawrence Road, Delhi.
7. Dr. Sudhir Bhushan, S/o Dr. I.D. Khatlar,  
R/o C-215, Anand Vihar, Delhi-110 092.
8. Dr. N. Pathak, S/o Shri K.M. Madhukar, R/o 192,  
Govind Khund, V.k. Nagar, Delhi-110 093
9. Dr. Bharti Jain, W/o Shri Krishan Kumar,  
R/o 12, Anamika Appartment, Patpad Ganj, Delhi.
10. Dr. Sunil Deshpande, S/o Shri P.D. Deshpande  
R/o 139-B, Pocket-F, Mayur Vihar-II, Delhi-110091.
11. Dr. Raj Kumar, S/o Shri L.M. Ram, R/o C/o Dr. Hira  
Lal, D-282, Jain Kalyan Road, Bhajanpura, Delhi.
12. Dr. Arun Kumar Varshney, S/o Shri Gyan Prakash,  
C/o Dr. P.C. Gupta, R/o 16, Type-IV, E.S.I. Colony,  
Basai Darapur, Delhi -110 015.
13. Dr. Shashi Gupta, W/o Dr. B.B. Gupta, R/o 2A/40,  
Ramesh Nagar, Delhi.
14. Dr. D.K. Jain, S/o late Shri Om Prakash Jain,  
R/o MD 43, Vishaka Enclave, Pritampura, New Delhi
15. Dr. Sanjay Kumar Pal, S/o late Shri J.C. Pal,  
R/o A-54, Chitranjan Park, New Delhi-110 019.
16. Dr. Ashok Kumar, S/o Shri Piara Singh,  
R/o D-2A/56C, Janakpuri, New Delhi-110058.
17. Dr. Imtihan Hussain, S/o N. Zamar,  
R/o 44/13, Ashok Nagar, Delhi.
18. Dr. Ranjini Chugh, W/o Dr. Jitender Chugh,  
R/o WZ-48, Rattan Park, Delhi.

19. Dr. Latha N. Kamat, W/o Dr. N.V. Kamat, R/o 121-B, Sunder Apartment, Gh-10, Paschim Vihar, Delhi.
20. Dr. Lilly Aggarwal, W/o Dr. R. K. Aggarwal, R/o B-2/12, Tibbia College, Karol Bagh, New Delhi.
21. Dr. Ravi Bhushan Gupta, S/o Shri Samar Singh, R/o House No. 7007, Gali Tautiwali, Pahari Dhiraj, Delhi - 110 006.
22. Dr. Mamta Singh, W/o Dr. Umed Singh, R/o 28-A, Sunder Appartments, Paschim Vihar, Delhi
23. Dr. Neelam Anand, W/o Dr. P. K. Anand, R/o 12-A, MIG Pocket-C, Phase-III, Ashok Vihar, Delhi-110052
24. Dr. Parveen Ghulani Choudhry, W/o Dr. Sanjay Choudhry, R/o 4802, Bharat Ram Road, 24 Darya Ganj, New Delhi.
- APPLICANTS

(By Advocate Shri M.L. Ohri)

**Versus**

Employees State Insurance Corporation,  
through Director General, Panchdeep Bhawan,  
Kotla Road, N. Delhi-110 002

- RESPONDENTS

(By Advocate Shri G.R. Nayyar)

**J U D G M E N T**

**By N. Sahu, Member (Admnv) -**

The order sheet entry on 14.5.1996 (para 2)  
reads as under-

"After hearing O.A.No.2343/93 for some time Shri Ashok Aggarwal prayed for permission to amend the relief clause in the O.A., in the light of submissions made during hearing that applicants would not press for grant of seniority from the date of ad hoc promotion of the applicants. Shri Nayyar stated that respondents would have no objection to the prayer of the applicant to amend the OA, in the light of the submissions made by Shri Aggarwal above, and further stated that the respondents would also have no objection to grant applicants' retiral benefits from the date of their ad hoc appointment. Shri Aggarwal is granted 4 wks. time to file MA to amend the OA-2343/93, which should be listed on 31.7.96."

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2. MA 2143 of 1996 containing an application on behalf of the applicants for leave to amend the above OA was filed on 1.8.1996. On 27.9.1996 the learned counsel for the respondents stated that he received a copy of the amended O.A. and was allowed two weeks' time to file the reply and two weeks further time to file rejoinder. Thereafter, the O.A. was dismissed for default and non-prosecution on 16.12.1996. It was restored on 6.2.1997. There was an M.A. bearing no.991/97 for early hearing and accordingly this case was heard by us on 2.9.1997.

3. The prayer for grant of seniority from the date of adhoc promotion of the applicants having been given up, the reliefs that remain for consideration are the benefits by way of annual increments, arrears of salary, time bound promotion in the scale of Rs.3000-5000 after 4 years of service, and other benefits like medical benefits, L.T.C. allotment of house accommodation & retiral benefits from the date of appointment in ad hoc service. In disposing of these claims, it will be necessary also to refer to the seniority claim.

4. The respondents have filed their counter on 6.1.1995. However, they have not chosen to file their counter to the amended O.A..

5. The applicants claim that the respondents vide their memorandum dated 20.2.1984 allowed seniority to as many as 134 Insurance Medical Officers (in short 'IMOs') Grade-II from the date of their

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initial ad hoc appointment. These 134 IMOs were subsequently regularised. This benefit was conferred on the basis of a judgment delivered by the Delhi High Court in Civil Writ Petition No.5 of 1981 on 13.8.1982 reported in 1983 Lab.I.C.910. An SLP filed against the above order of the Delhi High Court was dismissed by the Hon'ble Supreme Court on 25.1.1983. It is stated that apart from these 134 IMOs several other IMOs were regularised by granting seniority from the date of adhoc appointment. The applicants allege discrimination as the respondents have treated them differently from those of 134 IMOs. They claim recognition of the entire service because of continuous work after the initial appointment on adhoc basis.

6. The admitted facts in brief are that the applicants were appointed on a purely contractual term for a period of six months. After the contract, the applicants were dismissed. The respondent - Corporation advertised the posts of IMO Grade II. The applicants again applied for the same and they were selected and offered the posts as fresh entrants.

7. The claim of continuous service is denied by the respondent on the ground that the applicants were appointed locally on a purely temporary basis as a stop-gap arrangement pending the availability of regular candidates selected through Union Public Service Commission (in short 'UPSC') under Section 17(3) of the Employees State Insurance Act, 1948. The respondent states that comparison of the cases of IMOs

who were allowed seniority in 1984 is totally misplaced because the facts of the applicants' cases are on a different footing. The services of the applicants seeking regularisation were once dispensed with. The judgment of the Delhi High Court on the basis of which the applicants claimed regularisation was on different facts. Thus, the respondent's claim is that the ad-hoc service rendered before regular appointment does not count for seniority or other benefits except those that are stated in their orders of adhoc appointment.

8. The learned counsel for the applicants cited two decisions of this Tribunal in the cases of Dr.(Mrs) Prem Lata Choudhari Vs. Employees State Insurance Corporation, (1987)3 ATC 879 and Dr.(Mrs) Sangita Narang and others Vs. Delhi Administration, etc., (1988) 6 ATC 405.

9. In the case of Dr.(Mrs) Prem Lata Choudhary (supra) the point decided hinged on an interpretation of Section 17 of Employees State Insurance Act, 1948 (hereinafter to as 'the ESI Act'). This Tribunal directed the Government to continue the petitioners without any break and spells of break are to be treated as leave for the purpose of continuity in service. The second point decided related to parity of scales with other regular employees doing similar work and other benefits like leave, maternity leave and increments and it has been held that such parity has to be accorded retrospectively from the date of adhoc appointment. It is necessary to briefly note

the facts of this case. She received an offer of appointment dated 22.6.1984 from the Directorate (Medical), Delhi Employees' State Insurance Scheme, offering the post of a Junior Insurance Medical Officer Grade-II for a period of 90 days and also indicating that after every 90 days there would be a break of one day and the total period of service would not exceed 9 months. She was asked to appear for an interview before a selection committee on 6.7.1984. After she appeared in the selection, she was appointed again on a temporary and ad hoc basis for a period of 90 days on a fixed pay of Rs.650/- per month on 14.11.1984 with the clear terms and conditions that she would not be entitled to the facilities of any kind of leave, , medical care, travelling allowance, private practice, and residential accommodation besides other restrictions. She accepted those conditions and joined on 19.11.1984 and continued upto 16.2.1985. With a two days' break she was re-appointed on adhoc basis from 19.2.1985 to 18.5.1985. She was similarly re-appointed for a third time after a 3-day break from 21.5.85 to 17.8.85. For the fourth time again she was called but refused the appointment on the ground that this would violate proviso to Section 17(3) of the ESI Act. It is against this refusal and the fixed pay of Rs.650/- per month she had moved this Tribunal. The respondents' claim was that most of the applicants including the applicant who were selected by the UPSC have been regularised. The decision in Dr.(Mrs) Prem Lata's case hinged upon interpretation of Section 17 of the ESI Act. The Tribunal held that a reading of Section 17 ibid does not warrant that there should be

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breaks given after every 90 days and that there is no barrier for appointing continuously for a period of every one year. The Hon'ble Supreme Court in ESI Corporation Vs. Dr.(Mrs) Prem Lata Chaudhari and others, Civil Appeals Nos. 2171-91 of 1989 decided on 9.10.1994, held as under:

"The remaining respondents have all been appointed on regular basis as a result of the advice tendered by the Union Public Service Commission. Nothing more need be done in this petition.

Mr.KTS Tulsi has contended that the interpretation placed by the Tribunal on Section 17(3) of the

Employees State Insurance Corporation Act, 1948 is not tenable.  
Corporation Act, 1948 is not tenable.  
Corporation Act, 1948 is not tenable.  
According to Mr. Tulsi, the provisions of the said section are not applicable to an officiating or temporary appointments made for a period not exceeding one year. We see force in the contention of the learned Additional Solicitor General but in view of the facts and circumstances of this case, it is not necessary to go into the same.  
(emphasis supplied)

10. We note that the Apex Court expressed doubts on the interpretation placed by the Tribunal with regard to Section 17(3) of the ESI Act, but as the doctors were eventually regularised, it found no point to be decided in the Civil Appeals. Thus, no point of law has been decided in Dr.(Mrs) Prem lata Chaudhari's case.

11. The learned counsel for the applicants also relied on a decision of the Apex Court in the case of



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dealt with the case of Assistant Divisional Medical Officers appointed on adhoc basis initially but later selected by the UPSC and regularised. In that case their Lordship distinguished the decision of the Apex Court in the case of **Dr.M.A.Haque & others Vs.Union of India and others**, (Interlocutory Application No.1 of 1992 in Writ Petition No.1165 of 1986) decided on 18.2.1993 on the ground that in Dr.Haque's case the petitioner did not appear in any written examination or interview and had not gone through any process of selection by the UPSC; but in P.Srinivasulu's case, as he was selected through the UPSC and regularised his adhoc service was counted towards seniority. This was approved by the Apex Court.

12. After Dr.(Mrs.)Prem Lata Choudhary's case was decided there were two other decisions of this Tribunal in the cases of **Shri (Dr.)Surender Singh Negi Vs.Employees State Insurance Corp.**, O.A.581 of 1987 decided on 10.9.1992 and **Dr.(Mrs.)Sunita Goel Vs.Union of India through the Employees State Insurance Corporation**, O.A.No.1048 of 1987 decided on 11.12.1992. In the both the O.As. the Tribunal took notice of the decision in the case of Dr.(Mrs) Prem Lata Choudhari (supra) and dismissed the claims of the applicants relying on a decision of the Hon'ble Supreme Court in the case of **Director, Institute of Management Development U.P. Vs. Smt. Pushpa Srivastava**, JT 1992(4) SC 489. That was a case dealing with the appointment on ad hoc basis for a contractual period of six months. Their Lordships held that in such situation violation of Articles 14 and 16 of the

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Constitution of India does not take place because the appointment was for a specific contractual period. Because of this Apex Court's decision, Dr. (Mrs) Prem Lata Chaudhari's case was not considered and, therefore, termination was not interfered with.

13. The issue, therefore, that is focussed for our consideration is whether even if seniority is not given can the applicants be considered for other service benefits like grant of leave, increments, time bound promotion etc. counting the adhoc service as part of regular service.

14. With regard to the rights of ad hoc appointees, besides the decision of Smt. Pushpa Srivastava's case (supra) there are a number of other decisions available. In the case of **P.D. Aggarwal Vs. State of U.P.**, AIR 1987 SC 1676 it was held that services of purely ad hoc employees or employees on purely officiating basis or employees purely for a temporary period in the cadre of Assistant Engineers in PWD cannot be reckoned for determination of their seniority as they are not members of the service as per the service rules. In **State of Tamilnadu & another Vs. Paripoornam**, AIR 1992 SC 1823 the same view was taken. In the case of **Union of India Vs. Prof. S.K. Sharma**, AIR 1992 SC 1188 in which two earlier decisions were referred to namely **D.N. Agarwal Vs. State of M.P.**, AIR 1990 SC 1311 and **Direct Recruit**

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Class II Engineering Officers' Association Vs. State of Maharashtra, (1990)2 SCC 715=(1990)13 ATC 348 =AIR 1990 SC 1607 the Apex Court has held as under:-

"In the circumstances mentioned above, we are clearly of the view that the respondent was not entitled to claim his seniority on the post of Professor (Senior Scale) from 28.9.1969 and the appellants had rightly counted his seniority from 29.9.1973 when he was regularly selected in accordance with the rules on the said post. In the result, we allow this appeal, set aside the judgment of the Tribunal, dated 3.3.1988. In the circumstances, we direct no order as to costs."

15. This can be viewed also from another angle. In the case of S.K.Saha Vs. Prem Prakash Agarwal & others, JT 1993 (6)SC 441 the Apex Court laid down that regularly selected persons stand on a better footing and they will rank senior to the persons who have been regularised on a subsequent date. Regularisation should be prospective and should not be retrospective to take away the vested rights which have accrued in favour of the duly selected persons. Thus all the Apex Court decisions have followed the decision in the case of Direct Recruit Class II Engineering Officers' Association (supra) that ad hoc appointment of a temporary or stop gap nature cannot be taken into account for the purpose of seniority.

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✓ To give benefit of such service will be contrary to the equality clause enshrined under Article 14 of the Constitution.

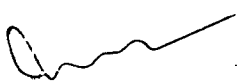
16. In this background of the law laid down by the Apex Court, we have to examine the claims in the amended O.A. for conferring certain other benefits. In O.A. 951 of 1997 decided on 6.5.1997, the second Dr. (Mrs) Prem Lata Choudhary's case, a Division Bench of this Tribunal held that she is not entitled to count her ad hoc service for purposes of seniority. The same order no. 446/95 dated 15.6.1995, placed before us at the time of hearing, was referred to wherein Dr. (Mrs) Prem Lata Choudhary was given certain other benefits. This Tribunal said as the respondents already passed this order, their action cannot be faulted with and did not find any reason to interfere with the same. With regard to the applicants in this O.A. also if the respondents on their own want to grant retiral benefits and other benefits for the adhoc service we would not interfere; but since we are asked to decide this issue of grant of these benefits we are afraid we cannot agree to these claims. The applicants want annual increments, leave benefit, time bound promotion, medical benefits, LTC, allotment of accommodation and retiral benefits. These are all the benefits that accrue only when the person is considered regularly appointed from the date of initial ad - hoc appointment. By granting these benefits we will be ignoring the contractual nature of

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the job and the termination made after every 90 days or six months. These benefits accrue only to a person who is a regular member of the service. The difference in the nature of appointment between a regular appointee and ad hoc appointee will be evident from a comparison of the terms of appointment in both the situations. As mentioned above in a contract appointment the appointee was denied private practice, travelling allowance for joining the post, medical care, LTC, leave etc. but in the case of a regular employee all these restrictive conditions and clauses do not exist. Para 4(c) of the counter affidavit clearly states that the applicants were dismissed and were re-appointed after some time. These were not specifically denied in the rejoinder. As the applicants were dismissed and as they have not impugned those dismissal orders, the applicants cannot compare themselves with the appointees regularised during 1984. We are of the considered view that granting leave, promotion benefits and other benefits prayed for would be inconsistent with the view taken that a contractual service cannot count for total length of service; and that appointees of such service are not members of the service and they cannot be given seniority over the regularly selected persons. Therefore, we are not in a position to agree with the submissions for grant of these benefits. The moment the applicants accepted their contractual




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nature of appointment, all the conditions in the contract are applied to them. We, therefore, hold that there is no merit in the relief claimed even in the amended O.A.

17. In the result, the O.A. is dismissed. The parties shall bear their own costs.

  
(K.M. Agarwal)  
Chairman

  
(N. Sahu)  
Member (Admnv)

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