

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 1st day of July 1997.

Original Application no. 1066 of 1996.

Hon'ble Dr. R.K. Saxena, Judicial Member
Hon'ble Mr. S. Dayal, Administrative Member.

Smt. Heera John, W/o Sri Vinod Masih, R/o 185/A Chandar Nagar
Harthala Colony, Moradabad.

... Applicant.

C/A Shri S. Dwivedi
Shri A. Dwivedi

Versus

1. Union of India through the Secretary Ministry
of Communication, Govt. of India, New Delhi.
2. The Post Master General, Bareilly Zone, Bareilly.
3. The Senior Superintendant of Post Offices, Moradabad
Division, Moradabad.

... Respondents

C/R Km. Sadhana Srivastava.

O R D E R(Oral)

Hon'ble Dr. R.K. Saxena, Member-J.

The applicant Smt. Heera John has approached
the Tribunal to seek the relief that the respondents be
directed to order regular appointment of the applicant
with effect from 21.10.87 with all consequential benefits.

2. Briefly stated the facts of the case are that there was one vacancy for the post of Nurse under the respondents nos. 2 and 3. In order to fill the vacancy, the names were called from the employment exchange, Moradabad. The name of the applicant ^{was also} sponsored along with other persons. It is contended that the procedure for regular appointment was followed and the applicant was finally selected for the post of Nurse. The appointment letter dated 20.10.87 annexure A-6 was sent with the stipulation that the applicant was engaged on short term contract basis for a period of 29 days with effect from 21.10.87 to 19.11.87 on remuneration of Rs. 1400/- plus usual allowances. It was, however, further mentioned that the engagement did not confer her any right for regular absorption. It appears that this process of issuing appointment letter after every 29 days is continuing for the last 10 years. The artificial break of one day is shown. The applicant approached the respondents through representations for regularisation, but with no effect. Hence this OA.

3. The respondents have contested the case. It is averred in the counter-affidavit that there was only one post of Nurse which was falling vacant. The posts of medical officer (Male) and (Female) were also lying vacant and, therefore, the necessity of appointing at least one Nurse had arisen. It appears from the pleadings in the counter-affidavit that after the names were called from the employment exchange and the process of selection was gone through, some doubt had crept in the mind of the respondent

no. 3, if there was any ban on appointment. Consequently, the letter annexure CA-3 dated 19.10.87 was sent to the Assistant Post Master General (Staff), Lucknow. Because no reply was received and the necessity of appointing a Nurse continued, the order of appointment as indicated in annexure A-6, was issued. At the cost of repetition¹ it may be stated that this process of issuing appointment letter after expiry of each term of 29 days continued from 1987 to this date. The learned counsel for the applicant points out that 218 times the orders of appointment and termination of the applicant, were issued.

4. The contention of the respondents is also to the effect ^{that} of the appointment which was given to the applicant on first date as well as on subsequent dates of appointment, was on ad-hoc nature. It is, therefore, contended that the applicant can not claim any regularisation on the said post. Ultimately it is averred that OA be dismissed.

5. The applicant has filed RA retreating the facts as were mentioned in the OA.

6. We have heard Shri S. Dwivedi learned counsel for the applicant and Km, Sadhana Srivastava learned counsel for the respondents. We have also gone through the records.

7. Some facts of the case are admitted to both the parties. These facts are that there existed one post of Nurse in the P & T dispensary at Moradabad and said post was lying vacant. It is also an admitted fact that necessity of appointment of Nurse was felt and the names of eligible

candidates were called from employment exchange, Moradabad. Along with other persons the names of the applicant was also sponsored. She was directed by respondent no. 3 to produce the necessary documents for her name being considered. There is no dispute that the applicant accordingly produced testimonials and other necessary documents and finally she was selected. There is no averment on behalf of the respondents that the proper procedure of selection was not adopted. The presumption^{is}, therefore, would be that there was no illegality in the procedure^{which} was followed for the appointment of the Nurse and culminating in the final selection of the applicant. This fact is also not in dispute that she was given appointment for the first time on 20.10.87 and still in the year 1997 she was working on the same post. The modus operandi adopted by the respondents was that every order of appointment was given for 29 days after showing break of one day, another appointment letter was issued. Simultaneously orders of termination were also sent for adoption of such method. We had put certain questions^{to} the learned counsel for the respondents who disclosed that because there was doubt in the mind of the respondent no. 3 about the ban of regular appointment, and at the same time the necessity of keeping one Nurse continued, this modus operandi was adopted. Despite^{and} the letter which was written by the respondent no. 3^{having} been brought on record to know if there was any ban on regular appointment, no reply was given to him and also no pleading to that effect was taken in the counter-affidavit. It is a material^{point to note} that the letter was written to the Assistant Post Master General (Staff), Lucknow, but the fact remains that Union of India is one of the respondents and Post Master General, Bareilly

Zone is also ~~x~~ respondents. It was expected of these respondents to have come forward with specific plea that there was a ban on regular appointment and, therefore, the selection of the applicant for the post of Nurse was not valid. In view of the silence maintained by the respondents on this point, we are left with no other option except to infer that there was no such ban. Even if it is assumed for the sake of argument that the ban on regular appointment persisted, it was mockery of such a ban, when the appointment was given to the applicant for every 29 days. She continued on such process of appointment for the last 10 years. No doubt, it has been urged on behalf of the respondents that because the appointment of the applicant was only of ad-hoc nature, she did not acquire any right to continue on the post or to seek regularisation thereon. We are not convinced with this argument. It is really surprising, even if it was taken to ^{be} the ad-hoc appointment, and baffling to understand as to why this applicant alone was available to the respondents for appointment after each period of 29 days. There is no dearth of the eligible candidates in the country. What appears is that actually the applicant was selected for regular post but because a doubt was created in the mind of the respondent no. 3, and no reply to his letter was received by him, he adopted a method of showing her an appointee on short term basis.

8. If the argument of the learned counsel for the respondents that the applicant was only ad-hoc appointee and had no right to seek regularisation, is accepted, it would mean that person who was selected through legal procedure and worked for last 10 years, should be thrown out. In this

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connection, learned counsel for the applicant has brought to our notice the memorandum dated 7.6.88 which dealt with recruitment of casual worker and persons on daily wages, and the policy of reviewing their cases. The first guideline is that the persons on daily wages should not be recruited for work of regular nature. Here in this case, the post of Nurse is a sanctioned post and a Nurse is required to discharge duty of regular nature. Despite this memorandum, the respondents, if it is accepted that the appointment of the applicant was on ad-hoc nature, followed this guideline in violation. We have already mentioned that this is not a situation here because the appointment of the applicant was made on regular basis but because of the said doubt of ban, all this had happened. Learned counsel for the respondents, however, attempted to make a distinction between a casual worker or an appointee of an ad-hoc nature. In our opinion, the regular nature of work can neither be entrusted to daily wage^a nor to an ad-hoc appointee. This office memorandum further speaks that the case^a of such appointment, should be reviewed by the department within stipulated period of time. For the department of P & T, this period of review is one year. No doubt the applicant is working for the last 10 years but there is no pleading that any such review had ever taken place. The result, therefore, is that actually the respondents never treated the applicant either as casual worker or ad-hoc appointee, which position has been vigorously asserted. In our opinion, she was appointed to the post of Nurse on regular basis after conducting the selection in the manner which was prescribed.

9. On the consideration of the fact and circumstances

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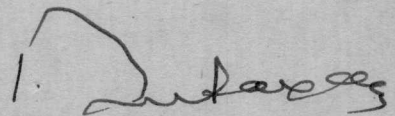
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of the case, we find merit in this case of the applicant. We accordingly direct the respondents to regularise the services of the applicant on the post of Nurse with effect from the date of her first appointment or from ^{such} ~~said~~ date as may be determined in accordance with the rules. We may clarify that by said other date, we mean that if there is any period of probation, the date may be fixed accordingly. The applicant shall also be entitled of all consequential benefits on her being regularised ~~on~~. The OA is disposed of accordingly. The stay order stands vacated. No order as to costs.



Member-A



Member-J

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