

AM  
8

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

\*\*\*\*\*

Registration (O.A.) No. 517 of 1986

Dr. R.R. Kishore ..... Applicant.

Versus

Ministry of Health and Family Welfare, Govt. of India, through its Secretary ..... Respondent.

\*\*\*\*\*

Hon'ble S. Zaheer Hasan, V.C.  
Hon'ble Ajay Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

The applicant, Dr. R.R. Kishore, has in this application, received under Section 19 of the Administrative Tribunals Act XIII of 1985, challenged the order No. 23020/5/85-CHS II, dated 25.11.1985 issued by the Government of India, Ministry of Health and Family Welfare, regarding seniority and placement of the applicant in senior scale Class I. According to applicant he was recruited as Junior Medical Officer in the Central Government Health Scheme on ad hoc basis by the Government of India with effect from 1.8.1969 and while serving on the above post he was called by the Union Public Service Commission for interview on 27.1.1971 and on the recommendation of the Union Public Service Commission his previous appointment was regularised by appointing him on the same post in terms of the Government of India's order No. 12025/314/71/CHS II, dated 21.10.1971. The applicant has stated that right from his initial appointment he has been serving on the same post without interruption and was given

the benefits of his ad hoc service in the fixation of his pay. His previous ad hoc service is also considered valid for purposes of pension and other retirement benefits. Subsequently on the recommendation of the 3rd Pay Commission he was placed in the Junior Scale Class I w.e.f. 1.1.1973 and later on in the Senior Scale Class I w.e.f. 1.1.1982. He is claiming on the principles laid down by the Hon'ble Supreme Court in A.I.R. 1984 S.C. 1527 his seniority should be reckoned from the date of his initial appointment taking into account his ad hoc service and, therefore, the date of counting his seniority should be 1.8.1969 but since he has not been given seniority the promotion to senior scale has been given much later. He has further said that in the Civil List dated 5.3.1986 a number of officers who are junior to the applicant, i.e. who are appointed after 1.8.1969 have been placed in Senior Scale Class I w.e.f. 1.1.1978 and since he was appointed on 1.8.1969 after due selection the action of the respondent to give seniority to his juniors from 1.1.78 was illegal. He has, therefore, challenged his placement in Senior Scale Class I w.e.f. 1.1.1982 as being not based on any principle and violative of Articles 14 and 16 of the Constitution of India. His representations on the subject have been arbitrarily rejected by the impugned order of 25.11.1985. He has, therefore, prayed that a direction may be issued to the respondent to reckon his seniority from the date of his initial appointment, i.e. 1.8.1969 and to place him in the Senior Scale Class I from 1.1.1978.

application dated 21.7.1987 the applicant advised that several Medical Officers having the same grievance about their seniority and who wanted the identical relief filed a petition before the Hon'ble Supreme Court on the same subject and in Petition no.1228 of 1986, Dr. P.P.C. Rawani & others v. Union of India & others, which was decided on 9.4.1987 the respondents, i.e. Ministry of Health, Government of India, have been directed to fix the seniority of those officers who were serving on ad hoc basis prior to the approval by the Union Public Service Commission from the date of their original appointments. The Hon'ble Supreme Court's order in Writ Petition No.1228 of 1986 and Civil Appeal No.3519 of 1984 reads as follows :-

*31*

"Pursuant to the interim directions and suggestions made by us the services of several of the petitioners have already been regularised and we are assured that the services of the rest will also be regularised. It is, however, stated by the learned counsel for the Union of India that there can be some problem regarding their seniority since some have been regularised earlier and some later. The difficulty anticipated is capable of easy solution. All orders of regularisation made pendentelite are naturally subject to our final orders. Those in respect of whom orders of regularisation have already been issued and the others are all parties before us. If the orders of regularisation of appointment are made to take effect from their respective dates of original appointment and seniority so determined there will be no other problem. Shri Venugopal, learned counsel assured us that none of the doctors has any objection to this course. It may be so done. This order disposes of the appeal and the

writ petition."

In view of this order the applicant has prayed for the grant of the same relief to him also.

3. According to the respondent the applicant was appointed to the post of General Duty Medical Officer w.e.f. 20.3.1971 in accordance with the Central Health Service Rules, 1966 where the recruitment to the post of General Duty Officer on regular basis can only be made on the recommendation of the Union Public Service Commission. He was earlier appointed on ad hoc basis w.e.f. 1.8.1969 on the recommendation of a Departmental Interview Board. He was also given Junior Scale Class I after being subjected to his screening by a duly constituted Departmental Promotion Committee and his case was sent to the Union Public Service Commission for approval but in the meantime some disciplinary proceedings were initiated and an order imposing a penalty of stoppage of two increments was issued on 23.11.1978 and, therefore, his placement in the Junior Scale Class I was held up and a fixation given by the Chief Medical Officer, Allahabad on 28.9.1978 without sanction of the Government was withdrawn. Against this withdrawal he went in a writ petition to the High Court of Judicature at Allahabad and a stay was granted on the operation of the orders of fixation of his pay done by the Chief Medical Officer, Allahabad. The High Court of Judicature at Allahabad also directed that the writ petition filed by Dr. Kishore would be considered after disposal of his appeal made to the department. The department, however, considered his appeal and decided to give him the scale of Rs.700-1300 w.e.f. the due date, i.e. 1.1.1973. He was

thereafter promoted to the senior scale w.e.f. 1.1.1982, the date from which his juniors were placed in the Senior Scale Class I. These orders were issued on 30.1.1985. According to the respondent no benefit of service rendered on ad hoc basis by Medical Officers who were appointed along with him or in subsequent years has been given towards fixation of seniority and on their regular appointment.

4. We have heard the applicant and the learned counsel for the respondent. When the applicant submitted a copy of the order of the Hon'ble Supreme Court claiming relief in view of those orders on 21.7.1987 a notice was issued to the respondent to say as to why the applicant, if he was similarly placed as the petitioners in those petitions, be not granted the same relief in terms of the Hon'ble Supreme Court's judgment. This notice was issued on 28.8.1987. On 15.10.1987 the learned counsel for the respondent stated that the department has not been able to supply any information as to whether the applicant was similarly situated or not and in view of the same he could not throw any light on the position.

31

5. The petitioners in Writ Petition No.1228 of 1986 filed in the Hon'ble Supreme Court were aggrieved by the fact that the respondents were denying them seniority while members junior to them had been effectively given seniority over the petitioners. According to them the appointment of doctors was being made both through Union Public Service Commission on a regular basis and through Departmental Selection Committee on ad hoc basis. The system of ad hoc recruitment existed from the beginning and such persons were regularised.

from time to time. At the time the service was constituted in 1963 all the then existing ad hoc doctors were absorbed without any further interview, selection or examination and were given subsequent promotions after taking into account their services prior to their regularisation. Thereafter till 1974 recruitment and appointment of ad hoc doctors was done from the names sponsored by the Employment Exchange and through selections made by high powered committee. These appointments were initially for one year but were extended every six years with a concurrence of the Union Public Service Commission. All these petitioners were recruited on ad hoc basis and were treated in the same manner as regular doctors. The difference being only in the mode of recruitment. The petitioners had earlier filed a writ petition No.1144 of 1983 in the Delhi High Court seeking a declaration that they had been regularly recruited in accordance with the rules but this petition was dismissed on 3.4.1984. An appeal was filed against/said order in the Hon'ble Supreme Court which was numbered as Appeal No.3519 of 1984. Out of a total of 225 ad hoc doctors 137 including the present petitioner were absorbed in regular service but they are taken as fresh entrant. When a number of vacancies arose of Senior Medical Officers the petitioners agitated but they were not considered for promotion. On the other hand doctors who were appointed as late as in the year 1976 were promoted. New rules came into being in 1982 in place of 1963 Rules and the promotion to Senior Medical Officer's post was in accordance with these Rules to be made on the basis of seniority-cum-fitness. The minimum qualification to qualify the service was 5 years' regular

(P.M.)  
14

- 7 -

service in the grade. They, therefore, submitted that the 1982 Rules with the eligibility requirement of 5 years' regular service are bad and that they should be entitled to be considered for promotion on the basis that they have actually put in more than 5 years' regular service notwithstanding the fact that they are being treated as fresh appointees after their recent ~~x~~ absorption and that the doctors have in actual reality put in more than 5 years' regular service and to exclude them on the ground that their previous appointment was merely 'ad hoc'. The petitioners had in this case relied on the following decisions of the Hon'ble Supreme Court :

1. Baleshwar Dass & others v. State of U.P. (A.I.R. 1981 S.C. 41).
2. A. Janardhana v. Union of India (A.I.R. 1983 S.C. 759), &
3. C.P. Doval v. Chief Secretary, Government of U.P. & others (1984 (4) S.C.C. 329).

31/ They, therefore, claimed that since they have been recruited by an All India advertisement after selection and interview by a Recruitment Committee whose assessment cannot be any worse than that of the Union Public Service Commission to treat them differently on the basis of initial recruitment was not equitable and just. According to them the ad hoc appointment had been continued from year to year in consultation with the Union Public Service Commission and if that was so the concurrence of the Union Public Service Commission will be more than sufficient and, therefore, in equity they should be entitled to be considered for promotion on the basis that they have completed more than 5 years' regular service. They also sought declaration that the rules

15

-: 8 :-

framed in 1982 and the seniority list issued may be declared as void. It was in this back ground that the Hon'ble Supreme Court gave the orders dated 9.4.1987.

6. In the case of P.D. Agarwal & others v. State of U.P. & others (1987 (4) SLR 134) the Hon'ble Supreme Court has observed in Paragraphs 26 and 27 as follows :-

"26. We mention in this connection the observations of this Court in the case of Ashok Gulati v. B.S. Jain, AIR 1987 SC 424 (to which one of us was a party). It has been observed as follows :-

"According to the accepted canons of service jurisprudence seniority of a person appointed must be reckoned from the date he becomes a member of the service..... It is well settled that an ad hoc or fortuitous appointment on a temporary or stop-gap basis cannot be taken into account for the purpose of seniority even if the appointee was qualified to hold the post of a regular basis, as such temporary tenure hardly counts for seniority in any system of service jurisprudence."

27. Similar observations were also made by this Court in the case of State of Gujrat v. C.G. Desai, (1974) 2 SCR 255. Therefore we make it clear that the period of service rendered by the ad hoc appointees before their service has been duly regularised in accordance with the regularisation rules cannot be taken into account in reckoning their seniority in service. Their seniority in service will be counted only from the date when such ad hoc appointees after regularisation in accordance with concerned rules have become members of the service."

The ratio of decision in P.D. Aggarwal's case makes it

clear that the period of service rendered by the ad hoc appointees before their services have been duly regularised in accordance with the regularisation rules cannot be taken into account in reckoning their seniority in service.

7. In Ashok Gulati's case the length of continuous officiation was not reckoned as basis for determining seniority in case of those who were appointed on a purely ad hoc basis as a stop-gap arrangement for six months at a time de hors the rules. Seniority was to be reckoned from the date a person becomes member of a service. There are detailed rules for the determination of the same in petitioner's case. In para 13 of Ashok Gulati's case the Hon'ble Supreme Court observed :-

3/

"We are not aware of any principle or rule which lays down that the length of continuous officiation/service is the only relevant criterian in determining seniority in a particular cadre or grade, irrespective of any specific rule of seniority to the contrary. It is necessary to emphasize that the principles laid down in the two leading cases of 'N.K.Chauhan & S.B. Patwardhan' reiterated in 'Baleshwer Dass's case' and subsequently followed in several decisions are not an authority for any such proposition ....."

8. The applicant was appointed purely on ad hoc basis on 1.8.1969. He was interviewed by the Union Public Service Commission on 27.1.1971 and was regularly appointed on 21.10.1971. <sup>ref 20.3.71.</sup> In view of the aforesaid two recent cases the period of continuous officiation cannot be counted as prayed by the applicant. It was contended that the period of continuous officiation was taken into

(19)  
(10)  
(17)

-: 10 :-

consideration by the Supreme Court in Writ Petition No. 1228 of 1986 vide judgment dated 9.4.1987 and since the applicant is similarly situated so he should also be granted the same relief. The decision in this writ petition is a ruling on its own facts and as observed in Ashok Gulati's case the cases mentioned in that judgment regarding continuous officiation "are not an authority for any such proposition". However, the applicant worked on ad hoc basis for a period of about one year ~~one~~ <sup>3/4</sup> eight months. Exigencies of administration frequently compel authorities to make short term ad hoc appointments. As already stated, the applicant officiated only for about one year <sup>3/4</sup> ~~one~~ eight months. So far as the applicants in the writ petition mentioned above are concerned they had worked on ad hoc basis for a period between 7 and 13 years. So the applicant is not similarly situated and his case cannot be decided on the basis of the decision dated 9.4.1987 given in the aforesaid writ petition. His appointment was purely stop-gap measure for a period of about one year <sup>3/4</sup> ~~one~~ eight months and in view of the two latest cases decided by the Supreme Court, referred to above, this short period of working cannot be taken into account as prayed. It would have been a different matter if even the ad hoc appointment was made by the Union Public Service Commission (C.P.Damodaran Nayar v. State of Kerala, AIR 1974 SC 1343).

Q. The application thus fails. The applicant can only count his seniority from the date of his regularisation by the Union Public Service Commission

(17)  
(18)

-: 11 :-

and not from the date of his appointment on ad hoc basis.

10. In the result the application is dismissed.  
Parties will bear their own costs.

*[Signature]*  
Vice-Chairman.

*[Signature]*  
Member (A).

Dated: October 30, 1987.

PG.