

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration T.A.No.1003 of 1987 (Writ Petition No.9241/82)

Madan Chandra Srivastava

Petitioner

Vs.

1. Union of India through
Secretary, Ministry of
Health and Family Planning

2. Director General, Central Govt.
Health Scheme, New Delhi

3. Chief Medical Officer, Allahabad

4. Ranjit Brahma

Respondents.

5. Lakhman Lal Gupta

6. Regional Director, National
Savings Scheme, Allahabad.

CONNECTED WITH

Registration T.A.No.1274 of 1987 (W.P.No.10576 of 1983)

Ranjit Brahma

Petitioner

Vs.

1. Union of India

2. Director General, Central Govt.
Health Scheme, New Delhi

3. Chief Medical Officer, Allahabad

4. Dr. A.P.Mathur, Chief Medical
Officer, Allahabad

Respondents.

AND

Registration T.A.No.1363 of 1987 (W.P.No.10577 of 1983)

Lakhman Lal Gupta ...

Petitioner

Vs.

1. Union of India

2. Director General, Central Govt.
Health Scheme New Delhi

3. Chief Medical Officer, Allahabad



Central
Adminstrative
Tribunal
Allahabad

4. Dr. A.P. Mathur, CMO,
Allahabad

Respondents.

Hon'ble G.S. Sharma, JH
Hon'ble K.J. Ramai, AJ

(By Hon'ble G.S. Sharma, JH)

These are three interconnected writ petitions filed under Article 226 of the Constitution of India in the High Court of Judicature at Allahabad and have been received on transfer u/s.29 of the Administrative Tribunals Act, XIII of 1905. Since common questions of facts and law are involved in these cases, they are being disposed of by this common judgement.

2. Undisputed facts of these cases are that in 1954-55, the Govt. of India had started Central Govt. Health Scheme (for short CGHS). The scheme was first introduced at Delhi only. After Bombay, it was introduced in Allahabad in 1969. For the recruitment to class III ministerial staff under this scheme, the Govt of India had framed necessary rules, which were published vide notification dated 2.4.1975 in the official gazette. These rules were made applicable to Delhi Centre only. The CGHS has now been introduced in many states of the country but no Recruitment Rules for other centres have since been framed and the appointments at the other places are being made in the light of the rules framed for Delhi Centre. The Petitioner in the first case M.C. Srivastava (for the sake of brevity and clarity hereinafter referred to as Srivastava) was appointed as Lower Division Clerk (for

Gulab



short (LDC) on 9.4.1969 in the CGHS Centre Allahabad and was confirmed on this post on 6.1.1979. He was promoted as Upper Division Clerk (for short UDC) on 20.1.1977.

3. The Petitioner in the second case Ranjit Brahma (hereinafter referred to as R.Brahma) was appointed as LDC in the CGHS New Delhi in 1959 when there was no centre of CGHS at Allahabad and was confirmed on this post on 29.1.1969. He was transferred and promoted as UDC on 24.4.1969 at Allahabad and was confirmed on this post on 13.4.1981. The Petitioner in the third case Lakhman Lal Gupta (hereinafter referred to as Gupta) was initially appointed as LDC on 24.6.1958 in the National Savings Organization Department and was confirmed on this post there on 14.1.1964 w.e.f. 23.5.1961. He was thereafter selected by the Directorate of CGHS Delhi and appointed as UDC on adhoc basis on 21.6.1969 at Allahabad Centre and was approved for confirmation on this post by the Deputy Director, CGHS New Delhi on 20.7.1969. On being asked by his parent department either to resign or to opt for his reversion, Gupta sent his resignation letter dated 9.7.1971 to the Regional Director, National Savings Scheme, Lucknow, which was accepted by him on 22.7.1971 and his services were thereafter regularised as UDC in CGHS Allahabad by the CMO Allahabad on 20.1.1982. Dy. Assistant Director, CGHS Allahabad vide his memo dated 20.9.1974 had issued the first seniority list of the non-gazetted staff of his Centre in which R.Brahma was mentioned at the top as UDC w.e.f. 3.5.1959 and the name of the petitioner Gupta was noted as sl.no.2 as UDC w.e.f. 1.7.1969 while

✓
Gulal

the Petitioner Srivastava was at s1.no1 in the list of LDC w.e.f. 9.4.1969. According to this seniority list, R.

Brahma was the senior-most among the three Petitioners and the first Petitioner Srivastava was the junior-most. On the regularisation of the services of R.Brahma as UDC at Allahabad Centre, the first Petitioner had made a representation on 15.1.1982 to the Respondent nos. 1 to 3 on the ground that he being an employee of Delhi Centre his services at Allahabad Centre could not be regularised as he was still having lien and seniority in Delhi Centre.

The first Petitioner further made a representation on 19.2.1982 when Gupta was regularised at Allahabad Centre disputing the reckoning his period of adhoc officiation as UDC for the purposes of seniority. Srivastava is shown to have made some more representations in this respect to the CMO Allahabad, which remained undisposed of.

Another seniority list of the non-gazetted staff of CGHS Allahabad was issued on 29.6.1982, copy annexure 11 to the first writ petition. Even in this seniority list, the order of seniority of the 3 Petitioners remained the same. The grievance of the first Petitioner is that the preparation of this seniority list without disposing of his representations against regularisation of the services of other two Petitioners was illegal and arbitrary and he had again filed a representation on 1.7.1982 in this respect. Even this representation does not seem to have been disposed of.

4. In 1981 one post of Office Superintendent (for short OS) in CGHS Allahabad fell vacant which was to be filled up by promotion from the cadre of UDC on the basis

Salai



of seniority-cum-fitness and according to the seniority position, as stated above, R.Brahma was appointed as OS on adhoc basis on 2.11.1981. The first writ petition was thereafter filed on 17.8.1982 for quashing the seniority list dated 29.6.1982, the order dated 2.11.1981 appointing R.Brahma as OS and for directing the Respondent nos. 2 and 3 to decide the various representations made by the first Petitioner as well as for a direction to appoint him as OS in place of R.Brahma.

5. After the filing of the first writ petition, the CMO CGHS Allahabad vide his memp dated 25.8.1983 (copy annexure 10 to the second writ petition) ordered that the regularization of adhoc UDCs R.Brahma and Gupta vide orders dated 13.10. 31 and 20.1.1982 ~~are~~ is treated as cancelled. The second and third writ petitions were accordingly filed against this order for getting it quashed and for not giving effect to the said order.

6. All these cases have been contested on behalf of the Respondents. The peculiar feature of the defence of the Govt. Respondents in these cases is that in the first case, the Counter Affidavit was filed on behalf of the Respondent no,3 by Dr. P.B.Dey-choudhary who had succeeded Dr.A.P.Mathur as CMO Allahabad and refuting the allegations made by the Petitioner Srivastava, it was stated by him in his Counter Affidavit that the adhoc appointment of the other two Petitioners as UDC was rightly taken into consideration for determining their seniority and they had

Sulav



joined an LDC much before the First Petitioner who was promoted and as such, he is junior to them and the seniority list of 29.6.1982 was correctly prepared and R.Brahma being the senior-most LDC, he was rightly considered and ultimately appointed as OS on adhoc basis. It was also stated by him that various representations made by the First Petitioner were forwarded to the Directorate and they are being considered there and the Petitioner has no case to restrain the Respondents from holding the meeting of the DPC which was going to be held on 25.8.1982. It has also been stated that each centre of the CGHS does not have a separate and independent cadre and all the centres are controlled by the Directorate of CGHS New Delhi and even the appointment of the first Petitioner was made by the CGHS Directorate and all the pleas raised by him are misconceived, unfounded and baseless & there has been no discrimination against him. In other two Petitions, the Counter Affidavits were, however, filed by the then CMO Dr.A.P.Mathur who refuted the allegations made in these writ petitions and supported the stand taken by the first Petitioner in his writ petition, as stated above. The Private Respondents in each case filed their separate Counter Affidavits and they have independently contested the cases. It may also be mentioned that 3 LDCs- Mahendra Ram, Prem Chandra and Prayag Lal working in CGHS Allahabad had moved applications for becoming parties to the second and third writ petitions and their applications were allowed and they filed their Counter Affidavits on the lines of pleas taken by the first Petitioner in his writ petition. For the sake of brevity, it does not seem necessary to narrate here in detail the various pleas raised by the Respondents in their Counter Affidavits and we will like to narrate the necessary of each case while taking

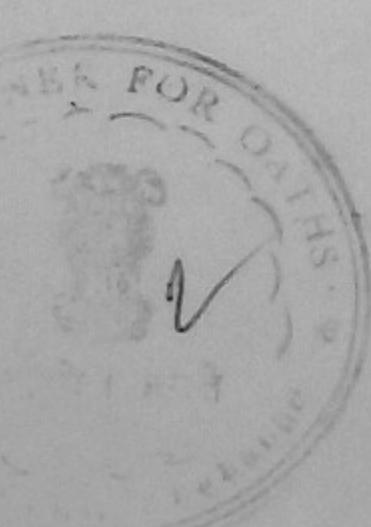
Guar



up the points in controversy for discussion.

7. The grievance of the first Petitioner regarding his seniority vis-a-vis R.Brahma and Gupta is two fold. His first contention is that each centre of the CGHS has its own cadre and promotion in that cadre can be made only from the cadre of that centre and the employees working at one centre are not entitled to be promoted in the vacancies of another centre. According to him, R.Brahma being an employee of Delhi centre, he could not be considered for the purpose of seniority and promotion at the Allahabad Centre of the CGHS. His other contention is that R.Brahma and Gupta both had worked 'on adhoc post' of UDCs for some time and only in 1981 in the Departmental Promotion Committee (for short DPC) meeting their suitability was considered as UDC and on being found suitable they could be confirmed only from the date of DPC but the department committed a grave error by confirming them, on a fir post, with retrospective effect from the respective dates of their adhoc officiation. In support of his contention, he cited the O.M. dated 30.12.1976 of the Home Ministry by extracting a para thereof in para 19 of his petition. He has further alleged that the adhoc appointments of R.Brahma and Gupta cannot be taken into consideration for their promotion in view of the directions of the Govt. of India as contained in O.M. dated 30.12.1976 (annexed with O.M. dated 29.4.1977 quoted in para 12 of the petition). He has further appended the copy of OM dated 29.4.1977 as annexure 5 to his 'writ' petition limiting the scope of adhoc appointments and his contention is that the adhoc appointment of the other two Petitioners at Allahabad Centre was contrary to the directions contained in this O.M. and on this ground their services as UDC for the period they worked on adhoc basis could not be taken into consideration for the purposes of seniority and further promotion.

Serial



8.

8. The contention of the Petitioner Pravastava made as above have been refuted on behalf of the Respondents and their stand is that the Recruitment Rules dated 2.4.1974, copy annexure 1, relied upon by the first Petitioner relate to only direct recruitment and do not cover the case of transfer and they are not exclusive in the matter of promotion. Their further contention is that in any case these rules came into force on 2.4.1974 and the second and the third Petitioners had already started working as UDCs in CGHS Allahabad much before and these rules are not applicable to them. They have not disputed the fact that the rules framed for Delhi centre are also applicable to the other centres of the CGHS. According to them, transfer from one centre to another centre is common practice and in case of transfer, length of service and seniority of an employee is retained and maintained for future. The Petitioner Pravastava too was confirmed as UDC on 14.4.1980 with retrospective effect from 6.1.1979.

9. The contention of the first Petitioner that each centre of CGHS has its own cadre has been denied by the Respondents and it has been stated that sanction of posts of each centre is ~~done~~ ^{made} by the Directorate, Health Services New Delhi and after the sanction of the post, respective posts are filled up by transfer, direct recruitment or promotion by respective authorities and accordingly seniority and service records are maintained with suitable rectification and adjustment. Even the promotion of the first Petitioner as UDC was approved

Serial

by the Dy. Director (Administration) New Delhi on behalf of the Director General of Health Services as is apparent from his letter, copy annexure CA-1, directing the CMO Allahabad to issue orders of the promotion of Pravastava to the post of UDC on behalf of the Dy. Director CGHS Delhi w.e.f.

20.1.1977. The order of promotion dated 1.1.1977, copy annexure 3, to the petition of the first Petitioner, issued by the CMO Allahabad clearly states that the Dy. Director New Delhi is pleased to promote and appoint Sri H.C. Pravastava LDC CGHS Allahabad as UDC, CGHS, Allahabad w.e.f.

20.1.1977. Thus according to the Respondents, the promotion of LDCs are made under the orders of the Director CGHS New Delhi and the contention of the Petitioner that each centre has its own separate cadre has been refuted by them.

10. R. Brahma has filed the copy of memorandum dated 30.7.1969 as annexure CA-1 to his Counter Affidavit which shows that the first Petitioner was appointed as LDC and the third Petitioner was appointed as UDC by the Directorate CGHS New Delhi to repel the contention of the Petitioner that each centre has its own cadre or the Directorate of CGHS could not appoint, transfer or promote the staff of any centre other than Delhi. CA-3 to his Counter Affidavit is the copy of this order dated 29.1.1969 of the Directorate of CGHS confirming R. Brahma as LDC w.e.f. 1.4.1962. The letter dated 1.12.76, copy annexure CA-5 to the Counter Affidavit of R. Brahma was addressed by the CMO CGHS Allahabad to the Accounts Officer, CGHS Delhi stating that the Petitioner R. Brahma was in the strength of CGHS Allahabad.

Sujal



It may also be pointed out that the transfer order date 24.4.1969 of R.Brahma, copy annexure CA-6 to his Counter Affidavit issued by the Directorate of CGHS states that he is being appointed on adhoc basis to officiate as UDC in CGHS Allahabad from the date he assumes his duty here. The letter further states that he is relieved of his duties under the CGHS New Delhi w.e.f. 24.4.1969. The seniority list issued by the CMO Allahabad on 28.9.1974 copy annexure CA-7 to the Counter Affidavit of R.Brahma shows R.Brahma senior to the other two Petitioners. The notifications dated 7.11.1977 and 8.5.1980, copies annexures CA-9 and CA-10 to the Counter Affidavit of R.Brahma provide that head of office or CMO is the appointing authority of LDC and UDCs and the CMO Allahabad had regularised the services of R.Brahma as UDC w.e.f. 3.5.69 vide its order dated 13.10.1981, copy annexure CA-8A.

11. The various pleas taken by the second Petitioner R.Brahma in his Counter Affidavit, as pointed out above, have been reiterated by the Govt. Respondents in their Counter Affidavit filed on their behalf by ~~exp~~ Dr.P.B. Dey Chaudhary. They have further filed the copy of order dated 14.1.1964 as annexure 12 to their Counter Affidavit to show that the third Petitioner Gupta was confirmed as LDC in his parent department w.e.f. 23.5.1961 and as such, he was already a confirmed LDC when he was appointed in CGHS Allahabad as UDC on adhoc basis in 1961. Undisputedly, the resignation of the third Petitioner was accepted by his parent department when he was asked by ~~the estat~~ either to revert to his parent department or to opt for

Sulal



CGHS and thereafter he is continuously on the strength of CGHS Allahabad.

12. The Petitioner Gupta has filed the copy of memorandum dated 3.4.1969 as annexure CA-5 to his Counter Affidavit issued by the Directorate of CGHS inviting applications from LDCs working in Central Government offices located at Allahabad who had rendered not less than 5 years service in that grade for being considered for appointment as UDCs in the CGHS and the contention of this Petitioner is that in accordance with this advertisement, he had applied for his appointment in CGHS and his candidature having been approved by the Directorate, the appointed letter was issued on 30.6.69, copy annexure 6 to the Counter Affidavit as already pointed out above and with his appointment as UDC, the first Petitioner was appointed as LDC and he is, thus, senior to the first Petitioner in the CGHS.

13. The first Petitioner has reiterated his various pleas in his rejoinder but regarding the first seniority list dated 28.9.1974 it was stated by him that it does not help R.Brahma and he (Pravastava) was not obliged to file any objection against the said seniority list. He has maintained that the adhoc appointments of the other two Petitioners as UDCs could not be taken into consideration and after their approval by the DPC they could not be confirmed with retrospective effect.

Subal



14. The controversy raised on behalf of the first Petitioner regarding the centre-wise seniority is misconceived and as a matter of fact, it does not arise for consideration in these cases. From the various documents cited and the discussions made as above, there is no room for doubt that all the Petitioners in these cases were appointed on the strength of CGHS Allahabad by the CGHS Directorate New Delhi and all of them are now in the strength of CGHS Allahabad. The Petitioner R.Brahma was transferred from Delhi to Allahabad much before the enforcement of the Recruitment Rules of 1974. After transfer of R.Brahma from Delhi to Allahabad, he became a ~~part~~^{member} of the Allahabad cadre of the CGHS and the contention of the first Petitioner to the contrary is not correct. There was no bar in sending R.Brahma to Allahabad CGHS in 1969 on promotion and subsequently on the approval of his promotion by the Directorate, he was appointed as UDC by the CMO Allahabad. The question of centre-wise cadre raised by the first Petitioner is, therefore, irrelevant and calls for no finding in these cases. It will suffice to say that after the transfer of R.Brahma to Allahabad, he became a member of Allahabad cadre of the CGHS and he could be considered here with other members of the staff for his confirmation and future promotion.

15. The third Petitioner Copta was directly recruited as UDC for CGHS Allahabad and excluding his past service in his parent Department, he is one grade senior to the first Petitioner as on the same grade, he was recruited as

Civil



other I
UDC in CGHS Allahabad. In support of his contention
reliance has been placed on behalf of the first Petitioner
on Shittu Prasad Shai Vs. State of U.P. (A.I.R.1986-S.C.-
1859) in which it was held that if a person at the time of
his appointment on any post is not eligible and does not
possess the requisite qualification and is absorbed in
service from the date on which he had secured exemption,
there is no irregularity in it. The ratio of the decision
is that the services of an unqualified person before the
exemption in respect of his qualification are not to be
taken into consideration. In our opinion, this case law
has no application to the case before us as it is not shown
that at the time of their adhoc appointments as UDC, R.
Brahma and Gupta were not qualified for appointment as UDC
and as such, the reliance of the first Petitioner on this
ruling is misplaced.

16. On behalf of the Respondents reliance has been
placed on Dr. Amar Jeet Singh Khulwanji Vs. State of Punjab
(A.I.R.1975 S.C.- 986) and Dascola Rama Rao and another Vs.
State of Andhra Pradesh (A.I.R. 1988 S.C.-857) in support
of their contention that in the case of confirmation on a
post, the adhoc service on that post has to be reckoned for
determining the seniority. In the latter case, the Hon'ble
Supreme Court had held that if the date from which regulari-
sation is directed is not anterior to the appointment of the
Govt. servant, the regularisation is not vitiated on account
of arbitrariness or otherwise. We have carefully gone through

Seal



gh these decisions, and, in our opinion, according to the principle laid down by the Hon'ble Supreme Court, the ad-hoc service of the second and third Petitioners on the post of UDC could be legally taken into consideration for determining their seniority with retrospective effect on their being found suitable by the DPC and nothing wrong has been done in their cases by the CMO Allahabad.

17. On behalf of the second and third Petitioners reliance was placed on the decision in Bullian and Agricultural Produce Exchange (Pvt.) Ltd Vs. Forward Markets Commission (A.I.R. 1979 Allahabad- 332) and Bangladesh Cotton Mills Vs. Union of India (A.I.R. 1981 S.C-818) in which it was held that if an order of judicial or quasi judicial nature is passed without affording an opportunity of hearing, the said order is bad in law. The contention of R. Brahma and Gupta is that the order dated 25.8.1983 of the CMO Allahabad, impugned by them, by which their order of confirmation was cancelled, was passed without affording them any opportunity of hearing. Further, this is not a speaking order and no cause has been assigned as to why their confirmation on the post of UDC made earlier was cancelled, and, as such, this order is not in accordance with law. We agree with their contention and are unable to sustain the same.

18. Having thus carefully considered all the points raised on behalf of the parties before us in these cases, we have come to the conclusion that the first Petitioner has utterly failed to make out any case for our interference



.15.

and his petition is liable to be dismissed. However, the order dated 25.8.1983 impugned in the other two writ petitions is bad in law and is liable to be set aside.

19. T.A.No.1005 of 1987 is accordingly dismissed,

T.A.No.1274 of 1987 and T.A.No.1361 of 1987 are hereby allowed and the impugned order dated 25.8.1983 passed by the CMC Court Allahabad is hereby quashed. The parties are directed to bear their own costs.

MEMBER (A)

MEMBER (J)

Dated: 13/7/1989
KMB.



TRUE
COPY

R.H.G. (R.H. PANDEY)

Section Officer
Central Administrative Tribunal
Allahabad.

Mr. Srinivas

OATH COMMISSIONER
HIGH COURT, ALLAHABAD
Sl. No. 81285
Date 25-7-1984

