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Devendra Kumar Applicant.

Government of India Ministry of
Defence Indian Ordnance Factory,
i.e. Vehicle Factory, Jabalpur
and others. Respondents.

The applicant, Dr. Devendra Kumar, has, by this application, filed by him under Section 19 of the Administrative Tribunals Act, 1985, challenged an order dated 31.12.1985 on the subject of fixation of his pay as Assistant Surgeon (AS) rejecting his request to count his previous service for purposes of the fixation in ^{31 reply} ~~response~~ to a representation submitted by him on 15.5.1984. The applicant alleges that his representation of 15.5.1984 was not replied by the respondents so he sent a reminder on 25.12.1986. When he did not get any reply he attended the office of the respondents personally on 6.3.1987 and came to know of the impugned order of 31.12.1985. According to him this order was not received by him earlier. On this account he has requested for condonation of delay in filing this application. He has relied on the rules (Annexure 11 to the application) on the basis of which he is making the prayer. He has also prayed for payment of salary for the period 18.9.1980 to 28.9.1980 as joining time. The applicant has alleged that he fulfills the conditions for continuity of service. His previous appointment at Jabalpur was on ad hoc basis but he was subsequently regularly appointed at Meerut. The applicant first represented on 26.11.1980 (Annexure 5 to the application). This was followed by another representation

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of 15.5.1984. To this he was given the impugned reply dated 31.12.1985 which he says he never received and about which he came to know in March, 1987 only.

2. Respondent no.1 and respondents no. 2 to 4 have filed separate replies to this application. According to respondent no.1 the applicant was appointed on ad hoc basis initially for a period of one year against a temporary post at Jabalpur ^{34 but was continued till} and later on after being selected by the Union Public Service Commission (UPSC) he was posted to Meerut. His services at Jabalpur were terminated with effect from 18.9.1980. The applicant had filed one application earlier being Original Application No. 306 of 1986, which stood dismissed, and the present application is time barred. The applicant was granted joining time by modifying an earlier order by which he was not granted the same. Other Government respondents have said that after the applicant joined service at Meerut a proposal to fix his pay under provisions of Article 156-A of the Civil Service Regulations (CSR) was sent to the Accounts Office, but it was not approved. According to them this benefit could not be given as the ad hoc spell at Jabalpur was not followed by regular appointment in the same post. They have said that the service at Jabalpur was terminated and the new appointment came to be known thereafter. The joining time given was also not admissible.

3. I have heard the learned counsel for the parties. The main emphasis laid in his contentions by the learned counsel for the applicant was that no reason has been given in the order rejecting the applicant's representation and even though joining time had been allowed by the respondents the applicant has not been paid for the period. The applicant has also been made to suffer financially by not counting

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his previous service which could no more be treated as ad hoc after he had worked for 5 years. According to him it is settled law that probation cannot continue indefinitely. The learned counsel for the respondents opposed these contentions and submitted that the applicant is not entitled to any relief as rules do not permit any benefit being given for the ad hoc service rendered at Jabalpur. I have perused the paper book and replies by the parties.

4. The main questions before me are whether the application is within time and whether the ad hoc service in a different Government Department can be counted in a new department where the applicant gets posted on a regular basis.

5. The applicant in his reply in para 7(f) of the application has said that his colleagues in the Ordnance Factory (OF), who got absorbed against temporary regular posts on getting through UPSC interviews have been admitted protection of pay. At page 27 is the applicant's representation dated 26.11.1980. In para 6 he has said that on posting of UPSC selected candidates in his place his services were terminated with effect from 18.9.1980. So it is clear that he was terminated in terms of his appointment order which was purely ad hoc.

6. By Original Application No. 306 of 1986 the applicant had raised the issue in regard to the fixation of his pay on appointment as AS at Meerut and had prayed for the reliefs that he may be allowed to be given the higher start of pay, continuity of service and joining time pay and allowances. In this ^{at} application he had challenged the order dated 10.11.1981. This ^{at} case was dismissed by this Tribunal on the grounds that the application ~~was~~ filed in July, 1986 was beyond the period of limitation prescribed

(7) (A3/4)

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by Section 21 of the Act and since the applicant has not been able to show sufficient cause for not making the application within the limitation the same is barred by limitation. In that application the representation dated 26.11.1980 was the subject matter of the order (which were challenged) dated 10.8.1981. In the present application a plea has been taken that his representation dated 15.5.1984 was not replied by the respondents, so he had sent a reminder on 25.12.1986 and when he did not get any reply, he personally attended the office of the respondents and came to know of the reply given to his representation of 15.5.1984 on 31.12.1985. According to him he did not receive this order and it was only on 6.3.1987 that he came to know that such an order rejecting his representation had been issued. He has requested for condonation of delay in filing this application against the order of 31.12.1985. The letter of 31.12.85 is addressed to the Commandant, Army Based Workshop (ABW), Meerut Cant. In his letter of 25.12.1986 the applicant has reminded the Government of India about his representation dated 15.5.1984. This letter was sent after O.A. No.306 of 1986 had been filed. In this he had also mentioned that he had been sending reminders in 1985 and 1986, but he got no reply and, therefore, he had prayed for the decision on his representation. An order becomes effective when it leaves the armoury of the Govt. But mere passing of an order is not effective ³⁰ ~~under~~ ^{until} it is communicated. The respondents have not shown any document to prove that this communication was given to the applicant. However the facts remains that the

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representation was dated 15.5.84 and if no reply was received within 6 months the applicant should have taken recourse to legal remedies. He chose to send a reminder in December, 1986. The sending of reminder will not save limitation. No explanation has been given for such a long delay in sending the reminder. The application therefore suffers from the vice of delays & latches.

7. Article 156-A of the Civil Service Regulations lays down that where a Government servant holding a post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary, or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay nationally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued. The applicant's plea that his case is covered under these rules is not supported by what is mentioned in this article. The applicant has not been appointed to a higher category of post. He was already working in the same grade in an ad hoc measure at Jabalpur and the two posts have no connection. Therefore, Article 156A of the Civil Service Regulations (CSR) does not apply to him.

8. It was contended before me that the appointment under OF at Jabalpur which was of an ad hoc nature pending arrival of UPSC selected candidates, and the

regular appointment finally given to the applicant at Meerut, were appointments under different authorities and since the first appointment was only of an ad hoc nature the applicant's case for taking into consideration the pay that he was drawing at Jabalpur prior to his coming to Meerut could not be taken into consideration for fixing his pay. The submission made further clarified that the Ord Factories are controlled by the Director Genral, Ord. Factories while the Army Base Workshop is controlled by the Army Head Quartors. Therefore unless the appointment under the ordnance factory can be treated as a regular temporary appointment the benefit of previous service of an ad hoc nature cannot be available in a new appointment under the Central Govt. There is no ^{bar in} considering this service if an ad hoc employee gets regularized in the same organisation after being regularly selected. In such cases he gets entitled to count all the increments that he has earned during his ad hoc working, but if there is no relationship between the previous appointment of the ad hoc/temporary nature and the new appointment which a person accepts and joins though it may be under the Central Government it cannot be claimed that the benefit of that service should also be given to such a person on his joining the new post. The fact that in ad hoc service a person earns increment does not in any way improve the case of the person for such an action. The applicant's case is also not on all ^{3/4} ~~same~~ ^{fours} with that of other Doctors who are working at OF at Jabalpur and who got regularised there itself as a result of the selection by UPSC. Also the fact that the

factory order regarding his ⁷joining time was amended by the local authorities cannot over-ride the fact that there was absolutely no connection between his previous employment and the new employment.

9. It was contended by the learned counsel for the applicant that even probation does not last for five years and the applicant has been drawing his increments so his service in the Ord. Factory should be considered as regular. This contention is fallacious and cannot be accepted. When the applicant joined service in the Ordnance Factory he knew the type of appointment. He was not selected through UPSC, who only can make regular selections. His appointment had been made by the local administration [&] de hors the rules. That he continued for a period of five years is a different matter. In Ashok Gulati v. B.S. Jain (1987 (1) SLJ 169) the Hon'ble Sup-reme Court have laid down the dicta that service rendered on ad hoc basis before substantive appointment in de hors of Rules cannot be counted for eligibility for promotion to next higher grade. This ratio is squarely applicable to the applicant's case. So his service rendered after his ad hoc appointment de hors the rules does not give him the benefit he is claiming.

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10. The applicant had applied to U PSC against the requirement of Assistant Surgeons advertised by them. He had attended the selections and he was selected by UPSC. At Jabalpure he was given due notice of termination of his appointment. His offer of appointment came within the period of notice. The applicant has mentioned that he was promised consideration of his past services for fixation of his pay. The respondents appear to have had

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a thought in this regard as the modification of the order will show. But that does not mean that such a fixation was on the cards. No rule has been shown to have been violated instead the rules on which the applicant relies do not help him. The appointment at Meerut, as is evident, was a fresh appointment and it has no relationship with the Jabalpure appointment.

11. In view of above I do not find any merit in the application and it is accordingly dismissed. Parties will bear their own costs.

राजेश मेहता

MEMBER (A).

Dated: December 14th, 1988.

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