

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

Amendment Application No.155 of 1991

In

D.A. No. 1294 of 1988

N.K. Bhagat & Others

....

Applicants

Vs.

Union of India & Others

....

Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. A.B. Gorathi, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicants were appointed as Short Term Medical Officers, commonly known as STMO by the Director General/Chairman, Ordnance Factory Board, Calcutta in various years between 1978 to 1985, in pursuance of the policy of Government of India. The applicants were appointed for a period of 6 months and thereafter, ~~after~~ ^{with} an artificial break, the said appointment was continued. Initially the applicants were given a lumpsum payment of Rs.1,155/- per month and thereafter they were given the grade of Rs.700-1300/- plus allowances. Despite the IVth Pay Commission Report the respondents did not give any benefit to the applicants, but on representation they agreed to pay the grade of Rs.2200-400/- but no increment is given to any of the applicants, though according to the applicants similarly placed employees were given the grade of Rs.2200-4000/- plus increments plus LTC benefits etc. The applicants' contention is that they cannot be treated as adhoc employees and in this connection they made reference to the case decided by the Principal Bench of Central Administrative Tribunal, ⁱⁿ which it has been held that any appointment made beyond the period of one year would be converted

into a regular appointment.

2. By means of this application the applicants have prayed that the respondents be given a direction to regularise the applicants on the post of Medical Officers on the salary of Rs.2200-4000/- and also award the monetary benefits with regard to the annual increments ~~which~~ they are entitled to receive from the respondents taking into consideration the length of service and giving them the increments ~~to~~ & commensurate with the length of service and also award such monetary benefits, allowances, LTC etc which are available to similarly situated AMOs and to declare that the applicants are substantively and regularly appointed on the post of Assistant Medical Officers in Indian Ordnance Factories Health Services and are entitled for the pay scale and other benefits as are payable to the other similarly placed employees; In the alternative, to direct the respondents to request the Union Public Service Commission to conduct special examination by interview only for selection/regularisation of the applicants from their original dates of appointment and to confer all the consequential benefits and the respondents be restrained from making appointment in pursuance of the selection held by Union Public Service Commission under their advertisement dated 17.8.1988 and 7.1.1989 on the posts of Assistant Medical Officer in Indian Ordnance Factories Health Services, and to declare Government orders dated 2.9.1978 and 13.7.1982 as arbitrary and violative of Article 14 and 16 of Constitution of India.

3. In the year 1988, 43 vacancies of Assistant Medical Officers arose in the pay scale of Rs.2200-4000/- in Indian Ordnance Factories, Health Services. According to the applicants the entire cadre consists of 141 vacancies of Assistant Medical Officers in the cadre of Indian Ordnance

Factories. It appears that 28 incumbents were selected through U.P.S.C. and are working in the said services. In case the aforesaid selection took place, the applicants will be thrown out from the services. Even though the Government of India's instruction for making recruitment of Assistant Medical Officer through U.P.S.C. in accordance with U.P.S.C.

Regulations 1958 does not contemplate the situation where recruitment through U.P.S.C. has ^{been} delayed for a very long period on account of numerous factors. The applicants have challenged the validity of Rule 8(2) of CCNE Rules.

4. The respondents have filed their reply and have refuted the claims of the applicants and have stated that they have no right or claim to the said post. According to the respondents the provision of para 2(ii) of the appointment letters contains the stipulation that the appointment of the applicants is purely on adhoc basis and there is no provision of regularising any short term Medical Officer unless he is selected through U.P.S.C. Examination. It has been further stated by the respondents that the applicants were given opportunity to appear in the U.P.S.C. examination to get their services regularised. But the applicants could not ^{get} qualified ^{to} get their services regularised. Those who were found fit by the Departmental Promotion Committee were pre-designated as Assistant Medical Officer and the applicants who were the adhoc employees and were engaged for a period of 6 months were not considered fit and also they could not get their services regularised through U.P.S.C., there was no alternative but to terminate their services.

5. Learned counsel for the applicants ^{invited} engaged our attention to the case of Dr. Hari Narain Misra Vs. Union of India, O.A. No. 186 of 1987 decided by this Tribunal on 29.1.92.

In the said case we have held that :-

"On the expiry of one year from the date of initial appointment the services of the applicants would only be continued after consultation with the Union Public Service Commission and such consultation being made whatever be the form of the consultation. As the U.P.S.C. has given the approval for extending the period of the temporary appointment after every six months, it could be presumed that the U.P.S.C. approved their appointment everytime as no selection was made. The U.P.S.C. having approved the appointments of the applicants for years, together there appears to be no reason for requiring these applicants to appear before the U.P.S.C. again for interview etc. Obviously because it is within the domain of U.P.S.C. and the question of the regularisation of these applicants can be decided by the U.P.S.C. after perusing the ACRs in view of the fact that they were in service for more than 10 years."

In the said case we have allowed the application and quashed the termination order and direct the respondents to consider the case of the applicants for regularisation without requiring them to appear for interview, but after perusing the ACRs, within a period of 4 months from the date of communication of this order. Actually the same position arises here in this case. Accordingly the respondents are directed to consider the case of the applicants for regularisation after perusing the ACRs, within a period of 4 months from the date of communication of this order. In case the services of the applicants have been terminated the said termination order shall be quashed and their case for regularisation shall also be considered.

transcript
Member (A)

h
Vice-Chairman.

(sph)

157-May, 1992, Alld.

In the said case we have held that :-

"On the expiry of one year from the date of initial appointment the services of the applicants would only be continued after consultation with the Union Public Service Commission and such consultation being made whatever be the form of the consultation. As the U.P.S.C. has given the approval for extending the period of the temporary appointment after every six months, it could be presumed that the U.P.S.C. approved their appointment everytime as no selection was made. The U.P.S.C. having approved the appointments of the applicants for years together there appears to be no reason for requiring these applicants to appear before the U.P.S.C. again for interview etc. Obviously because it is within the domain of U.P.S.C. and the question of the regularisation of these applicants can be decided by the U.P.S.C. after perusing the ACRs in view of the fact that they were in service for more than 10 years."

In the said case we have allowed the application and quashed the termination order and direct the respondents to consider the case of the applicants for regularisation without requiring them to appear for interview, but after perusing the ACRs, within a period of 4 months from the date of communication of this order. Actually the same position arises here in this case. Accordingly the respondents are directed to consider the case of the applicants for regularisation after perusing the ACRs, within a period of 4 months from the date of communication of this order. In case the services of the applicants have been terminated the said termination order shall be quashed and their case for regularisation shall also be considered.

transcript
Member (A)

h
Vice-Chairman.

(sph)

15-May-1992, A.M.d.