

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1607 of 1993
connected with
Original Application No. 1652 of 1993
connected with
Original Application No. 1653 of 1993
connected with
Original Application No. 1680 of 1993
connected with
Original Application No. 1682 of 1993

Allahabad this the 6th day of Nov. 1997

Hon'ble Dr. R.K. Saxena, Member (J)
Hon'ble Mr. S. Dayal, Member (A)

O.A. No. 1607/93

Dr. S.K. Srivastava, aged about 36 years S/o Sri K.D.L.Sri-
vastava, presently posted as Short Term Medical Officer,
Ordnance Factory, Kanpur, R/o 351/D Block, Shyamnagar,
Sujatganj, Kanpur.

Applicant

By Advocate Sri Sudhir Agrawal

Versus

1. The Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Ordnance Factory Board, 10-A, Auckland Road, Calcutta through its Chairman.
3. The Union Public Service Commission, Dhaulpur House, New Delhi through its Secretary.
4. The General Manager, Ordnance Factories, Kanpur.

Respondents

By Advocate Sri Amit Sthalekar

O.A. No. 1652/93

Dr. Virendra Srivastava aged about 43 years S/o Sri Badri Narain Srivastava presently posted as Short Term Medical Officer, Ordnance Factory, Kanpur. R/o 8/113, Aryanagar, Kanpur.

Applicant

By Advocate Sri Sudhir Agrawal

.....pg.1/-

:: 2 ::

1. The Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Ordnance Factory Board, 10-A, Auckland Road, Calcutta through its Chairman.
3. The Union Public Service Commission, Dhaulpur House, New Delhi through its Secretary.
4. The General Manager, Ordnance Factories, Kanpur.

Respondents.

By Advocate Sri Amit Sthalekar

O.A. No. 1653/93

Dr. Lakshmi Shanker Tripathi, aged about 40 years
S/o Sri R.D. Tripathi, presently working as Short
Term Medicel Officer, Small Arms Factory, Kanpur.
R/o 486, Jawahar Nagar, Sati Talab, Unnao.

Applicant

By Advocate Sri Sudhir Agrawal

Versus

1. The Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Ordnance Factory Board, 10-A, Auckland Road, Calcutta through its Chairman.
3. The Union Public Service Commission, Dhaulpur House, New Delhi through its Secretary.
4. The General Manager, Small Arms Factory, Kabpur.

Respondents.

By Advocate Sri Amit Sthalekar

O.A. No. 1680/93

Dr. Surendra Kumar S/o Shri Raghbir Singh, Advocate
R/o 117/N/35, Avon Market, Kakadeo, Kanpur.

Applicant

By Advocate Sri Sudhir Agrawal

Versus

1. The Union of India through Secretary, Ministry of Defence, New Delhi.
2. The Ordnance Factory Board, 10-A, Auckland Road, Calcutta through its Chairman.
3. The Union Public Service Commission Dhaulpur House, New Delhi through its Secretary.
4. The General Manager, Ordnance Factory, Kanpur.

By Advocate Sri Amit Sthalekar

Respondents.

.....P.P. 3/-

:: 3 ::

O.A. No. 1682/93

Dr. Santosh Kumar S/o Shri Siddh Nath Awasthi,
R/o 117/M/182, Kakadeo, Kanpur -208019

Applicant

By Advocate Sri Sudhir Agrawal

Versus

1. The Union of India through Secretary, Ministry of Defence, New Delhi.
2. The Ordnance Factory Board, 10-A, Auckland Road, Calcutta through its Chairman.
3. The Union Public Service Commission, Dhaulpur House, New Delhi through its Secretary.
4. The General Manager, Ordnance Factory, Kanpur.

Respondents.

By Advocate Sri Amit Sthalskar-

ORDER

By Hon'ble Dr. B.K. Saxena, Member (J.J.)

These 5 cases are taken ^{up} together for disposal by the common judgment because the common question of facts and law is involved.

2. The applicants of these cases are Assistant Medical Officers working in different Ordnance Factories for sufficiently long period. In place of being regularised, they have been offered fresh appointments against which they felt aggrieved. Before we deal with the facts of individual case, we would like to glance at the history of creation of service. The Ordnance Equipment Factory General Duty Officer Grade II (Assistant Medical Officer) Recruitment Rules, 1977 were framed under Article 309 of the Constitution and came into force on 01.10.1976. Those rules were amended

.....pg.4/-

on 02/4/1980. The recruitment under the said rules was found time consuming whereas there was urgent need of the Medical Officers to run the hospitals of the Ordnance Factories. It was, therefore, decided that the appointment of the Medical Officers on monthly wages and for a period of 6 months, be made. A letter (annexure A-4) was addressed to the Director-General, Ordnance Factories, Calcutta by the Under Secretary to the Government of India. The guidelines as to how the appointment of the Medical Officers would be done and what would be ^{the} terms and conditions, were laid down in this letter. The monthly amount to be paid to such Medical Officers was ^{fixed at} Rs.1155/- per month. ^{fixed at} The appointment was to be made for a period of ~~6~~ months on purely ad-hoc basis; and the appointees were required to be informed that they would have no claim for any preferential treatment or right. It appears that there was poor response to this scheme and, therefore, these guide-lines were further amended by another letter annexure A-5 whereby the Medical Officers who were ^{appointed} to be required, were given a pay scale of Rs.700-1300/- in place of monthly ^{fixed} salary of Rs.1155/-. They were also allowed to get allowances of H.R.A., C.C.A., D.A. and A.D.A. and even non-practice allowance as was permissible to duly appointed Assistant Medical Officers of the Factory. The rider placed was that they would not get any increment. The appointment was for a period of 6 months only and was given the name of Short Term Medical Officers. It further appears that the pay scale of Rs.700-1300 was revised to Rs.2200-4000 and accordingly the pay scales of these Short Term Medical Officers were also revised and fixed Rs.2200-4000 through the letter annexure A-6.

3. It appears that these applicants who have come before the Tribunal, applied under this scheme and were appointed on different dates. The applicant of O.A.No. 1607 of 1993 was initially appointed on 27.9.85, the applicant of O.A.No. 1652 of 1993 was appointed on 01.2.78, the applicant of O.A. 1653/93 was appointed on 02.11.1982, the applicant of O.A.No. 1680/93 was appointed on 11.12.84 and the applicant of O.A.No. 1682/93 was initially appointed on 08.2.79. Their appointment was for short term which was ofcourse renewed from time to time but with break of some days. The following chart will disclose the dates of different appointment and break in between:-

Dr. S. K. Srivastava (O.A. 1607/93)

Sl. No.	Date of Appointment	Period of Appointment From _____ to _____	Artificial break, number of days
1.	29.7.1985	19.7.85 to 28.1.86	2 days 29th and 30th Jan, 1986.
2.	31.1.1986	31.1.86 to 29.7.86	3 days, 30.7.86 to 01.8.86
3.	02.8.1986	02.8.1986 to 31.1.87	2 days 02.2.87 to 02.2.87
4.	03.2.1987	03.2.87 to 01.8.87	2 days, 02.8.87 to 03.8.87
5.	04.8.1987	04.8.87 to 02.2.88	12 days, 03.2.88 to 14.2.88
6.	15.2.1988	15.2.88 to 13.8.88	3 days, 14.8.88 to 16.8.88
7.	17.8.1988	service continued till date.	

:: 6 ::

Dr. Virendra Srivastava in O.A. 1652/93

Sl. No.	Name of Factory	From	to	Number of
				days of break
1.	Field Gun Factory Kanpur	01.12.78	30.5.79	2 days
2.	*	02.6.79	30.11.79	3 days
3.	*	04.12.79	03.06.80	2 days
4.	*	06.06.80	05.12.80	9 days
5.	*	15.12.80	14.06.81	4 days
6.	*	19.06.81	18.12.81	2 days
7.	*	21.12.81	19.06.82	2 days
8.	*	22.06.82	21.12.82	1 day
9.	*	23.12.82	22.06.83	1 day
10.	*	24.06.83	23.12.83	2 days
11.	*	26.12.83	25.06.84	15 days
12.	Ordnance Factory, Kanpur	11.07.84	10.01.85	3 days
13.	*	14.01.85	13.07.85	3 days
14.	*	17.07.85	16.01.86	3 days
15.	*	20.01.86	19.07.86	2 days
16.	*	22.07.86	21.01.87	2 days
17.	*	24.01.87	23.07.87	3 days
18.	*	27.07.87	26.01.88	2 days
19.	*	29.01.88	28.07.88	1 day
20.	*	30.07.88	till date	

Dr. J. S. Tripathi in O.A. No. 1653/93

Sl No.	From	to	Break in Service
1.	02.11.82	30.04.83	04 days
2.	05.5.83	03.11.83	05 days
3.	09.11.83	08.5.84	03 days
4.	11.05.84	10.11.84	02 days
5.	13.11.84	11.05.85	02 days
6.	14.05.85	14.11.85	04 days
7.	19.11.85	18.05.86	02 days
8.	21.05.86	20.11.86	03 days
9.	24.11.86	23.05.87	02 days
10.	26.05.87	25.11.87	01 day
11.	27.11.87	26.05.88	01 day
12.	28.5.88	till date	

.....pg. 7/-

:: 7 ::

Dr. Suresh Kumar in O.A. 1680/83

sl.	Dt. of appointment	Period of Appointment from	to	Artificial break, number of days.
1.	11.12.84	11.12.84	10.06.85	11 & 12.06.85 02 days
2.	13.06.85	13.06.85	12.12.85	13 to 15.06.85 03 days
3.	16.12.85	16.12.85	15.06.86	16.06.86 01 day
4.	17.06.86	17.06.86	16.12.86	17 & 18.12.86 02 days
5.	19.12.86	19.12.86	18.06.87	19 to 21.06.87 03 days
6.	22.06.87	22.06.87	21.12.87	22 & 23.12.87 02 days
7.	24.12.87	24.12.87	23.06.88	24.06.88 01 day.
8.	25.06.88		till date.	

Dr. Santosh Kumar in O.A. 1682/83

sl.No.	Period of Engagement from	to	No. of days of breaks	Period of Employment
1.	04.11.82	03.05.83	02 days	06 months
2.	06.05.83	03.11.83	05 days	*
3.	09.11.83	12.05.84	02 days	*
4.	15.05.84	14.11.84	02 days	*
5.	17.11.84	16.06.85	03 days	*
6.	20.05.85	19.11.85	02 days	*
7.	22.11.85	21.05.86	02 days	*
8.	24.05.86	22.11.86	02 days	*
9.	25.11.86	23.05.87	02 days	*
10.	26.05.87	25.11.87	02 days	*
11.	26.11.87	27.05.88	02 days	*
12.	30.05.88		till date.	

:: 8 ::

4. The contention of the applicants is that even after completion of 3 and more years of service, the respondents did not care to regularise the services of the applicants and, therefore, Dr. N.K. Bhagat had instituted a case 'C.A. No. 1294 of 1988 Dr. N.K. Bhagat and Others Vs. Union of India and Others' which was decided by the Tribunal on 15.5.1992. The directions were given to the respondents that the services be regularised after perusal of the annual confidential report within a period of 4 months from the date of communication of the order. It was also observed that in case the services of those applicants were terminated, the said termination order should be quashed and their cases for regularisation be also considered. The contention of the applicants is that even after the directions given by the Tribunal, nothing was done. Thereupon, the applicants represented to the Chairman of the Ordnance Factories at Calcutta. In response thereto, letters were received by these applicants to get themselves medically examined for their regular appointment. It was further mentioned that they were selected by the U.P.S.C. for the post of Assistant Medical Officers. It appears that after this medical examination of the applicants was done, they were issued letter dated 04.10.1993 about their appointment as Assistant Medical Officers. The contention of the applicants is that this letter dated 04.10.93 is an appointment letter as a fresh Medical Officer and nothing has been said in it about regularisation of their services. Not only this, they were ordered to take charge on different places but no transfer allowance was given to them. Dr. S.K. Srivastava (O.A. 1607/93) who was working in the Ordnance Factory, Kanpur was directed to take charge of Clothing Factory,

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Shahjahanpur, Dr. Virendra Srivastava(O.A. 1652/93) was sent to Gun Carriage Factory, Jabalpur from Ordnance Factory, Kanpur. Dr. Laxmi Shanker Tripathi(the applicant of O.A.1653/93) was appointed as Assistant Medical Officer Gun and Cell Factory, Cossipuri, Calcutta from Ordnance Factory, Kanpur. Dr. Surendra Kumar(the applicant of O.A.No. 1680/93) was posted as Assistant Medical Officer, Ordnance Factory, Katni from Ordnance Factory, Kanpur and Dr. Santosh Kumar(the applicant in O.A.No. 1682/93) was directed to take charge as Assistant Medical Officer, Ordnance Factory, Raipur in Dehradun from Ordnance Factory, Kanpur.

5. It is contented on behalf of all the applicants that no benefit of past services rendered by them, was given. It is also claimed that the similar orders permitting Short Term Medical Officer in Central Government Health Scheme came for consideration before the O.A.No. 257/87 Tribunal in Dr.P.N. Misra Vs. Union of India and Others and O.A.No.424/87 Dr. K.G. Misra Vs. Union of India and Others, for decision and the Tribunal had taken the view that the applicants (of referred cases) should be deemed to have continued in service ever since the date of their first appointment; and the date on which they did not actually discharge the ~~functions~~^{functions} artificial break at the end of every six months/90 days, should be treated as leave, to which the applicant would be entitled ^{and be} at par with the regularly appointed Medical Officers.

6. The applicants have, therefore, filed these applications to seek the relief that the order dated 04/10/1993 in so far as it offered appointment to the applicants to the post of Assistant Medical Officers

:: 10 ::

as fresh and new entrants be quashed; the order dated 14.3.88 which had been communicated to the applicants on 03.2.94, be quashed; and the respondents be directed to issue regularisation order with respect to the applicants on the post of Assistant Medical Officers treating them as the existing employees of the Ordnance Factories and giving credit to their past continuous service. The annual increments and other allowances were also sought.

7. The respondents have contested the cases virtually on one and the same line. It is admitted that the applicants were appointed as Short Term Medical Officers in the Ordnance Factory Hospitals. It is also admitted that the Tribunal gave judgment on 15/5/92 in O.A.1294/88 Dr. N.K. Bhagat and Others Vs. Union of India and Others and the letters were issued to the applicants. It is contended that the claim of the applicants to treat them regular in service with retrospective effect from the date of their appointment as Short Term Medical Officers, is misconceived and unacceptable. According to the respondents the services of the applicants were regularised with retrospective effect and the benefits can also be given only ~~retrospectively~~ ^{prospectively}. The claim of the applicants that past services should be taken into account, is not maintainable. The justification of ad hoc appointment of Medical Officers on short term was given to obviate from the lengthy procedure of appointment. In this way, the claim of the applicants to treat them regular Medical Officers from the time they joined the service, was denied.

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:: 11 ::

8. The applicants filed rejoinders, reiterating the facts which were mentioned in their applications.

9. we have heard Sri Sudhir Agrawal, counsel for the applicants and Sri Amit Sthalekar, counsel for the respondents. The record is also perused.

10. The pleadings of the parties in the cases are narrated in short and on some facts there is no dispute. It is admitted case of both the parties in the cases that no doubt, the rules of recruitment of Medical Officers were framed but the appointments could not be made because of lengthy procedure which was prescribed thereunder. It is also admitted that to obviate from that lengthy procedure and to run the hospital of the Ordnance Factories, it was thought that some other way be found out. Accordingly, the guide lines were drawn and the appointment of Medical Officers designated as Assistant Medical Officers on fixed salary was envisaged. It appears that there had been poor response and therefore, some improvement was made firstly by giving a grade but without any other allowances and increments. When it also failed to attract the attention , all these allowances and increments which were admissible to regularly appointed Medical Officers, were extended to such Medical Officers who were required to be appointed on short term. It is in pursuance thereof that several Medical Officers including the present applicants came forward and they were given appointment. It is clear from the averments of both the sides that the appointments were given for a period of six months and after the break of a few days, another appointment letter

..... pg. 12/-

was given to the applicants and this process of breaking services and then again issuing appointment letters continued. Dr. N.K. Bhagat ^{had} ~~had~~ filed a case and the judgment was given by the Tribunal on 15.5.1992 that ^{directed the} ~~directed the~~ applicants of the said case be regularised. The process which was started for regularisation and came through the order dated 04.10.1993, had shown the seeds of fresh litigation. The contention of the applicants is that the judgment of the Tribunal was not sincerely and honestly implemented. In place of regularising the services of the applicants, they were given fresh appointments treating them to be the newly entrants in the service. We have gone through the judgment of the Tribunal given in Dr. N.K. Bhagat's case and find that it was never the intention of the Tribunal.

II. In this connection, our attention has been drawn to various judgments of which some of them were referred to by the applicants in their petitions. In none of the judgments, the directions given indicated such type of regularisation which may wash off the past services altogether and make them new entrants in the service. In this connection the reliance can be placed on the decision given by their Lordships of Supreme Court in Dr. A.K. Jain and Others Vs. Union of India and Others 1987 S.C.C. (Supp.) 497. In the decision, their Lordships had observed that the Doctors should be regularised in consultation with the Union Public Service Commission on the evaluation of their work and conduct on the basis of their confidential reports. It was further observed that Doctors regularised, should be appointed

Assistant Divisional Medical Officers with effect from the date, from which they had been continuously working as Assistant Medical Officers. It also flows from the said judgment that the services should be regularised as if there was no break in the continuity of service. It is not the only case whenever the question of regularisation came up about the Doctors. Similar situation had arisen before their Lordships of Supreme Court in the Civil Misc. Petition No. 8076 of 1988 in C.A. No. 3519 of 1984 and writ Petition Civil No. 2620-50 of 1985 in the case of Dr. P.P.C. Rawani and Others Vs. Union of India and Others decided on 21.10.1991. The directions given in the said case, were that the applicants of the case be treated as regularised w.e.f. 01.1.1973. ~~Since~~ In that case, there was a dispute between the directly recruited medical officers and ad hoc appointees who were subsequently regularised. To do away with the dispute of seniority and posts of promotion amongst them, their Lordships went to the extent of creating supernumerary posts for regularised Medical Officers. Anyway, in the present dispute, we are simply concerned with regularisation and we find that the view taken by their Lordships in A.K. Jain and Others case, should be followed.

12. So far as the period indicating break in service is concerned, it was also regularised in those cases by directing that the same should be treated as leave period. The same directions were given by the Tribunal in C.A. No. 257/87 Dr. P.N. Misra Vs. Union of India and Others and in C.A. No. 424/87 Dr. R.G. Misra Vs. Union of India and Others, decided on 11.5.1988. The same procedure may be followed in the present cases

for regularising the period of artificial breaks shown in the cases of these applicants.

13. The learned counsel for the applicants also relied on the decision of their Lordships of Supreme Court in the case Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Ors., J.T. 1992 (1) S.C. 373. In this case also in privately managed degree colleges in Karnataka, teachers were temporarily appointed and their services continued for years with break of a day or two every 3 months. Their Lordships deplored this practice. In this case, also the teachers had sought regularisation but it appears that they were given fresh appointments. Their Lordships had observed that the claim of teachers could not be negated on the ground that the teachers had not faced selection. In the present case, ^{before us} all the applicants have been approved by the Union Public Service Commission and this fact is admitted to the respondents as well. Thus, when the applicants are found fit for regularisation by the Union Public Service Commission and they had served for about 8 years, there is no justification that the services be not regularised and they should be treated as fresh appointees.

14. In view of the discussions made above, we come to the conclusion that the impugned order dated 04.10.1993 so far as it relates to indicate the applicants as fresh appointees, is not legal and the said part is, therefore, quashed. The respondents are directed to regularise the services of the applicants in the manner

:: 15 ::

as ^{is} mentioned in the case of DR.A.K. Jain's case
and are discussed above. The Original Applications
are allowed accordingly. No order as to costs.

Member (A)

Member (J)

/M.M./