Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 591 of 2000
alongwith
Original Application No. 734 of 2000
Original Application No. 600 of 2000
Original Application No. 670 of 2000

Allahabad this the 3rd day of July 2001

Hon'ble Mr.S.K.I. Naqvi, Member (J)
Hon'ble Mr.S. Biswas, Member(A)

O.A.No. 591 of 2000

Dr.Brajendra Singh Chauhan A/a 30 years, Son of Late Devendra Singh Chauhan, Posted as Short Term Medical Officer, in Small Arms Factory, Kanpur, Resident of 117/209-A, Kakadev, Kanpur.

Applicant

By Advocate Shri Sudhir Agrawal

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Director General/Chairman, Ordnance Factories Board, 10-A, Auckland Road, Calcutta.
3. Union of India through the Secretary, Ministry of Personnel Training and Public Grievances, New Delhi.
4. The General Manager, Small Arms Factory, Kanpur.

Respondents

By Advocate Shri Amit Sthalekar

O.A.No.734 of 2000

Dr.Alok Kumar Agarwal A/a 30 years, Son of Kishan Lal,Resident of Ram Raghu Market, Head Post Office Crossing, Firozabad, presently working as Medical

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Officer on Short Term, Ordnance Equipment Factory Hazratpur Distt., Firozabad.

Applicant

By Advocate Shri Sudhir Agarwal

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Director General/Chairman, Ordnance Factories Board, 10-A, Auckland Road, Calcutta.
3. Union of India through the Secretary, Ministry of Personnel, Training and Public Grievances, New Delhi.
4. The General Manager, Ordnance Equipment Factory, Hazratpur Distt.Firozabad.

Respondents

By Advocate Km.Sadhna Srivastava

O.A.No. 600 of 2000

Dr.Dinesh Jha, A/a43 years, Son of Sri D.R.Jha, Resident of 70/3, D.S. Factory Estate, O.C.F. Shahjahanpur, presently posted as Medical Officer, Short Term, at Ordnance Clothing Factory, Shahjahanpur.

Applicant

By Advocate Shri Sudhir Agarwal

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Director General/Chairman, Ordnance Factories Board, 10-A, Aeuckland Road, Calcutta.
3. Union of India through the Secretary, Ministry of Personnel Training and Publeic Grievances, New Delhi.

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4. The General Manager, Ordnance Clothing Factory, Shahjahanpur.

Respondents

By Advocate Shri Ashok Moheiley,
Shri J.N. Sharma

O.A.No. 670 of 2000

Dr.Anuj Kumar Agarwal, A/a 33 years, Son of Sri Satish Kumar Agarwal, presently posted as Short Term Medical Officer, Ordnance Factory, Kanpur.

Applicant

By Advocate Shri Sudhir Agarwal

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Director General/Chairman, Ordnance Factories Board, 10-A, Auckland Road, Calcutta.
3. Union of India through the Secretary, Ministry of Personnel Training and Public Grievances, New Delhi.
4. The General Manager, Ordnance Factory, Kanpur.

By Advocate Shri Amit Sthalekar

ORDER

By Hon'ble Mr.S.K.I. Naqvi, Member (J)

The applicants involved in these O.As. are Short Term Medical Officer(for short S.T.M.O.) in the respondents establishment. In O.A.No.670/00

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Dr.Anuj Kumar Agarwal was appointed in 1994 in Ordnance Clothing Factory, Shahjahanpur. The applicant of O.A.No.600/00 Dr.Dinesh Jha was appointed as S.T.M.O. Ordnance Factory, Kanpur in the year 1993, Dr.Brajendra Singh Chauhan applicant in O.A.No.591 of 2000 was appointed as S.T.M.O. on 02.2.1999 at Small Arms Factory, Kanpur and Dr.Alok Kumar Agarwal applicant of O.A.No.734 of 2000 was also appointed as S.T.M.O. at Hazratpur Ordnance Equpipment Factory, Firozabad. All these applicants were found eligible to appear in the test for regularisation, held on 22.3.2000 by the Union Public Service Commission, but they met with different fates. Dr.Anuj Kumar Agarwal and Dr.Dinesh Jha were not amongst the successful candidates. Dr.Brajendra Singh Chauhan was issued letter dated 19.1.2000 to keep himself ready for the the test before U.P.S.C. but no notice was received by him, hence he could not appear in the test and thereby could not have an opportunity to qualify the same. Dr.Alok Kumar Agarwal (O.A.No.734/00) appeared in the test held on 22.3.2000 and was declared successful. He was also issued appointment letter dated 17.10.2000 but to his surprise it was appointment as Assistant Medical Officer as fresh direct recruit and not as a regularised Medical Officer as per recommendation of the U.P.S.C. through letter dated 05.07.00(annexure-13(A).

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2. Since all these matters relate to test held by U.P.S.C. on 22.3.2000 and most of pleadings are common with some difference in the relief sought, all these cases are being decided by one order and the leading case is O.A.No.591 of 2000.

3. Dr.Anuj Kumar Agarwal and Dr.Dinesh Jha have a claim that after having put in 7 and 8 years of service as Medical Officer, they shall not be subjected to written test but their cases be considered for regularisation on the basis of interview and their service record. Dr.Brajendra Singh Chauhan has a request that he be allowed to appear in the next examination before U.P.S.C. and till then he be allowed to retain the post of S.T.M.O. as he is having presently. The applicant of O.A.No.734 of 2000 Dr.Alok Kumar Agarwal has prayed that he be regularised right from the date of his initial appointment and not to be taken as direct fresh recruit. He has based his claim on the recommendation by U.P.S.C. to regularise his services.

4. As per respondents case, the post of Assistant Medical Officer in the Ordnance Factories under Ministry of Defnence is a Group 'A' gazetted post. Appointment and recruitment to the post is made through Union Public Service Commission as per S.R.O.(Recruitment Rules). In view of time

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taking process of recruitment which includes Written examination and interview conducted by the U.P.S.C. on all India basis, the Government of India, Ministry of Defence had made provision for ad hoc appointment of Short Term Medical Officer on a stop gap basis for six months to provide medical cover to the employees and their families, till the U.P.S.C. selected candidates join duty. The S.T.M.Os appointed for one term of six months may be offered appointment for further spells of six months each if the U.P.S.C. selected candidates join late and each spell of S.T.M.O. is a fresh appointment for all purposes. The respondents have also ~~prayed~~ brought on record their own processed proposal with the Government of India for consideration of regularisation of all the remaining S.T.M.Os in consultation with U.P.S.C. Accordingly the U.P.S.C. considered all the S.T.M.O. who were eligible for the same and conducted a limited written test for the purpose, on 22.3.2000. It has also been pleaded that prior to forwarding the candidature of the petitioners to the U.P.S.C. and similarly placed other S.T.M.Os, the respondents obtained their option as to whether they would like to be considered for regular appointment and the applicant responded postively and ~~furnished~~ furnished their consent for being considered for regularisation and thereby they were allowed to appear in the written examination conducted by the U.P.S.C. Amongst the

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applicants , Dr.Anuj Kumar Agarwal and Dr. Dinesh Jha could not qualify the examination held by U.P.S.C. Dr.Brajendra Singh could not appear whereas Dr.Alok Kumar Agarwal qualified the same. The applicants who could not qualify in the U.P.S.C. test for regularisation and failed there, are having an attempt to circumvent their failure and seeking relief for regularisation, which will have the affect of nullifying their assessment by independant autonomous body like U.P.S.C.

5. On legal position it has been pleaded on behalf of the respondents that the Judgment of C.A.T. Jabalpur Bench in O.A.No.499 of 1988 decided on 31.10.1989, has provided the method of regularisation to be considered in consultation with U.P.S.C. as to whether the S.T.M.O. who had put in more than one year service, should be made to ~~made~~ be to undergo an examination for the purpose of regularisation or their regularisation is to be considered after evaluation of their work and conduct on the basis of service record. The Tribunal directed that the respondents shall be at liberty to terminate the services of the S.T.M.Os who have been considered and not so regularised. It has been mentioned in the counter-affidavit that the cases of the applicants here were considered and were not so regularised because they could not qualify the U.P.S.C. examination. In short the contention from the side of the respondents

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is that as per rules in this regard and the case law handed down from different Courts, it is quite clear that no S.T.M.O. can be regularised unless and until he has cleared the test held by U.P.S.C. and so recommended by the U.P.S.C. and, therefore, the prayer of the applicants to regularise their services without getting cleared by the U.P.S.C., cannot be legally allowed.

6. Heard counsel for the pearties and also gave thoughtful consideration to referred case law.

7. We find that in the present matters there is no dispute on fact and there remains a battle on legal front only.

8. From the side of the applicants, reliance has been placed in the ratio given in the following cases;

1."Dr.N.K. Bhagat and Others Vs. Union of India and Others O.A.No.1294 of 1988, decided on 15.5.1992 by Allahabad Bench of C.A.T.

The respondents were directed to consider the case of the applicants for regularisation after perusing the A.C.Rs.

2. Dr.P.N. Mishra Vs. Union of India and Others in O.A.983 of 1991, decided on 20.5.95

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by Allahabad Bench of C.A.T.

A separate block for the purpose of regularisation was directed and regularisation was to be based on evaluation of work and service record of the applicant.

3. Civil Appeal No.2969 of 1997 Dr.(Smt.)Rekha Khare Vs. U.O.I. & Ors., decided on 21.4.1997 by the Apex Court.

Regularisation of appellant on the said post to be considered by Commission and if found suitable for such regularisation by the Commission, she was to be regularised on the said post without requiring her to compete with other applicants for the post.

4. Dr.Jitendra Singh Vs. Union of India A.T.R. 1992(1) C.A.T. 556 P.B. New Delhi, decided on 08.10.1991

Scheme formulated for regularisation of ad hoc Doctors.

5. Dr.B.D. Babbar Vs. U.O.I. and Others O.A. No.881 of 1990 decided by C.A.T. Jabalpur Bench on 07.2.1996

Guide line given to deal with the cases of ad hoc Doctors and the scheme formulated for regularisation in the light of decisions by Hon'ble Supreme Court including the case of Dr.A.K. Jain Vs. U.O.I. 1987(Supp.)S.C.C.497.

9. From the side of the respondents, reliance has been placed in the ratio given in the following cases;

1. 1995 S.C.C.(L&S) page 879 U.O.I. & Ors. Vs.Dr.Devendra Vir Sahi, wherein the Hon'ble Apex Court held that the U.P.S.C. while...pg.10/-

considering for regularisation, besides taking into account the service record, shall also hold interview to decide the suitability.

2. 1994 S.C.C.(L&S) 472 U.O.I. & Ors. vs. Dr.Gyan Prakash Singh, in this matter decision taken in Dr.A.K.Jain's case has been distinguished and held not applicable to appointments made on or after October 1, 1984.

3. 1994 S.C.C.(L&S) page 723 J.K. Public Service Commission Vs. Dr.Narendra Mohan and Others, in which it is held that Govt. cannot use its executive power to circumvent requirement of statutory recruitment rules hence Public Service Commission cannot be ignored where appointments are required to be made through it.

4. Adhir Ranjan Bal and Others Vs. U.O.I. & Others O.A.No.1209 of 1991 decided on 12.5.92 by Calcutta Bench of C.A.T. holding that one is estopped from questioning the examination after having participated in it and being unsuccessful.

10. After a close and thoughtful study of the case law referred from either side, it is quite evident that there is unanimity on the point that statutory requirements cannot be circumvented. To be more specific we find that where the requirement for appointment and regularisation is through, or in consultation with U.P.S.C., there cannot be any..pg.11/-

legal order for appointment or regularisation without such consultation by the U.P.S.C.

11. With the above position in view, now we examine each case separately;

O.A.No.591/00 Dr.Brajendra Singh Chauhan Vs.U.O.I.

12. Dr.Brajendra Singh Chauhan was appointed as S.T.M.O. on 02.2.1999 at Small Arms Factory, Kanpur. It was vide letter dated 19.1.2000(annexure A-10) that Dr.Brajendra Singh Chauhan was intimated by Shri P.L. Verma, Assistant Works Manager, for General Manager, that he was under consideration for regularisation by U.P.S.C. and accordingly he was advised to keep himself prepared to appear in the examination to be held by U-P.S.C. When Dr.Brajendra Singh Chauhan did not receive the Admit Card for the examination and some other similarly situated Doctors received the Admit Card, Dr.Brajendra Singh sent a request to the Secretary, U.P.S.C., New Delhi through proper channel for issue of Admit Card for the examination to be held on 22.3.2000. This letter has been forwarded to Secretary, U.P.S.C. by the D.G.M. for General Manager vide letter dated 13.3.2000(ann.A-12) The applicant never received the Admit Card and, therefore, could not appear in the examination before U.P.S.C. and thereby he lost an opportunity to appear in the test for regularisation for no fault of his, but he is being made to suffer for

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the same. With these facts in view we do not hesitate to direct the respondents that Dr.Brajendra Singh Chauhan be allowed to appear in the next examination and till then his services shall not be terminated unless some regular appointee through U.P.S.C. reports to join at his place.

O.A.No.734 of 2000 Dr.Alok Kr.Agarwal Vs.U.O.I.

13. Dr.Alok Kumar Agarwal presently Sr.T.M.O. Ordnance Equipment Factory, Hazratpur, Firozabad had appeared in the regularisation test conducted by U.P.S.C. on 22.3.2000 and after the interview, he has been declared selected and found fit for regularisation, but instead of issuing order of regularisation to the applicant, the respondents have issued order appointing the applicant as Assistant Medical Officer w.e.f. 17.10.2000 as if he is fresh open marked candidate. Therefore, he has come up seeking relief to quash the order dated 13.10.2000 and 17.10.2000 and to direct the respondents to regularise the services of the applicant as Assistant Medical Officer in Ordnance Factory Health Services as per direction in A.K. Jain's case(supra) followed by C.A.T. Allahabad in O.A.No.1607 of 1993 and connected matters decided on 06.11.1997.

14. Learned counsel for the applicant covered the arguments in this matter refering the pleadings from the side of the respondents wherein it has been mentioned that the respondents processed proposals purposely.

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with the Government of India for consideration of regularisation of remaining S.T.M.Os in consultation with U.P.S.C. Accordingly U.P.S.C. considered all S.T.M.Os who were within the zone of consideration and conduct a limited written test for the purpose on 22.3.2000. Learned counsel for the applicant emphasised that the examination in which this applicant appeared and was declared successful, was held for the limited purpose for consideration of regularisation of the S.T.M.O. and, therefore, the applicant did not compete as fresh candidate, but he appeared as S.T.M.O. for regularisation purpose. Reference has also been made to letter from U.P.S.C. dated 05.7.00(annexure-13A) through which the applicant has been informed that he has been recommended to the Secretary to the Government of India, Ministry of Defence, Department of Defence Production and Supply, New Delhi for regularisation. These facts clearly indicate that the applicant did not appear in the test for fresh appointment as Assistant Medical Officer, but it was for regularisation of his services to the post of Assistant Medical Officer, which he was holding on ad hoc basis in the name of S.T.M.O.

15. For the above, we find the prayer of the applicant deserves to be acceded with the direction to the respondents that the services of the applicant be regularised, as prayed.

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O.A.No.600/00 Dr.Dinesh Jha
O.A.No.670/00 Dr.Anuj Kr.Agarwal Vs. U.O.I. & Ors.

16. Dr.Dinesh Jha was appointed as S.T.M.O. Ordnance Factory, Kanpur on 17.11.1993 and Dr.Anuj Kumar Agarwal was appointed to this post in the year 1994 ~~a~~in Ordnance Clothing Factory, Shahjahanpur. They are continuing as such and thereby have put in services as Medical Officer with the respondents establishment for a period 6 and 7 years regularly ~~and~~with artificial breaks to disturb the continuity. Both these applicants appeared in the test on 22.3.00 before the U.P.S.C. for the purpose of regularisation of service, but they could not qualified and are facing termination from the service, but carrying on under the umbrella cover provided through grant of interim relief by the Tribunal in these O.As. They have come with a claim that they be not subjected to examination by the U.P.S.C., but their services be regularised on the basis of their service record and in interview following the laid down procedure by the Allahabad Bench of the Tribunal in O.A.No.124 of 1988, decided on 18.5.1992 and as held in O.A.No.186/87 ~~D.R~~ Dr.R.N. Mishra Vs. U.O.I & Ors decided on 29.1.92 as well as O.A.No.881 of 1990 Dr.B.D. Babbar and Others vs. U.O.I. & Others decided on 07.2.1996.

17. As we have discussed above, this prayer has been opposed on behalf of the respondents on

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the ground that no relief can be granted by ignoring or circumventing the statutory provision in this regard.

18. Considering the pleadings and the case law referred from either side, we find that there cannot be a direction from the Tribunal to ignore or circumvent statutory provision regarding the appointment and regularisation of the services of Assistant Medical Officer in the respondents establishment. However, at the same time we cannot ignore the fact that the applicants in the present matters have put in 6/7 years with the respondents and have acquired certain expertise and that cannot be flushed out to drain by a single stroke of termination order particularly when the prime period of life and service has been consumed by the respondents by engaging them on ad hoc basis. Therefore, they deserve some consideration. At the same time, we are of the view that for the purpose of regularisation, it is the U.P.S.C. which may alone consider the case of the applicants.

19. For the above, ~~it is~~ we find expedient to give another opportunity to the applicants to go through process of regularisation and, therefore, respondents are directed to formulate a scheme in consultation with U.P.S.C. to hold a Limited Qualifying Examination ~~or~~ for to consider the case of the applicants and other similarly situated ad hoc

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S.T.M.Os on the basis of their service record and performance in the interview. The matter be decided within four-months from the date of communication of this order. It is provided that the applicants be allowed to continue till their cases are considered by U.P.S.C. for regularisation OR until some regular appointee through U.P.S.C. reports to join at their places.

20. The original applications under consideration are decided as per the above observation mentioned distinctly in each cases. No order as to costs.