

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 6 of 96

Present : Hon'ble Mr. Justice S.N. Mallick, Vice-Chairman.

Hon'ble Mr. B.P. Singh, Administrative Member.

Dr. Panchali Roy

- Versus -

1. Union of India service through the Secretary, Ministry of Health and Family Welfare, Department of Health, Govt. of India, New Delhi.
2. Director, All India Institute of Hygiene & Public Health, 110, Chittaranjan Avenue, Calcutta - 700 073.
3. Additional Director, Central Govt. Health Scheme, 8, Esplanade East (4th floor), Calcutta-700 069.
4. Under Secretary to the Govt. of India, Ministry of Health & Family Welfare, New Delhi.

...Respondents..

For the applicant : Mr. Samir Ghosh, counsel.

For the respondents : Mr. B. Mukherjee, counsel.

Heard on 28.9.99

Order on 28.9.99

O R D E R

S.N. Mallick, VC

In this O.A., the petitioner has prayed for following reliefs:-

"8. i) To direct the respondents to cancel, withdraw and/or rescind the purported order of rejection of the representation of the applicant vide memo dated 24.12.94 as contained in Annexure-'D' hereof;

ii) To direct the respondents to declare that adhoc service rendered by the applicant be counted towards service benefits including incremental benefits, promotional benefits and all other consequential benefits thereof as has been accorded to all other similarly circumstanced doctors of Central Govt. Health Services;

iii) To direct the respondents to produce the entire records of the case for adjudication of the point at issue;"

The matter has been contested by the respondent authorities represented by Mr. Mukherjee. In pursuance of our order dated 4.3.98 the reply has been filed which is beyond time without taking any leave from the Tribunal. The reply was filed on 12.6.98. Mr. Ghosh, Id. counsel appearing for the petitioner submits that copy of the reply has also not been served upon him. As no leave was taken to file reply beyond time we refrain ourselves from looking into the contents therein. It must be made clear that the petitioner stands on his own case. The case of the petitioner is as follows:-

2. The petitioner was given adhoc appointment to the post of Demonstrator (Medical), Maternity & Child Welfare as per letter issued by the respondent authorities dated 21.12.1987 which has, however, not been annexed to the O.A. The adhoc appointment was for a period of three months which expired on 20.3.1988 but the petitioner continued in the said post. Thereafter it was further extended for a period of three months w.e.f. 4.4.1988. The petitioner further continued in the said post without any order from the respondent authorities. It is stated that for continuance in the said post on adhoc basis without further any formal order, the applicant acquired right to the said post. It is also stated that the respondent authorities informed her that her services would be terminated without any notice to her. The petitioner moved an application being O.A. No. 1132/90 before this Tribunal which was finally disposed of as per this Tribunal's order dated 10.9.93 (Annexure-A). At the time of final hearing, it was submitted before the earlier bench of this Tribunal that the petitioner has already been appointed as a Medical Officer under the Ministry of Health and Family Welfare, Deptt. of Health and posted in the Labour Welfare Organisation by the appointment order dated 9.3.92. In view of this admitted fact the Tribunal did not go into the question whether the petitioner was entitled to be regularised in the post of Demonstrator in terms of the Hon'ble Supreme Court judgment which was placed before the bench. The order

of the Tribunal was as follows:-

" However, we are in agreement with the contention of Mr. Das that this application has become infructuous in view of the latest developments. We, therefore, do not propose to enter into the arguments now advanced by Mr. Ghose. The applicant may represent to the competent authority for counting her past service under the Institute of Hygiene & Public Health so that she can get pay protection and other related service benefits. If such a representation is made by the applicant, the concerned authority shall consider and dispose of the same in the light of the judgment referred to by Mr. Ghose and orders issued by the department of Health on that basis, if they are at all applicable to the case of the applicant, within three months from the date of receipt of the same."

The order passed by the respondent authorities is to be found at Annexure-D dated 24.12.94. The petitioner's representation was rejected on two grounds. The first ground is that since the Dr.(Ms) Roy has been working in services other than Central Health Service on ad-hoc basis, she cannot be granted benefit of pay protection consequent upon ^{her} subsequent joining Central Health Service on regular basis, in respect of services rendered on ad-hoc basis. The second ground is that her past services cannot be counted as there is a gap between the date when the services of Dr.(Ms) Panchali Roy in the All India Institute of Hygiene & Public Health Calcutta on ad-hoc basis were terminated on 19.10.1990 and her joining on regular basis in Central Health Service on 27.3.1992. It has been contended by Mr. Mukherjee that because of this gap, the prayer of the petitioner cannot be entertained. It may be noted here that at the time of hearing of this application, Mr. Ghosh, Id. counsel for the petitioner submitted on instruction that the reliefs prayed for in the O.A. are not pressed, but his client will be satisfied if a direction is given upon the respondent authorities to reckon the past service of the petitioner rendered

in adhoc appointment in the post of Demonstrator for considering her pensionary benefits etc. While dictating in the open court Mr. Ghosh however, submits that he is ~~not~~ pressing all reliefs. He has referred to a judgment of the Hon'ble Supreme Court reported in 1992 (1) SCC 331. It may be noted here that this matter was placed before the earlier bench of this Tribunal ~~and the~~ disposed of the petitioner's O.A. dated 10.9.93. The petitioner's contention was rejected in this regard. Under such circumstances, we are of the view that this matter cannot be re-opened in the present application. We do not find any substance in the O.A. There is no legal infirmity in the speaking order passed by the respondent authorities dated 24.12.94 as per Annexure-D. Because of the gap of two years since the termination of the petitioner's adhoc appointment to the post of Demonstrator dated 19.10.90 till her date of regular appointment to a higher post on 27.3.92, the respondent authorities, in our view, has rightly rejected the prayer of the petitioner. There is no substance in this application. The O.A. is dismissed.

3. No order is passed as to costs.

Subramanian

Member (A)

S. N. Pillai
Vice-Chairman.

a.k.c.