

Central Administrative Tribunal, Lucknow Bench, Lucknow
Original Application No. 345/2008

Reserved on 26.3.2014

Pronounced on 21-04-2014

Hon'ble Sri Navneet Kumar, Member (J)
Hon'ble Ms.Jayati Chandra,Member (A)

Dr.(Mrs.) Anjana Pankaj , aged about 48 years wife of Dr. Pankaj Kumar resident of C-1/198, Sector G,Jankipuram, Lucknow-226021 (presently working as Sr. Medical Officer in the Central Govt. Health Scheme,Dispensay No. 5,Mall Avenue, Lucknow.

Applicant

By Advocate: Sri Praveen Kumar

Versus

1. Union of India through the Secretary , Ministry of Health and Family Welfare, Nirman Bhawan,New Delhi.
2. Director General Health Services, Govt. of India, Ministry of Health and Family Welfare, New Delhi-110001.
3. Director, Central Govt. Health Scheme, Nirman Bhawan, New Delhi-110001.
4. Additional Director, Central Govt. Health Scheme,9-A, Rana Pratap Marg, Lucknow.
5. Union Public Service Commission, New Delhi through its Secretary.

Respondents

By Advocate: Sri Ganga Singh for R.No. 1 to 4.

Sri Pankaj Awasthi for Sri A.K.Chaturvedi for R.No.5

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present Original Application is preferred by the applicant u/s 19 of the AT Act, with the following reliefs:-

a) issuing/ passing of an order or direction for setting aside the impugned memorandum dated 24.7.1996 issued by Additional Director, Central Govt. Health Scheme, Lucknow through which the applicant was warned not to repeat such acts in future and also the impugned office order dated 24.6.1998, issued by the Additional Director, Central Govt. Health Scheme, Lucknow through which the period of absence of the applicant from 2.9.1993 to 9.11.1994 has been treated as 'Dies non' for all purposes viz increment, leave and pension entailing forfeiture of entire past service (as contained in Annexure No. A-4 and A-3 to the Original Application, respectively) after summoning the original records.

b) Issuing/ passing of an order or direction to the respondents setting aside the part of the impugned order issued by the Govt. of India, Ministry of Health and Family Welfare (Department of Health) vide letter dated 23.4.2003, whereby the applicant has been given the appointment as Medical Officer on regular basis in Central Health Services with effect from 12.3.2003 through all others appointed along with her have been given regular appointment with effect from

9.11.1994 and also the impugned decision/order communicated by the respondent No.1 vide letter dated 14.8.2004 (received on 7.4.2005) whereby the representation of the applicant has been rejected (as contained in Annexure Nos. A-1 and A-2 to the Original Application respectively) after summoning the original records.

c) issuing/passing of an order or direction to the respondents to reconsider the case of the applicant afresh and regularize her services on the post of Medical Officer (pay scale Rs.2200-4000) (revised pay scale Rs. 8000-13,500) with effect from 9/11/1994, as has been done in the case of the other adhoc appointees, instead of with effect from 12.3.2003 as mentioned in the impugned order dated 23.4.2003 (as contained in Annexure No.A-1 to the O.A.) and to pass appropriate orders within a specified period of two months

d) issuing/passing of an order or direction to the respondents to consider the case of the applicant for promotion to the post of Sr. Medical Officer (pay scale Rs. 10000- 15,200) w.e.f. the due date (9.11.1998) instead of 12.3.2007 as notified vide impugned order dated 15.5.2008 (Annexure No.A-5 to the O.A.) and to issue necessary modified orders within a specified period of two months

e) issuing/ passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

f) allowing this original application with cost.

2. The facts relating to the case is that the applicant was initially appointed as Medical Officer in 1989 in Central Govt. Health Services (in short CGHS) and was posted in New Delhi as adhoc Medical Officer. The applicant was subsequently transferred within New Delhi itself in 1990. Later on, she was transferred to CGHS, Lucknow on her own request vide order dated 2.9.1992. Copy of transfer order is also on record as Annexure No.A-9 to the O.A. In 1992, the applicant was granted maternity leave for a period of one year and during the said period, she has undergone repeated surgery and thereafter she joined duty on 23.7.1993. But after that, she again proceeded on medical leave in August, 1993 and remained on absent till 9.11.1994. During medical leave, all others appointed and joined as Medical Officer on adhoc basis along with the applicant were given regular appointment, but the case of the applicant was not considered. In 1995, the applicant received a memorandum regarding her unauthorised absence from duty. The applicant has also submitted the reply thereto, and subsequently received another memorandum through which she was warned not to repeat such act in future. Subsequently in the year 1998, the applicant

received a communication indicating therein that her period of unauthorized absence from 1.9.1993 to 9.11.1994 has been treated as dies non. The applicant has also made a request for grant of seniority and other benefits from the date of her initial appointment. Applicant has also filed O.A. No. 470/2005 challenging the order dated 22.4.2003 and 14.8.2004 .The said O.A. was disposed of by the Tribunal on 1st September, 2008 with liberty to the applicant to challenge the orders dated 24.7.1996 and 24.6.1998 and the O.A. was allowed to be withdrawn. By means of the present O.A., the applicant is claiming for quashing of memorandum dated 24.7.96 as well as quashing the order dated 24.6.98 passing an order of dies non for applicant being unauthorized absence w.e.f. 1.9.1993 to 9.11.1994. The applicant has also prayed for delayed regularization of her service and consequential delayed promotion as Sr. Medical Officer in the respondents organization.

3. Learned counsel for respondents filed their reply. It is pointed out by the respondents that in pursuance of the judgment and order dated 8.10.1991 passed by the Principal Bench of this Tribunal in the case of Dr. Jitendra Singh and others , the services of such doctors were regularized on the recommendation of the UPSC on the basis of their service records w.e.f. 31.9.1994 in accordance with the instructions issued by the DOP&T dated 1.7.1991. The applicant who was initially appointed as Medical Officer on adhoc basis has sent an application and requested for leave on medical ground. However, no medical certificate was attached with her leave application. The applicant also remained unauthorizely absent for more than a year and joined CGHS only on 10.11.1994.During the said period, the proposal for regularization for service of adhoc doctors appointed during the strike period was under active consideration of the UPSC. The UPSC was informed that her name may be withdrawn from the list and her case would be forwarded as and when the decision on her unauthorized

absence is taken. After joining back on 10.11.1994, the applicant was asked to submit her explanation and after examining the explanation, it was decided to give her a warning not to repeat such acts of indiscipline in future. Accordingly a warning was issued to the applicant vide order dated 24.7.1996 and further it was decided to treat the period of unauthorized absence from 2.9.1993 to 9.11.1994 as "Dies non" vide order dated 24.6.1998. Since the applicant joined on 9.11.1994, therefore, a proposal was sent to UPSC for regularization of the service of the applicant. The screening Committee of the UPSC on the basis of over all records, founds the applicant unfit in the year 1994 and considered her case for subsequent years and found her fit as on date. Accordingly the services of the applicant were regularized as Medical Officer in CGHS w.e.f. 12.3.2003, i.e. the date of recommendation of the UPSC. Learned counsel for respondents has also argued that there is no illegality in passing the impugned orders, as such the present O.A. is not liable to be entertained and is liable to be dismissed.

4. Learned counsel appearing on behalf of the applicant has filed their rejoinder reply and through Rejoinder mostly the averments made in the O.A. are reiterated. The learned counsel for applicant has also relied upon FR-17 A and pointed out that the said provision provides for reasonable opportunity of hearing and without following the procedure of principle of natural justice, the order of dies non cannot be passed.

5. Head the learned counsel for the parties and perused the records.

6. The applicant was initially appointed in the respondents organization and was subsequently regularized. The applicant applied for medical leave and remain unauthorizely absent w.e.f. 2.9.1993 to 9.11.1994 as such, the aforesaid period was treated as dies non. It is also to be seen that for her unauthorized absence the applicant was

issued warning by means of a order dated 24.7.96 and thereafter, before issuing the order of dies non, the applicant was given opportunity of hearing as provided under Rules 17 A of fundamental Rules. The Fundamental Rules 17 A provides that a period of unauthorized absence shall be deemed to cause an interruption or break in service of an employee unless otherwise decided by the competent authority for certain purposes. The only condition in that is opportunity must be afforded to the employee to make a representation. It is also to be pointed out that once a warning was given, what was the occasion for the respondents to issue an order dated 24.6.1998 of dies non. Therefore, we propose to interfere with the order dated 24.6.1998 treating the period as dies non for all purposes, while increment, leave and pension.

7. Not only this, the second question is about the assessment of DPC/ selection committee.

8. As observed by the Hon'ble Apex Court in the case of **Union Public Service Commission Vs. Gyan Prakash Srivastava reported in (2012) 1 Supreme Court Cases 537**, it is observed that "***UPSC is a constitutional body but its actions and decisions are not immune from judicial review and if a competent judicial forum finds that impugned action is ultra vires, Constitution or any legislation or is otherwise arbitrary or discriminatory, there will be ample justification to nullify same.***"

9. In the case of **Dr. Basavaiah Vs. Dr. H.L.Ramesh and others reported in (2010) 8 Supreme Court Cases, 372**, the Hon'ble Apex Court has observed that "**Court should be slow to interfere with the opinions expressed by the experts particularly in a case where there is no allegation of malafide against the experts".**

10. The second question is about the assessment of DPC/Selection Committee declaring applicant for the regularization w.e.f. 12.3.2003 . Union Public Service Commission is an advisory body set up under Article 315 of the Constitution. The factual information about the officers in the zone of consideration is furnished by administrative ministry . The Ministry also provides the requisite certificate about integrity and vigilance clearance about the officers as per the Govt. of India instructions. The name of Dr. Anjana Pankaj was not forwarded in 1994 because her case of unauthorized absence while on adhoc service was pending with DOP&T. As to the decision of UPSC findings applicant unfit in 1994 and find her fit in 2003, it is settled law that the scope of judicial review as to the merits of selection made for appointment to a service or a civil post is limited. The Courts are not expected to play the role of an appellate authority or an umpire in the acts and proceedings of DPC unless the selection is assailed as being vitiated by malafides or on the ground of its being arbitrary. The applicant has not raised pleadings to establish arbitrariness or tainted with malice. A mere allegation that the selection is arbitrary is of no avail.

11. In the result, we are of the view that the impugned orders dated 24.7.96 and order dated 24.3.2003 issuing warning to the applicant and also treating the applicant regularized w.e.f. 12.3.2003 respectively does not require any interference as such the same are liable to be rejected and is rejected accordingly, and the order dated 24.6.98 treating 2.9.1993 to 9.11.1994 as dies non requires interference accordingly the order dated 24.6.98 is liable to be quashed and is quashed.

12. With the above observations, the O.A. is allowed partly. No order as to costs.

J. Chandra
(JAYATI CHANDRA)
MEMBER (A)
HLS/-

Navneet Kumar
(NAVNEET KUMAR)
MEMBER (J)