

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

LUCKNOW

O.A. NO . 278 / 82

Dr. Pramila Srivastava Applicant.

Versus

Union of India
and others. Respondents.

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

Hon'ble Mr. K. Oayya, A.M.

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

This is second application by the applicant before Central Administrative Tribunal after dismissal of first one by the Principal Bench with a changed relief, this time claiming that the Union Public Service Commission be directed to consider his candidature in response to the advertisement no. 2/85 and advertisement no. 4/87 Homeopathic physical lying vacant in C.G.H.S. Dispensary, Lucknow.

2. In the earlier case (S. No. 210 of 1985) instituted as suit on 10.5.1985 and thereafter transferred to ~~Prin~~ Principal Bench in 1986 an injunction was sought restraining the defenants from dispensing with her service treating her to be adhoc employee and for a declaration that she was entitled to be treated as a person appointed regularly to the post of Homeopathic Physician in a substantive capacity. The Princepal Bench vide its judgment dated 8.4.1986 dismissed the said suit in which an interim order was granted as the strength of which she continued as service held that her appointment was made a stop gap arrangement pending regular appointment by Public Service Commission of which she was aware from the very beginning as per terms of her appointment and as such her termination was also in terms of appointment .

- 2 -

The Bench also took notice of the fact that she offered herself as a candidate for selection by U.P.S.C. but she was not called for interview (1985). As she did not make any grievance in this connection it followed that she accepted that her case for regular appointment was rightly not considered.

3. The applicant passed five years Degree Course of G.H.M.S. (Homeopathy) in the year 1979 and thereafter six months internship Training between 10.9.1979 to 9.3.1980. It was thereafter she was appointed in Central Government Health Scheme Dispensary at Lucknow with effect from 5.4.1983 on the post of Homeopathic Physician for 6 months on adhoc basis which was being extended from time to time and thereafter is still continuing after interim order in Civil Suit.

4. So far as selection for 1985 is concerned the applicant having failed to question it in the first application before Tribunal that is in the suit, which notice was also taken, it is no longer open for her to claim any relief in respect of the same. The advertisement for two posts was again issued on 24.1.1987 and the last date for receipt of application was 24.2.1987. One of the essential qualification was 5 years of Homeopathic practice preferably in a recognised Hospital or Dispensary. Even if credit of six months more job is given to the applicant towards practice on 24.2.1987. Benefit of internship which is part of course of 6 months training can not be given as the same could not be added towards the period of Homeopathic 'practice'. As such the plea that she had completed 5 years of practice has got to be rejected.

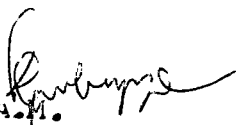
..... 3

ACS

5. It was also contended that the Bench of C.A.T. (of which one of us was a member) allowed the application filed by similarly placed persons and quashed the termination order and observed that their cases may be considered against vacant post and U.P.S.C may consider their case for condonation of age. The Hon'ble Supreme Court considered somewhat similar matter in the case of Allopathic ~~Assistant~~ **Assistant Medical Officer** who were appointed on adhoc basis and were continued till the termination order was not passed. In case of Dr. A.K. Jain -Vs- Union Of India 1987 Suppl.SCC 497 the adhoc Asst Medical Officer (Class II) in the Railways originally appointed during 1985 to July 1986 for Six month were allowed to continue for 4 years service of some of these Assistant Medical Officer were terminated for failure to avail of their chances for selection through U.P.S.C. and the rest facing termination on joining of Assistant District Medical officer selected by the U.P.S.C. . The court directed that service of those appointed on adhoc basis upto October 1, 1984 to be regularised and for relaxation of age enabling regular appointment to rest and salary adjustment . In the instant case the applicant is now working for more than ^{9 years} and the vacancy ~~is~~ still exists . Her case for regularisation may be considered by U.P.Sc by perusing ACR as was directed in Dr. Jain's case (Supra) and in case she is fit, she may be regularised giving relaxation in age . ~~XXXX~~ If no selection has been made, fresh advertisement then have to be issued and her case may ~~be~~ also be considered, she being now qualified for the post. if necessary by applying the relaxation

A9

5. The application stands disposed of finally
in these terms. No order as to costs.


A.M.


V.C.

Lucknow DT. 7/11/93