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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GUIESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY 1

OA NOS. 605/89 & 617/89

1. Dr. (Mrs.) Sumati Prakash Shere ..Applicant
in OA No.605/89

2. Dr. S J Pol ..Applicant
in OA NO.617/89

V/s

Union of India & Ors. . Respondents

Coram: Hon.Shri Justice M S Deshpande, Vice Chairman
Hon.Shri R Rangarajan, Member(A)

Appearance:

Mr. C S Thakore
Counsel for the applicants
Mr. V S Masurkar
Counsel for the respondents

ORAL JUDGMENT:

DATED: 23.3.1994

(Per: M S Deshpande, Vice Chairman)

Dr. (Mrs.) Shere, the applicant in OA NO. 605/89 was appointed as Assistant Surgeon Gr.I on 16.2.1982 and has been working continuously as such. Initially her services were terminated on 12.1.1985 and that termination was challenged by filing a Writ Petition in the Bombay High Court. The applicant took the matter to the Supreme Court and in Civil Appeal No. 2192/88 decided on April 3, 1989 the appeal was allowed and the order of termination dated 12.1.1985 was set aside. The Supreme Court however made it clear that the applicant will not claim status of a regular employee since her services are not regularised in accordance with law. By the present application the applicant seeks regularisation of her services. There was also a fresh

order of termination dated 28.9.1989 which is also challenged by the applicant. By the interim order passed by this Tribunal on 21st September 1989, the applicant was continued in service.

The learned counsel for the respondents stated that the applicant is being continued in service in accordance with that order and that the respondents would not act on the order of termination passed earlier. In view of this statement the only point that needs our consideration is whether the applicant is entitled by virtue of the appointment made initially on 16.2.1982 to be regularised in the post. There is no dispute about the fact that the applicant came to be appointed initially as the appointment was sponsored by the Employment Exchange and after an interview by the local officers. This was not the position for regular appointment as contemplated by the Navy Group 'A' Gazetted posts (Assistant Surgeon Grade I/Medical Officer (Lady Doctor) Recruitment Rules 1989 which were notified on 2.1.1989. The schedule appended to the rules prescribes that the UPSC is to be consulted for making these appointments and these posts are Group A posts. This requirement was not followed in the present case. It is, therefore, clear that the applicant by virtue of this service rendered on ad hoc basis from 16.2.82 cannot be regularised and the regularisation can come only in the manner provided for in the aforesaid rules.

The learned counsel for the applicant relied on the decision of the Supreme Court in Dr. P.P.C. Rawani & Ors. Vs. Union of India & Ors. from an appeal against Writ Petition No. 2620-59/1985 (Order in CMP No.8076/1988) decided on 29th October 1991. But that decision would not help the applicants because the Supreme Court issued the directions in view of the peculiar circumstances of that case directing separate

seniority list to be prepared in respect of ad hoc appointees so that there might not be any conflict between them and the persons who came to be regularly appointed whose interests were to be safeguarded. Until the date of filing the applications the applicants have rendered only 7 years of ad hoc service. So far as the legal position is concerned it is set at rest by the decision of the Full Bench by this Tribunal in a group of petitions including 1595 of 1987 and Ors. H.C. BAJAJ V. REGIONAL PROVIDENT FUND COMMISSIONER, DELHI decided on 5.2.93 (Full Bench Decisions 1991 to 1993 page 250). The Full Bench pointed out after referring to the decision reported in AIR 1991 SC 284 between KESHAV CHANDRA JOSHI AND OTHERS ETC. & UNION OF INDIA AND OTHERS,

that the principle is laid down by the Supreme Court in The Direct Recruits case would apply only in cases where the initial appointment is made deliberately in disregard of the rules and the incumbent allowed to continue in the post for long periods of about 15 to 20 years without reversion till the date of regularisation of service in accordance with rules, there being power in the authority to relax the rules will be deemed to have been exercised by the Government. It is apparent that service rendered on ad hoc basis for shorter spells would not count for regularisation and in the present case the mere fact that the applicants have been rendering ad hoc services will not entitle them ipso facto for regularisation as their initial appointment was not in accordance with the rules.

The only order that we can make in this OA and OA NO. 617/89 where the facts are identical would be that the services of the applicant shall not be terminated merely on the ground that they have been working on ad hoc basis, except upon the regular appointment being made through the UPSC or if any disciplinary action is to be taken as a result of the disciplinary proceedings. The respondents shall take early steps for regularising the appointments of the applicants by making a reference to the Union Public Service Commission in accordance with the recruitment

rules. We would direct the respondents to initiate such action as early as possible. With these directions the OAs are disposed of. No order as to costs.

(R Rangarajan)
Member(A)

(M.S.Deshpande)
Vice Chairman