

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
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Commercial Complex (BDA),
Indiranagar,
Bangalore - 560 038

Dated : 18 JUN 1987

APPLICATION NO 46 /87 (F)

W.P. NO _____

Applicant

Dr (Smt) Kshama Kapur

v/s The Secy, M/o Health & Family Welfare

To

1. Dr (Smt) Kshama Kapur
2973, HAL IInd Stage
13th Main, 8th Cross, Indiranagar
Bangalore - 560 038
2. Shri Mohandas N. Hegde
Advocate
Kurubara Hostel Building
2nd Main Road, Gandhinagar
Bangalore - 560 009
3. The Secretary
Ministry of Health & Family Welfare
Nirman Bhavan
New Delhi-110 011
4. Shri M. Vasudeva Rao
Addl Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/XXXX/

~~ORDER~~ passed by this Tribunal in the above said
application on 12-6-87.

Encl : as above

Sh/S
Please come all
18/6/87

R. Jay
SECTION OFFICER
(JUDICIAL)

18/6/87

CENTRAL ADMINISTRATIVE TRIBUNAL:BANGALORE

DATED THIS THE 12TH DAY OF JUNE,1987.

PRESENT:

Hon'ble Mr.Justice K.S.Puttaswamy, .. Vice-Chairman.
And
Hon'ble Mr.P.Srinivasan, .. Member(A).

APPLICATION NUMBER 46 OF 1987

Dr.(Smt.)Kshama Kapur,
Senior Medical Officer,
Central Government Health Scheme,
2973, HAL II Stage, 13th Main,
V Cross, Indiranagar,
Bangalore-560 038. .. Applicant.
(By Sri Mohandas N.Hegde, Advocate)
v.

Union of India by Secretary
to Government of India,
Ministry of Health and Family Welfare,
New Delhi. .. Respondent.
(By Sri M.Vasudeva Rao,CGASC).

This application coming for hearing, Vice-Chairman made the following:

O R D E R

This is an application made under Section 19 of the Administrative Tribunals Act,1985 ('the Act').

2. Dr.(Smt.) Kshama Kapur, the applicant before us initially joined service as a Medical Officer (Grade-II) in the New Delhi Municipal Committee ('MDMC'), a local authority constituted and functioning for the New Delhi area under an Act of Parliament. While working in the NDMC the applicant applied to the Union Public Service Commission ('UPSC') for the post of Medical Officer Grade-II (Category 'E'officer) of the Central Health Service of Government of India ('CHS') which came into being from 1-1-1965 under the Central Health Services Rules ("Rules") framed by the President of India under the proviso to Article 309 of the Constitution. The UPSC



UPSC selected the applicant and others and assigned her rank No.821. From 1-1-1965 and onwards the applicant has been working as a Medical Officer Grade-II of the CHS at one or the other place.

3. On 27-1-1987 the applicant has approached this Tribunal for a direction to the respondents to count her service from 26-1-1963 to 31-12-1964 rendered in the NDMC as if rendered in the Central Government and regulate her seniority and other conditions of service on that basis. She has also sought for a direction to the respondents to consider her case for promotion to the post of Medical Officer Grade-I and Chief Medical Officer on the dates her alleged juniors were prooted to the said posts. But, at the hearing, the first prayer of the applicant was prominently pressed by her.

4. In its reply, the respondent has resisted the claims of the applicant. Firstly, the respondent has urged that this application made under the Act was highly belated and barred by time. On merits the respondent has justified its decision not to count the applicant's service with NDMC on the ground that NDMC had declined to make the pensionary contribution in respect of that period. Replying to the applicant's assertion that similar service rendered by others with NDMC had been counted, the respondent has stated that this was being 'looked into'.

5. Sri Mohandas N.Hegde, learned Advocate has appeared for the applicant. Sri M.Vasudeva Rao, learned Additional Central Government Standing Counsel has appeared for the respondent. We have heard the learned counsel for the parties on the question of limitation raised by the respondent. Since it concerns the maintainability of this application itself, we now proceed to examine it first as indicated by us at the hearing.

6. Sri Rao has urged that the application made by the applicant

applicant really challenges a proceeding or an order made prior to 1-II-1982 and that, therefore, it cannot be entertained and examined by this Tribunal and is, in any event, barred by time, as held by the Principal Bench of this Tribunal in V.K.MEHRA v. SECRETARY, MINISTRY OF INFORMATION AND BROADCASTING, NEW DELHI (1986 ATR 203). Sri Hegde countered the submissions of Sri Rao and urged that the application was in time.

7. Sri Hegde at the threshold has urged that the objection of the respondent on the plea of limitation without setting out the particulars, was vague and general and calls for rejection on that very ground.

8. In its objections the respondent without furnishing the particulars had only pleaded that the application made was highly belated and barred by limitation under Section 21 of the Act. Without any doubt, this objection formulated by the respondent is vague and general. But, that defect in the pleading, though regrettable is no ground to reject the contention without a full examination and to hold that the application made was in time. We see no merit in this objection of Sri Hegde.

9. Sri Rao has urged that the notification dated 1-1-1965 (Annexure-R1) itself settles the relative seniority of the applicant vis-a-vis other officers appointed to 'E'category posts and that for deciding the question of jurisdiction and limitation we must take that date itself as the starting point in time.

10. Sri Hegde has urged that the truncated copy of the notification cannot be acted and relied upon and that in any event without the respondents producing an authenticated copy of the gazette notification the same cannot be acted upon and the date of the notifica-



tion cannot be reckoned as the starting point for deciding the question of jurisdiction and limitation raised by the respondents.

II. Along with the statement of objections the respondent had produced an extract of Notification No.F.1 (III)-2(A)-CHS dated 1-1-1965 (Annexure-RI) publishing the list of officers appointed to several categories or cadres or scales under the Rules from 1-1-1965. We very much wish that the respondent had produced a full copy of the notification instead of producing only copies of first and forty-first pages of the list. But, notwithstanding this infirmity we are of the view that the said notification did indeed publish the list of officers appointed to several categories under the Rules from 1-1-1965. We have no doubt that in the list of officers appointed to Category-E or Medical Officers Grade-II, the applicant had been assigned rank No.821.

12. The Rules provide for selection of officers to the CHS as part of its initial constitution by the UPSC or by a Committee constituted by it and the approval of such selection by Government. We have no doubt that in making selections, arranging their seniority, the UPSC and Government had followed the Rules and arranged them in the order of their merit. Even in the absence of a gazette notification, we are inclined to hold that the placements of the officials was in conformity with the Rules and that the applicant had been assigned rank No.821 with due regard to her merit and other factors detailed in the Rules.

13. In the notification itself there is no provision to count the service rendered by the applicant in NDMC. In reality and in substance the applicant is asking us to interfere with the relative seniority fixed in the notification dated 1-1-1965. If that is so, then this application made on 27-1-1987 cannot be entertained by us under the Act.

We are of the view that this objection of Sri Rao has considerable force.

14. Sri Rao has alternatively urged that the claim of the applicant to count her service in the NDMC for the purpose of determining her seniority had been rejected by Government as early as on 2-9-2-1979 and 31-8-1979 (Annexure-B) and taking those orders as the final determination of her claims, this application made on 27-1-1987 cannot be entertained by the Tribunal and was barred by time.

15. On or about 13-11-1978 the applicant made a representation to Government which reads thus:

Dr.Kshama Kapoor,
Chief Medical Officer I/c

D.O.No.A.19018/2/78/BNG/CGHS/9087
Office of the Chief Medical Officer
Central Government Health Scheme
No.21/2/2A, 9th Main, III Block West,
Jayanagar, Bangalore 560 011.

Dated 13th November,1978.

Dear Sri Tiwari,

Please refer to the Provisional Civil List of Sr.Class-I Officers of Central Health Services issued vide letter No.A.21020-6/77-CHS.III(V) dated 28-3-1978 of Ministry. My name is listed at Sl.No.612 of the Civil List and is placed in the temporary officers category. In this connection I would like to bring to your kind notice the following points:

(i) I joined service in the New Delhi Municipal Corporation in 1963 and my service since then has been continuous. In Col.4 of the list, date of commencement of service is shown as 1-1-1965. It appears that my service prior to 1-1-1965 has not been taken into account for purposes of seniority.

I shall be highly thankful if you could look into the matter and revise my seniority in the list taking into account the period of service prior to 1-1-1965 also.

In this connection kindly clarify whether I have been declared quasi permanent under Rule No.3 of Temporary Service Rules.

I shall be thankful for an early reply.

Yours sincerely,

Sd/- Dr.(Mrs.)Kshama Kapoor,
Chief Medical Officer I/c.

Sri R.N.Tiwari,
Under Secretary, CHS-II,
Ministry of Health & Family Welfare,
(Department of Health), Nirman Bhavan,
New Delhi-110 011.



On an examination of this representation, Government rejected the same and communicated its decision in its letter No.A.23020/I/79-CHS-IV dated 9-2-1979 addressed to the Chief Medical Officer, Jayanagar, Bangalore which was also copied to the applicant and the same reads thus:

To

The Chief Medical Officer,
Central Government Health Scheme,
21/2/2A, 9th Main, 3rd Block West,
Jayanagar, Bangalore 560 011.

Sub:Counting of service rendered under the Delhi
Municipal Corporation -Dr.(Smt.)Kshama Kapur.

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Sir,

I am directed to refer to your letter No.A.19018/2/79-BNG/-CGHS/563 dated the 17-1-1979 on the subject cited above forwarding therewith a representation from Dr.(Smt.)Kshama Kapur, a G.D.O. Grade-I Officer. In this connection I am to inform you that Dr.(Smt.) Kshama Kapur was inducted as Category 'E' officer in the C.H.S. w.e.f. 1-1-1965 at its initial constitution. Her service under the Central Health Service will count only with effect from that date i.e., 1-1-1965 for the purpose of seniority in her grade.

2. As regards counting of her service rendered under the Delhi Municipal Corporation, it is pointed out that her service prior to 1-1-1965 will not count for the purpose of civil pension until the D.M.C.agree to this proposal and the Ministry of Finance endorse the proposal. In this connection Dr.(Smt) Kshama Kapur may put up a request through proper channel to the D.M.C. While doing so, she may give full particulars of her service rendered under the D.M.C. She may also indicate the amount of share which she had received from the D.M.C. towards gratuity/C.P.F.etc.

Yours sincerely,

Sd/- US(CHS).

Copy forwarded for information and necessary action to
Dr.(Smt.)Kshama Kapur, Medical Officer, C.G.H.S.Dispensary
No.1, No.20, Union St.Bangalore-560 001.

Under Secretary.

When the applicant was confronted with this letter, she denied the receipt of the same. But, in her letter dated 23-2-1979 addressed to Government, she has acknowledged the receipt of this letter and has again protested against the decision taken by Government in these words:



Dr.(Mrs.)Kshama Kapur,

1331/79 CHS-IV.
No.63 Cunningham Road,
Bangalore 560 052.

23rd February,1979.

Dear Mr.Tewari,

I owe you an apology for writing to you a personal letter on an official matter. To recall the problem I had put in an application requesting that the service rendered by me under New Delhi Municipal Committee prior to constitution of Central Health scheme on 1-1-1965 should be reckoned for my seniority and regulation of my promotion to Grade-I. I received a routine reply vide letter No.A.23020/I/79-CHS.IV dated _____ February, 1979.

2. I strongly feel that justice has not been done in my case. Not satisfied with the reply given to me I have again put up a representation. I am sending herewith an advance copy so that you may kindly get the case examined pending the receipt of my representation through proper channel. This I hope will expedite the consideration of my case.

3. I shall indeed be grateful if you can kindly put your weight behind my representation for a favourable consideration of my case.

Sd/- Dr.(Mrs.)Kshama Kapur.

Shri R.N.Tiwari,
Under Secretary,
Ministry of Health & Family Welfare,
(Department of Health), Nirman Bhavan,
New Delhi.

We have no doubt that the letter dated 9-2-1979 had been forwarded to the applicant and had been received by her as acknowledged by her in her letter dated 23-2-1979. The decision conveyed in letter dated 9-2-1979 has been reiterated in the letter dated 31-8-1979 produced by the applicant and the same reads thus:

No.A.23020/I/79-CHS.IV

Government of India

Ministry of Health and Family Welfare

New Delhi, the 31-8-1979.

To

Dr.(Smt.)Kshama Kapur,
Medical Officer,
Central Government Health Scheme Dispensary No.1,
No.20, Union St.Bangalore-560 001.

Sub: Counting of service rendered under the
New Delhi Municipal Committee.



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Madam,

I am directed to invite your attention to this Ministry's

letter No.A.23020/I/79-CHS.IV dated 28th March,1979, addressed to the Additional Secretary, NDMC, New Delhi, and copy endorsed to you on the subject cited above and to inform you that the New Delhi Municipal Committee have intimated this Ministry that they will not bear any liability for any type of payment of account of pension/leave contributions for the period of your service rendered under the NDMC.

2. In view of the position explained, I am to inform you that the period of your service rendered under the NDMC shall not count for the purpose of grant of civil pension.

Yours faithfully,

Sd/- R.N.Tewari,

Under Secretary to the Government of India.

A.23020/I/79-CHS.IV.

Copy forwarded for information to the Chief Medical Officer, Central Government Health Scheme, 21/2/2A, 9th Main,-3rd Block West, Jayanagar, Bangalore-560 011, w.r.t. this Ministry's letter dated 28-3-1979 referred to above.

Sd/- Under Secretary.

We are of the view that this letter only reiterates what had been conveyed to the applicant on 9-2-1979. At any rate the applicant herself admits that she has received this letter. We need hardly say that the letters dated 9-2-1979 and 31-8-1979 had finally rejected the claim of the applicant to count her service rendered in the NDMC for seniority and all other purposes.

16. On the question whether a final decision reached by an authority before 1-11-1982 can be examined by the Tribunal under the Act or not Justice Madhava Reddy, Hon'ble Chairman,CAT speaking for the bench in Mehra's case has expressed thus:

The Administrative Tribunals Act does not vest any power or authority to take cognizance of a grievance arising out of an order made prior to 1-11-1982. The petitioner requests that the delay in filing this application be condoned. But the question is not at all one of condoning the delay in filing the petition. It is a question of the Tribunal having jurisdiction to entertain a petition in respect of grievance arising prior to 1-11-1982.

3. In Regn.No.T.34/85 Capt.Lachhman Singh v. Secretary, Ministry of Personnel and Training, we held:

"The period of three years laid down under sub-section (2)of Section 21 would have to be computed with reference to any order made on such a representation and not with reference to the earlier order....the Tribunal would have jurisdiction under sub-section (2) of Section

21 to entertain an application in respect of "any order" made between 1-11-1982 and 1-11-1985."

The limited power that is vested to condone the delay in filing the application within the period prescribed is under Section 21 provided the grievance is in respect of an order made within 3 years of the constitution of the Tribunal. Though the present petition is filed within six months of the Constitution of the Tribunal in respect of an order made prior to 1-11-1985 as contemplated by sub-section (3) of Section 21, since it relates to a grievance arising out of an order dated 22-5-1981, a date more than 3 years immediately preceding the constitution of the Tribunal, this Tribunal has no jurisdiction, power or authority to entertain the petition. This petition, is therefore, dismissed."

In THIMMA v. THE DIVISIONAL RAILWAY MANAGER, CITY RAILWAY STATION, BANGALORE (A.No.1706 of 1986 decided on 1-4-1987) we have followed this ruling and another ruling of the Bombay Bench in PARAMU GOPINATH ACHARY v. UNION OF INDIA (1986 (1) ATC 514(Bom.)) which has taken a similar view. On the ratio of these rulings that are binding on us, we must necessarily hold that this application which really seeks to challenge the decision taken by Government as early as on 19-2-1979 and 31-3-1979 cannot be entertained by us.

17. But, Sri Hegde has urged that the decision rendered by Government on 3-7-1986 has revalidated its earlier order or must be deemed to be a case of acknowledgment of liability and the same saves the period of limitation under the Act.

18. We are of the view that the principle of acknowledgment of liability properly applicable to civil debts or liabilities cannot properly be extended to administrative or judicial orders made by authorities or Courts. We cannot on principle or authority hold that Government had acknowledged its liability on 3-7-1986. If Government had not acknowledged any liability then the question of holding that the same saves the period of limitation does not arise.

19. When a final order is made and repeated representations



are made and the decision is reiterated in a later order, it is difficult to hold that the later order validates the earlier order or replaces it, giving rise to a fresh cause of action. The reiterations made from time to time out of sheer courtesy and grace cannot on principle or authority be construed as validating or revalidating an earlier order. Even otherwise we are of the view that the order dated 3-7-1986 does not validate or revalidate the earlier orders made by Government on 9-2-1979 and 31-8-1979. We see no merit in this contention of Sri Hegde also and we reject the same.

20. Lastly, Sri Hegde urged that Government itself has stated that the applicant's complaint was being 'looked into' in its latest letter dated 3-7-1986 (Annexure-F) and, therefor, her case had not so far been finally determined and on that view this application made under Section 19 of the Act was in time.

I to agree

21. We are unable with this last contention of Sri Hegde. The matter of counting the service of the applicant with NDMC for determining her seniority in CMS stood concluded by Government's replies dated 9-2-1979 and 31-8-1979 referred to earlier. In the letter dated 3-7-1986 also which Sri Hegde relies on, there is a denial in the first paragraph that the past services rendered by three other Doctors with NDMC/DMC had been counted for the purpose of seniority. This statement is merely to reinforce the earlier decision rejecting the applicant's claim. After saying so, the letter goes on to say that the question why "the dates of their joining NDMC/DMC have been indicated in the civil list as date of entry into Government service" was being looked into. There is, thus, no suggestion here at all that the applicant's claim of seniority based on her earlier service with NDMC was being considered again. Therefore, we see no merit in the last contention of Sri Hegde.



22. On the foregoing discussion, we hold that this application made on 27-1-1987 challenging the decisions of Government made in 1979 cannot be entertained by us under the Act. On this view, this Tribunal examining the merits of the case does not arise. We, therefore, refrain to examine the merits of the case.

23. In the light of our above discussion, we hold that this application is liable to be dismissed. We, therefore, dismiss this application. But, in the circumstances of the case, we direct the parties to bear their own costs.

Sd/-

VICE-CHAIRMAN

12/6/87

Sd/-

MEMBER(A)

-True Copy-



np/

12/6/87
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE