

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH:MUMBAI
OA No.973/1993

WEDNESDAY, THIS THE 18TH DAY OF OCTOBER, 2000.

HON'BLE MR.JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MR.B.N.BAHADUR, MEMBER (A)

Dr.Sujata Chhotaray
Medical Officer (short-term)
Ordnance Factories Hospital
Khadki, Poona
R/o 9/8 Type III Quarter
Ordnance Factories Hospital
Khadki, Poona-411003.

.... Applicant

(By Advocate Shri S.P.Saxena)

vs.

1. The Union of India through
the Secretary
Ministry of Defence
New Delhi-110011.
2. The Director General
Ordnance Factories
10-A Auckland Road
Calcutta.
3. General Manager
Ammunition Factory
Kirkee, Pune 411003.
4. The Secretary
Union Public Service Commission
Dholpur House
Shahjahan Road
New Delhi-110011. Respondents

(Shri R.R.Shetty, advocate for Shri R.K.
Shetty for Respondents 1 to 3.
Shri K.Babu Rajan, proxy for Shri. V.
Rajgopal, counsel for respondent No.4)

ORDER(ORAL)

JUSTICE ASHOK AGARWAL:

Applicant joined services of the Ordnance Factories Hospital, Kirkee, Pune as a short term Medical Officer with effect from 26.10.1990. Her services were continued for a period of six months each time after giving her an artificial break of a day or two. By the present OA, she has claimed regularisation with effect from the date she was earlier appointed ignoring the

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technical breaks. Pending the present OA, services of the applicant have been regularised after she has been selected by the Union Public Service Commission. The order of appointment has been issued on 18.8.2000. Aforesaid prayer for regularisation, in the circumstances, has now been granted. Applicant has, however, made some additional prayers which are contained in prayer clauses (b) to (c) which are in the following terms:-

"(b) The Respondents may be directed to treat the services of the applicant as continuous without any break from the time she was first appointed as M.O. for the purpose of determining her seniority, annual increment etc.

"(c) The Respondents may be directed to pay the arrears of pay after the annual increments are granted in terms of prayer (b) above.

"(d) The applicant be considered for quasi-permanent status on completion of 3 years service in the organisation.

"(e) The respondents be further directed to count the service of the applicant from the date of her first appointment for all other purposes including her pensionary and terminal benefits."

In other words, applicant has sought directions to treat her service as continuous without any break from the date she was first appointed as Medical Officer for all purposes such as for determining her seniority, annual increments etc. In support of the prayers, reliance is placed on an order issued by the Government of India, Ministry of Defence, Department of Defence Production and Supplies on 19.12.1994 which provides as under:-

"Sub: Counting of past service, grant of condonation of break in service, increments, etc. in respect of STMOS regularised following CAT judgement.

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I am directed to convey the sanction of the President to the grant of the following benefits to the Medical Officers indicated in Annexure due to regularisation of their services in pursuance of the orders of Hon'ble CAT Jabalpur Bench, in O.A.Nos.499/88, 528/88, 538/88, 543/88, 548/88, 316/89 and Hon'ble CAT Allahabad Bench dt. 15.05.92, 02.11.92 and 10.02.93 in O.A. No. 1294/88, O.A.No.707/92 and 1763/92 respectively:-

- (i) These Medical Officers shall be deemed to be in service from the date of their first appointment the entire service being counted towards increment the break being ignored for the purpose.
- (ii) The break shall be treated as leave to which these Medical Officers may be entitled or as Extra-ordinary leave without pay, if there is no leave in credit.

2. Seniority of these Officers will, however, count w.e.f. the date of their regular appointment as indicated in the Annexure.

3. This issues with the concurrence of Integrated vide their I.D.NO.2115/IF/DP-I dated 14.12.1994.

Yours faithfully,
sd/-
(DILBAGH SINGH)
Desk Officer "

2. In our judgement, applicant will not be entitled to the aforesaid reliefs based on the aforesaid order of 19.12.1994. Aforesaid order, it is clear has been issued in pursuance of orders issued by the Tribunal in various OAs. The same has been issued only in favour of the applicants in the said OAs. The same cannot be extended in favour of the applicant in view of the decision of the Supreme Court in the case of Dr. Anuradha Bodi & Ors. etc.etc. vs. Municipal Corporation of Delhi & Ors, JT 1998 (3) SC 757 wherein on facts para materia it has, inter alia, been observed as follows:-

....But the petitioners are placing reliance on the judgement of the constitution Bench of this Court in Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra & Ors. JT 1990 (2) SC 264 = (1990) 2

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S.C.C. 715 and are contending that their services from the dates of initial appointment till the date of regularisation have to be taken into consideration for purposes of fixing their seniority.....Hence, the question which has to be considered is whether the petitioners are entitled to get any benefit on the basis of the decision rendered by the Constitution Bench in the Direct Recruit case (supra)."

"12. If the facts of these two cases are analysed in the light of the aforesaid decisions, there can be no doubt whatever that the petitioners fall within the corollary in Conclusion (A). The orders of appointment issued to the petitioners are very specific in their terms. Though the Recruitment Rules came into force on 6.8.82, the appointments were not made in accordance therewith. They were ad hoc and made as a stop gap arrangement. The orders themselves indicated that for the purpose of regular appointment the petitioners were bound to pass the U.P.S.C. examination in normal course in the direct competition...."

"17. The petitioners have been regularised with effect from 27.6.91 the date on which the U.P.S.C. recommended their appointments. Hence there is nothing illegal or arbitrary in the office order dated 17.8.92 appointing the petitioners on regular basis with effect from 27.6.91. The said regularisation is in accordance with the rules."

3. If one has regard to the aforesaid decision, applicant can only be treated as regularly appointed from the date she has been selected through the Union Public Service Commission on 18.8.2000. She cannot claim reliefs based on her earlier ad hoc appointment which would naturally give her a march over those who have been regularly appointed through the Union Public Service Commission prior to her having been so appointed. Such a relief also cannot be granted as those who have been earlier appointed have not been impleaded as party respondents to the OA. In the circumstances, we find that the applicant will have



to rest content with the order of her regular appointment through the Union Public Service Commission issued in her favour on 18.8.2000, ~~at least as far as this Tribunal is concerned.~~

4. Present OA, in the circumstances, is dismissed.

No costs.

B.N.Bahadur
(B.N.Bahadur)
Member (A)

sns

Ashok Agarwal
(Ashok Agarwal)
Chairman