

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 1066/94 and 1277/94

DATE OF DECISION: 13th Dec., 99

Dr. Harshad K.Vaidya Applicant.

Shri I.J.Naik Advocate for
Applicant.

Versus

The Administrator
Union Territory of Respondents.
Daman & Diu and others

Shri R.R.Shetty for Shri R.K. Shetty Advocate for
Respondent(s)

CORAM

Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

- (1) To be referred to the Reporter or not? YES
- (2) Whether it needs to be circulated to _{NS}
other Benches of the Tribunal?
- (3) Library. YES

S.L. JAIN
(S.L. JAIN)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO: 1066/94 and 1277/94

the 13th day of DECEMBER 1999

CORAM: Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

Dr. Harshad K.Vaidya
Residing at Kathiria
P.O. Nani Daman

...Applicant

By Advocate Shri I.J.Naik.

V/s

1. The Administrator
Union Territory of
Daman & Diu,
Administrator's Secretariat
Fort Area
P.O.Moti Daman.
2. The Union Public Service
Commission through
The Secretary
'Dholpur House'
Shah Jahan Road,
New Delhi.
3. Union of India through
Secretary
The Ministry of Home Affairs
Central Secretariat
North Block, New Delhi.

...Respondents.

By Advocate Shri R.R.Shetty for Shri R.K.Shetty.

O R D E R

(Per Shri S.L.Jain, Member(J))

These are the applications under Section 19 of the Administrative Tribunals Act 1985 seeking the declaration that the applicant is entitled to be declared as a deemed confirmed employee in the post of Medical Officer, entitled to get his appointment regularised, respondent No.1 be directed to send

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offers of appointment in view of advertisement No.24 dated 11.12.1993 only to 5 candidates and not the 6th candidate there by keeping one post vacant for regularising the appointment of the applicant, not to terminate the appointment of the applicant holding of interviews for three posts in view of advertisement No.21 of the UPSC published on 12.11.1994 and selection of three candidates by passing the applicants to one out of three posts of Medical Officer is erroneous and to reserve one post for the applicants, alongwith costs.

2. The respondents admitted that the applicant was initially appointed as Medical Officer on adhoc basis under the Directorate of Health Services, earstwhile Government of Goa, Daman and Diu vide order dated 26.6.1982, the earstwhile Union Territory of Goa, Daman & Diu, came to be reorganised resulting in the formation of State of Goa; Daman and Diu continued to remain as Union Territory with effect from 30th May 1987, the applicant continued in service since 26.6.1982 and onwards. The respondent No.1 in consultation with respondent No.2, issued an advertisement No 24 dated 11.12.1993 for the post of 6 Medical Officers, further issued advertisement No.21 on 12.11.1994 for the post of 3 Medical Officers, selected three by passing the applicant.

3. The applicant's case in brief is that having been duely selected by the local selection committee he was appointed as a Medical Officer/Rural Medical Officer under the Directorate of Health Services under the earstwhile Union Territory of Goa, Daman and Diu and was posted at Mandrem against the vacant post

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which was created under the Government order PSS/PHS - 64 dated 7.1.1964 with immediate effect on terms and conditions contained in Government memorandum dated 12.4.1982 marked as Annexure No. A-3. He has served for a period of over 12 years and still continues on the post without any break, as per term 3(iv) his appointment was " the appointment will be on probation for a period of 2 years" which expired on 29.6.1984. The probation period was never extended. Other Doctors were appointed under respondent No.1 at Daman and Diu who are junior to the applicant and they are still continuing on the post of Medical Officers. He became confirmed employee by implication after completion of three years service. It was the duty of respondent No.1 to refer to the Government the applicant's case to the UPSC for regularisation. Respondent No. 1 promised in 1991 to get the appointment of doctors but nothing came out. He submitted the representation on 21.9.1990 but no action was taken and the post was advertised.

4. The applicant further alleged that in the State of Goa 39 Doctors who were the colleagues of the applicant in the erstwhile Government of Union Territory of Goa, Daman and Diu got their appointment regularised in January 1991 as per Annexure A-2. Had the applicant remained in Goa State his services could have been regularised as has been done in the said cases of 39 doctors. Hence these OAs for the above said reliefs on account of inaction of the respondents No.1 and advertisement No.21 and 24 published by respondent No.2 UPSC.

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5. The respondents have resisted the claim of the applicant and alleged that the applicant was also interviewed by the UPSC for one of the post of Medical Officer, was found unfit and rejected, the said fact is admitted by the applicant in rejoinder affidavit.

6. The respondents have alleged that the appointment was on adhoc basis not to be confirmed as there were no recruitment rules for the Medical Officer, recruitment rules have been framed under Article 309 of the Constitution for the post of Medical Officer under the Administration of Union Territory Daman and Diu and Dadra and Nagar Haveli. The respondents are seeking appointment of 6 and 3 Medical Officers in view of advertisement No. 21 and No. 24 respectively as per the said recruitment rules. The direction claimed by the applicant is in controvention of the recruitment rules under Article 309 of the Constitution. The Tribunal cannot interfere with the process of selection and recruitment which is being conducted as per the recruitment rules framed under Article 309 of the Constitution. The offer of appointment is very clear which mentions that the appointment would not confirm any title to permanent employment. The question of probation would arise only in case of employment on permanent or regular basis. It is the inaction of the applicant not opting for Goa State hence he cannot claim equality on the said account. The circular of Goa State is not applicable to Union Territory of Daman and Diu.

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7. The applicant filed the rejoinder affidavit alleging that after the probation period of 3 years the status of adhoc vanishes, infact recruitment rules published in official Gazette series I No.21 dated 24.8.1967 were operative at the time of appointment of the applicant. The new recruitment rules are not applicable to the applicant as they cannot govern the earlier appointment of the applicant which was as per the then existing rules. The appointment was not by a back door entry, after a due selection, not for a specific period or stop gap arrangement or a substitute and the post was permanent one. He appeared in the interview by way of abundant precaution.

8. In sur rejoinder the respondents submitted that in fact no recruitment rules were framed for the post of Medical Officer and recruitment rules published in the Government services I No 21 dated 24.8.67 seized to exist on 6th October 1993 after coming into force of the recruitment rules (new rules) which are duly published by the Union Public Service Commission and said recruitment rules are not challenged. There is no establishment order to the effect that adhoc appointment vanishes after a particular period.

9. The applicant filed reply to the sur rejoinder of the respondent alleging that he was not required to appear for the interview thinking that it was merely a formality for regularisation he appeared for interview. His appointment cannot be termed as adhoc in view of OM No.380 36/87 EST(D) dated 30.3.1988. It is not necessary to challenge the new recruitment rules.

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10. The respondents further filed the reply to the reply filed by the applicant in sur rejoinder alleging that there was no provision for the regularisation of the services of the adhoc in recruitment rules. The applicant never informed the respondents that he is appearing for the interview by way of an abundant caution.

Rest of the contentions raised earlier are reiterated. Hence prayed for dismissal of the OA alongwith cost.

11. Dr. Pooja Gupta on behalf of the respondents has filed an affidavit dated 30.8.1999 stating that after the appointment of the applicant till 1987 in the absence of the record she is not in a position to state the number of UPSC selection took place. Since after 1987 three selection took place from 1994 onwards, it was conducted by the UPSC and out of the three occasions on two occasions in 1994 and 1996 the applicant appeared for the selection and that during the selection of 1996 the applicant was selected by the UPSC and his services were regularised in 1996.

12. In view of the applicant's selection and regularisation in 1996 the question of direction to regularise the service of the applicant in consultation with the UPSC does not arise, as the said relief becomes infructuous. In consequence of it a direction to respondent No.1 to issue offer of appointment only to 5 candidates and not the 6th candidate thereby keeping one post vacant for regularisation of appointment of the applicant and not to terminate the services of the applicant does not arise.

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The learned counsel for the respondents argued that such a direction is violating Article 320 of the Constitution, in view of the judgement relied on by the counsel for the respondents Union of India and others V/s Harish Balkrishna Mahajan decided by the Apex Court on 23.10.1996 which lays down the proposition that a direction to regularise the services of temporary Medical Officer in consultation with Public Service Commission is violative of Article 320 of the Constitution of India and the proper course is temporary Medical Officers may apply for such post after vacancy is notified inviting application from eligible persons by public Service Commission and examination is conducted and while the applicant's counsel argued on the basis of the orders of this Tribunal passed in OA 125/94 and OA 926/94 decided on 5.7.1999 and 6.7.1999 Dr. (Mrs) Priyamvada Vishwanath Kolhatkar V/s Administrator, Union Territory of Daman & Diu and others and Dr. J.C. Rana V/s Administrator, Union Territory of Daman and Diu and others that such direction can be ordered.

13. The learned counsel for the applicant relied on 1988 SCC (L&S) 222 Dr. A.K. Jain and others V/s Union of India and others alongwith Dr. M.A. Haque & others V/s Union of India and others and Dr. P.K. Shroff and others V/s Union of India and others and argued that the said precedent deserves to be followed which is being followed in several orders passed by the Tribunal and also in order passed in OA 125/94 and 926/94 decided by this Tribunal. We have carefully perused the judgement of the Apex Court and are of the opinion that the said judgement was delivered "having regard to peculiar facts and circumstances of these casts." It is further made out that the Medical Officers

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appointed before October 1, 1984 and appointed after October 1, 1984 are being treated differently. On the above said promises, we are of the view that the said authority and the judgement passed is under Article 141 of the Constitution of India. The said power is possessed by the Apex Court of the land and not the Tribunals. Hence the said authority and orders passed in OA 125/94 and 926/94 by this Tribunal is of no assistance to the applicant. Further the ratio of what is held in the OAs 125/94 and 926/94 does not apply to the present case on facts. In the present case, the applicant has appeared before the UPSC as a candidate alongwith ^{others} ~~orders~~ and has been selected and therefore ^{his} status has to be determined accordingly. In the case of OA 125/94 and 926/94 a direction has been given to regularise the services in consultation with UPSC considering the various facts mentioned in the orders. Such is not the situation in the present OA.

14. It is also to be mentioned that the Apex Court has neither interpreted any provision of law or has not applied any theory which can serve as precedent but the judgement is passed for doing justice in the said cases having regard to peculiar facts and circumstances.

15. The learned counsel for the applicant relied on 1996(1) AISLJ 426 Shri Ram Sheti lal V/s Union of India and others decided on 3.7.1995 for the proposition that in view of O.M. dated 26.10.1988 regularisation of long adhoc promotion by waiving selection as a one time measure should be permitted. O.M. dated 26.10.1988 is not applicable to the present case for the reasons that the said OM was issued by CPD Western Railway while the applicant is not in Railway service.

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16. As the applicant's service is neither terminated nor he is reverted, hence the authority relied by the learned counsel for the applicant 1998(1) ATR CAT 196 Dr(Mrs) Premlata Choudri V/s ESIC which lays down the proposition that termination of services of Adhoc appointee for a period of 90 days at a time for a maximum period of 9 months with a break of a day or two at the end of each 90 days period, termination of services is illegal, ^h does not apply.

17. 1986(3) AISLJ 358 Upendranath Ojha V/s U.O.I. and others decided by Calcutta Bench on 24.4.1986 which lays down the proposition that on a promotion on adhoc basis working for 7 years allowed to cross E.B. when performance is satisfactory, reversion is bad. The authority is of no assistance, as reversion is not in question in the present OA.

18. The applicant is not challenging the adhoc appointment. Hence the authority relied by the learned counsel for the applicant 1995(1)SLR 580 C.B.Dube and others V/s Union of India and others for the proposition that if appointment made after consideration or claim of others and on merit cannot be termed as adhoc appointment, only left out persons can challenge such appointment, persons considered and rejected have no locus standie to challenge the same. As the applicant is selected the said authority does not help the applicant at all.

19. The applicant's case is not of adhoc promotion and subsequent regularisation. But of adhoc appointment and subsequent regularisation. Hence authority relied by the

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applicant's counsel 1986 ATC 274 M.L. Zutshi V/s Union of India and others and 1992 SCC (L&S) 153 Rajbir Singh and others V/s Union of India and others for the proposition that period of adhoc service on promotion in substantive vacancy subsequently regularised must be counted for seniority has no bearing on the case and not applicable.

20. The applicant's case is only for a period of officiating after appointment as adhoc/probation. Hence authority relied on by the learned counsel for the applicant 1993 SCC (L&S) 412 Dr. M.A. Haque and others V/s Union of India and others which lays down that since petitioners neither appointed nor regularised in accordance with the rules but as a consequence of special procedure laid down by the Supreme Court, period of their officiating service cannot be counted for the purpose of seniority in view of non-applicability of the guidelines (A) & (3) laid down by the Supreme Court in Direct recruit class II Engineering Officers Association case. Hence on the basis of the said authority the applicant is not entitled to claim seniority in view of his subsequent regularisation.

21. Union of India and others V/s Harish Balkrishna Mahajan decided by the Apex Court on 23.10.1996 reported in 1988 LLJ(Supp) 687 serves as precedent, In view of the facts of the present case particularly when the earlier rules in force at the time of appointment on adhoc basis/probation are not brought on record.

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22. There is nothing on record to come to a conclusion that the applicant has appeared with an intimation that he is appearing, though not required to appear with an abundant caution. He cannot claim equality with the officers appointed alongwith him and remained in Goa, as now ^hthey form a separate cadre.

23. In the result we do not find any merit in the OAs, the said OAs deserves to be dismissed and is dismissed accordingly with no order as to costs.

S.L. Jain
(S.L.JAIN)
Member (J)

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D.S. Baweja
(D.S.BAWEJA)
Member (A)