

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.

1092/1998

Transfer Application No.

Date of Decision 26.9.2001

Dr. Subir Subas Roy

Petitioner/s

Shri G. K. Masand

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V.G. Rege

Advocate for
the Respondents

CORAM :

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

Hon'ble Shri. S.K.Agrawal, Member (A).

(1) To be referred to the Reporter or not ? *yes*

(2) Whether it needs to be circulated to other Benches of the Tribunal ? *no*

SAC /

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

No. O.A.1092/1998

Dated the 26th Day of September, 2001.

C O R A M : 1. The Hon'ble Mr. S. L. Jain, Member (J).

2. The Hon'ble Mr. S. K. Agrawal, Member (A).

Dr. Subir Subas Roy,
working as Dental Surgeon at
Central Govt. Health Scheme Polyclinic,
Commerce House, Ballard Estate,
Mumbai-400 001.

Residing at CRESCENT, Pali Road,
Khar, Mumbai-400 052.

(By Advocate Shri G. K. Masand)

... Applicant

A N D

1. Union of India through the
Secretary, Ministry of Health &
Family Welfare,
Nirman Bhavan, New Delhi.
2. Director General of Health Services,
Nirman Bhavan, New Delhi.
3. Addl. Director General,
Central Govt. Health Scheme,
Directorate of Health Services,
United India Building, 2nd Floor,
Sir P.M. Road, Fort,
Mumbai-400 001.

... Respondents

(By Advocate Shri V. G. Rege)

O R D E R

(Per Hon'ble Mr. S. K. Agrawal, Member (A))

The applicant was initially appointed as a Dental Surgeon under the Central Govt. Health Scheme, Mumbai, w.e.f. 1.4.1986. His selection was for a purely temporary post from the names



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sent by Employment Exchange for appointment on monthly wages for a period of six months as there were shortage of Dental Surgeon during that period. He was thereafter appointed on ad-hoc basis w.e.f. 19.1.1989. He has been continuing since then on ad-hoc basis with periodical extension orders issued by the Ministry of Health & Family Welfare, New Delhi. The applicant has sought relief through this O.A. to consider him for regularisation of his service as a Dental Surgeon retrospectively w.e.f. 1.4.1986.

2. The case of the applicant is that the services of 162 Doctors who were working on ad-hoc basis like the applicant were regularised by the respondents vide order dated 27.9.1994, but the name of the applicant was omitted from the said list.

3. The applicant has mentioned in his O.A. that while others including Ayurvedic and Homeopathic Physicians who like the applicant were appointed on temporary basis/monthly wages, then on ad-hoc basis, have all been regularised and absorbed in their respective cadres, the applicant alone has been left out by the respondents in spite of the fact that he is in service for over 12 years.

4. The applicant is aggrieved by the impugned letter dated 8.9.1998 issued by the respondent no.1, addressed to respondent no.3 by which the respondents conveyed that respondent no.1 had no objection in according ex-post-facto approval to the ad-hoc appointment of the applicant being continued upto 31.12.1998, or till some regular arrangement is made, whichever was earlier. It was further mentioned in the said letter that this order was issued with the concurrence of Department of Personnel & Training O.M. dated 31.7.1998.

5. Thereupon, the applicant made a representation dated 12th December, 1998, addressed to the Secretary, Ministry of Health &

Family Welfare, New Delhi, with copies to respondent nos. 2 and 3, as his name was left out from the list dated 27.9.1994, regularising the services of various medical officers.

6. The ld.counsel for the applicant has argued that several Doctors who were appointed after the applicant have been regularised vide order dated 27.9.1994, whereas the applicant who has been working with the respondents as a Dental Surgeon continuously without any break for the last over 12 years, has been ignored from the list.

7. The ld.counsel for the respondents has submitted that the applicant was recruited on 1.4.1986 on the basis of personal interview only for a purely temporary post from the names sent by the Employment Exchange for appointment on monthly wages. It is further submitted that all the extension orders were issued to the applicant from time to time with the specific clear instructions that such continuance is till a regular candidate joins. The respondents have challenged the claim of the applicant for regularisation bypassing the normal channel of selection through U.P.S.C. It is further submitted by the ld.counsel for the respondents that if the applicant had any serious intention to secure regularisation, it was necessary for him to apply to U.P.S.C. whenever posts were advertised, which the applicant failed and neglected to do so. It has also been stated by the respondents' counsel that advertisements were issued by the U.P.S.C. in March, 1989 and July, 1994, but the applicant did not apply against those advertisements. It was for the first time that the applicant vide his representation dated 12.12.1998, requested the Govt. for regularising his service. It has further

been stated by the 1d.counsel for the respondents that the applicant is not and cannot be called a person similarly situated like the said 162 Doctors entitled for the benefit of regularisation.

8. Heard the 1d.counsel for the applicant as well as the respondents.

9. For getting regular appointment in a Class I post, which the applicant is holding, the selection has to be through U.P.S.C. As such, as and when posts are advertised by the Ministry for regular appointment from time to time, the applicant should have applied for the same and got regularisation, if he was really interested in getting his services regularised, which he failed and neglected to do so. The act of avoiding U.P.S.C. Examination by the applicant appears to be deliberate on his part. The facts show that it is incorrect to say on the part of the applicant that any Doctor working on ad-hoc basis was regularised even without U.P.S.C. clearance. It has been confirmed by the respondents that only those Doctors who have been recommended by UPSC for regularisation were regularised.

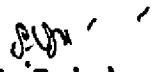
10. In this regard, we take the support from the decision of the Apex Court in the case of J & K Public Service Commission & Ors. vs. Dr. Narinder Mohan & Ors. (1994 (29) ATC 56), wherein it was held by their Lordships that regularisation of ad-hoc appointees without being subjected to open competitive examination to be held by Public Service Commission, purportedly done in relaxation of recruitment rules was invalid. The relevant extract.

from the decision from para 10 at page 65 is reproduced as under :

"It is true that the ad-hoc appointees have been continuing from 1986 onwards but their appointments are de hors the Rules. Rules prescribe only two modes of recruitment, namely, direct recruitment or promotion by selection. As regards the lecturers are concerned, it is only by direct recruitment. The mode of recruitment suggested by the High Court, namely, regularisation by placing the service record of the respondents before the PSC and consideration thereof and PSC's recommendation in that behalf is only a hybrid procedure not contemplated by the Rules."

11. We, therefore, do not find any merit in this O.A. and the same is accordingly dismissed with no order as to costs.


(S. K. Agrawal)
Member (A)


(S.L.Jain)
Member (J)