

(7)

IN THE GENERAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH:
J A I P U R.

O.A. No. 186/1994

Date of order: 8.1.1997

Rajendra Gupta

: Applicant

Vs.

1. Union of India through Director General, Central Government Health Scheme, New Delhi.
2. The Deputy Director, Central Govt. Health Scheme, Hotel Radhakrishan, Jaipur.

: Respondents

Mr. Shiv Kumar, counsel for the applicant
Mr. J.D. Sharma, counsel for respondents

CORAM:

HON'BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE)
HON'BLE SHRI RAVI PRAKASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE))

In this application under Section 19 of the Administrative Tribunal's Act, 1965, Shri Rajendra Gupta has prayed that respondents may be directed to regularise his services with all consequential benefits.

2. The case of the applicant is that he was appointed as a Pharmacist in the Central Government Health Scheme, Jaipur on basic pay of Rs. 1350/- on purely short term wage basis from 1.1.1987 to 25.3.1987 vide order Annexure A-1 dated 30.12.1986. The applicant fulfilled all the prescribed qualifications for recruitment to the post of Pharmacist on regular basis. There were breaks in his postings. The applicant filed

AJ

.. /2

(8)

- : 2 :-

in O.A. No. 286/37 Rajendra Gupta Vs. Union of India and others before the Tribunal. When the OA came up for hearing on 15.12.1993, it was disposed of by the Tribunal vide an order passed on that date (Annex A-3), recording the position therein that since the applicant has already been appointed on adhoc basis with retrospective effect, the OA has become infructuous. After the applicant's appointment on adhoc basis from 1987 three other persons have been appointed on the post of Pharmacist on regular basis whose names have been given by the applicant in the OA. The applicant's claim is that his appointment should be considered on regular basis on the grounds amongst others that he fulfills all the qualifications for appointment and was also interviewed by the departmental promotion committee. He has alleged that there has been discrimination against him in as much as other persons similarly situated have been appointed on regular basis. Further, according to him, vacancies are also available in the department on the post of Pharmacist. Since he has rendered about eight years services satisfactorily and has been working against the regular vacancies, he is eligible for appointment on regular basis.

3. The respondents in the reply have stated that the applicant had been appointed on purely adhoc basis on short term wage basis for various periods during 1987. Subsequently, he was appointed on adhoc basis w.e.f. 26.6.1989 vide order Annexure A-5 dated 16.6.1989 and the breaks given in his earlier employments were covered by treating these as leave and he was deemed

9~

to have continued in service from the date of his first appointment. However, he was continued to be treated as an adhoc employee. At the time of his appointment on 1.1.1987 the applicant did not fulfil the condition of having one year's experience as a Pharmacist. They have also denied that he was interviewed by the Departmental Promotion Committee. In fact, according to them, he was screened by a Selection Committee out of various candidates sponsored by the Employment Exchange. The post for which the applicant had been selected is reserved for a Scheduled Tribe candidate and that is why the applicant had been engaged only as a stop gap arrangement on short-term wage basis. He has, therefore, no right for being given appointment on a regular basis. They have also denied that any person junior to the applicant has been given appointment on regular basis. The three persons mentioned by the applicant in his OA who have been given appointment on regular basis belonged to SC,ST category in accordance with the roster maintained in the office of the respondents. Since there is no regular un-reserved vacancy available on the post of Pharmacist, the applicant has no right to be appointed on regular basis as Pharmacist.

4. During the arguments, the learned counsel for the applicant produced before us an order passed by this Bench of the Tribunal on 26.5.1994 in OA No.159/1988 Sanjeev Garg Vs. Union of India and others. This application was filed by a person whose facts and circumstances were almost identical to those of the present applicant. In that case also the applicant

Q

had been working as a Pharmacist on adhoc basis with breaks from time to time against a vacancy reserved for SC/ST candidate. In that case the Tribunal had directed that as and when a general vacancy is available, the case of that applicant should be considered for regularisation against that vacancy in accordance with the prescribed rules and procedure. The learned counsel for the applicant has prayed that similar treatment should be accorded to the applicant. He has produced before us copy of an advertisement issued on 11.10.1996 by the Central Government Health Scheme, Jaipur showing that the respondents proposed to fill up four vacancies of Pharmacists in Gr.I, three of which are reserved for ST candidates and one is available for a general candidate. He has prayed that the applicant may be considered for regularisation against the general vacancy now advertised instead of filling up the post by direct recruitment.

5. The learned counsel for the respondents states that at present only one general post of Pharmacist is available with the respondents which has been advertised. Since the Tribunal has in the order passed in OA No.158/88 directed the respondents to consider the applicant in that case for regularisation against the general post, the claim of that applicant has to be considered first.

6. We have heard the learned counsel for the parties and have perused the material on record. No doubt against the one general vacancy now

92

.../5

available the respondents will have to consider the case of the applicant in OA No.158/98 who even otherwise senior to the applicant as admitted by the learned counsel for the applicant, in accordance with the order passed by the Tribunal on 26.5.1994. However, we direct that as and when in future a general vacancy becomes available, the respondents shall consider the case of the applicant for regularisation against the said post in accordance with the prescribed Rules and Procedure. The operative part of the order dated 26.5.1994 passed by us in OA No.158/98 reads as under:-

"7. In the circumstances of the present case, we direct that the applicant may be continued on the post of Pharmacist till a regularly selected SC/ST candidate is available to fill up this post. As regards the applicant's regular appointment as a Pharmacist, he can be considered for such appointment only against a general vacancy. We direct that the respondents may consider the case of the applicant for regular appointment against a general vacancy, arising in future, in accordance with the prescribed rules and procedure. However the fact that the applicant has worked on this post since 1985 and has therefore acquired experience on the post may be taken into account while considering his regular appointment against the post of Pharmacist. Since the applicant has been working on the post since 1985 i.e. for the past 9 years, the requirement that the applicant's name be sponsored by the Employment Exchange for the purpose of regular appointment may not be insisted upon.

8. O.A is disposed of accordingly with no order as to costs."

The directions given in the said order as reproduced above should be applied in the case of the present applicant also while considering him for regularisation

92

(12)

as and when a general vacancy arises in future.

7. The O.A. stands disposed of accordingly with no order as to costs. A copy of the order dated 26.5.1994 passed in OA No.158/33 has been taken on record.


(RATAN PRAKASH)

MEMBER (J)


(O.P.SHARMA)

MEMBER (A)