

# THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH, JAIPUR ORDER SHEET



APPLICATION NO.: \_\_\_\_\_

Applicant(s) Smt. Kusum George

Respondent (s) W.D.

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL
<p><u>7. 8. 2009</u></p>	<p><u>OA 339/2009</u></p> <p>Mr. C. B. Sharma, Counsel for applicant.</p> <p>Heard learned counsel for the applicant.</p> <p>For the reasons dictated separately, the OA stands dismissed.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="text-align: center;">               ( B. L. Khatri )              M (A)         </div> <div style="text-align: center;">               ( M. L. Chaudhary )              M (J)         </div> </div>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 7<sup>th</sup> day of August, 2009

**OA No.339/2009**

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)  
HON'BLE MR. B.L.KHATRI, MEMBER (ADMV.)

Smt. Kusum George  
w/o Shri George Joseph,  
r/o C-25, Prem Colony, Near Surya Nagar,  
Tonk Road, Jaipur and presently working  
on the post of Laboratory Technician,  
Postal Dispensary No.2, Tilak Nagar,  
Jaipur.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through Its Secretary to the Govt. of India, Department of Posts, Ministry of Communication and Information Technology, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Postmaster General, Rajasthan Circle, Jaipur.
3. Chief Medical Officer Incharge, Postal Dispensary No.2, Tilak Marg, Jaipur

.. Respondents

(By Advocate: .....)



**ORDER (ORAL)**

The applicant has filed this OA thereby praying for the following reliefs:-

- i) That respondents be directed to count services from 01/04/1982 to 05/04/1989 as regular service on the post of Laboratory Technician by quashing memo dated 23/06/2009 (Annexure A/1) with all consequential benefits.
- ii) That the respondents be further directed to extend benefits of ACP scheme etc. treating the applicant as appointee of 01/04/1982 with all consequential benefits.
- iii) Any other order, direction or relief may be passed in favour of the applicant, which may be deemed fit, just and proper under the facts and circumstances of the case.
- iv) That the costs of this application may be awarded."

2. Briefly stated, facts of the case are that the applicant was initially engaged on the post of Laboratory Technician w.e.f. 1.4.1982 on daily wage basis. It is the case of the applicant that she was allowed to work on the vacant post as Laboratory Technician w.e.f. 1.4.1982. Subsequently, the respondents requested the Employment Exchange vide requisition dated 19.8.1982 for sponsoring names for the said post. It is further stated that the applicant was further called for interview on 18.1.1985 and subsequently the applicant was selected on 13.2.1985. The applicant has placed on record a letter dated 2.3.1987 at Ann.A/6, perusal of which shows that the applicant was appointed as Laboratory Technician w.e.f. 2.2.1987 on ad-hoc basis for 90 days only in the pay scale of Rs. 1350-2200 + DA. However, the applicant was appointed on regular basis to the post of Laboratory

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Technician w.e.f. 6.4.89. The grievance of the applicant in this case is that service rendered by her on the post of Laboratory Technician w.e.f. 1.4.1982 to 5.4.1989 that is immediately before her regularization on the post of Laboratory Technician be counted as regular service and she be granted the benefit of ACP scheme by treating the applicant appointee of 1.4.1982 with all consequential benefits. For that purpose, the applicant has relied upon the Govt. of India, Ministry of Health and Family Welfare order dated 7.5.1992 (Ann.A14) which relates to regularization of service of Medical Officer (adhoc) and their induction in the Central Health Services as Group 'A' Medical Officer which instruction has been issued pursuant to the direction given by the Supreme Court in Civil Appeal No.3519/84.

3. At this stage, it may be stated that the applicant has earlier filed OA No.423/06 for counting her service for the aforesaid period which was decided on 6.11.2008 with direction to the respondents to dispose of representation. Pursuant to the direction given by this Tribunal, the respondents passed order dated 23.6.2009 (Ann.A/1) which is impugned in this OA. At this stage, it will be useful to quote Para-4 of the order whereby reasoning has been given by the respondents for rejecting claim of the applicant and thus reads:

"4. I have carefully considered the representation taking into account every aspect of the case. The records reveal that she was selected for the post of Lab. Technician on the recommendation of the Selection Board which met on 28.01.1985 and orders in this regard were issued vide SSPOs Jaipur City Division Memo No.B2-90 dated 13.2.1985 and due to ban imposed on new appointments by the Government of

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India, regular appointment order was issued vide SSPOs Memo No.B2-90/4 dated 06.04.1989 after completion of required formalities under the provisions of recruitment rules framed by Government of India powers conferred upon under article 309 of constitution. Thus delay due to inaction of the departmental authorities is not proved since regular appointment was given on completion of all formalities for her recruitment/appointment. It is a fact that the representer was engaged prior to her selection, on daily wages basis under temporary arrangement from time to time subject to condition that she will not be eligible for regularization and any other benefits and paid wages to the minimum scale of Lab Technician for the period worked actually. Further after her selection and prior to her regular appointment, she was engaged as an approved outsider on temporary/ad hoc and contractual basis on daily wages in the spells of not more than 90 days under temporary arrangement from time to time after a break subject to condition that her engagement is purely on temporary and adhoc basis and will not confer on her any claim for regular absorption, seniority etc in the grade and she will not be entitled to earn any increment, CGMS/GPS/leave benefits or any other benefits/relief due to the employment and liable to be terminated earlier to 90 days without assigning any reason. Thus her engagement was purely on temporary and contractual basis for which minimum of pay and allowance as admissible were paid to her from time to time. If she has any objection on the conditions of her engagement or delay in regular appointment due to inaction of departmental authorities, she should have raised objection at appropriate time but she did not do so and accepted the employment at her own volition and with eyes open as to the nature of her employment. Now after a long time she has raised objections to justify her irregular and unlawful claim."

4. We have given due consideration to the submissions made by the learned counsel for the applicant. We are of the view that the applicant is not entitled to any relief in view of the law laid down by the Apex Court. At this stage, it will be useful to quote decision of the Apex Court in the case of Punjab State Electricity Board and Ors. vs. Jagjiwan Ram and others, (2009) 1 SCC (L&S) 769 whereby the Apex Court has held that service rendered on daily wage/work charged basis and adhoc basis cannot be treated as

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service on regular basis. For that purpose reliance was placed by the Apex Court in the case of State of Haryana Vs. Haryana Veterinary and AHTS Association, 2000 SCC(L&S) 1043. At this stage, it will be useful to quote Para 18 and 19 of the judgment, which thus reads:-

"18. The Court then referred to the provisions contained in the Haryana Service of Engineers, Class II, Public Works Department (Irrigation Branch) Rules, 1970 and held:

"15. A combined reading of the aforesaid provisions of the Recruitment Rules puts the controversy beyond any doubt and the only conclusion which could be drawn from the aforesaid Rules is that the services rendered either on an ad hoc basis or as a stopgap arrangement, as in the case in hand from 1980 to 1982, cannot be held to be regular service for getting the benefit of the revised scale of pay or of the selection grade under the Government Memorandum dated 2.6.1989 and 16.5.1990, and therefore, the majority judgment of the High Court must be held to be contrary to the aforesaid provisions of recruitment rules, consequently cannot be sustained. The initial letter of appointment dated 6.12.1979 pursuant to which respondent Rakesh Kumar joined as an Assistant Engineer on an ad hoc basis in 1980 was also placed before us. The said appointment letter unequivocally indicates that the officer of appointment as Assistant Engineer was on adhoc basis and Clauses 1 to 4 of the said letter further provides that the appointment will be on an adhoc basis for a period of 6 months from the date of joining and the salary was a fixed salary of Rs. 400 p.m. in the scale of Rs. 400 to 1100 and the services were liable to be terminated without any notice and at any time without assigning any reason and that the appointment will not enable the appointee any seniority or any other benefit under the Service Rules for the time being in force and will not count towards increment in time scale. In view of the aforesaid stipulations in the offer of appointment itself we really fail to understand as to how the aforesaid period of service rendered on ad hoc basis can be held to be service on regular basis. The conclusion of the High Court in contrary to the very terms and conditions stipulated in the offer of appointment and, therefore, the same cannot be sustained. The regular letter of appointment dated 29.1.1982 in favour of Rakesh Kumar along with others had applied to the Secretary,

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Haryana Public Service Commission for being appointed as an Assistant Engineer and the Service Commission after selecting the number of persons prepared a list and appointment letters were issued by the Government from the said list on the basis of the merit position of different candidates. Thus the appointment of respondents Rakesh Kumar was a fresh appointment in accordance with the statutory rules after the Public Service Commissioner adjudged their suitability and the regular service of the respondent Rakesh Kumar must be counted from the date he joined the post pursuant to the offer of appointment dated 29.1.1982 and the prior service rendered by him on adhoc basis cannot be held to be regular service nor can it be tagged on to the later service for earning the benefit under the Government Circular dated 2.6.1989 as well as the clarificatory Circular dated 16.5.1990. The conclusion of the majority, judgment of the High Court, therefore, is wholly erroneous and cannot be sustained."

19. In *State of Punjab vs. Ishar Singh and State of Punjab v. Gurdeep Kumar Uppal* the two-Judge Benches referred to *State of Haryana vs. Haryana Veterinary and SHTS Assn.* and held that ad hoc service rendered by the respondents cannot be clubbed with their regular service for the purpose of grant of revised pay scales senior/selection grade, proficiency step-up and for fixation of seniority."

5. Further, the Apex Court in the case of State of West Bengal vs. Banibrata Ghosh and ors., (2009) 1 SCC (L&S) 638 has held that where a person has been appointed on adhoc basis against a leave vacancy and continued for about 10 years under interim order of the Court does not give him any right to be regularized.

6. Thus, on the basis of the law laid down by the Apex Court when applied to the facts of the case, it is evident that the applicant was engaged on daily wage basis on 1.4.1982. No doubt the applicant was selected to the post of Laboratory Technician on 13.2.1989 but she was appointed as Laboratory Technician on

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regular basis only from 6.4.1989. As can be seen from Para 4 of the impugned order, prior to regularization of the applicant, the applicant was on daily wag basis as temporary arrangement from time to time subject to condition that she will not be eligible for regularization. Her engagement was purely temporary/adhoc and contractual basis on daily wage under spells of not more than 90 days under temporary arrangement from time to time and after break subject to condition that engagement is purely temporary and adhoc basis and will not confer upon her any claim for regular absorption. This fact is clear from Ann.A/6 which the applicant has annexed with this OA. Perusal of this A/6 shows that the applicant was appointed as Laboratory Technician w.e.f. 2.2.1987 for 90 days on adhoc basis at minimum pay in the pay scale of Rs. 1350-2200 + DA. Perusal of this order also reveals that this arrangement is temporary and this engagement will not confer any right for her regularization. It is made clear in this order that service of the applicant can be terminated even prior to that date.

7. Thus, in view of the stipulation as contained in the appointment letter Ann.A/6 it is clear that service of the applicant rendered prior to her regularization cannot be counted as regular service in terms of law laid down by the Apex Court, as noticed above. The reliance placed by the applicant to instructions Ann.A14 pursuant to direction given by the Apex Court in respect of adhoc Doctors which direction was given under different factual

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context, cannot be made applicable in the facts and circumstances of this case.

7. Accordingly, the OA is dismissed at admission stage.

  
(B.L. KHATRI)  
Admv. Member

  
(M.L. CHAUHAN)  
Judl. Member

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