***CENTRAL ADMINISTRATIVE TRIBUNAL***
***PRINCIPAL BENCH***

OA No.1556/2014
MA No. 1337/2014

Order Reserved on: 01.06.2016
Order Pronounced on: 15.11.2016

**Hon'ble Mr. Sudhir Kumar, Member (A)**
**Hon'ble Mr. Raj Vir Sharma, Member (J)**

1. Dr. Saroj Bala, Age- 42
W/o Dr. Parmesh Sharma
3B, Pocket-I, Mayur Vihar Phase-I
Delhi-110 091.

2. Dr. Vimla, Age-56
D/o Late Raghubir Singh
B-5/159, Paschim Vihar,
New Delhi-110 063. -Applicants

(By Advocate: Shri Ashok Kumar Mohapatra)

**Versus**

1. Govt. of NCT of Delhi,
Through its Chief Secretary
Department of Health & Family Welfare
9th Level, 'A' Wing
Delhi Secretariat, I.P. Estate,
New Delhi-110 002

2. The Director
Directorate of Health Services,
Govt. of NCT of Delhi
F-17, Karkardooma,
Delhi-110 032.

3. The Medical Superintendent
Dr. Hedgewar Arogya Sansthan
Karkardooma,
Delhi-110 032.

4. The Medical Superintendent
Guru Gobind Singh Hospital
Raghubir Nagar, Delhi.

5. Union Public Service Commission
Through Secretary

Dholpur House,
Shahjahan Road,
New Delhi-110 069. -Respondents

(By Advocate: Shri Amit Anand, for R-1 to R-4
Shri Naresh Kaushik, for R-5)

**O R D E R**

**Per Sudhir Kumar, Member (A):**

MA No.1337/2014 filed by the two applicants for joining together in filing this OA under Rule 4(5) of Central Administrative Tribunal (Procedure) Rules, 1987, is allowed.

2. Both the applicants of this OA are aggrieved by the decision of Respondent No.5, Union Public Service Commission (UPSC, in short) for not considering their cases for re-assessment test, and having discarded their candidatures on the ground of unsuitability, through letter dated 27.02.2014 (Annexure A-1), through which three Doctors, including the two applicants before us, had not been found suitable for inclusion/appointment as Members of Delhi Health Service (DHS, in short) in the respective sub-cadres at the initial constitutional stage under Rule-6(2) of the DHS (Allopathy) Rules, 2009 .

3. The facts of this case, however, lie in a very narrow compass. An Advertisement had been brought out for recruitments to the posts of Junior Specialists of non-teaching cadre on contract/ad-hoc basis for one year, or till a regularly selected (direct recruit) incumbents join through the Ministry of Health and Family Welfare, whichever is earlier. Through the letter placed by the applicants at Annexure P-2 (Colly) dated 22.06.2004, a similar letter had been issued on 21.06.2004 in respect of

the applicant No.2 also, placed at Annexure P-2 (Colly). The two Doctors had then reported for duty as Junior Specialists in the Directorate of Health Services of Govt. of NCT of Delhi, and had been indicated their Places/Hospital of postings, through Office Order No.227 dated 22.06.2004, also placed at Annexure P-2 (Colly).

4. Subsequently, through Office Order dated 24.06.2004, the Applicant No.1 had been taken on the strength of Chief District Medical Officer (CDMO, in short) (East District). Though a corresponding Office Order in respect of Applicant No.2 has not been produced, but it has been submitted in the OA that she had joined as a Junior Specialist in Pathology on 07.06.2004 on the same conditions as stipulated in the case of Applicant No.1. Their contract appointments as such Junior Specialists were continued from time to time, and the applicants have produced the last such order passed on 17.05.2012 at Annexure P-3 (Colly), through which the contract appointment of 331 Junior Specialists for various disciplines had been continued for a further period upto 28.02.2013, on the same terms and conditions on which they had been initially appointed.

5. In the meanwhile, the DHS (Allopathy) Rules, 2009, had been notified, and individual Doctors were being assessed for their suitability for appointment under Rule-6(2) of the said Rules. Applicant No.1 had been called for such personal talk on 02.04.2012 in the Office of Respondent No.5-UPSC through Annexure P-4 (Colly). The Departmental Assessment Board so constituted by Respondent No.5-UPSC, along with the Specialist Doctors of the relevant disciplines, had assessed all such

contractual Doctors on 27th, 28th, 29th, 30th, 31st March, 2012, and the 2nd, 3rd and 4th April, 2012.

6. Such review was considered on the basis of essential qualifications and qualifying service and also desirable qualifications, if any, as per Recruitment Rules, and additional Academic Qualifications, Professional Training and Work Experience, over and above the required experience, and Research Publications and Reports/Project Reports, Awards/Scholarships/ Official Appreciation, and Affiliation with the professional bodies/Institutions/Societies, as notified through Annexure A-2 of the letter issued to all such contract Doctors, as produced at pages 55 to 59 of the paper book of the OA, which was an Annexure to the Interview call letter dated 19.03.2012 placed at pages 60 & 61 of the paper book of the OA. The applicants have also, through Annexure P-4 (colly), brought on record the Gazette Notification notifying the said DHS (Allopathy) Rules, 2009.

7. Even though the applicants have relied upon the DHS (Allopathy) Rules, 2009 in the OA, they have claimed to have been covered by the Central Health Services (CHS, in short) Rules, 1959, initially from the date(s) of their appointment, which services were declared a Group 'A' Central Service in 1973, and were restructured and divided into four sub-cadres in 1982, namely; (i) Teaching Specialists, ii) Non-Teaching Specialists, (iii) Public Health Specialists, and (iv) General Duty Medical Officers (GDMOs), and the applicants have claimed that their appointment on ad-hoc basis was under the CHS Rules, 1959, Gazette notified in the year 1963.

8. It was submitted that many such Doctors, who were appointed on ad hoc basis during the period 1968-1977, had approached the Hon'ble Supreme Court agitating their grievance that despite their long service in the Department, their services were not regularized with reference to the original dates of their appointments. It was submitted that the Hon'ble Supreme Court had allowed Civil Appeal No.3519/1984 vide order dated 09.04.1987, and later a clarificatory order had also been passed by the Hon'ble Supreme Court in **P.P.C. Rawani vs. Union of India** (1992) 1 SCC 331. Thereafter, between 1992 to 1996, there were no ad hoc appointments of Doctors, and only when the Government of NCT of Delhi came into existence in the year 1992, a number of hospitals/dispensaries/health centres were created, and certain other hospitals were put under Govt. of NCT of Delhi. Thereafter, Advertisements were issued by the Directorate of Health Services of Govt. of NCT of Delhi for appointments of Medical Officers on contract basis. The applicants themselves had been appointed against one similar Advertisement issued in the year 2004.

9. The applicants are aggrieved that on the date of filing of this OA nearly 10 years had passed since they had started working for the Respondents, which only goes to show that their work was of permanent nature, and that the services of the applicants, as well as other similarly situated Doctors, were required by the Respondent-Government, and, therefore, they had a legitimate expectation of being granted permanent status with the Respondent-Government.

10. It was further submitted that even during the period between 1998 to 2004, many such Doctors were working as In-charge/Heads of Departments in their respective Medical Speciality Departments. It was also submitted that out of the list of 331 candidates whose candidature was sought to be reviewed by Respondent No.5-UPSC by constitution of a Departmental Assessment Board, as mentioned above, the names of the applicants had figured at Sl No. 152 & 172 (of that list of 331 Doctors). The applicants have submitted that Regulation-4 of the UPSC (Exemption from Consultation) Regulations, 1958, provides for consultation with UPSC in all appointments in civil posts for a period of more than one year, and if their services were required to be continued beyond one year, their names should have been sent to the UPSC within the first year itself, but such Regulation was totally overlooked and violated by the Respondents No.1 to 4, who had continued the services of these 331 Doctors, including the applicants, on contract basis for decades.

11. The two applicants of this O.A. are aggrieved that after the interviews for assessment of suitability test conducted in respect of the 331 Doctors, the names of the two applicants of this O.A., along with those of five other Doctors, did not figure in the suitability list. Aggrieved by such rejection, six out of the seven Doctors concerned had challenged their rejection before this Tribunal in OA No.3653/2012, in which the Tribunal had ordered for further assessment in respect of those six Doctors. The Respondent No.5-UPSC felt aggrieved by that order of this

Tribunal, and approached the Hon'ble Delhi High Court with a prayer to set aside this Tribunal's orders. The Hon'ble High Court had, however, dismissed that Writ Petition (C) No. 6260/2013 **Union Public Service Commission vs. Dr. Akshay Bahadur & Ors.** (Annexure P-5) on 28.10.2013. Thereafter, along with those six Doctors, the applicants had also sent their proforma for re-assessment of their suitability in response to Annexure P-6 (Colly) dated 04.02.2014, through which such re-assessment had been announced by R-5 UPSC, and the requisite applications had been forwarded to Respondent No.5-UPSC.

12. The applicant No.1 was thereafter called for such re-assessment on 21.02.2014 through letter dated 19.02.2014, and the applicant No.2 had also been called in response to the information furnished by her, as reproduced at pages 128 to 135 of the paper-book of the OA at Annexure P-6 (Colly). With reference to the decision taken by Govt. of NCT of Delhi through their OM dated 18.12.2006 to constitute their own Health Service Cadre, assessment of suitability of 86 Non-Teaching Specialists appointed on contract basis after the said date of 18.12.2006, but prior to 23.12.2009, in relaxation of Rule 6 (2) of DHS (Allopathy) Rules, 2009, notified that date, had also been started in respect of 63 GDMOs and 86 Non Teaching Specialists, through U.P.S.C's letter dated 20.01.2014 (Annexure P-8), since this Tribunal had through its order dated 07.05.2012 pronounced in OA No.1259/2011, with OA No.1209/2011, with OA No.2936/2011, upheld the validity of the Rule-6(2) for prescribing the cut-off date of 18.12.2006, which had been otherwise challenged before this Tribunal.

13. In its letter dated 20.01.2014, the Respondent No.5-UPSC had taken a stand that taking recourse to contractual appointment due to non-availability of formal Service Rules upto the date of Notification of DHS (Allopathy) Rules of 2009 was not tenable, as the date of 18.12.2006 had been held to be the proper cut-off date by this Tribunal, and such appointments were also against the provisions of Rule-4 of UPSC (Exemption from Consultation) Regulations, 1958, which provide for exemption from consultation with UPSC in all appointments in civil posts for upto one year, and make such consultation necessary in all such appointment, for a period of more than one year. It was pointed out that if the proposal for induction of 149 doctors, 63 GDMOs and 86 Non Teaching Specialists, appointed between 18.12.2006 23.12.2009, is agreed to, it will give rise to claim for such benefit, in relaxation of the Service Rules, by even those Doctors who were so appointed on ad hoc/Contract Basis after the relaxation of Rules on 23.12.2009, and that their cases were distinguishable from the cases of those Doctors who had been appointed on ad-hoc/contractual basis after 18.12.2006, the cut-off date which has already been upheld by this Tribunal in another proceedings.

14. However, in view of the observations of this Tribunal in its order dated 07.05.2012, it was stated that Respondent No.5-UPSC would be inclined to consider age relaxation for such Doctors, to the extent of the period of service rendered by them on ad hoc/contract basis under Govt.

of NCT of Delhi as and when their cases were considered for open selection in direct recruitment.

15. In this whole process, the cases of a total of 529 Doctors had been examined, and only six persons had been found unfit in such suitability test, including the two applicants before us, and after the Hon'ble High Court's orders for re-assessment, three out of those six Doctors were found fit, and still three Doctors were found unsuitable, even though the applicants have claimed that their cases are distinct, and a vindictive attitude had been adopted for discarding the applicants' names as unfit even after the second suitability test.

16. The applicants have raised a grievance in this O.A. that when this Tribunal had given a direction that their suitability be re-assessed by devising a suitable assessment procedure, keeping in view their record of performance and experience, these two elements were not given any weightage in the fitness methodology devised and adopted by Respondent No.5-UPSC. While on the one hand trying to draw sustenance from this Tribunal's earlier order dated 07.05.2012, at the same time the applicants had assailed that order also, by saying that the Tribunal had wrongly treated and interpreted the applicable Rule, as if it was a case of regularization of irregularly appointed employees. It was submitted that when five out of the six candidates re-assessed had acquired new skills, this aspect ought to have found a weightage in the criteria of re-evaluation adopted.

17. It was further submitted that when the initial appointment of the applicants was against sanctioned and vacant posts pursuant to the public advertisement, the Respondent No.5-UPSC should have scrutinised their candidature on the anvil of an essentiality criteria while assessing their suitability earlier in 2012 itself. Some allegations were also made against the three Doctors who had been found fit during the re-assessment, but the applicants cannot be allowed to assail their selection in the present O.A., as they have not been made a party to the present proceedings, and have not had a chance to reply to any averment made against them.

18. It was further submitted that the applicants have become over-age, and have no chance for finding alternative jobs, and the Govt. of NCT of Delhi should have, therefore, devised their own criteria for regularization of their contractual employees, since UPSC is merely a Consulting Authority, and not an Appointing Authority, and, therefore, even in spite of the recommendations of the UPSC, the Government still has every right to regularize its contractual employees, and in fact a burden to this effect lies on the Government when the applicants were appointed against regular posts, through a regular process, by a regular advertisement, by adopting all checks and balances of direct recruitment policy. It was further submitted that the skills and the talent of the applicants was required by the Government.

19. The applicants had also filed Writ Petition (C) No. 2554/2014 before the Hon'ble Delhi High Court against the same impugned order,

but through its order dated 25.04.2014, the Hon'ble High Court had permitted that Writ Petition to be withdrawn, and liberty had been granted to the applicants to approach this Tribunal, whereafter on 30.04.2014 this OA had been filed. The same grounds, as already mentioned above while discussing the facts of the case, had been taken as the grounds for filing this OA, and they need not be repeated here once again.

20. The applicants had alleged that non-consideration of their case was due to non-application of mind, and whimsical and arbitrary attitude on the part of Respondent No.5-UPSC, which was tainted with *mala fide* also. They have further taken the ground that at the time of their initial engagement, the Government had conducted a regular interview, along with the scrutinization of their documents, which was not different from the process as prescribed under the direct Recruitment Rules (RRs, in short) for direct recruitments, and hence it has to be held that their initial appointment itself was almost a regular appointment, and, therefore, further consultation with Respondent No.5-UPSC was not called for, and was an unnecessary procedure adopted by the Government. They had further taken the ground that while conducting such reassessment, the specific directions of the Hon'ble Delhi High Court had not been followed by the Respondent No.5-UPSC, in a highhanded manner, and it was submitted that the doctrine of legitimate expectation would operate in their favour. In the result, the applicants had sought the following reliefs:

> "(a) direct the Respondents No.1 & 2 to confirm the job of the applicants on the post where they are working as Paediatrics & Pathologist in the office of Respondent No.3 & 4 hospital and

regularize the applicants on the same posts and also the Respondents be directed to fix the cadre by adopting their own procedure for regularization without any consultation with the Respondent No.5 and the regularization must be followed from the date of their confirmation and appointment from initial date of appointment and accordingly the seniority of the applicants are also considered, in the interest of justice and fair-play;

(b) quash the impugned order F.No.9/31(16)/2012-AP.2 dated 27th February, 2014 issued by the Respondent No.5 to the applicants do not impose on them, which are not followed by the directions of the Hon'ble High Court and not followed the instructions issued by the Court and the order has no legal force in case of the applicants, where the applicants names were not considered in suitability test;

(c) Pass any other and further order as this Hon'ble Court may deem fit, just and proper in the facts and circumstances of the case;"

21. The issue of interim relief had been considered by a Coordinate Bench including one of us [Member (J)], on 27.02.2015, and the Bench that day was not inclined to direct the respondents to extend the appointment of the applicants as an interim measure, and had listed the case for final hearing.

22. The Respondent No.5-UPSC filed their short reply on 10.07.2014, denying all the averments and allegations made in the OA. It was explained that prior to the Notification of DHS (Allopathy) Rules, 2009, the Government of NCT of Delhi had been a participating unit of the CHS, and the posts created in the Hospitals/Medical Institutions under the Government of NCT of Delhi were also being filled up by the CHS Doctors, as the Delhi Government was not having its own medical cadre, and was dependent upon the Ministry of Health and Family Welfare of Union of India for filling up of posts, because of which a large number of posts had remained vacant. Therefore, in order to provide better Health

Care Service to the citizens, Government of NCT of Delhi had made contractual appointments against the vacant posts for a period of six months to one year initially, which appointments were continued later on from time to time, as the posts concerned could not be filled up on regular basis.

23. It was submitted that with the concurrence of Respondent No.5-UPSC under the DHS (Allopathy) Rules, 2009, on 23.12.2009 the separate GDMO and Non-Teaching Specialists Cadres had been notified with the specific provision, under Rule 6 (2) of the said Rules (supra). Later, when in April, 2011, the Ministry of Health & Family Welfare, Department of Govt. of NCT of Delhi had requested Respondent No.5-UPSC to assess the suitability of 214 Non-Teaching Specialists (Junior Specialists) and 322 GDMOs, who were appointed on or prior to 18.12.2006 on ad-hoc/contract basis, the Respondent No.5-UPSC had constituted the Assessment Boards to assess the suitability of such Doctors on the basis of Personal Talk (100 marks), and Bio Data (50 marks), with the stipulation that a candidate may be declared as 'Fit' on achieving the aggregate 50% marks out of the total 150 marks.

24. It was further submitted that since the Government of NCT of Delhi had not maintained the formal ACRs in respect of such ad-hoc/contractual Doctors, the same could not have been considered by the Assessment Board. The allocation of marks for review of Bio Data was explained. Thereafter the cases of six Junior Specialists, including the applicants herein, who had been earlier assessed as unfit for appointment/inclusion as a Member of DHS, had been explained in the

context of the orders of this Tribunal vide order dated 18.05.2013 in OA No.3652/2012 **Dr. Akshay Bahadur & Others v. Government of NCT of Delhi and others**. It was submitted that the Hon'ble Delhi High Court had thereafter allowed the Writ Petition filed for challenging the orders of this Tribunal, and had ordered for reassessment of suitability of those six Junior Specialists, who were earlier assessed as 'Unfit'.

19. It was submitted that in view of the observations made by this Tribunal in its order dated 28.05.2013 in OA No.3652/2013 (supra), as well as Hon'ble Delhi High Court's order dated 28.10.2013 in Writ Petition (C) No.6260/2013 (supra), the second time the Respondent No.5-UPSC had adopted a revised criteria for reassessing the suitability of the six candidates by providing for Personal Talk and Bio Data to carry 100 marks each, and the stipulation that those scoring 50% of total 200 marks would be declared as 'Fit'. The distribution or allocation of marks for assessment of Bio-Data had also been explained. It was further explained that after such re-assessment, three Junior Specialists were found to be 'Fit', and the remaining three, including the two applicants of this O.A., were found to be 'Unfit' for their appointment/inclusion as a Member of DHS.

26. It was submitted that the applicants have not been able to make out any significant ground for seeking the reliefs as prayed for by them in the OA. It was further submitted that the specific directions of the Hon'ble Delhi High Court had been scrupulously followed. It was further submitted that as per the provisions of DHS (Allopathy) Rules, 2009, also, all regular appointments to Group 'A' posts have to be made in

consultation with the UPSC-Respondent No.5, which process of consultation had been adopted in the case of the present applicants also twice. It was submitted that the Hon'ble Delhi High Court had in its judgment held that the Tribunal had wrongly appreciated the case, as it was not a case of regularization of irregularly appointed employees, but it was a case of appointment/inclusion of contractually appointed Doctors as Members of the DHS, at the initial constitution stage of that new cadre.

27. It was further pointed out that the Calcutta Bench of this Tribunal had, in its Circuit Bench at Port Blair order dated 17.12.2012 in OAs No. 143/AN/2012 and 144/AN/2012, also rejected the prayer of ad-hoc officers for regularization, and the Hon'ble High Court of Calcutta (Circuit Bench at Port Blair) had in its judgment and order dated 28.01.2013 not interfered with that order of the Port Blair Circuit Bench of this Tribunal. It was submitted that the applicants' suitability was first assessed on the basis of the general criteria adopted by for all the 532 Doctors, and was then again re-assessed on 21.02.2014, based on the revised criteria, taking into account the observations of this Tribunal, and of the Hon'ble High Court, after which three out of the six who were earlier found 'Unfit' were recommended as 'Fit', which indicates that a fair process had been adopted in the case of all the six Doctors, including the applicants, while re-assessing their performance through the Assessment Board, and that the applicants have unnecessarily chosen to malign the selection process unreasonably. It was submitted that if the suitability of 529 Doctors, including the three other Doctors re-assessed on 21.02.2014 the second

time, along with the applicants, by the UPSC has been in order, the plea of the present applicants, that the criteria adopted by UPSC was vindictive, is totally untenable.

28. In regard to the averment of the applicants that having continued for a decade, they were eligible for regularization, it was pointed out that the Hon'ble High Court has already held that it is not a case of regularization, but a case of appointment/inclusion of contractually appointed Doctors as a Member of DHS, at the initial constitutional stage of the DHS Cadre itself, and the applicants, who had already been given two chances of assessment, but still could not find a place on the basis of their performance before the two Assessment Boards, are, therefore, only trying to malign the selection process as having been totally unreasonable.

29. The Respondent No.5-UPSC had then sought shelter behind various judgments of various Hon'ble Courts/Tribunal, in which it has been held that the selection made by a duly constituted Selection Committee is not questionable, unless it is actuated with malice, or there is an error apparent on the face of it. In this context, they had relied upon the following judgments:-

"i) **R.S. Dass vs. Union of India & Others [1986 (Supp) SCC 617]**;

ii) **UPSC vs. H.L. Dev and Ors. (AIR 1988 SC 1069)**;

iii) **Dalpat Abasahab Solanke vs. B.S. Mahajan (AIR 1990 SC 434)**; and

iv) **UPSC vs. L.P. Tiwari & Ors. [2006 (12) SCALE 278]**".

30. It was, therefore, submitted that the process of re-assessment of all the six Junior Specialists, including the three applicants, by the Assessment Board which had met on 21.02.2014 in terms of the orders of this Tribunal (supra), and of the Hon'ble Delhi High Court (supra) was very much correct, fair and reasonable, and that the applicant have not been able to make out any case for grant of any relief, and the OA, therefore, deserves to be dismissed with costs.

31. Counter reply on behalf of Respondents No.1 to 4 had been filed on 15.09.2014. The facts, as already discussed above, were again pointed out, and it was submitted that the suitability of the applicants had been screened twice, but they were disqualified both the times, and a third chance being provided to them will be unfair to other meritorious candidates who were otherwise available for direct recruitment through examination against these public posts, and any such relaxation would dilute the service standards, and also the quality of public service, and would also be a violation of the approved scheme, which in itself does not envisage any second or third chances for such assessment of suitability.

32. It was submitted that the Govt. of NCT of Delhi is under an obligation to uphold standards of public recruitment, and in the case of the applicants Rule-6(2) has been applied and exhausted. All future recruitments would now be under the open route, through examination, and that since the applicants have been given ample opportunity, and no prejudice has been caused to them, the public interest should now

prevail, and Rule-6 (2) having been already exhausted, the open examination route must now takeover.

33. In their para-wise remarks, the contentions of the applicants were repeated more or less on the same lines as in the reply of Respondent No.5-UPSC, and there was no disagreement from the facts as pointed out by the applicants also in their OA. It was thereafter submitted that henceforth, under the DHS Rules, 2009, under Rule-11 relating to appointments to the service, all appointments to the service would be only on the basis of direct recruitment, and deputation, including short term contract/absorption to the service, shall be followed in consultation with the UPSC. It was, therefore, submitted that none of the reliefs as prayed for by the applicants is legally admissible to them, and the OA is liable to be dismissed.

34. The applicants filed a rejoinder to the counter-reply of the Govt., R-1 to R-4, on 03.02.2015, more or less reiterating their contentions as already made out in the OA. It was submitted that it is the duty of the Govt. of NCT of Delhi to take care of the services of the applicants, since the Government has derived benefit out of the age, experience, qualification and services rendered by them to the public for many years. It was submitted that Govt. of NCT of Delhi cannot be allowed to let go of its hand now by saying that since the applicants have not been found suitable, they cannot be confirmed in their posts and regularized in their jobs in which they have already been serving as contractual employees.

35. It was further submitted that the Rules as framed are silent as to after how many years the serving incumbent will be put to the assessment of the suitability test, and that the Government had erred in extending the period of service of the applicants from time to time without bothering about their age, and considering the implications that would befall if the UPSC-Respondent No.5 will discard them at a belated stage of age. It was submitted that the applicants have been exploited, which cannot be tolerated by law, and that the Government cannot escape from its responsibility by saying that it was helpless and handicapped when the UPSC-Respondent No.5 had not selected them. It was, thereafter, submitted that it is the duty of the Government to prepare a Cadre Rule, or any subsequent Standing Rule, which can protect the applicants, without taking into account the consultation with the UPSC-Respondent No.5. It was submitted that the applicants have a just and genuine case, and, therefore, it was prayed that the counter-reply filed by the respondents may be rejected, and the OA be allowed.

36. A separate rejoinder was filed on 03.02.2015 itself to the counter-reply filed by UPSC-Respondent No.5. It was submitted that the Hon'ble High Court had noted that the work of all the five respondents before it, who had been disqualified at the 1st stage assessment, was not only extensive, but was also rich in experience, and five out of the six Doctors had acquired new skills with new technology, which was relevant, and ought to have found weightage in the criteria of evaluation. It was submitted that this aspect has not been considered during re-assessment by the UPSC-Respondent No.5. 37. It was further

submitted that as per the law and a jurisprudence on the subject, the evaluation of all the Doctors and Specialists had to be done at a point of time which was distinct from the points when evaluation for their fitness had to be done, i.e., suitability had to be assessed only as on the date of their initial contract employment. It was, therefore, submitted that the Hon'ble High Court had indirectly stated that all the six Doctors before it should be declared as 'Fit' and 'Suitable', but UPSC-Respondent No.5 had misinterpreted the judgment, and had put them through a fresh assessment process, with a changed marks criteria, and that the applicants, therefore, could not be blocked on the ground that their oral interview had not been satisfactory. It was submitted that the Hon'ble Supreme Court had held that in Personal Talk no candidate should be failed, but the minimum passing marks should be given, which also the UPSC-Respondent No.5 did not do, and it had interpreted the Hon'ble High Court's order in its own manner.

38. It was submitted that the simple prayer of the applicants is that they should be considered and declared as regular appointees in the posts, and confirmed from the date(s) of their initial appointments, which aspect has not been addressed at all in the counter-reply of UPSC-Respondent No.5. It was, therefore, submitted that the counter-reply filed by UPSC-Respondent No.5 may be rejected, and the OA may be allowed.

39. Written arguments were also submitted on behalf of both the learned counsel. In these written arguments the learned counsel for the

applicants had relied upon a number of judgments, which had been mentioned by him during his arguments also. He had relied mainly upon the judgment in the case of **Mohinder Sain Garg v. State of Punjab, (1991) SCC 1 662,** in which the Hon'ble Supreme Court had struck down the allocation of excessive marks for the interview as illegal. The observation of the Hon'ble Supreme Court on the same lines in **R. Chitralekha & others v. State of Mysore & others, 1964 (6) SCR 368** were also cited, in which also high percentage of marks for oral interview was said to suffer from the vice of arbitrariness. Further, reliance had been placed on the case of **Ajay Hasia etc. v. Khalid Mujib Sehravardi & Ors. etc., AIR 1981 SC 487** to submit that there is always a great element of choice in the interview test, which becomes a serious matter when the marks assigned to oral test constitute a high proportion of the total marks in the competition, and it was laid down that allocation of more than 15% of the total marks for the oral interview would be arbitrary and unreasonable, and would be liable to be struck down as Constitutionally invalid.

40. Heard. We have also considered these judgments, all of which related to selection *ab-initio*, and not the screening of persons already selected and working, as was the case in the present case. In the instant case, all the persons were already selected and were working on year to year ad-hoc/contractual basis, and at the time of initial constitution of the DHS, they were required to be screened, which process of screening assessment was undertaken, and all except six Doctors were found to be eligible in the first round, and when, on the directions of the Hon'ble

Delhi High Court, a second similar screening assessment was conducted, three out of those six were also found to be qualified, and were selected. Out of the remaining three, two applicants have filed this OA No.1556/2014, and third namely, Dr. Beena Aggarwal, has filed OA No.380/2015, which is still pending adjudication before this Tribunal. Since on both the occasions, the process was only a process of screening and assessment for the purpose of inclusion in a new cadre at the time of initial constitution at DHS cadre, none of the cited judgments in **Mohinder Sain Garg v. State of Punjab** (supra), **R. Chitralekha & others v. State of Mysore & others,** (supra), and **Ajay Hasia etc. v. Khalid Mujib Sehravardi & Ors. etc.,** (supra) would apply to the instant case.

41. Learned counsel for the applicants had also relied upon the judgment in the case of **Bhagwati Prasad and Ors. vs. Delhi State Mineral Development Corporation AIR 1990 SC 371,** to submit that the Court had held that practical experience would always aid a person to effectively discharge the duties, and is a sure guide to assess his suitability. In the instant case, the practical experience of more than 10 years' contractual employment, renewed year after year, has really come to the aid of the persons first assessed, in the first instance, and on a re-assessment, it had come to the aid of three more Doctors. The three persons left out even after their having undergone first an assessment, and then a re-assessment, must certainly be lacking the required expertise even after their long practical experience, because of which they were not able to compete and get assessed as suitable, in spite of their

long employment and claimed practical experience. Therefore, the judgment in the case of **Bhagwati Prasad and Ors. vs. Delhi State Mineral Development Corporation** (supra) would also not enure any benefit to the applicants, for whom even their decade long employment had not given them sufficient practical experience to be able to be assessed as suitable either in the first round, or re-assessed as suitable even in the second round.

42. Learned counsel for the applicants had further relied upon the judgment in the case of **UP State Electricity Board vs. Pooran Chandra Pandey & Ors. (2007) 11 SCC 92**, which is on the aspect of discrimination and applicability of Article 14 of the Constitution, which cannot be violated on the ground of arbitrariness and unreasonableness. However, when the process of assessment has not been unreasonable or arbitrary in the case of the Doctors called for assessment from 27.03.2012 to 04.04.2012, and in respect of three out of the six who were similarly called for re-assessment, following the directions of the Hon'ble Delhi High Court, the applicants cannot be allowed to assail the whole process of assessment/re-assessment on the ground of unreasonableness and arbitrariness.

43. Learned counsel for the applicants had further relied upon the Madras High Court judgment dated 18.12.2007 in W.P. No.23479/2006 **S. Srinivasan vs. Union of India & Ors.** in which when the applicant was not found suitable for regularization by the UPSC, the Hon'ble Madras High Court had directed the UPSC to get the applicant

regularized within three weeks from the date of receipt of a copy of that judgment, which judgment had been *in personam* and not *in rem,* and also the process of regularization cannot at all be applicable to the instant case concerning the constitution of a new Cadre. This case does not concern the process of regularization, but the process of constitution of a brand new fresh service under the name of DHS, by inducting the qualified and competent from among the Doctors who had been recruited and were working on year to year contractual employment basis. Therefore, the applicants cannot be allowed to draw any sustenance from the said judgment of Hon'ble Madras High Court rendered *in personam* in the case of **S. Srinivasan vs. Union of India & Ors.** (supra).

44. The prayer of the applicants in their OA, as well as in the arguments of their learned counsel, and in their written submissions, has been mainly twofolds. Firstly, they have argued that when they have already been put through the process of suitability test earlier at the time they were initially engaged on such contractual appointments, they ought not to have been subjected a fresh assessment process for the purpose of their regularization. Second limb of their arguments is that when their initial induction on contract basis was itself against substantive vacant posts, their services deserve to be regularized from the date of their initial contractual appointments itself.

45. We find ourselves unable to accept any of these two arguments of the learned counsel for the applicants. Firstly, the interview or suitability test conducted initially, when they were engaged on

contractual basis a decade earlier, was in the context of such contractual employment only, and the respondents had notified, and the applicants knew, that the interview and suitability test were being conducted only for the purpose of one year contractual employment, which, however, ultimately got renewed year after year. However, just because they were so contractually engaged about a decade back, while sanctioned vacant posts were available, against which they could also have been regularly recruited through the UPSC, the present prayer of the applicants to regularize their services from the initial date of their engagement on contractual basis is hopelessly time bared. If they had a grievance in respect of their employment being on annual contractual basis, they should have either not responded to the advertisement calling for applications for such annual contractual basis employment, or should have challenged the whole process of contractual employment against vacant sanctioned posts at the relevant point of time itself. Now, more than a decade has elapsed after that event, they cannot be allowed to rake up that issue now, and agitate a matter, which they had failed to agitate at any point of time over the last more than a decade, by challenging such contractual employment, either at the time of their first engagement on one year contract basis, or at any point of time when their contract was subsequently extended on an year to year basis. The applicants cannot, therefore, be now allowed to plead that since the Government required their services, and had sanctioned posts available, even though the RRs concerned had not been framed at that point of time when they were so engaged on contractual basis, the services of the applicants need to be necessarily regularized, just because they had

voluntarily opted to enter into contractual employment with the respondents.

46. Learned counsel for the applicants had further relied upon the judgment in the case of **Dr. A.K. Jain & Ors. Etc. Etc. vs. Union of India & Ors. (1987) SCC Supp 497,** in which, in the case of Indian Railway Medical Department, where Recruitment Rules were already in existence earlier, and the Doctors had been recruited Zonal Railway-wise on ad-hoc basis, directions had been issued by the Hon'ble Apex Court for their regularization. But even that case was *in personam*, and related to a service where RRs were already in place before such ad-hoc appointments had been made, which is not the case in the instant case. Therefore, that judgment not being *in rem*, and not relating to a service like DHS, in which RRs were not in place at the time the initial contractual appointments were made, the applicants cannot be allowed to derive any benefit from the said judgment of the Hon'ble Apex Court.

47. Learned counsel for the applicants had further relied upon the Hon'ble Supreme Court's judgment in **Secretary, State of Karnataka & Others vs. Uma Devi & Ors. (2006) 4 SCC 1**, to submit that it has been held that the people who have been working on contract basis for more than 10 years should not be removed. However, on a detailed reading of this Constitution Bench judgment, it is clear that the ratio of the judgment actually operates against the applicants, as they had been adjudged earlier only for contractual employment for one year, and were thereafter continued on year to year basis, and they had not been interviewed as per the RRs prescribed in this behalf, since the RRs did

not actually exist for DHS, as the RRs were not at all framed as on the date they were initially recruited for contractual employment. Therefore, no benefit of this judgment can also be provided to the applicants.

48. Learned counsel for the applicants had further relied on the judgment in the case of **Nihal Singh & Ors. vs. State of Punjab & Ors., (2013) 14 SCC 65** to submit that **Uma Devi's** judgment (supra) cannot be a thumb rule, and that the appellants therein were entitled to be absorbed in the services of the State by creating numerous supernumerary posts, by way of regularization. It is clear from a reading of that judgment that the judgment was delivered *in personam*, and it was not *in rem,* and the Division Bench of the Hon'ble Apex Court, which had delivered the judgment on 07.08.2013, could not have set aside the Constitution Bench judgment in the case of **Uma Devi** (supra), but had only distinguished the facts of that particular case from the case of **Uma Devi** (supra), in order to provide relief to the appellants therein, under its powers under Article 142 of the Constitution to do ultimate justice, by even accommodating the appellants therein. Firstly, the facts of that case are entirely different from that of the instant case, and secondly this Tribunal does not have even an iota of the vast powers available to the Hon'ble Supreme Court to do ultimate justice under Article 142 of the Constitution, and, therefore, the present applicants cannot claim any benefit from the said cited judgment.

49. The learned counsel for the applicants has also cited an order dated 23.04.1998 passed by a Coordinate Bench of this Tribunal in OA

No.2564/1997 with connected OAs, which related to the aspect of regularization of service. But that order was much prior to the Constitution Bench judgment in the case of **Uma Devi** (supra), and cannot enure any benefit to the applicants.

50. Lastly, the learned counsel for the applicants had relied on the Hon'ble Delhi High Court's judgment in the case of **Amrish Chanana & others v. Govt. of NCT of Delhi & others**, in WP(C) No.1045/2013, delivered on 03.05.2013. Having gone through that Single Bench judgment, we find that the issue involved in that judgment was between the expressions "temporary basis" and "contractual appointment or appointments" on contractual basis. In that case the advertisements had not used the expression "appointments on contractual basis", and in that sense, the judgment had been delivered by the Hon'ble High Court on the basis of the facts of that case. In the instant case, the applicants had applied for appointments clearly advertised to be on temporary basis for one year initially, and had been continued by their contract being extended on year to year basis, and, therefore, the applicants cannot enure any benefit from that Single Bench Delhi High Court judgment also.

51. Moreover, it is trite law that after having participated in the selection process, and having been unsuccessful, and having failed to be selected in the process of selection, the persons not selected cannot turn around and question the whole process of selection undertaken. In the instant case, the two applicants of this OA had, like the applicant of OA

No.380/2015 – Dr. Beena Aggarwal, willingly participated in the process of assessment undertaken from 27.03.2012 to 04.04.2012 by the Respondent No.5-UPSC, and had been declared unsuccessful, alongwith three others. When the orders thereafter obtained by those six unsuccessful persons from a Coordinate Bench of this Tribunal, for their re-assessment being taken up, were challenged before the Hon'ble Delhi High Court, the Hon'ble Delhi High Court had ordered for such reassessment to be undertaken, as already discussed above. Even after such a reassessment was conducted on 21.02.2014, the two applicants, along with the third applicant Dr. Beena Aggarwal in OA No.380/2015, had still not been found suitable, even after such reassessment. When 529 Doctors have been so found to be suitable to be inducted into the new cadre at the time of the initial constitution of the DHS, including the three Doctors re-assessed on 21.02.2014, and only the two applicants before us, along with one more Dr. Bina Aggarwal, whose OA still pending for adjudication, were not so selected, they cannot now, after having voluntarily participated twice in the process of their assessment, turn around and challenge such process of assessment. The law in this regard has been laid down by the Hon'ble Apex Court in the following cases:

"i) **Madan Lal vs. State of J&K: AIR 1995 SC 1088;**

ii) **Dhananjay Malik & Ors. vs. State of Uttaranchal & Ors.: AIR 2008 SC 1913: (2008) 4 SCC 171;**

iii) **National Institute of Mental Health & Neuro Sciences vs. Dr. K.Kalyana Raman & Ors. AIR 1992 SC 1806;**

iv) **Osmania University Represented by its Registrar, Hyderabad, Andhra Pradesh vs. Abdul Rayees Khan: (1997) 3 SCC 124;**

v) **K.H. Siraj vs. High Court of Kerala & Ors. (2006) 6 SCC 395;**

vi) **University of Cochin Rep., by its Registrar vs. N. S. Kanjoonjamma and Others, AIR 1997 SC 2083;**

vii) **K.A. Nagamani vs. Indian Airlines & Ors., (2009) 5 SCC 515;**

viii) **Amlan Jyoti Borooah vs. State of Assam & Ors., (2009) 3 SCC 227;**

ix) **Manish Kumar Shashi vs. State of Bihar & Ors. (2010) 12 SCC 576;**

x) **Chandra Prakash Tiwari & Ors. vs. Shakuntala Shukla & Ors., (2002) 6 SCC 127: 2002 SCC (L&S) 830;**

xi) **Union of India & Another vs. N. Chandrasekharan & Ors. (1998) 3 SCC 694."**

52. Therefore, there is no merit in the present OA, and the OA is, therefore, dismissed, but there shall be no order as to costs.

***(Raj Vir Sharma)***
***Member (J)***

***(Sudhir Kumar)***
***Member (A)***

cc.