

**Central Administrative Tribunal
Principal Bench
New Delhi**

**OA No.3331/2015
MA No.1362/2016**

**Reserved on :13.11.2017
Pronounced on :09.01.2018**

Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Ms. Praveen Mahajan, Member (A)

Ms. Jyoti Sahni (nee Tamar)
Stenographer (Ad hoc)
Department of Pharmacology
A.I.I.M.S. Ansari Nagar
New Delhi – 110 029.

.... Applicant

(By Advocate:Ms. Ekta Mehta with Shri Shreyans Singhvi)

Versus

1. All India Institute of Medical Sciences
Through its Director
Ansari Nagar
New Delhi – 110 029.
2. Union of India
Through its Secretary
Ministry of Health
Nirman Bhavan
New Delhi – 110 001.

.... Respondents

(By Advocate: Shri B.P.Gupta with Shri R.K.Gupta)

ORDER

Hon'ble Ms. Praveen Mahajan, Member (A)

The present OA has been filed by the applicant assailing the memorandums dated 25.02.2015 and 08.08.2015 issued by the

respondent no.1 rejecting the extension of her ad hoc appointment and regularisation to the post of Stenographer.

2. The facts of the case, in brief are that the applicant joined respondent no.1 in one of its research project 'Double Blind Novalgin (NI-209)' on 01.01.1997. On 04.03.1999 the applicant was appointed to another research project namely the 'SRB Centre of Clinical Pharmacology' as a Stenographer (Ad hoc). On 24.05.2011, the entire staff employed in SRB Centre of Clinical Pharmacology was taken over and integrated with the department of Pharmacology. After taking over the project, the employees of the project were absorbed in the regular cadre of respondent no.1 (Annexure A/3).

3. A memorandum was issued by respondent no.1 approving the absorption of the applicant in the regular set up of respondent no.1 (Annexure A-7). Vide memorandum dated 27.09.2014, the pay scale of the applicant was revised w.e.f. 04.03.2011 placing her in the same scale as available to a regular employee, and she was also paid arrears on the revised salary. On 27.1.2008, a staff employed on adhoc basis in the aforesaid project was absorbed on a regular basis after completing 15 years of service in terms of the policy/guidelines of the respondent no.1. Having completed 15 years of continued service with the respondent no.1, the applicant made many representations requesting for

regularisation of her services in terms of the Policy, of the institute for regularisation of project employees. A copy of the guidelines on the subject is at Annexure A/6.

4. On 17.04.2014, 98 incumbents functioning on adhoc basis were placed under consideration for regularisation. The applicant states that her name figured at Sl. No.87. Services of all other incumbents, similarly situated have been regularised on 24.06.2014, except those of the applicant.

5. As a result of the proceedings in OA No.200/2012 filed before this Hon'ble Tribunal (Karamchari Union Vs. AIIMS), the respondent no.1 regularized the services of employees, working as stenographers on ad hoc basis. Amongst these employees was an employee Smt. Meenu Vohra, whose name also figured in the list of regularized employees and who is junior to the applicant. The applicant again represented to respondent no. 1, and Senior Administrative Officer of the Recruitment Cell (of the respondent no.1) for regularisation of her services to the post of Stenographer but to no avail.

6. The applicant further contends that though she is regularly attending to her duty, her salary has not been released since February, 2015. Rather she received the impugned memorandum rejecting her extension and regularisation of service, on

25.02.2015. She represented to the competent authority seeking reconsideration of the said order. The Head of the Department of Pharmacology, also recommended to Deputy Director (Admin), that service of the applicant be regularised and she may be permanently absorbed in the service of the first respondent on 16.05.2015. This too was rejected by the impugned memorandum dated 08.08.2015.

7. The applicant avers that having completed 18 years of service, she is eligible for regularisation of her services under the guidelines, on the subject. The respondent is bound by its policy/guidelines which were framed under the directions of the Hon'ble Supreme Court in **V.L.Chandra Kumar Vs. AIIMS** [1990 (3) SCC 38]. The applicant has relied on the case of **Director, AIIMS Vs. Om Prakash** wherein the Hon'ble High Court has upheld the decision of the learned single judge issuing directions that researchers, scientists and others who have worked on projects for more than 15 years should be absorbed in the service within a period of 4 months. Aggrieved by the inaction of the respondents she has filed the current OA.

8. The respondents have opposed the averments made by the applicant in the OA. They deny the fact that project to which the applicant was appointed has been absorbed in the regular set up of respondent no.1 or that her pay scale has been revised as that

of a regular employee w.e.f. 04.03.2011. They submit that it is incorrect that the services of all persons placed under consideration for regularisation vide Circular dated 17.04.2015 and juniors to the applicant, have been regularised. The name of Ms. Meenu Vohra was included in the list of employees for regularisation as she was working on the strength of the Institute, whereas Mrs. Jyoti Sahni (applicant) was working on the SRP Centre of Clinical Pharmacology which had been taken over in the project by the Institute. At the time of proposal of regularisation of adhoc employees the applicant was drawing a consolidated salary, and had been granted adhoc status and other benefits applicable to adhoc employees vide memorandum dated 19.03.2014. As such, her name was not included in the list of adhoc employees placed before the Governing Body in its meeting held on 28.04.2014. The Respondents further aver that the facts in the case of **Director, AIIMS Vs. Om Prakash** are different and not applicable to the present case. Hence, they have requested for dismissal of the OA on merit.

9. In the rejoinder, the applicant has reiterated the averments made in the Original Application. The applicant also filed an MA No.1362/2016 for filing an amended OA, which was allowed. The respondents have filed counter to the amended OA. Their preliminary objection is regarding the non-maintainability of the

OA, in view of the decision of the constitution bench of the Hon'ble five judges of Hon'ble Supreme Court of India in the case of **Secretary, State of Karnataka Vs. Uma Devi** wherein it has been held that :-

"What is sought to be pitted against this approach is the so-called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of the courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question objectively and based on the constitutional and statutory provisions. In this context, we have also to bear in mind the exposition of law by a Constitution Bench in *State of Punjab Vs. Jagdip Singh*. It was held therein: (SCR pp.971072)

"In our opinion where a government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give he will not in law be deemed to have been validly appointed to the post or given the particular status."

10. The respondents submit that the SRB Centre for Clinical Pharmacology and its staff were taken over by the AIIMS vide memo no.F-12-13/2005/Estt.-I dated 24.05.2011 with the

stipulation that the persons working on adhoc basis will not have any right for regularization of their services at AIIMS and their services can be terminated at any time without assigning any reason. However, such persons can appear for regular selection as departmental candidate. They emphasize that the services of applicant were not regularized due to the fact that she was drawing a consolidated pay at par with the other adhoc Stenographers which was given on 19.03.2014 with the approval of the competent authority.

11. In support of their decision qua the applicant, the respondents have relied upon the following judgments :-

- “(i) Jawahar Lal Nehru Krishi University Vs. Bal Kishan Soni reported in 1997 (5) SCC 86.**
- (ii) Ashwini Kumar Vs. State of Bihar reported in 1997 (2) SCC 1.**
- (iii) State of U.P. Vs. Ajay Kumar reported in 1997 (4) SCC 88.**
- (iv) M.D. U.P. Land Dev. Corp. Vs. Amar Singh, 2003 (5) SCC 388.**
- (vi) The English decision in Taylor Vs. Taylor reported in 1875 (I) Ch. D.426 and Nazir Ahmed Vs. Emperor, AIR 1936 P.C. 253 says that a thing which cannot be done directly, the same cannot be permitted to be done indirectly.**

Similar view was taken by three Hon’ble Judges of the Supreme Court in Shiv Kumar Chadha Vs. Municipal Corporation of Delhi, 1993 (3) SCC 161.”

12. We have gone through the facts of the case and the rival submissions made by both the parties.

13. While laying down 15 years service as the criteria for being considered for regularisation, guidelines for regularisation/absorption of project employees in AIIMS stipulate that mere completion of 15 years of service will not make the employees automatically eligible for regularization. However, such employees are entitled to appear for regular selection. The only justification given by the Respondents for not considering the case of the applicant for regularisation, to the post of Stenographer, along with other candidates is, that since she was already drawing a consolidated salary with adhoc status and other benefits available to them, hence her name was not put up for regularisation to the governing body. This logic is totally devoid of conviction. Rather we find that since the work of the applicant was found satisfactory, hence she was granted pay and allowances, and other benefits, at par with other stenographers with the approval of the competent authority on 19.03.2014.

14. It is not disputed that when the meeting of the governing body was held on 24.04.2014, the applicant had an adhoc status. But, merely because she was drawing a consolidated salary did not make her ineligible from being considered, and included, in the list of adhoc employees for regularisation. Ms. Meenu Vohra

was also an adhoc employee, junior to the applicant, but the same logic was not applied in her case, as done in the case of the applicant in OA – Ms. Jyoti Sahani. It is not the case of the respondents that the employees working in the SRB Centre were “ineligible” for regularisation. While it may be true that at the time of takeover it was clarified that the employees of SRB Centre did not have an ‘automatic right’ for being regularised – it is equally true – that there was no rule/condition which laid down that their claim for regularisation will not even be considered – if, they were otherwise found eligible for a particular post. Hence in all fairness, the case of the applicant should have been placed before the Governing Body, for consideration on 24.04.2014, along with other similarly placed candidates.

15. In view of the facts and discussions above, it appears that the applicant’s request has not been fairly examined by the respondents. Accordingly, the impugned order dated 25.02.2015 and 08.08.2015 are set aside. We direct the respondents to consider the case of Ms. Jyoti Sahni for regularisation, in accordance with law. If she is otherwise found eligible, then her services should be regularised with all consequential benefits from the date her immediate junior was granted such benefits.

16. This exercise may be completed in the next four months time from the date of receipt of a certified copy of this order. No costs.

(Praveen Mahajan)
Member (A)

(Raj Vir Sharma)
Member (J)

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