

Central Administrative Tribunal
Principal Bench

OA No.1347/2013

New Delhi, this the 7th day of August, 2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

Dr. P.K. Jain, Aged 55 years,
S/o late Gopi Ram Jain,
r/o C-7, 1st Floor, Arya Samaj Road,
Adarsh Nagar, Delhi – 110 033.

...Applicant

(By Advocate: Sh. Atul Kumar)

Versus

1. ESIC through Director General,
Panchdeep Bhawan, CIG Road,
New Delhi – 110 002.

2. Union of India through
Director (Establishment),
DOPT, Ministry of Personnel,
Public Grievance and Pensions,
New Delhi.

3. Union of India through
Labour Secretary,
Ministry of Labour,
Sharm Shakti Bhawan,
Rafi Marg, New Delhi-110 001.

...Respondents

(By Advocate: Ms. Pragya Aggarwal)

ORDER (Oral)

Justice L. Narasimha Reddy, Chairman:

The applicant joined the Employees State Insurance Corporation [ESIC) as Medical Officer on 08.04.1986 on *ad hoc* basis. Thereafter, he was regularized w.e.f. 19.05.1992. The ESI Corporation introduced the Scheme of Dynamic

Advanced Career Progression Scheme (DACP) consequent upon the Report of the Sixth Pay Commission. According to this, such of the medical officers, who have completed 20 years of regular service, would be extended the benefit of Senior Administrative Grade (SAG) in Pay Band-IV. Through Office Order No.531 of 2012 dated 04.10.2012, the ESI Corporation extended the benefit of DACP to 70 doctors. The name of the applicant did not figure therein. Hence, this OA is filed by the applicant challenging the action of the respondents in denying him promotion to SAG, with a prayer to direct the respondents to conduct review DPC for this purpose and claiming consequential benefits.

2. The applicant contends that whatever may have been the manner in which his *ad hoc* service was treated earlier, once the Hon'ble Supreme Court in Civil Appeal No.2191/1989 held the applicant and other similarly situated persons are entitled to count their *ad hoc* service also, there is no justification for the respondents in reckoning the applicant's service, w.e.f. 19.05.1992.

3. Another grievance of the applicant is that even though 20 years service has been completed by him in the year

2012 itself, the DPC that met on 06.09.2012 did not consider his case.

4. In the counter affidavit, the respondents pleaded that the Scheme is very clear in its purport, and only such medical officers, who have completed 20 years of regular service, are eligible for the benefit of SAG, and the applicant did not have 20 years of regular service to his credit, by the time the impugned order was passed.

5. We heard Sh. Atul Kumar, counsel for the applicant and Ms. Pragya Aggarwal, counsel for the respondents.

6. The impugned order is nothing but the result of implementation of Office Memorandum dated 29.10.2008 issued by the Ministry of Health & Family Welfare. This *inter alia*, provided for the mechanism of implementation of the recommendations of Sixth Pay commission. It is to the effect that such of the medical officers, who have completed 20 years of regular service, would be extended the benefit of SAG in Pay Band-IV. The list appended to the impugned order contains 70 doctors and against all of them, the dates of entry into ESI Corporation are shown, which range between 1.4.1991 and 20.02.1992.

7. It is true that the Hon'ble Supreme Court directed that the service rendered by doctors, even on *ad hoc* basis,

must be treated as continuous from the date of initial appointment and orders were passed to that effect. However, the service can be treated as regular only after a selection process. In the order of implementation (Annexure-2), the position is made clear. It reads as under:-

“The above benefits are being granted to the doctors concerned in the light of the judgement dated 19.02.1987 by the CAT, New Delhi. Their regular appointment shall be reckoned from the date he/she was selected by UPSC/ESIC Selection Board in accordance with the Rules and Regulations applicable to such doctors.”

In other words, the regular appointment shall be reckoned only from the date on which the candidate, who was continuing on *ad hoc* basis, has been selected by the UPSC or ESIC Selection Board. That occurred in respect of the applicant only on 19.05.1992. The same is pointed out against his name which occurs at serial no.11. Once the regular service is to be counted only from the date when the Selection Board has recommended the name of the applicant i.e. 19.05.1992, he cannot claim counting of regular service from any other date. It, therefore, emerges that “continuous service” is different from “regular service”.

8. Another point, which needs to be taken note of, is that in Annexure A-2, there are as many as 21 doctors whose services were regularized duly reckoning their continuous service. The name of the applicant occurs at serial no.11.

The applicant does not dispute that the 10 persons placed above him are seniors to him. The impugned order does not contain the name of any of those doctors. Therefore, we do not find any basis to interfere with the impugned order.

9. So far as the grievance of the applicant vis-a-vis DPC held subsequently in 2013 is concerned, we do not intend to deal with the same for the reason that necessary facts are not placed before us, nor brought to our notice. We leave it open to the applicant to work out his remedies separately in regard thereto. We, therefore, dismiss the OA as devoid of merits. There shall be no order as to costs.

(Aradhana Johri)
Member(A)

(Justice L.Narasimha Reddy)
Chairman

/Ahuja/