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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No.609/2003

New Delhi, this the ³⁰ day of May, 2008

**HON'BLE MR. L.K. JOSHI, VICE CHAIRMAN (A)
HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)**

1. K.G. Verma
S/o Late Shri Ram Kishan
Working as Investigator (Statistics) now reverted,
Department of Family Welfare,
Ministry of Health and Family Welfare,
509-A, Nirman Bhawan,
Maulana Azad Road,
New Delhi-110 011.
2. Rajeswar Kumar
S/o Shri K.L. Bassi
Working as Investigator (Statistics) now reverted,
CBHI, DGHS,
Ministry of Health and Family Welfare,
Nirman Bhawan,
Maulana Azad Road,
New Delhi-110 011.
3. Chakochan Y.,
S/o Shri C. Yohannan Kutty
Working as Investigator (Statistics) now reverted,
Statistics Division,
Department of Family Welfare,
Ministry of Health and Family Welfare,
Nirman Bhawan,
Maulana Azad Road,
New Delhi-110 011.
4. R.K. Saxena
S/o Shri P.M. Saxena
Working as Investigator (Statistics) now reverted,
Bureau of Planning, DGHS,
Ministry of Health and Family Welfare,
748-A, Nirman Bhawan,
Maulana Azad Road,
New Delhi-110 011.
5. M.S. Chahar
S/o Late Shri Shiv Singh
Working as Investigator (Statistics) now reverted,
N.M. Section,
Department of Family Welfare,
Ministry of Health and Family Welfare,
512-A, Nirman Bhawan,
Maulana Azad Road, New Delhi-110 011.



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6. Sadhu Ram
 S/o Shri Nand Lal
 Working as Investigator (Statistics) now reverted,
 S.S. Section,
 Department of Family Welfare,
 Ministry of Health and Family Welfare,
 Nirman Bhawan,
 Maulana Azad Road,
 New Delhi-110 011.

7. Smt. Suman Lata
 W/o Shri K.K. Sharma
 Working as Investigator (Statistics) now reverted,
 P & E Cell, Department of ISM & Homeopathy,
 Ministry of Health and Family Welfare,
 204, Indian Red Cross Society Annex Building,
 New Delhi-110 011.Applicants

By Advocate: Shri S.K. Das.

Versus

1. Union of India
 through the Secretary,
 Department of Health,
 Ministry of Health and Family Welfare,
 Nirman Bhawan,
 Maulana Azad Road,
 New Delhi-110 011.

2. Director General Health Services,
 Department of Health,
 Ministry of Health and Family Welfare,
 Nirman Bhawan,
 Maulana Azad Road,
 New Delhi-110 011.

3. Secretary,
 Ministry of Statistics and Programme Implementation,
 Sardar Patel Bhawan,
 Sansad Marg,
 New Delhi-110001.Respondents

By Advocate: Shri Rajesh Katyal with Mrs. Meenu Mainee,
 Proxy for Shri D.S. Mahendru.



ORDER**By Hon'ble Mrs. Meera Chhibber, Member (J)**

This OA has come before us in the 2nd round. Earlier OA was allowed on 12.2.2004 by directing the respondents to consider the case of the applicants for regularization with all consequential benefits as per rules and instructions on the subject but even for a vacancy available after 30.1.2002, as the same is done in case of persons appearing at Sl. Nos. 597 to 601 in the integrated lists.

2. The matter was carried to the Hon'ble High Court by the respondents by filing Writ Petition No. 14485-87/2004 which was allowed on 19.9.2007 by observing as follows:-

" We find that the Tribunal has not addressed the issues which were raised before it and it rather went on a tangent by discussing the case from the angle as to whether services of the respondents are to be regularized or not. We accordingly set aside the impugned judgment and remand the case back to Tribunal for its decision afresh".

3. The main issue in the case is whether applicants could have been reverted from the post of Investigator (Statistics) (Annexure A-I).

4. The relief sought by applicants are as follows:-

(i) allow the present application.

(ii) quash Directorate General Health Services Office Order No.A.32015/1/97-Admn.II dated 6.3.2003 (Annexure A-1) as being illegal, arbitrary, discriminatory and unconstitutional.

(iii) direct the respondents to regularize the services of the applicants in the post of Investigator (Statistics) with effect from the dates of their initial ad hoc appointment, with consequential service benefits;

(iv) issue any such and further order/directions this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case; and

(v) allow costs of the application.

5. As far as regularization is concerned, Tribunal had earlier directed the respondents to consider the case of applicant for regularization as



per rules even for a vacancy available after 30.1.2002 by placing reliance on memo dated 20.10.2003. However, Hon'ble High Court set aside that direction by observing that OM dated 20.10.2003 concerns the employees of Central Water Commission and it had no bearing in the present case.

6. In view of above we have to test the correctness of order dated 6.3.2003 only.

7. The brief facts of the case, as alleged by applicant are as follows:-

Applicant No.1 was promoted as Investigator (Statistics) in the pay scale of Rs.1640-2900 against a clear vacancy as is evident from order dated 31.8.1992 (page 35). Similarly other applicants were also promoted from March, 1996 onwards (page 36 to 38). They continued to perform their duties to the entire satisfaction of superiors but they were not regularized even though had worked as such from 4 to 10 years on the said posts.

They have submitted that applicants are Subordinate Statistical Personnel working in various departments of Ministry of Health and Family Welfare. The Subordinate Statistical Personnel are posted to look after the statistical jobs of the organization. The subordinate statistical personnel of the entire Ministry of Health and Family Welfare are divided into three grades, i.e., Computors, Statistical Assistants and Investigator (Statistics). That for each of the above three grades of the subordinate statistical personnel for the entire Ministry of Health and Family Welfare, a combined seniority list is prepared and maintained.

As per the Recruitment Rules, the mode of recruitment for the posts in the grade of Investigator (Statistics) was 75% by promotion, failing which by transfer on deputation, failing both by direct recruitment, and the balance 25% by direct recruitment. The post of Investigator (Statistics) is the feeder cadre for further promotion to



Grade-IV of the Indian Statistical Service. However, in terms of a Cabinet decision of 1994, in order to enhance the grade, direct recruitment was initially banned for a period of five years which is operational even today. The total sanctioned strength of Investigators (Statistics) is 33 in the Ministry of Health and Family Welfare. Their grievance is that applicants were not confirmed as Investigators (Statistics) as per the existing Recruitment Rules in spite of availability of vacancies. So long they were in Ministry of Health it made no difference because all were on ad hoc and inter-se seniority was maintained but they are aggrieved in view of creation of Subordinate Statistical Service (hereinafter would be referred to as SSS) as now applicants would have to compete with personnel of other ministries also and unless they are regularized as Investigators, they would be put to disadvantage.

It is submitted by the applicants that respondent No.3, Ministry of Statistics and Programme Implementation had decided to constitute a Subordinate Statistical Service vide OM dated 30.1.2002 which would include the applicants also. There were some inaccurate vacancies mentioned in OM dated 30.1.2002, therefore, correct position was given vide OM dated 19.2.2002. In the meantime Subordinate Statistical Service was constituted by issuing gazette notification dated 12.2.2002. It was in these circumstances that applicants felt aggrieved as their seniority would be reckoned only w.e.f. their regular appointment along with other appointees in the scale and since they had been working on the post of Investigators for so long they could not have been reverted. Being aggrieved, applicants along with others filed OA 2004/2002. The same was disposed off on 1.8.2002 by directing the respondents to treat the OA as a representation and to dispose it off within a reasonable period (page 72 at 78). The respondents not only rejected the



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representation vide order dated 6.3.2003 (page 83), but by same dated order 6.3.2003, reverted the applicants also (page 29).

It is contended by the learned counsel for the applicants that out of total 33 posts of Investigators, 6 posts were still lying vacant as only 27 are filled up which is proved from the seniority list issued on 20.12.2001. If only DPC was held in time, applicants would have been confirmed, therefore, they cannot be deprived of their right to continue on the post of Investigator. They have thus challenged their reversion and have prayed they may be regularized. Learned counsel for the applicants submitted the posts of Investigators were included in SSS only in the year 2003 after amended rules were issued because earlier in SSS Group-B Rules, posts of Investigators were not even mentioned. He also relied on the judgment dated 02.7.2007 in OA No.1548/2007 in the case of Vijay Kumar & Ors. Vs. Union of India & Ors.

8. Respondents on the other hand have opposed this OA. They have explained that as per Recruitment Rules in force before 30.1.2002, total sanctioned strength of Investigators was 33 out of which 25 posts were meant for promotion while 8 for direct recruitment. Of these 25 posts meant for promotion, 21 incumbents were already in position. Out of remaining four vacancies, three were reserved for SC/ST and the 4th vacancy which was unreserved occurred on 1.1.2002. Action was initiated to fill up this vacancy, however in the meantime, SSS was constituted w.e.f. 30.1.2002 and the existing RRs (which existed prior to 30.1.2002) were repealed and the cadre controlling powers were also withdrawn from the respondent No.1 and 2, therefore, no DPC could have been convened by them. The respondent No.3 is now the cadre controlling authority. They have specifically stated that the averments that the posts held by the applicants are yet to be formally taken over by respondent No.3, the cadre controlling authority of the SSS is incorrect.



The SSS was constituted by including 3839 Group 'B'/Group 'C' statistical function post located in 40 different Ministries/Departments/Organisations vide Ministry of Statistics and Programme Implementation OM dated 30.1.2002 and the posts held by the applicants on ad hoc basis were also included in the SSS and were mentioned at Sl.No.14 of the Annexure to the OM. The Government of India vide Gazette notification dated 12.2.2002 notified SSS Rules. Vide Rule 24 of the said Rules, all the existing RRS of the posts including in the SSS were repealed and a list of these posts were given in Schedule-IV of the said Rules. This clearly shows that the posts indicated in the Schedule-IV including the posts held by the applicants have been included in the SSS. They have further stated applicants were promoted on ad hoc basis but neither the said ad hoc promotions were extended beyond the initial period nor the approval of DOP&T was obtained for continuation of the ad hoc appointment beyond one year as per the prescribed procedure. Therefore, the continuation of the applicant on ad hoc basis beyond the initial specified period was an administrative lapse and the applicants cannot take advantage of the same. As already submitted, the matter is under consideration in the Directorate General of Health Services for fixing the responsibility for the aforesaid lapse.

9. Respondents had also filed additional affidavit on directions of the court wherein they have stated, applicants were promoted to the post of Investigators (Statistics) on ad hoc basis because there was no regular vacancy in the said grade in promotion quota. The promotion was made for a specific period with the condition that the ad hoc promotion will not confer on them any right for regular appointment or for seniority in the grade or for promotion to the higher grade. However, the applicants continued to hold the post even after expiry of the specified period without approval of competent authority as provided under the rules.



Therefore, their continuance on the post of Investigator (Stat) was irregular. This irregularity was rectified by reverting the applicants to their regular post of Statistical Assistants with simultaneous action for fixing the responsibility for this administrative lapse. They have further explained that out of 33 sanctioned posts of Investigator (Stat), 19 posts were filled by promotion and 8 by direct recruitment. Out of 6 vacancies available in the promotion quota 4 were un-reserved and 2 were reserved for SC/ST (1+1). Accordingly, the ad hoc promotion of 4 general candidates, who were senior to the applicants in OA No. 609/2003 as per seniority list were regularized vide order dated 20.12.2000. One Shri Paramjit Singh an SC candidate was also regularized against the regular vacancies reserved for the SC as per Reservation Order though he was junior to the applicants. As none of the applicants belong to SC/ST, they cannot claim their right against the reserved vacancies.

10. That after regularization of the 5 incumbents, the reserved points were increased to 3 (2 ST and 1 SC) and, therefore, 3 vacancies were kept unfilled for SC/ST candidate. After keeping 3 reserved vacancies, 1 unreserved vacancy occurred on 1.1.2002 due to retirement of Shri Y.R. Kathuria, regular Investigator (Stat) on 31.12.2001. Immediate action was initiated to consider regularization of one of the applicants against this vacancy as per seniority position but in the meanwhile, Subordinate Statistical Service (SSS) was constituted w.e.f. 30.1.2002 by Ministry of Statistics and Programme Implementation and RRs of the participating Ministries/Departments were repealed. Cadre controlling powers were also withdrawn by respondent No.3, therefore, any vacancy in the grade of Statistical Assistant and Investigator (Stat) will be filled as per RRs of SSS notified on 12.2.2002 from amongst the incumbents included in the integrated eligibility list issued by respondent No.3. As such no DPC can be held now on the basis of repealed RRs. They have thus explained out



of 12 ad hoc promotees mentioned in Annexure-C five were regularised on the post of Investigators (Stat) against the regular vacancies which became available at that point of time in the promotion quota. New RRS have been notified by the R-3 on 12.2.2002. Any vacancy in the grades of Statistical Assistant and Investigators (Stat) will now be filled on the basis of RRS of 12.2.2002 from amongst the combined eligibility list of incumbents prepared and circulated by the R-3. No DPC can be held on the basis of repealed RRS.

11. Counsel for the respondents further placed reliance on the judgment in the case of Smt. Suman Lata and Others Vs. U.O.I. & Others (OA No. 1066/2003 and other connected OAs decided on 15.9.2006) to show that applicants had already challenged order dated 6.3.2003 but the OA has been rejected. He thus prayed this OA may also be dismissed.

12. Counsel for the applicants submitted in rejoinder that the posts of Investigator were included in SSS only by way of amendment in the year 2003, therefore, they could and should have been confirmed as Investigators by the Ministry of Health itself by convening a DPC in 2002.

13. We have heard both the counsel and perused the pleadings. Since applicants have challenged their reversion, it is important to know how they were promoted in the 1st instance. Perusal of orders (Annexure A-3 colly) show that all the applicants were promoted as Investigators on ad hoc basis with immediate effect for a period of 6 months or till the regular incumbent joins the duty, whichever is earlier. It was also specifically stated that ad hoc promotion will not confer any claim or right for seniority/regular appointment in future. No order has been annexed by the applicants to show that these orders were extended in writing. On the other hand respondents have stated neither these orders were extended nor any approval was sought for extension. It is thus clear



that they continued to hold the post because of negligence of officers. The question arises whether it would give any right to the applicants to seek regularization simply on the ground that they had continued for a long period on ad hoc basis. This question need not detain us for long as this point has already been decided by Hon'ble Supreme Court in the case of **Dr. Chanchal Goyal Vs. State of Rajasthan, JT 2003 (5) SC**

144. In this case appointments were made on temporary basis for 6 months till candidates selected by PSC were appointed. Appointments were extended from time to time. Services were finally terminated. They continued till 28 years under the interim orders. The question raised was whether termination was illegal, whether principle of legitimate expectation would apply and whether appointee was entitled to regularization on basis of length of service. Hon'ble Supreme Court held there was no scope of regularization and principle of legitimate expectation would not apply. It was further held as under:-

“ There is no scope of regularization unless the appointment was on regular basis. After one year, currency of appointment is lost. The extension orders operated only during the period of effectiveness. Unless the initial recruitment is regularized through a prescribed agency, there is no scope for a demand for regularization. In this case it was clearly stipulated in the initial order of appointment that the appellant was required to make room once a candidate selected by the Service Commission is available”.

14. In the instant case also since applicants were promoted on ad hoc basis for want of vacancies in promotion quota, naturally promotion cannot be said to be as per rules, therefore, the promotion orders would not give any right to the applicants to continue on this post and get regularized.

15. In view of above, 1st contention of the counsel for applicants that they ought to have been regularised in view of long continuation on the post of Investigator is rejected.



16. Counsel for the applicants strenuously argued that since vacancies were available, applicants could not have been reverted. However, respondents have explained that applicants were promoted on ad hoc basis as no regular vacancies in promotion quota were available and out of total strength of 33 posts of Investigators only 25 could be filled by way of promotion and 8 by way of direct recruitment because as per the Recruitment Rules 75% posts were to be filled by way of promotion while 25% by way of direct recruitment. 19 were already filled out of 25 posts meant for promotee quota. Out of 6 vacancies in promotion quota, 4 were for unreserved while 2 were for SC and ST. Accordingly, 4 general ad hoc Investigators, who were senior to the applicants were regularised vide order dated 20.12.2000. One SC candidate Paramjit was also regularised even though he was junior to the applicants but applicants cannot have any grievance because he was regularised against SC quota whereas all the applicants belong to general category. Thereafter, reserved points were increased to 3, 2 ST + 1 SC, accordingly, they had to be kept unfilled as were meant for ST/SC, therefore, applicants cannot have any grievance nor any claim for regular promotion/regularization against reserved points. Respondents have admitted one more general category vacancy became available on 1.1.2002 due to retirement of Shri Y.R. Kathuria on 31.12.2001. Immediate action was also taken to regularize one more ad hoc Investigator but before it could be completed, Subordinate Statistical Service was constituted w.e.f. 30.1.2002 by Ministry of Statistics of Programme Implementation and all RRs of participating Ministry/Departments were repealed. Cadre Controlling powers were also withdrawn by Ministry of Statistics & Programme Implementation, therefore, further DPC could not have been held by the Ministry of Health and Family Welfare. It goes without saying once



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powers were withdrawn and RRs were repealed naturally DPC could not have been convened by the DGHS.

17. Counsel for the applicants vehemently argued that the posts of Investigators in DGHS were not included in SSS till 2003. In order to examine the correctness of this argument it would be relevant to refer to the relevant O.M.s / Notifications and Rules on the subject.

18. Admittedly applicants were earlier working as Subordinate Statistical Personnel in the Ministry of Health and Family Welfare. They were governed by Ministry of Health and Family Welfare and the Directorate General of Health Services, Investigator (Statistics) Recruitment Rules, 1994 (page 30). As per these rules, sanctioned strength of Investigators (Statistics) was 33 (page 31). Applicants have themselves stated that from 1994 direct recruitment was banned. As per these rules, 75% could be filled by way of promotion while 25% by way of direct recruitment. 75% of 33 would make it 25 posts, which were in promotion quota. The break up has already been explained in para (supra) which shows only one vacancy had arisen for general candidates on 1.1.2002.

19. O.M. dated 30.1.2002 was issued by Govt. of India, Ministry of Statistics & Programme Implementation (page-39) whereby it was declared that after considering the recommendation of Vth Pay Commission, Govt. has decided to constitute a service known as Subordinate Statistical Service by encompassing all group B & C statistical function posts located in various central Ministries / Departments / Organizations. The list of Ministries / Departments / Organizations participating in the Subordinate Statistical Service along with number of posts offered was enclosed with this OM. It was further declared that the Ministry of Statistics & Programme Implementation shall be the Cadre Controlling Authority for the Subordinate Statistical



Service. The Subordinate Statistical Service (Group B Gazetted), Rules 2002 and the Subordinate Statistical Service (Group C) Rules 2002 covering all relevant aspects are being notified separately. In this annexure names of the Ministries/Departments participating in SSS were mentioned with no. of posts offered. It is relevant to note that D.G.H.S. was specifically mentioned at serial no.14 (page-41) and 33 posts were shown under column-I. From above it is clear that from 30.1.2002 itself D.G.H.S. was also participating in the Subordinate Statistical Service and all the 33 posts were also offered for participation in SSS, therefore, from the said date it was Ministry of Statistics and Programme Implementation which was to be the Cadre Controlling Authority for the Subordinate Statistical Service.

20. It seems, wrong pay scale of Investigators and wrong number of posts of Statistical Assistant was mentioned in O.M. dated 30.1.2002 so vide letter dated 19.2.2002 (page 43), D.G.H.S. gave the correct picture to the Ministry of Statistics. It is relevant to note that there was no change as far as number of posts of Investigator was concerned but the only mistake was it was wrongly shown in the revised scale of pay of Rs.5000-8000 whereas it was in fact Rs.6500-10500. As far as Statistical Assistants are concerned their no of posts were wrongly shown as 29 whereas it was 50. However, it seems before this letter reached the ministry, SSS rules were notified, therefore, when Subordinate Statistical Service Group-C Rules, 2002 were notified on 12.2.2002 (page-57), the posts of Investigator (Statistics) were shown at serial no.5 under Schedule IV (page 67) by treating them as Group 'C' in view of wrong pay scale noted by them. These posts were not included in SSS Group-B Rules 2002 (page-44 at 55). In Group-B rules under Schedule-IV against serial no.5, posts of Demonstrators (Statistics) were only mentioned. On realizing the mistake, as pointed out by DGHS vide its letter dated



19.2.2002 SSS (Group-B Gazetted) Amendment Rules were issued on 04.4.2003 (page-146 at 151) whereunder posts of Investigators, Statistics were inserted at serial no.5 by showing the correct pay scale of Rs.6500-10500. Simultaneously SSS Group 'C' amendment rules 2003 were also issued and in these rules under Column 7, against DGHS, only posts of Statistical Assistant were shown and Investigators (Statistics) was removed. In other words, it can easily be concluded that the posts were already included but in 2003 only the mistake was rectified by substituting the schedule which is evident from para 2 (a) of the amendment rules 2003.

21. In notification dated 04.4.2003 all that was done was to substitute the Schedule, as there were some mistakes. It was removed from SSS Group-C (Amendment) Rules 2003 (page-140 at 141) serial no.7 and was included in Group-B Rules (page-146) at serial no.6. Therefore, by no stretch of imagination can it be said that the posts of Investigators were brought within the purview of SSS only in 2003 as was being suggested by the counsel for the applicant. In fact, it is relevant to note that when SSS of Group-C Rules 2002 were issued on 12.2.2002 (page-57) it was clearly mentioned in para-4 as follows:-

"Constitution of the Subordinate Statistical Service:

There shall be constituted a Service known as the Subordinate Statistical Service consisting of Group B and Group C posts. The Group C posts of the service shall consist of persons appointed to the Service under rules 8 and 9."

22. In para-6, it was specifically mentioned as follows:-

"Controlling Authority:

Ministry of Statistics and Programme Implementation shall be the Controlling Authority."

23. Para-8 reads as under:-

"Initial Constitution of the Services:

(i) The initial constitution of the Service shall be made from amongst Group C statistical function posts



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spread over different Ministries / Departments / Organizations of the Government of India, which have been offered for inclusion in the Subordinate Statistical Service."

24. The most important is para-24, which for ready reference reads as under:

"Repeal and Savings:

The existing recruitment rules in respect of the posts included in the Service of various Ministries / Departments / Organizations participating in the Service mentioned in Schedule IV are hereby repealed.

Provided that such repeal shall not affect anything done or action taken under the said rules before such repeal."

The same language was used in Group-B Rules 2002 also. We have referred to Group-C Rules because Investigators (Statistics) were initially shown under Schedule to Group-C Rules 2002 by mistake. However, perusal of above paras would show clearly that the posts of Investigators were also included in the SSS in the year 2002 itself but were wrongly shown as Group-C, therefore, by amendment, in 2003, they were only placed in Group-B, therefore, the contention of counsel for the applicant that they were included in SSS only in the year 2003 is rejected.

25. It is also relevant to note that from February 2002, the existing Recruitment Rules in respect of posts which were included in SSS from various Ministries / Departments / Organizations participating in SSS were already repealed, therefore, naturally no DPC could have been held by the DGHS as per earlier Recruitment Rules for the post of Investigators because undisputedly posts of Investigators of DGHS had already been included in the new service known as Subordinate Statistical Service as explained above. Counsel for the applicants has not been able to demonstrate that there were other 33 posts of Investigators in DGHS in Group 'C' also. It is, therefore, a clear case of mistake but



this would not mean the posts were not included in SSS in the year 2002.

26. In view of above, the contention of counsel for the applicant that vacancies were available even after 30.1.2002 and applicant could have been regularized by DGHS is rejected. Since new service had been constituted and new Recruitment Rules were notified for all the posts, naturally further regular promotions could be undertaken only by the SSS that too under the new Recruitment Rules.

27. We have already noted above that the vacancies, which were available in the grade of Investigator (Statistics) were already filled by regularizing persons, who were senior to the applicants. The only junior, who was regularized ahead of applicants was, Paramjit but he was regularized against reserved quota whereas applicants are all general candidates, therefore, they cannot have any grievance. The last vacancy in General Category had arisen on 31.12.2001 but before it could be filled, Recruitment Rules were repealed and new service was constituted. In these circumstances naturally applicants could not have been allowed to continue as Investigators because they were promoted as Investigators (Statistics) only on adhoc basis, when no vacancies were available in promotion quota. They were, therefore, rightly reverted to their substantive posts by order dated 6.3.2003.

28. At this juncture, it would also be relevant to note that applicant had initially filed OA 2004/2002 alongwith other persons because respondents were not taking into account their continuous period of officiation as Statistical Assistant and Investigator Statistics. The said OA was disposed off on 01.8.2002 by directing the respondents to treat the OA as representation and dispose off the same by a speaking order (page-72 at 78).



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29. Respondents thereafter passed speaking order dated 06.3.3003 (page-83) wherein it was clarified that as per DOPT's instructions issued vide their O.M.No.22011/3/75-Estt.(D) dated 29.10.75 and O.M. No.28036/8/87-Estt.(D) dated 30.3.88 it is clarified that the ad hoc appointment will not bestow on the person any claim for regular appointment and the service rendered on ad hoc basis would not count for the purpose of seniority in that grade and for eligibility for promotion to the next higher grade. These instructions have been reiterated again by Deptt. of Personnel and Training vide their O.M. No.28036/1/2001-Estt.(D) dated 23.7.2001. Moreover it was clearly stated in the Office Orders itself, issued by the Directorate, under which ad hoc promotions were given to the applicants that these ad hoc promotions would not confer any right for regular appointment for seniority in the grade or for promotion to higher grade (page-84). Para-3 of speaking orders dated 6.3.2003 specifically referred to the Investigators also.

30. Even this order was challenged by the applicant by filing another OA bearing No.1066/2003. Counsel for the applicants submitted this OA was filed by Statistical Assistant but this cannot confuse us, in as much as the second paragraph of judgment dated 15.9.2006 makes it clear that the OA was filed against order dated 06.3.2003 rejecting their representation for regularization in the post of Investigator (Statistics) from initial date of their adhoc appointment. They have also sought direction to the respondents to take said period into their seniority with all consequential benefits. It is thus clear that though applicants had described themselves as Statistical Assistants but their grievance was same as they had challenged order dated 6.3.2003 whereby applicants were directed to be reverted. Since OA was filed after reversion, naturally applicants would have shown themselves as Statistical Assistants. Counsel for the applicants tried to mislead us by stating that OA No.

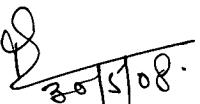


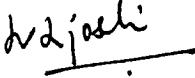
1066/03 was in different context. Even otherwise it is noted that OA 871/2003 was filed by Investigators (Statistics) and both the OAs were decided by a common judgment. After dealing with the contentions of all concerned, OAs were dismissed and order dated 06.3.2003 was upheld.

31. In view of above, applicants cannot be allowed to file two OAs for same cause, therefore, present OA is liable to be dismissed on this ground also. In speaking order dated 06.3.2006, it was already noted that respondents have decided to revert the applicants to their regular post of Statistical Assistant. The order dated 6.3.2003, Annexure A-1 was only a consequence of above order, therefore, 2 different OAs are not maintainable on same cause of action.

32. Counsel for the applicants had placed reliance on judgment dated 2.7.2007 in OA No. 1548/2006 in the case of Vijay Kumar and Others Vs. U.O.I. & others. However, perusal of same shows this OA pertained to Ministry of Agriculture whereas applicants in case before us belonged to DGHS. It goes without saying that each case has to be decided in given facts. In Vijay Kumar's case there is clear finding recorded on page 7 in para 9 that there were clear vacancies since 1997 in which ad hoc promoted officers could have promoted whereas in the case before us we have already noted that all the vacancies in promotion quota were filled. Only one vacancy was available for which process was also initiated but before it could be completed SSS was constituted and earlier rules were repealed, therefore, this case cannot advance the case of applicants before us.

33. In view of above discussion, we find no merit in the OA. The same is accordingly dismissed. No order as to costs.


(MRS. MEERA CHHIBBER)
MEMBER (J)


(L.K. JOSHI)
VICE CHAIRMAN (A)

Rakesh