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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 1841/2003

This the 26th day of March, 2004

HON'BLE SH. KULDIP SINGH, MEMBER (J)
HON'BLE SH. S.A.SINGH, MEMBER (A)

1. Dr. Baldev Singh,
s/o Mr. Soran Singh,
r/o J-47, Prem Nagar,
New Delhi-110044.
2. Dr. Noor Mohammad,
s/o Mr. Allah Baksh,
c/o Super General Store,
Joshi Colony, Mandawali,
Fazalpur, Delhi-110092.
3. Dr. Taj Mohammad,
s/o Sh. Aas Mohammad,
r/o C-32, Phase-IV,
Welcome Seelampur,
Delhi-110053.
4. Dr. Mustehasan,
d/o Mr. Noor Mohammad,
r/o 71-B, Pocket A-3,
Mayur Vihar, Phase-III,
Delhi-110096.
5. Dr. Aley Mustafa,
w/o Dr. Mohammad Hanif,
c/o Mr. Islamuddin,
A-97, Gali No.2,
Bhaghirathi Vihar 1st,
Delhi-110094.
6. Dr. Abbas Ali Khan,
s/o Sh. Babu Khan,
r/o N-86, Sailing Club,
Lane No.2, Batla House,
Okhala, New Delhi-110025.
7. Dr. Mohammad Zubair,
s/o Sh. Faquruddin,
c/o Mr. Qamar Alam,
2446, Charrey Wali Gali,
Baradari, Baallimaran,
Delhi-110006.

(By Advocate: Sh. Ashwini Bhardwaj)

Versus

1. The Govt. of N.C.T. Delhi,
through the Chief Secretary,
G.N.C.T. of Delhi,
Secretariat, I.G. Stadium,
New Delhi.
 2. The Principal Secretary (Health),
Govt. of NCT, Delhi,
Department of Health & Family Welfare,
- for*

Secretariat, I.G.Stadium,
New Delhi.

3. The Director (ISM&H)
Directorate of Indian System of Medicines
and Homoeopathic,
A & U Tibbia College,
Govt. of N.C.T., Delhi,
Karol Bagh, New Delhi-110005.

4. Union Public Service Commission,
through its Chairman,
Dholpur House, Shahjahan Road,
New Delhi-110003.

(By Advocate: Ms. Rashmi Chopra for Resp. No.1 to 3
Mrs. B.Rana for Resp. No.4)

O R D E R

4 By Sh. Kuldip Singh, Member (J)

This OA has been filed by 7 applicants who are seeking a direction to the respondents to regularise the services of the applicant on the post of Medical Officer (Unani) on which they had been working since 2001 onwards on contract basis.

2. Facts in brief are that the applicants in response to an advertisement issued by the respondents vide Annexure A-1 applied to be engaged as Doctors in Ayurveda/Unani on contract basis in the dispensaries to be established by the Govt. of NCT of Delhi. In the advertisement it was made clear that they shall be paid salary on contract basis @ Rs.6000/- p.m. Applicants allege that their selection has been made in accordance with the rules after undergoing a competitive test and thereafter they had been appointed and had been serving as such. But the respondents are not considering the case of the applicants for their regularisation. It is also pleaded that the Cabinet Committee of Govt. of NCT of Delhi had also taken a decision on F.NO.F.3(6)97-2001-H&FW/331 which contains a decision of the Cabinet Committee into this effect.

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3. Applicants further allege that they are fully eligible to hold the post of Medical Officer (Unani) as they have been selected out of 570 candidates who had appeared in response to the said advertisement issued by the said respondents. Applicants further allege that though initially they were appointed on consolidated salary of Rs.6000/- but subsequently Govt. of its own had increased the status of the applicants by according them the status of ad hoc employee in the pay scale of Rs.8000-13500 plus NPA and other attendant allowances. Thus, applicants submit that they are eligible to be regularised or their case may be sent to UPSC, so that respondents may regularise the services of the applicant in consideration of UPSC.

4. Applicants also submit that the Cabinet Committee of Delhi Govt. had already decided to recommend the case of the applicant for regularisation to the Central Govt. So respondents are estopped from changing their stand in an arbitrary, illegal and unjust manner particularly so when the Cabinet Committee has not changed its decision till date. Applicants also allege that they have been appointed by respondents as per the recruitment rules and as such they are not a back door entrant, rather they are eligible for regularisation of their services.

5. Respondents are contesting the OA. Respondents in their reply submitted that applicants were initially appointed on contract basis and it was made clear that their post will be filled by candidates who are subsequently selected by the UPSC for the said post and applicants were also eligible to appear in the selection to be conducted by UPSC.

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6. It is further stated that applicants were all aware of the terms of employment after having accepted the same cannot subsequently claim regularisation. It is denied that the advertisement was as per recruitment rules. It was only on contract basis and not for regular appointment and no procedure for regular appointment, has been followed. It is further submitted that the Govt. of NCT of Delhi is not competent to fill up the post since the post in question is a Group "A" post which can be filled by only those candidates who are recommended through UPSC and candidates can be appointed to a regular post only in accordance with the recruitment rules and so far selection made on contract basis cannot be said to be a regular selection as per recruitment rules. The mere fact that the applicants are having experience, does not entitle them to be regularised on the said post de hors the recruitment rules. It is also submitted that in the offer of appointment it was made clear that the post will be available to the candidate till the regularly selected candidates are made available through UPSC. As far granting of pay scales and other facilities are concerned, it is stated that it has been done in compliance of the order issued by the Tribunal in OA-2108/99. Thus, it is stated that the applicants have no case for regularisation, since they had not been appointed in accordance with the rules.

7. Resp. No.4, i.e. UPSC, also filed their written statement. They also submitted that Govt. of NCT had appointed the applicants on contract basis without consulting UPSC and had allowed the applicants to continue in their appointment thereafter also but their appointment is not in consonance with the said policy of the UPSC. It is also stated that UPSC is an advisory body set up under Article 315

of Constitution of India and they have a constitutional obligation to ensure that all the selections made for regular appointments to the service of Union of India falling under the purview of UPSC are made strictly in accordance with the statutory recruitment rules and the relevant instructions issued by the Govt. of India from time to time. As far as regularisation of ad hoc appointment is concerned, it is not covered under the statutory recruitment rules, so UPSC do not agree to all regularisation of such ad hoc appointments in discharge of their Constitutional obligations until or unless there are directions of the Court to the contrary. Thus, it is submitted that since the appointment is against the rules without consultation of the UPSC, so these applicants are not eligible to be regularised in the post of Medical Officer (Unani).

8. We have heard the learned counsel for the parties and gone through the record.

9. Counsel appearing for the applicants relied upon a judgment of Union of India vs. Jitender Singh and others in SLP No.23578-84/92. and submitted that applicants are entitled to be considered for regular appointment. Counsel for applicant has also relied upon a judgment of Delhi High Court reported in 1983 Labour and Industrial Cases 910 where Junior Medical Officer who was initially appointed on ad hoc basis for one year was continued for an aggregate period exceeding one year which was barred by Proviso to Section 17(3) of the Employee State Insurance Act. So it was held that petitioner to be made permanent, UPSC has to regularise them. On the strength of this judgment learned counsel of applicant submitted that since applicants have been appointed

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after undergoing written examination and as per recruitment rules, applicant are to be treated as if they have been regularly appointed and since there is a technical formality of consulting the UPSC has not been observed and Govt. of NCT of Delhi had already taken a decision to refer the matter to UPSC so case of the applicants could be referred to UPSC for according regularisation of the applicants.

10. On the contrary, counsel for respondents submitted that since applicants have not been appointed on regular basis and rather have been appointed on ad hoc basis that too de hors of the rules, so applicants are not entitled to be regularised. Though their appointment has been made by Govt. of NCT of Delhi after holding a test but Govt. of NCT of Delhi could not have held the test since it is the UPSC who is competent to conduct the selection.

11. Counsel for respondents referred to a recent judgment of Hon'ble Supreme Court given in case of Dr. (Mrs.) Chanchal Goyal vs. State of Rajasthan reported in 2003 (2) SCALE 264 wherein also the case of appointment of Medical Officer in the Municipal Council was a subject matter of the case. Hon'ble Supreme Court had observed as under:-

"There is no scope of regularisation unless appointment was on regular basis. Considerable emphasis has been laid down by the appellant to the position that even for temporary appointment there was a selection. That is really of no consequence. Another plea of the appellant needs to be noted. With reference to the extension granted it was contended that a presumption of the Service Commission's concurrence can be drawn, when extensions were granted from time to time. This plea is without any substance. As noted above, there is no scope for drawing a presumption about such concurrence in terms of sub-rule (2) of Rule 27. After one year,

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currency of appointment is lost. The extension orders operated only during the period of effectiveness."

12. It is further observed as under:-

"Unless the initial recruitment is regularised through a prescribed agency, there is no scope for a demand for regularisation. It is true that an ad hoc appointee cannot be replaced by another ad hoc appointee. 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."

13. Counsel for respondents also referred to another judgment given by a Coordinate Bench of this Tribunal in OA-3418/2001 wherein the applicants have been appointed as Medical Officers (Ayurveda) purely on ad hoc basis for a period of 6 months or till the regular appointment is made whichever is earlier. This Tribunal relying upon the judgment given in CWP No.7386/2000 in case of Sandeep & others vs. Delhi Subordinate Services Selection Board and others decided on 23.7.2002 found that in that case before the Hon'ble Delhi High Court appointment of Trained Graduate Teachers was in question for regularisation and the appointments have been made on contract basis. The CWP has been dismissed by Delhi High Court and the Court found that in case of Ayurveda Doctors also identical claim was made before this Tribunal, so OA was dismissed.

14. Counsel for respondents has also referred to a judgment of Divpreet Sahni and others vs. Govt. of NCT of Delhi in which one of us (Hon'ble Sh. Kuldip Singh) was also a party and there also the question of regularisation based on similar circumstances was the issue and this Tribunal had dismissed the OA.

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15. Counsel for Resp. No.4 also referred to a latest office memorandum issued by Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training dated 23.7.2001 wherein continuance of ad hoc appointment have been deprecated and thus counsel for respondents submitted that continuing them beyond one year period itself is an irregular one so they do not deserve to be regularised as their appointment is de hors the rules.

16. We find that the case of the applicants is fully covered by the judgments in case of Dr. Chanchal Goel vs. State of Rajasthan (supra) as well as the judgment of Divpreet Sahni (supra) as referred by the counsel for the respondents both Govt. of NCT of Delhi as well as UPSC. We find that the case of the applicant in this OA is also identical. Applicants are claiming regularisation though they had been initially appointed on contract basis and later on the regular pay scales were extended to them by virtue of an order of this Court but the fact remains that they were not appointed in consultation with UPSC and so called test conducted by Govt. of NCT of Delhi was conducted by an incompetent authority and de hors of the rules which do not give any right to the applicants for regularisation. In the offer of appointment letters also it was clearly stipulated that their appointment is on contract basis and till regularly selected candidate becomes available. The applicant by no stretch of imagination can now ask for regularisation de hors the rules. Hence we find that OA is bereft of any merits and the same is dismissed.

(S.A. SINGH)
Member (A)

(KULDIP SINGH)
Member (J)