

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO.2430/2003

NEW DELHI THIS...22nd...DAY OF JULY 2004

HON'BLE SHRI SHANKER RAJU, MEMBER (J)
HON'BLE SHRI S.A. SINGH, MEMBER (A)

1. Dr.G.C.Sahu,
S/o Late Ramesh Chandra Sahu
aged about 42 years
C/o Regional Office for Health and
Family Welfare, Government of India,
Ahmedabad.
2. Dr.P.Karmakar,
S/o Late R.N.Karmakar,
aged about 51 years
C/o Regional Office for Health and
Family Welfare, Government of India,
Kolkata.
3. Dr.T.D.Khatri,
S/o Mr. Aasudamal Khatri,
aged about 47 years
C/o Regional Office for Health and
Family Welfare, Government of India,
Jaipur.
4. Dr.A.Subba Rao,
S/o Late A.V.Seshagiri Rao,
aged about 52 years
C/o Regional Office for Health and
Family Welfare, Government of India,
Hyderabad.
5. Dr.Ashok Kumar,
S/o Late M.N.Sahay,
aged about 52 years
C/o Regional Office for Health and
Family Welfare, Government of India,
Patna.
6. Dr.Haridhar Sahu,
S/o Mr.Permanand Sahu,
aged about 53 years
C/o Regional Office for Health and
Family Welfare, Government of India,
Lucknow.

.....Applicants

(By Shri S.K.Bhattacharya, Advocate)

VERSUS

1. Union of India,
through The Secretary,
Ministry of Health and Family Welfare,
Government of India, Nirman Bhavan,
New Delhi-110011.

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2. Director General of Health Services
Government of India, Nirman Bhavan..
New Delhi-110011.
3. Director,
National Anti Malaria Programme,
22, Sham Nath Marg,
Delhi-110054.

.....Respondents.

(By Sh.Madhav Panikar, Advocate)

ORDER

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

This OA has been filed by the Group 'A' Research Officers (Medical) who originally belonged to MOFRS and were merged with the National Malaria Eradication Programme (NMEP). The President created on 27.9.1995, 156 temporary posts in the NMEP for facilitating this merger. These posts were filled up by transfer of the existing incumbents in the MOFRS..

2. The case of the applicants is that though they had been originally appointed as temporary project employees on ad hoc basis they had been continued without a break before their absorption as a separate wing of the NMEP.

3. The MOFR Scheme consisted of Group 'A', 'B', 'C' and 'D' employees. The services of Group 'B', 'C' and 'D' had been regularised. However, the applicants who are in Group 'A' have not been regularised.

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4. The services of Group 'B', 'C' and 'D' employees were regularised in terms of the directions given in the judgement of Karnataka Bench of the CAT which was upheld by the Hon'ble High Court of Karnataka and also by the apex Court in their judgement dated 10.9.2003. The order also directed for counting of the past services of these employees for the purposes of pensionary benefits.

5. Aggrieved by not granting them regularisation and counting of the past service the applicants filed this OA seeking the following reliefs:

- a) direct the Union of India to regularise the services of the petitioners from the date the services of the other Groups namely 'B' 'C' and 'D' were regularised i.e. 29.9.1995;
- b) direct the Union of India to treat the past service of the applicants from the date of initial appointment for pensionary benefits; and
- c) direct the Union of India to consider the cases of the applicants for promotion and cadre in CHS.

6. The respondents have contested the claim of the applicants stating that there are no Recruitment Rules in existence in respect of MOFRS staff separately and since it is a dying cadre the number of posts have been frozen and no recruitment/promotions can be made. They have indicated that they are considering the case of Group A and B cadre for regularisation after the apex court judgement but this can only be implemented after consultation with the Ministry of Law. Further they cannot be considered for absorption

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into the cadre of CHS and associated promotions as induction into the CHS has to be done ^L as per the recruitment rules and the applicants are not eligible.

7. Having heard the counsel for the parties and gone through the information/papers/records placed on records. We find that the basic facts are not contested. The applicants were originally part of the MOFRS and were merged with the NMEP by transfer on 25.9.95. Group 'C' employees of the MOFRS filed OA No. 595/99 in the Bangalore Bench of the Tribunal for regularisation of their services and counting of the past service. The orders of the Hon'ble Tribunal in that case were as under:-

"9. In view of these decision it has to be held that the contention of the respondents that the applicants cannot be permitted to count their past service in the previous scheme prior to the absorption cannot be upheld. They are entitled for counting the past service prior to that date of absorption and all other benefits that arise from the absorption as per law. Though the records would show that subsequent to the filing of this O.A., a representation was given for consideration of this request which the Government of India is still considering but since this was done after the O.A. was admitted we do not propose to defer the decision in view of the legal position quoted above.

10. Hence the O.A. is accordingly allowed directing the respondents to count the past service of the applicants from the date of their initial appointment and given them all other benefits to which they are entitled as per law because of the absorption. Necessary orders shall be passed in this regard within a period of three months from the date of receipt of a copy of this order."

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8. The case of the applicants is identical to the Group 'C' employees of the MOFRS who had filed OA 595/99, relevant para of which have been reproduced above, the ratio of the judgement would be applicable to the applicants. We therefore direct the respondents to count the past service of the applicants from the date of their initial appointment and to give them all other benefits to which they are entitled as per law/norms of rules because of their absorption to NMEP. The necessary order should be passed within three months of the receipt of the certified copy of the present order.

9. With regard to the prayer of the applicants for encadrement in CHS, the relief is not related to their prayer for regularisation and counting of their past service from the date of initial because appointment into the CHS has to be made in accordance with rules. The applicants were appointed on adhoc basis into the MOFRS and cannot claim incadrement in the CHS on the basis of their absorption into the NMEP.


10. The applicants have also prayed for time bound promotions as applicable to the Medical Officer under CHS. It is a fact that the applicants have served for more than 15 to 25 years without promotions or upgradations. This is an unfortunate situation resulting from long delay in taking decision in regularisation of the applicants. The applicants have not been part of any cadre nor they have been able to earn promotions despite long service without break. Taking a clue from the ACP Scheme which has been

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evolved as a 'safety net' to deal with the problem of general stagnation and hardship faced by the employees due to lack of promotional avenues, we direct in the interest of justice, Secretary Health and Family Welfare to find an equitable solution concerning this particular problem of the applicants within a reasonable time. Accordingly this OA is disposed of with directions given under para 8 and 10.


(S.A. Singh)
Member (A)


(Shanker Raju)
Member (J)

Patwal/