

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.2442/2003

New Delhi. this the 29<sup>th</sup> day of July, 2004

HON BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN  
HON BLE SHRI S.A.SINGH, MEMBER (A)

O.N. Mathur  
s/o Shri J.N. Mathur  
aged about: 54 years  
Resident of: A-141  
Privadarshini Vihar  
I.P.Extension  
Delhi - 110 092.

**and employed as:**

Finance and Accounts Officer in the  
Central Pollution Control Board  
Parivesh Bhawan  
East Ariun Nagar, Shahdara  
Delhi - 110 092.

... Applicant

(By Advocate: Sh. B.B.Raval)

Versus

1. Union of India  
through: The Secretary  
Ministry of Environment and Forests  
Government of India  
Parvavaran Bhawan  
C.G.O.Complex, Lodhi Road  
New Delhi - 110 003.

2. The Chairman  
Central Pollution Control Board  
Parivesh Bhawan  
East Ariun Nagar  
Shahdara  
Delhi - 110 092.

... Respondents

(By Advocates: Sh. M.M.Sudan for Respondent No.1 and  
Shri S.M. Arif for Respondent No.2)

**O R D E R**

Justice V.S. Aggarwal:-

The Central Pollution Control Board (hereinafter called the Board), is a statutory body constituted under the Water (Prevention and Control of Pollution) Act, 1974 (for short 'the Water Act'). The Board functions under the administrative control of Respondent No.1. Section 12(3)(A) of the Water Act provides that the method of recruitment and the terms

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and conditions of service, including the scale of pay of the officers other than Member Secretary and other employees of the Central Board or State Board shall be such as may be determined by the regulations made by the Central Board or, as the case may be, by the State Board. The regulations made under the above said Sub-Section only takes effect in the case the regulations made by the Central Board is approved by the Central Government.

2. In pursuant to the provisions of Section 12(3)(A), the Board has framed service regulations for various categories of posts and the same were duly approved by the Central Government. The method of recruitment for the post of Finance and Accounts Officer as per the Central Pollution Control Board Method of Recruitment & Conditions of Service of Officers and other Employees other than Member Secretary, Regulations, 1995, had been notified on 24.1.1995. It is a Group 'A' post and Columns 10, 11 and 12 are as under:

"Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various methods	In case of recruitment by promotion/deputation/transfer, grades from which promotion/deputation/transfer to be made	If a Departmental Promotion Committee exists, what is its composition
(10)	(11)	(12)
Transfer on deputation/ promotion.	Transfer on deputation (including Short-term Contract)/Promotion:	Departmental Promotion Committee:
	1. Officers of Indian Audit & Accounts Service, Indian Defence Accounts Service, Indian	Chairman, Central Board - Chairman, Joint Secretary (dealing with establishment of

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Railway Accounts  
Service or any  
other organised  
Accounts Service.  
OR

Any other Officers  
of the Central Govt.  
or a Central

Statutory/Autonomous  
Body or a Public  
Sector Undertaking.

Board) in the  
MoEF - Member.

Two Members of the  
Board (to be  
nominated by the  
Chairman) - Members  
Member Secretary,  
Central Board -  
Member."

(a) (i) holding  
analogous posts on  
regular basis; or

(ii) a post in the  
scale of Rs.3000-  
4500. with 5 years  
of regular service  
in that grade; and

(b) having experience  
in Accounts, Audit,  
Financial Advice and  
related matters.

2. The departmental  
Accounts Officers  
with 12 years of  
regular service in  
the grade will also  
be considered and in  
case he is selected  
for appointment to  
the post, the same  
will be deemed to have  
been filled by  
promotion.  
(Period of deputation  
shall not ordinarily  
exceed 3 years).

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3. The applicant had joined the Central  
Pollution Control Board as Junior Accounts Officer in  
January, 1980. He was promoted as Accounts Officer  
from 1.5.1983. The applicant claims that a regularly  
constituted Departmental Promotion Committee had  
promoted him as Finance and Accounts Officer on ad hoc  
basis from 25.6.1995. The above said ad hoc promotion  
was extended from time to time without break and he

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has been working on the said post from 23.6.1995. The applicant fulfils all the requirements for regular promotion.

4. The grievance of the applicant is that despite having been continued to work for such a long time, the respondents have issued a circular dated 21.7.2003 for filling up the post of Finance and Accounts Officer in the Central Pollution Control Board. The eligibility criteria prescribed in the impugned Circular is as under:

"ELIGIBILITY CRITERIA:

(1) Officers of Indian Audit & Accounts Service, Indian Defence Accounts Service, Indian Railway Accounts Service or any other organised Accounts Service.

OR

Any other Officers of the Central Govt. or a Central Statutory/Autonomous Body or a Public Sector Undertaking.

(a) (i) holding analogous posts on regular basis; or

(ii) a post in the scale of Rs.10,000-325-15,200 with 5 years of regular service in that grade; and

(b) having experience in Accounts, Audit, Financial Advice and related matters.

(2) The departmental Accounts Officers with 12 years of regular service in the grade will also be considered and in case he is selected for appointment to the post, the same will be deemed to have been filled by promotion. (Period of deputation shall not ordinarily exceed 3 years)."

5. It is asserted by the applicant that he has been working on the said post for the past eight and half years and should be regularised by way of promotion to the above said post. The Circular to

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which we have referred to above violates the Fundamental Rights of the applicant and should be quashed.

6. Both the respondents have filed their separate reply. The sum and substance of the plea of Respondent No.1 is that as per the notified recruitment rules, the post of Finance and Accounts Officer is to be filled up by a composite method of transfer on deputation/promotion. According to the Manual of Establishment and Administration, whenever an employee of the Public Sector Undertakings/Autonomous Bodies, and non-Secretarial offices is also eligible under the recruitment rules, the vacancy has to be circulated to all such organisations so that the requirement of the recruitment rules are duly met. In addition, it should invariably be published in the employment news also. The departmental Accounts Officer is also considered along with the outsiders. If the departmental person is selected, the post is deemed to have been filled by promotion. Respondent No.2 is stated to have never taken action to fill up the post as per the recruitment rules. On the contrary, the post was filled up on ad hoc basis in violation of the recruitment rules and instructions.

7. Before venturing into the principles further, we deem it necessary to mention that the applicant was promoted to the post of Finance and Accounts Officer w.e.f. 23.6.1995 vide Office Order

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dated 26.6.1995 (Annexure A-4). The said order clearly states that he is being appointed on ad hoc basis. It reads:

"C-20017/1/91-Admn(P)/2162 Dated 26-06-1995

OFFICE ORDER

Shri O.N. Mathur, who is presently working as Accounts Officer is promoted to the post of Finance and Accounts Officer on ad-hoc basis with effect from 23-06-1995 forenoon for a period of 6 months in the scale of pay of Rs.3700-125-4700-150-5000/-.

2. He will be reverted to the post of Accounts Officer as soon as the post of Finance and Accounts Office is filled up on regular basis.

3. The period of his ad-hoc promotion shall be curtailed or extended at the discretion of the Competent Authority, Central Board.

4. This appointment will not bestow him to claim for regular appointment and the ad-hoc services render will not count for the purpose of seniority on that grade or eligibility for promotion.

5. His pay in the above grade will be fixed as per rules.

6. This is being issued with the approval of the Chairman, Central Board.

Sd/-  
(S.P. CHAKRABARTI)  
MEMBER SECRETARY

It is not in dispute that since that date, he has continued to function on the said post on ad hoc basis. Respondent No.2 admittedly, held three DPCs subsequently but the Central Government had not approved the applicant. As already referred to above, it is the plea of Respondent No.1 that this approval was not granted because the recruitment rules had been ignored.

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9. The first and foremost question therefore, that comes up for consideration is to the effect that the applicant had continued to work on the said post for the past more than eight years.

10. In the case of Dr. Chanchal Goyal (Mrs.) v. State of Rajasthan, (2003) 3 SCC 485, a similar situation had cropped up before the Supreme Court. Certain persons had been appointed on temporary basis for a period of six months. Certain orders of extension were issued. On 1.10.1998, services of Dr. Chanchal Goyal were terminated on the ground that the candidates selected by the Public Service Commission were available. The question for consideration before the Supreme Court was as to whether she could claim regularisation as in the case of the applicants. The Supreme Court repelled the argument of Dr. Chanchal Goyal and held:

"8. Unless the initial recruitment is regularized 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; only a legally selected candidate can replace the ad hoc or temporary 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."

Thereupon the Supreme Court went on to hold:

"10. In J&K Public Service Commission v. Dr. Narinder Mohan [(1994) 2 SCC 630] it was, inter alia, observed that it cannot be laid down as a general rule that in every category of ad hoc appointment if the ad hoc appointee continued for a longer period, rules of recruitment should be relaxed and the appointment by regularisation be made.

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In the said case in para 11 the position was summed up as under: (SCC pp. 640-41, para 11)

"11. This Court in A.K.Jain (Dr.) v. Union of India [1987 Supp SCC 497] gave directions under Article 142 to regularize the services of the ad hoc doctors appointed on or before 1-10-1984. It is a direction under Article 142 on the peculiar facts and circumstances therein. Therefore, the High Court is not right in placing reliance on the judgment as a ratio to give the direction to the PSC to consider the cases of the respondents. Article 142 - power is confided only to this Court. The ratio in F.P.C. Rawani (Dr) v. Union of India [(1992) 1 SCC 331] is also not an authority under Article 141. Therein the orders issued by this Court under Article 32 of the Constitution to regularize the ad hoc appointments had become final. When contempt petition was filed for non-implementation, the Union had come forward with an application expressing its difficulty to give effect to the orders of this Court. In that behalf, while appreciating the difficulties expressed by the Union in implementation, this Court gave further direction to implement the order issued under Article 32 of the Constitution. Therefore, it is more in the nature of an execution and not a ratio under Article 141. In Union of India v. Dr. Gyan Prakash Singh [1994 Supp(1) SCC 306] this Court by a Bench of three Judges considered the effect of the order in A.K.Jain case [1987 Supp SCC 497] and held that the doctors appointed on ad hoc basis and taken charge after 1-10-1984 have no automatic right for confirmation and they have to take their chance by appearing before the PSC for recruitment. In H.C. Puttaswamy v. Hon'ble Chief Justice of Karnataka High Court [1991 Supp (2) SCC 421] this Court while holding that the appointment to the posts of clerk etc. in the subordinate courts in Karnataka State without consultation of the PSC are not valid appointments, exercising the power under Article 142, directed that their appointments as a regular, on humanitarian grounds, since they have put in more than 10 years service. It is to be noted that the recruitment was only for clerical grade (Class III post) and it is not a ratio under Article 14. In State of Haryana v. Piara Singh [(1992) 4 SCC 118] this Court noted that the normal rule is recruitment through the prescribed agency but due to administrative exigencies, an

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ad hoc or temporary appointment may be made. In such a situation, this Court held that efforts should always be made to replace such ad hoc or temporary employees by regularly selected employees, as early as possible. The temporary employees also would get liberty to compete along with others for regular selection but if he is not selected, he must give way to the regularly selected candidates. Appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc or temporary employee. Ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee. He must be replaced only by regularly selected employee. The ad hoc appointment should not be a device to circumvent the rule of reservation. If a temporary or ad hoc employee continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State. It is to be remembered that in that case, the appointments are only to Class III or Class IV posts and the selection made was by subordinate selection committee. Therefore, this Court did not appear to have intended to lay down as a general rule that in every category of ad hoc appointment, if the ad hoc appointee continued for long period, the rules of recruitment should be relaxed and the appointment by regularisation be made. Thus considered, we have no hesitation to hold that the direction of the Division Bench is clearly illegal and the learned Single Judge is right in directing the State Government to notify the vacancies to the PSC and the PSC should advertise and make recruitment of the candidates in accordance with the rules."

11. Similar situation had arisen before the Supreme Court in the case of Union of India & Ors. v. Harish Balkrishna Mahajan, 1996(6) SLR S.C. 668. Therein Harish Balkrishna Mahajan was appointed on monthly basis. This Tribunal had directed that he should be regularised in consultation with Union Public Service Commission. The Supreme Court allowed the appeal and held:



"2. The respondent was temporarily appointed as a Medical Officer on monthly basis in the Central Government Health Scheme on August 10, 1982. During the unfortunate strike of the doctors as trade unionists, unmindful of the ethical and medical code of conduct, he was appointed and even continued in the service till August, 1987. When his services were terminated, he had gone to the Tribunal and filed OA No. 701/89. The Tribunal in the impugned order dated 21.12.1994 directed the appellants to regularise the service of the respondent in consultation with the Public Service Commission. Thus, this appeal by special leave.

3. The controversy is no longer res integra. In similar circumstances, this Court had considered the entire controversy in J and K Public Service Commission & Ors. vs. Dr. Narinder Mohan and Ors. [(1994) 2 SCC 630] : [1994(1) SLR 246 (SC)]. Admittedly, the post of doctors in the Central Government Health Scheme are required to be filled up by recruitment through Union Public Service Commission. Therefore, the direction to consider the case of the respondent in consultation with the Public Service Commission for regularisation is in violation of the statutory rules and Article 320 of the Constitution of India. The only course known to law is that the Union of India shall be required to notify the recruitment to the Public Service Commission and Union Public Service Commission shall conduct the examination inviting the applications from all the eligible persons including the persons like the respondents. It would be for the respondent to apply for and seek selection in accordance with Rules. Therefore, the direction is in violation of Article 320 of the Constitution."

12. Identical view was expressed by the Apex Court in the case of Dr. Surinder Singh Jamwal & Anr. v. The State of Jammu & Kashmir & Ors., JT 1996 (6) S.C. 725. The decision of the Supreme Court in the case of Jammu & Kashmir Public Service Commission v. Dr. Narinder Mohan, 1994 (2) SCC 630 was relied upon, and it was held that the applicant therein could apply afresh only.

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15. This Tribunal had considered this controversy in the case of Dr. Divpreet Sahni & Others v. Government of NCT of Delhi & Others O.A.No.988/2001. decided on 19.9.2002. Herein also the said persons had been appointed firstly on ad hoc basis for a period of six months. It was reiterated that they could continue with ad hoc appointment subject to the appointment of regular incumbents, and when regular incumbents became available, the question for consideration was as to if the said persons had gained any such right or not? The applications were dismissed holding:

22. .... it was clearly mentioned that appointments were to be made on ad-hoc basis. When a suggestion of ad-hoc appointment is made, only few persons would apply. On the other hand, when regular appointments are notified, a large number of eligible candidates are tempted to apply. To this extent, the applicants in these OAs have been selected from amongst a much lesser number of competitors than would have been the case if regular selection had been notified. Further, there is always the likelihood of favouritism when departmental committees are set up to interview candidates from the open market. When UPSC gets associated, objectivity and impartiality also steps in. That is precisely the reason why the UPSC and for that matter the State Public Service Commissions have been set up as constitutional bodies who devise their own procedure albeit in consultation with the department concerned, for selecting candidates for various services. We have in the foregoing paragraphs also noticed, after a discussion of the various Court cases relied upon by the applicants, that nothing will assist their case, whether it is the case of Dr. Jitender Singh (supra) or that of Medical Officers (Unani), or for that matter any other case. Consideration of the candidature of the applicants in the manner sought by them treating them as forming a separate block and by directing the UPSC to consider their claims wholly on the basis

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of their performance in ad-hoc service, is something unknown to the relevant rules and the procedure. Following of such a hybrid procedure cannot be sustained in law, and for this reasons are available in plenty in the cases of J&K Public Service Commission & Others (supra) and Shri Sandeep & Others (supra)."

14. The Supreme Court in the case of State of Madhya Pradesh & Another v. Dharam Bir. (1998) 6 SCC 165 further held that when ad hoc appointments are made they would continue to do so even after passage of time. The findings of the Supreme Court read:

"34. The respondent having worked in an ad hoc capacity on the post of Principal might have gained some administrative experience but the same cannot be treated as equivalent to his knowledge in the field of Engineering. A compounder, sitting for a considerably long time with a doctor practising in modern medicine, may have gained some experience by observing the medicine prescribed by the doctor for various diseases or ailments but that does not mean that he, by that process, acquires knowledge of the human anatomy or physiology or the principles of pharmacology or the field of action of any particular medicine or its side effects. The compounder cannot, merely on the basis of experience, claim a post meant exclusively for persons having MBBS or other higher degrees in medicine or surgery. The plea of experience, therefore, must fail. Moreover, this would amount to a relaxation of the Rule relating to educational qualification. Power to relax the Rule vests exclusively in the Governor as provided by Rule 21. This power cannot be usurped by the court or the tribunal."

15. At this stage, it is relevant to mention the decision rendered by the Supreme Court in the case of Ahmedabad Municipal Corporation v. Virendra Kumar Jayantibhai Patel. (1997) 6 SCC 650. The Supreme Court in that case went on to conclude that even sympathetic consideration will not outway the legal position.

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16. From the aforesaid, it is clear that de hors the rules, regularisation could not be effected. A person can only be regularised in accordance with the recruitment rules. Even in this regard, therefore, sympathetic consideration should not outway the legal position. Since the applicant had been appointed only on ad hoc basis, therefore, merely because he continued for such a long time will not prompt us to conclude that he is entitled to regularisation ignoring the recruitment rules.

17. In the preceding paragraphs, we have already referred to the recruitment rules to the post. It clearly shows that the source of recruitment is transfer on deputation/promotion. The recruitment rules therefore, clearly do not state that firstly the method of induction would be by promotion failing which by transfer on deputation or both the methods, therefore, have to be adopted simultaneous.

18. The Department of Personnel & Training OM No.A8 14017/71/89-Est.(RR), dated 3.10.1989, clearly provides:

**"7. Eligibility of departmental officers for appointment by deputation:**

7.1. In a situation where the field of promotion consists of only one post, the method of recruitment by transfer on deputation (including short-term contract)/promotion is prescribed so that the departmental officer is considered along with outsiders. If the departmental officer is selected for appointment to the post, it is treated as having been filled by promotion. Otherwise, the post is filled by deputation/contract for the prescribed

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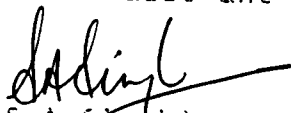



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period. In other cases, where the field of promotion is adequate, i.e., there are adequate number of sanctioned posts in the feeder grade, promotion is provided as the first method or certain percentage of vacancies is earmarked for promotion and certain percentage for appointment by transfer on deputation or direct recruitment. In such cases, departmental officers in the feeder grade are considered for promotion when they are fully qualified for discharging the responsibilities of the higher post and satisfy the eligibility criteria. If the departmental officer is not considered eligible or fit for promotion, it will not be proper to consider him again for appointment by transfer on deputation. Deputation is actually an appointment outside the normal line. It has, therefore, been decided that the departmental officer in the feeder category who, according to the provisions in the notified recruitment rules, are in direct line of promotion should not be considered for appointment by transfer on deputation. Similarly, the deputationists shall not be eligible for being considered for appointment by promotion."

19. Herein also, the position is identical. Therefore, it is in accordance with the same that the matter has been advertised. The applicant can be considered along with other candidates. But he cannot insist in this backdrop that the method of promotion should be adopted and recruitment rules violated.

20. For these reasons, the OA being without merit fails and is dismissed.

  
(S.A. Singh)  
Member (A)

  
(V.S. Aggarwal)  
Chairman

/NSN/