

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH****OA/310/00068/2013****Dated the 26 day of February Two Thousand Nineteen****PRESENT****HON'BLE MR. P. MADHAVAN, Member (J)
&
HON'BLE MR. T. JACOB, Member (A)**

Dr.V..Padmanaban,
S/o. V.Kunhappa Nair (late),
Working as Specialised Grade II T & T,
Government General Hospital,
Mahe.

....Applicant

By Advocate M/s. Karthik, Mukundan and Neelakantan

Vs

1.Union of India rep by
The Secretary to Government,
Government of Pondicherry, through its
Secretary to Government,
Health & Welfare Department,
Secretariat, Pondicherry.

2.Union Public Service Commission,
Rep by its Secretary,
Dolpur House, Shahjahan Road,
New Delhi 110001.

....Respondents

By Advocates Mr. R. Syed Mustafa (R1)
Mr. P. Deivendra (R2)



ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Member(A))

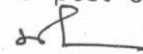
Heard. The applicant has filed this OA seeking the following relief:

"a. To set aside Order No. 19012/32/H1/Health/87/2012 issued by the 1st respondent dated 09.11.2012 and consequently direct the respondents to count the service rendered by the applicant from 11.01.1988 till 07.06.2001 for all purposes except seniority and

b. pass such further or other orders as may be deemed fit and proper."

2. The facts of the case as stated by the applicant are as under :-

The applicant joined the Government of Pondicherry as an Assistant Surgeon on 11.01.1988 through a properly constituted selection process conducted by the 1st respondent. He was continued on adhoc basis without any break. He repeatedly requested for regularisation of his services. But there was no action taken by the 1st respondent. In those circumstances, the applicant filed OA 263 of 1993 before this Tribunal for a direction to the respondent to regularize his services. The Tribunal by its order dated 08.09.2000 allowed the OA and directed the respondents to consider the case of the applicant for regularization in consultation with the 2nd respondent. On the above basis, the applicant came to be regularized by order dated 02.07.2001. The applicant thereafter made representations seeking regularisation of his earlier adhoc service. No action was forthcoming from the respondents. Nine years later, the probation of the applicant was declared and he was confirmed in service in the redesignated post of




General Duty Medical Officer. The applicant renewed his request for counting of his adhoc service for the purpose of fixation of pay and career advancement etc. However the same was rejected by the impugned order. In the above circumstances, the present OA is being filed.

3. The respondents have filed a detailed reply statement in which it is stated that there was a practice of engagement of the Doctors in the Health Department on adhoc basis and such Doctors who were initially appointed on adhoc basis used to apply/appear to the UPSC as and when the vacancies are notified and get appointment on regular basis. The regularisation of adhoc Doctors in Pondicherry has been under litigation for a long time. After the decision of the Hon'ble High Court Madras 15.04.2008 in the Writ Petition filed Dr. Shankar Reddy, the date of conveying approval for regularisation by UPSC was only taken for all purposes i.e. seniority/time bound promotion in respect of all cases. Accordingly in the case of applicant also, regularisation was made with effect from 07.06.2001. Prior to adoption of Dynamic Assured Career Progression (DACP) scheme with effect from 29.10.2008, the applicant got appointed as Specialist in ENT by direct recruitment through UPSC on 24.10.2007. He has resigned the post in the GDMO so as to take up the appointment as Specialist. It is submitted that if the applicant is regularised from the date of initial adhoc appointment, he will be in the NFSG cadre is baseless and not tenable one. Further the Doctors appointed on adhoc basis who



got regular appointment subsequently through UPSC under direct recruitment during the years 1990, 1994, 1999, 2000 will also raise the same claim for the purpose of advancement of their time bound promotion by way of regularisation. It is further submitted that the reopening of the time bound promotions granted on various occasions to the 63 Doctors would unsettle the position already settled. Respondents would submit that the order of the Tribunal in O.A.No.261 & 263/1998 makes it clear that consideration for regularization or non-regularisation/termination of service, if not fit, is on prospective basis only and not retrospectively. Hence the respondents have prayed for the dismissal of the O.A.

4. The applicant has filed rejoinder. The applicant would submit that he is claiming the benefit of adhoc service for the purpose of pay, increments, qualifying service for pension and not for seniority. He has also relied on the decision of this Tribunal in O.A.No.546/2009 in respect of adhoc lecturers working in the Government of Pondicherry in support of his submissions. It is submitted that the applicant contended that the Hon'ble High Court of Madras by its order dated 15.04.2008 in Writ Petition No. 8810 of 2000 and batch confirmed the order of this Tribunal in O.A.358 of 1987 applying the principle laid down therein the applicant is entitled for the benefit of the earlier adhoc service except for the purpose of seniority. Further if the adhoc service is taken into account he would have got the subsequent time bound promotion as Chief Medical Officer with effect from



13.08.2001 much before to his elevation to the post of Specialist in ENT in the year 2007.

5. We have heard the learned counsel for the respective parties and perused the pleadings and documents on record.

6. The short question for consideration in this OA is whether the adhoc service put in by the applicant can be considered towards eligibility service for promotion etc.,

7. Admittedly this is the second round of litigation before this Tribunal. Earlier, the applicant filed OA.263/1998 before this Tribunal seeking regularisation of his services and this Tribunal by order dated 8.9.2000 directed the respondents to consider the case of the regularisation of the service of the applicant in consultation with the UPSC. It is not in dispute that the applicant was appointed on adhoc basis w.e.f. 11.1.1988 as an Assistant Surgeon and admittedly it was localised selection. He was regularised in service w.e.f. 7.6.2001 after obtaining approval of the UPSC as per Court direction in OA.261/98 & 263/98. His initial selection and appointment on adhoc basis cannot be termed as having attributes or characteristics of a regular selection the benefit of which is sought by the applicant. The applicant's adhoc appointment was merely a stop gap arrangement and due selection process was not followed and therefore the adhoc period cannot be counted as regular service. He was confirmed in service in the redesignated post of General Duty Medical Officer. He submitted representation dated 14.8.2003 for counting of his adhoc

service for the purpose of fixation of pay including seniority.

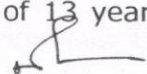
8. The law in counting of adhoc service for seniority after one is appointed on regular basis or regularised is well settled by now. In Chambel Singh v.State of Haryana & Another, 1995 (I) RSJ, 383, it was held that adhoc service per se cannot be counted to determine an appointee's seniority in the cadre. In V.K. Chhibbe v. State of Punjab & Anr, 1995 (1) RSJ, Page 395, it was held that a person appointed on adhoc basis without following the due procedure prescribed under the rules cannot claim the benefit of such service for the purpose of determination of seniority and the mere fact that the department was wrongly granted the benefit to some employee, would not entitle him to claim this benefit in violation of the rules and law. Hon'ble Supreme Court of India in V. Sreenivasa Reddy & Others v. Govt. of A.P. & Others, 1995 (1) RSJ 179, has held that temporary or ad hoc or fortuitous appointment etc. is not an appointment in accordance with the Rules and temporary service cannot be counted towards seniority. To the same effect are decision of the Apex Court in Excise Commissioner, Karnataka and Another v. Sreekanta, AIR 1993 SC 1564, decision of the Hon'ble Punjab & Haryana High Court in Rajinder Singh V. State of Haryana & Others, 1996 (4) RSJ, 715; decision of the Apex Court in Santosh Kumar & Others V. G.R. Chawla & Others, (2003) 10 SCC 513; in which it was held that adhoc employee has no right to the post and adhoc appointment cannot be counted for the purpose of seniority. The Hon'ble Supreme Court in the case of State



of Punjab and others vs. Gurdeep Kumar Uppal and others (2003) 11 SCC 732 C.A.No.3620 of 2009 (arising out of SLP) No.2848 of 2006 titled State of Rajasthan and others vs. Jagdish Narain Chaturvedi decided on 8.5.2009 has held that adhoc employee has no right to the post and adhoc appointment cannot be counted for the purpose of seniority.

9. In Suraj Prakash Gupta vs State of J & K, (2000) 7 SCC 561, the Apex Court, with regard to retrospective regularization of ad hoc services, has held as under:-

6. The direct recruits relied upon *A.P.M. Mayankutty v. Secy.* In that case, the petitioner was appointed in 1950 temporarily under Rule 10(a)(i) of the Rules [which is similar to the ad hoc appointment under Rule 14 and Rule 25 in the J&K Rules and Rule 10(a)(i) of the A.P. Rules] but was directly recruited only in 1954. It was held that the pre-1954 service could not be counted. Likewise in *State of T.N. v. E. Paripoornam* the petitioner in the High Court was appointed temporarily under Rule 10(a)(i) but was recruited much later under the Rules through PSC. PSC gave him a rank. It was held that his seniority would be as per the rank and not from the date of temporary appointment. *A.P.M. Mayankutty case* was followed. *P.D. Aggarwal v. State of U.P.* was one where it was held (see paras 26-28) that the ad hoc service of the officer who was later directly recruited in consultation with PSC, could not count as it was not regularised service. Their seniority would count only from the date they become members of the services, even if they were qualified earlier on the date of temporary appointment (see p. 646). *Masood Akhtar Khan v. State of M.P.* is also a case of a direct recruit and it was held that his previous service before regular selection by PSC could not count. *Vijay Kumar Jain v. State of M.P.* is similar. In *State of Orissa v. Sukanti Mohapatra* the exercise of the power of relaxation by the Government to count the ad hoc service of a direct recruit prior to PSC recruitment was held bad and the order, to that extent, was quashed. *Dr Arundhati Ajit Pargaonkar v. State of Maharashtra* is also a case where ad hoc service of an employee before direct recruitment by PSC was held not liable to be counted. In *E. Ramakrishnan v. State of Kerala* it was held that the pre-recruitment service of 13 years could

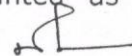


not be counted. All these cases cited relate to ad hoc service of direct recruits before selection and are therefore distinguishable and could not have been relied upon to deprive the promotees of their ad hoc service.

10. The Writ Petition filed by Dr. Sankar Reddy was dismissed by Hon'ble High Court of Madras by its order dt. 15.04.2008 and accordingly the seniority was determined and fixed by treating the date on which the UPSC had conveyed their approval for regularisation as the date of regular appointment, the relevant portion of which would read as follows:-

"19. Regularisation in service has many facets and many consequences including the question of increment, counting of service for the purpose of pension as well as the question of the seniority depending upon such regularisation in the context in which the initial disputes were raised, it is obvious that the Tribunal was only concentrating on the question regarding protection to the adhoc employees who due to various reasons could not get selected on regular basis. The obvious intention was to protect their service or otherwise such person would have been thrown out of the job and may be to also protect their increments, but it cannot be visualized that the Tribunal, at that stage, also intended that such persons who had missed the bus earlier would steal a march over all other regularly appointed doctor employees.

11. In the instant case, it is seen on perusal of the records that in respect of placement to the grade of Chief Medical Officer (Non Functional Selection Grade) which is restricted to 30% of the cadre, consideration for promotion is only as per seniority in the grade of Chief Medical officer under Time Bound Promotion Scheme. Hence, he cannot be considered for promotion at that level without adhering to seniority. Prior to adoption of Dynamic Assured Career Progression (DACP) Scheme w.e.f. 29.10.2008, the applicant was appointed as



Specialist in ENT by direct recruitment through UPSC on 24.10.2007. He resigned the post in the DGMO Cadre, so as to take up the appointment as Specialist. Hence, we do not see any ground in the argument of the applicant that if the applicant had been regularised from the date of initial adhoc appointment, he will be in the Non Functional Selection Grade. Further, retrospective regularisation will unsettle the settled matters and anomaly among the placement of Medical Officer in their respective higher grade under Time Bound Promotion will also arise. Hence we are at a loss to understand as to how the applicant can reopen the entire issue which was given a quietus by regularising his services by the UPSC in 2001. His promotion etc., has to be based on this seniority only.

12. In the conspectus of the above facts and circumstances of the case, we do not see any grounds for interference. The OA is liable to be dismissed and is accordingly dismissed however, with no order as to costs.
