



**Central Administrative Tribunal
Principal Bench**

OA No. 2849/2015

Order reserved on : 25.11.2019
Order pronounced on: 17.12.2019

Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Pradeep Kumar, Member (A)

1. Mr. Girish Chander,
S/o Late Shri Mohan Lal,
Dark Room Assistant
2. Mr. Bhagwan Ballabh,
S/o Sh. H.D.Tiwari,
Dark Room Assistant
3. Sh. Arun Kumar,
S/o Sh. Amit Singh
Dark Room Assistant
4. Sh. Jitender Kumar
S/o Sh. Balwan Singh
Medical Record Assistant
5. Sh. Shreechand
S/o Sh. Kiran Singh
Nursing Attendant
6. Sh. Mohammad Yameen
S/o Sh. Mohammad Idrish
Safai Karamchari
7. Sh. Sunil Kumar
S/o Sh. Raghuraj Singh
Nursing Attendant
8. Sh. Pramod
S/o Sh. Chander Singh
Nursing Attendant



9. Sh. Vijender Pal
S/o Sh. Pyare Lal
Peon
10. Sh. Anil Sharma
S/o Sh. Ved Prakash
Nursing Attendant
11. Sh. Jagminder
S/o Sh. Daya Kishan
Nursing Attendant

All working in Ram Manohar Lohia Hospital
New Delhi-110001.

... Applicants

(By Advocate: Sh. Krishan Kumar)

VERSUS

1. Union of India,
Through Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi-110011.
2. Directorate General of Health Services,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi-110011.
3. Medical Superintendent,
Dr. Ram Manohar Lohia Hospital,
New Delhi-110001.

... Respondents

(By Advocate: Sh. Subhash Gosain)

ORDER

By Hon'ble Mr. Pradeep Kumar, Member (A)

Applicant No.1 has joined as Nursing Attendant on
06.10.1988 on daily wages in Ram Manohar Lohia Hospital



(RML Hospital). He was conferred temporary status on 01.09.1993 under Central Government Scheme of 10.09.1993. Similar is the case of applicant No.2 to 5, 7, 8, 10 & 11 with their dates being different.

Applicant No.6 has joined as Safai Karamchari on 01.09.1993 on daily wages and was made permanent on 01.01.1999 under the said scheme.

Applicant No.9 has joined as Peon on May 1991 on daily wages and he was conferred temporary status on 01.09.1993 under the said scheme.

All these applicants were subsequently regularized on different dates in the year 1998 and 1999. It is pleaded as a common grievance by all those applicants that at the time of regularization their service from the date of initial appointment was not counted. It is claimed that prior to regularization, applicants No.1 to 5, 7 & 11 were granted ad hoc appointment also, however, no documents are submitted in support of this claim.

2. Applicants have been pleading regularization with effect from the date they joined on daily wages or since they were granted ad hoc status. It appears that some other staff nurses, were also appointed in 1980s, and they were allegedly on ad hoc basis. They were regularized subsequently but when they were regularized, it was given with effect from the



date of their initial appointment. This appears to have been questioned by some staff. A Committee was constituted to look into the issue. This Committee met on 23.07.2014, 12.08.2014 and 29.08.2014 and decided that question of their regularisation is already decided and cannot be reopened. The relevant minutes of this Committee read as under:

“Minutes of the meeting of the Committee constituted in regard to regularization of services of ad-hoc employees working in Dr. RML Hospital.

The Committee, constituted by the Medical Superintendent, to go into the question of all Direct Recruitment appointments made allegedly on ad-hoc basis by Dr. RML Hospital, has met on 23.7.2014, 12.8.2014 and 29.8.2014. In the meeting, the following were present:-

1. Dr. A.K.Singhal, Addl. MS - Chairman
2. Shri A. Mahalingam, Registrar - Member
3. Shri Arvind Kumar, CoE - Member
4. Shri Chandra Sekhar, DD(A) & Member (did not attend the meeting held on 29.8.2014.)
5. Shri M.M.Gowtham, Sr.Accounts Officer - Member

The Committee has perused the records with regard to appointment of Staff Nurses resorted to in 1980's. Taking into account the fact that (i) though the entries in some of the Service Books of Staff Nurses appointed during 1980's indicated them as 'ad-hoc', their appointment was in fact on temporary basis against regular posts through selection/ /interview of candidates sponsored by Employment Exchange and (ii) the recommendations of the Selection Committee were accepted by the competent authority, the Committee is of the view that their subsequent regular appointment w.e.f. the date of their initial appointment cannot be called in question and therefore there is no need for re-visiting the issue of appointment of Staff Nurses made by Dr. RML Hospital during 1980's."



3. Learned counsel for applicants relied on the judgment of Hon'ble Supreme Court in **Sabha Shanker Dube vs. Divisional Forest Officer & ors.**, Civil Appeal No.10956/2018 decided on 14.11.2018 and the judgment of Hon'ble High Court of Delhi in **Union of India vs. Mrs. Avinash Srivastava**, WP(C) No.7024/2012 decided on 02.04.2013 and the judgment of this Tribunal in the case of **Meer Singh vs. Union of India**, OA No.490/2011 decided on 17.04.2012.

4. Respondents opposed the OA and made the following averments:

4.1 It is submitted that all the benefits including regularization of their services have been provided to these employees as per the guidelines contained in DOPT OM No.51016/2/90-Estt(C) dated 10.09.1993 and they are not entitled for any relief as has been sought in this OA. It was pleaded that it is clear in para 4 (iv) of said Memo that "such casual labourers who acquire temporary status will not however, be brought on to the permanent establishment unless they are selected through regular selection process for Group-D posts".

4.2 Following specific averments are made in the counter reply:



“4.1 It may be understood from the order no.7-16/80-RMLH/E-II dated 29.11.1995 that the officials from Sl. No.1 to 3 were appointed on regular basis against regular vacant posts and the officials from Sl. No.4 to 14 were appointed on ad hoc basis as the vacancies in permanent grade were not available at that time. These officials were appointed on ad hoc basis as some regular employees in various Group-D grades were promoted on ad hoc basis in next higher grade for one reason or other. The services of the officials from Sl. No.4 to 14 were regularized vide office order no.10-1/94-RMLH(E-II)/2008 dated 13.10.1998 when the posts became available on regular basis due to promotion, retirement, death etc.....”

4.7 & 4.8 The present OA is entirely different from the case of Staff Nurses. It may be noted from the minutes of the meeting of the Committee constituted with regard to regularization of services of ad hoc employees working in Dr. RML Hospital that the Committee had perused the records with regard to appointment of Staff Nurses resorted to in 1980s. Taking into account the fact that (i) though the entries in some of the service books of Staff Nurses appointed during 1980's indicated them as 'ad-hoc', their appointment was in fact on temporary basis against regular posts through selection/ interview of candidates sponsored by employment Exchange and (ii) the recommendations of the Selection Committee were accepted by the competent authority, the Committee had of the view that their subsequent regular appointment with effect from the date of their initial appointment cannot be called in question and therefore, there is no need for re-visiting the issue of appointment of Staff Nurses made by Dr. RML Hospital during 1980's. In view of the recommendations of the Committee, it may be seen that there is no similarity between these two cases.”

5. Matter has been heard at length. Sh. Krishan Kumar, learned counsel represented the applicants and Sh. Subhash Gosain, learned counsel represented the respondents.

6. MA No.2529/2015 filed for joining together is already allowed on 19.07.2017.

7. Regularisation is a specific process before which a selection has to take place for specified number of posts.



This was undertaken by respondents and applicants were regularised from respective dates. This regularisation cannot be preponed as the said process was not completed earlier.

8. Applicants have not brought out the case of any of their junior who may have been regularised from an earlier date. Thus there is no whisper of discrimination.

9. All the judgments relied upon by the applicants are in different context and no ratio can be drawn. Learned counsel for applicants has relied upon a judgment of Hon'ble Supreme Court in **Sabha Shanker Dube** (para 3 supra) wherein Court noted that "the only point that requires consideration pertains to the entitlement of the Appellants to the minimum of the pay scales applicable to the regular employees in the Forest Department." In this respect, the Court held as under:

"11. In view of the judgment in Jagjit Singh (supra), we are unable to uphold the view of the High Court that the Appellants-herein are not entitled to be paid the minimum of the pay sales. We are not called upon to adjudicate on the rights of the Appellants relating to the regularization of their services. We are concerned only with the principle laid down by this Court initially in Putti Lal (supra) relating to persons who are similarly situated to the Appellants and later affirmed in Jagjit Singh (supra) that temporary employees are entitled to minimum of the pay scales as long as they continue in service.

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13. For the aforementioned reasons, we allow these Appeals and set aside the judgments of the High Court holding that the Appellants are entitled to be paid the minimum of the pay scales applicable to regular employees working on the same posts. The State of Uttar Pradesh is

directed to make payment of the minimum of pay scales to the Appellants with effect from 1st December, 2018.”



The question at hand before Hon'ble Apex Court was what rate is to be paid to those appellants. The question of regularisation, or if so from what date, was neither before the Court nor was it adjudicated.

As against this, the question in this OA is for the preponement of the effective date of regularisation. Hence, this judgment is of no help to applicants.

10. Learned counsel for applicants also relied upon the judgment of Hon'ble High Court of Delhi in **Mrs. Avinash Kaur** (para 3 supra). This judgment is in respect of from which date is 12 years period is to be counted for grant of ACP benefit, whether from date an employee was appointed on casual basis when such casual period was followed by regularisation also or from the date of regularisation. When this matter was raised earlier before the Tribunal in OA No.2129/2006, it was decided on 10.08.2007 and directions were issued to count it from the date of casual service if it was followed by regularisation. It was implemented for applicants therein. But it was denied for some others who were similarly placed on the plea that they were not applicants in OA No.2129/2006. They felt aggrieved and filed another OA No.1104/2011 which was decided on



16.01.2012 in terms of OA No.2129/2006. Feeling aggrieved, Department approached the Hon'ble High Court, wherein order by Tribunal was upheld.

The subject matter of this case is the period which is to be counted for grant of ACP benefits whereas instant case is for preponement of date of regularisation. Hence this judgment is of no help.

11. Learned counsel for applicants also relied upon a decision of this Tribunal in **Meer Singh** (para 3 supra). Sh. Meer Singh was initially appointed as Group-D, Stretcher Bearer on 17.02.1982. He applied against the two posts of LDC for which applications were invited on 06.08.1982 against 10% quota. He passed the specified tests and was appointed as LDC on 15.10.1982 on ad hoc basis for three months. He represented to be granted regular appointment. However, this was not agreed and ad hoc arrangement was continued though he was allowed annual increments. He was regularised w.e.f. 07.01.1993. He represented for regularisation w.e.f. 15.10.1982. However, since no decision was taken, he filed OA No.590/2010 which was decided on 19.02.2010 with direction to respondents to treat the OA as representation and pass final orders.

As a result of this exercise, the date of regularisation remained unchanged from 07.01.1993. He felt aggrieved and



preferred OA No.490/2011. Following order was passed on 17.04.2012.

“14. In view of above discussion and the statement made by the counsel for the respondents, we would agree with the counsel for the applicant that since there was no special condition either in the RRs or in the OM dated 20.3.1970 to have minimum 5 years of regular service as Group “D”, this reasoning given by the respondents while rejecting his claim is bad in law.

15. Since respondents have now verified the correctness of the Employment Exchange Card and have now agreed that applicant had indeed passed the typing test with the speed of 31.8 w.p.m. in 1979 and the circular issued on 6.8.1982 was also for filling up the post of LDC on regular basis, we find no justification as to why applicant should not be regularized as LDC w.e.f. 15.10.1982 when he was appointed as LDC after being duly selected and after qualifying the typing test. In view of above discussion, order dated 8.12.2010 is quashed and set aside. Respondents are directed to regularize the applicant as LDC w.e.f. 15.10.1982. This shall be done within a period of 6 weeks from the date of receipt of a copy of this order under intimation to the applicant.”

Applicants plead that on similar basis, they also came from Employment Exchange and their case is similar and they also need to be regularized from their initial appointment as daily wages or w.e.f. when they were granted temporary status.

12. Another relied upon judgment of Hon'ble Supreme Court in **Narendra Kumar Tiwari vs. The State of Jharkhand**, JT 2018 (7) SC 364 is also of no help. This judgment is in the context when casual labourers having more than ten years service were not regularised by State of Jharkhand on the plea that ten years time has not lapsed since when



Jharkhand was created on 15.11.2000. This has no ratio in support of instant OA.

13. In view of foregoing, there is no merit in the pleading of applicants to grant them regularisation from the date of their daily wage engagement or when some of them were allegedly granted ad hoc status. The process of regularisation was conducted later when posts became available and they were regularised when attendant conditions were fulfilled.

14. The OA is without merit and is accordingly dismissed.
No costs.

(Pradeep Kumar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

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