

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 2nd March, 2021.**

+ **W.P.(C) 4731/2017**

UNION OF INDIA

..... Petitioner

Through: Mr. Ruchir Mishra, Mr. Sanjiv Kumar Saxena and Mr. Mukesh Kumar Tiwari, Advs.

Versus

DR. SHAILJA SAXENA

..... Respondent

Through: Dr. Shyam Moorjani and Mr. Mani Moorjani, Advs.

AND

+ **W.P.(C) 4830/2017**

UNION OF INDIA

..... Petitioner

Through: Mr. Ruchir Mishra, Mr. Sanjiv Kumar Saxena and Mr. Mukesh Kumar Tiwari, Advs.

Versus

DR. KALPANA SOOD

..... Respondent

Through: Ms. Ruchira Gupta and Ms. Mona Sinha, Advs.

AND

+ **W.P.(C) 3809/2018**

UNION OF INDIA AND ANR.

..... Petitioners

Through: Mr. Ruchir Mishra, Mr. Sanjiv Kumar Saxena and Mr. Mukesh Kumar Tiwari, Advs.

Versus

DR. NIRUTA SHARMA

..... Respondent

Through: Mr. Rajeshwar Singh, Adv.

AND

+

W.P.(C) 9348/2018

UNION OF INDIA AND ANR.

..... Petitioners

Through: Mr. Jaswinder Singh, Adv.

Versus

DR. SANGEETA DEVI

..... Respondent

Through: Mr. Asheesh Mohan, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. All the four petitions though impugn the separate orders of Central Administrative Tribunal (CAT), Principal Bench, New Delhi in separate OAs preferred by each of the respondent, all now in the General Duty sub-cadre of the Central Health Services (CHS), but each order directs the petitioner Ministry of Health and Family Welfare, Union of India, to count the past service of each of the respondent as qualifying service for the purposes of promotions, post absorption in the CHS.
2. The petitions were entertained and notice thereof ordered to be issued.
3. We have heard the counsels for the petitioners and the counsels for the respondents.
4. The Central Health Service Rules 1996, in Rule 3 provide for composition of service, in Rule 4, the authorised strength of service, in Rule 5, the members of the service, in Rule 6, the initial constitution of the

service and in Rule 7, for the filling up of future vacancies in the service. Rule 7 refers to Schedule II and III to the Rules and which *inter alia* provide for method of recruitment, the field of selection for promotion including the minimum qualifying service in the immediate lower grade or grades for appointment or promotion to the posts in the respective sub-cadre and specialties within the sub-cadre concerned included in the service. In Schedule III, the method of recruitment, in the General Duty sub-cadre posts of Medical Officer is by direct recruitment on the basis of a written examination and the method of recruitment of the next higher posts of Senior Medical Officer, Chief Medical Officer and Chief Medical Officer (Non-Functional Selection Grade) is by promotion from the immediately lower cadre post, with the prescribed qualifying service. Thereafter, Rule 8 provides as under:

"8. Filling of Duty Posts by Transfer on Deputation (including short term contract):

(1) Notwithstanding anything contained in rule 7, where the Government is of the opinion that it is necessary or expedient so to do, it may for reasons to be recorded in writing and in consultation with the Commission, fill not more than twenty duty posts in all, in the grades of Medical Officer/Senior Medical Officer in General Duty Sub-Cadre and Specialist Grade II (Junior Scale) in the Non-Teaching Specialist Sub-Cadre and Public Health Sub-Cadre by transfer on deputation of suitable officers holding analogous posts under the Central Government (including Ministries of Railways and Defence)/State Governments/Union Territories and by Short Term Contract of suitable-officers holding analogous posts under the statutory bodies, autonomous bodies, semi-government organisations, universities or recognised Research Institutions.

(2) The period of deputation/contract shall be for a period not exceeding three years, which may, in special circumstances be extended upto five years, as the Government may think fit."

The aforesaid Rule, though provides for appointment by transfer/deputation, to the General Duty Medical sub-cadre posts, *inter alia* from State Governments but only for a maximum period of five years and does not provide for absorption of deputationists in the General Duty Medical sub-cadre posts of CHS, which could only be by direct recruitment.

5. However vide Central Health Service (Amendment Rules), 2001, notified on 30th July, 2001, in place of Rule 8 aforesaid, the following rule was substituted:

"8. Filling of duty posts by deputation (including short term contract)/absorption:

(1) Notwithstanding anything contained in the rule 7, where the Government is of the opinion that it is necessary or expedient so to do, it may for the reasons to be recorded in writing and in consultation with the Commission, fill not more than one hundred duty posts in all, in the grades of Medical Officer or Senior Medical Officer or Chief Medical Officer in the General Duty Medical Officer sub cadre and Specialist Grade II (Junior and Senior Scale) or Specialist Grade I in the Non-Teaching and Public Health Sub Cadres and Assistant Professor or Associate Professor or Professor in the Teaching sub cadre by deputation of suitable officers holding analogous posts under the Central Government (including Ministries of Railways and Defence) or State Governments or Union Territories and by Short Term Contract of suitable officers holding analogous posts under the statutory bodies, autonomous bodies, semi-government organisations, universities or recognised Research Institutions:

Provided that of the one hundred posts earmarked for deputation (including short term contract) in all the four sub-cadres mentioned above, it may be open to the Central Government; in consultation with the Commission, to consider absorption against fifty posts and only officers of Central Government or State Government or Union Territories shall be eligible for being considered for appointment on absorption basis.

(2) The period of deputation or contract shall be for a period not exceeding three years, which may, in special circumstances be extended upto five years, as the Central Government may think fit.

(3) For appointment to duty posts on absorption basis, the officers shall fulfil the minimum educational and other qualifications prescribed for the posts in the Schedule V to these rules."

Vide the aforesaid amendment, absorption of deputationists in the General Duty Medical sub-cadre posts of CHS, was permitted.

6. Yet again, vide Central Health Service (Amendment) Rules, 2006 notified on 13th January, 2006, the Rule 8 aforesaid was substituted with the following:

"8. Filling of duty posts by deputation (including short term contract):

(1) Notwithstanding anything contained in the rule 7, where the Government is of the opinion that it is necessary or expedient so to do, it may for the reasons to be recorded in writing and in consultation with the Commission, fill not more than one hundred duty posts in all, in the grades of Medical Officer or Senior Medical Officer or Chief Medical Officer in the General Duty Medical Officer sub-cadre and Specialist Grade II (Junior and Senior Scale) or Specialist Grade I in the Non-Teaching and Public Health Sub Cadres and Assistant Professor

or Associate Professor or Professor in the Teaching sub cadre by deputation of suitable officers holding analogous posts under the Central Government (including Ministries of Railways and Defence) or State Governments or Union Territories and by short term contract of suitable officers holding analogous posts under the statutory bodies, autonomous bodies, semi-government organizations, universities or recognized Research Institutions.

(2) The period of deputation or contract shall be for a period not exceeding three years, which may, in special circumstances be extended upto five years, as the Central Government may think fit."

As would be seen, the 2006 Amendment undid what the 2001 Amendment had done i.e. did away with absorption of deputationists in the General Duty sub-cadre posts of CHS.

7. Though all the petitions are concerned with the aforesaid Rules and have other common questions of law but since the facts concerning each of the respondents are different, it is hereinafter deemed appropriate to deal first with W.P.(C) No.4731/2017 and thereafter with other petitions.

W.P.(C) No.4731/2017

8. The respondent Dr. Shailja Saxena filed OA No.3328/2013, pleading (i) that the respondent, on being selected through Madhya Pradesh Public Service Commission, joined the Government of Madhya Pradesh as a Medical Officer, on 16th November, 1990; (ii) that on 20th September, 2001, the petitioner herein addressed a letter to all State Governments for filling up of posts in CHS on transfer/deputation/absorption basis; (iii) that in CHS, there is a provision for time bound promotions, from Medical Officer to Senior Medical Officer in four years, from Senior Medical Officer to Chief

Medical Officer in five years, and from Chief Medical Officer to Chief Medical Officer (Non-Functional-Selection Grade) (NFSG) in four years; (iv) that the respondent, on 9th October, 2002 was appointed as a Medical Officer, on transfer on deputation basis under the CHS, initially for a period of three years, carrying the same Pay-Scale of Rs.8,000-13,500/- which she was drawing under the Government of Madhya Pradesh; (v) that on 22nd October, 2007, on completing five years term of deputation in the CHS, the respondent was repatriated to the Government of Madhya Pradesh; (vi) that once again, on 17th October, 2008, the respondent joined CHS on deputation basis, as Senior Medical Officer in the Pay-Scale of Rs.15,600-39,100/- with Grade Pay of Rs.6,600/-; (vii) that on 22nd March, 2010, the respondent was absorbed as Medical Officer in the Pay-Scale of Rs.15,600-39,100/- with Grade Pay of Rs.5,400/-; (viii) that on 4th May, 2010, the respondent represented, that in the Madhya Pradesh Government she was in the Pay-Scale of Rs.15,600-39,100/- with Grade Pay of Rs.7,600/- and therefore she may be considered for the post of Chief Medical Officer in the Pay-Scale of Rs.15,600-39,100/- with Grade Pay of Rs.7,600/- and benefit of earlier service may also be counted towards regular service; and, (ix) that vide order dated 18th September, 2012, the respondent was informed that while the seniority of the respondent in the civil list of Medical Officers was fixed with effect from 16th November, 1990 i.e. the date on which she joined service under the Government of Madhya Pradesh but for purposes of promotion to the next grade in CHS, it was ordered that her qualifying service will be counted from the date of her absorption in the CHS i.e. with effect from 22nd March, 2010. Accordingly, in the OA, relief of directing the petitioner to count the entire length of service of the respondent, starting

from 16th November, 1990 till 22nd March, 2010, towards qualifying service for all purposes including for time bound promotions, with consequential benefits, was claimed.

9. The petitioner contested the aforesaid OA of the respondent, pleading (a) that CHS was constituted in the year 1963, to manage various medical posts under the Central Government; (b) that in the year 1982, CHS was restructured and was divided into four sub-cadres viz. Teaching, Non-Teaching, Public Health and General Duty Medical Officer (GDMO); (c) that in order to fulfill the requirement of GDMO sub-cadre of CHS, candidates are selected through Combined Medical Service Examination conducted by Union Public Service Commission (UPSC) annually; (d) that to fill up the vacant posts on deputation basis, letter dated 20th September, 2001 was issued; (e) that in pursuance to the letter dated 20th September, 2001, the respondent applied and on consideration of her application, she was issued an appointment letter dated 9th October, 2002 for being posted on deputation basis as Medical Officer in CHS; (f) that the respondent was repatriated to Government of Madhya Pradesh on 22nd October, 2007; (g) that the respondent was again appointed in CHS, with effect from 17th October, 2008, on *ad hoc* deputation basis, as Senior Medical Officer and continued on deputation till 21st March, 2010 when the respondent was absorbed as Medical Officer on regular basis in CHS; (h) that consequent upon absorption as a Medical Officer, the seniority of the respondent in CHS was fixed in terms of Department of Personnel and Training (DoPT) Office Memorandum (OM) dated 27th March, 2001; (i) however for the purposes of promotion to next grade in GDMO sub-cadre of CHS, the required qualifying service has to be counted from the date of absorption; (j)

that pay benefits accrued due to past service cannot be the grounds for out of turn promotion in CHS; (k) that the respondent was well-aware of the stipulations of appointment while accepting the appointment as Medical Officer in CHS; (l) that the service rendered in another cadre cannot be counted for the purposes of promotion and the respondent had accepted this condition while accepting appointment in CHS, which was clearly stated in her absorption order; and, (m) that the decision to count the past service only for pension purpose is based on DoPT instructions in the matter.

10. CAT, in the impugned order dated 5th May, 2015 has reasoned that it was bound by the view taken by the Full Bench of CAT in order dated 22nd April, 2009 in OAs No.1436/2007, 1437/2007 and 1438/2007, holding that in the matter of promotion, a deputationist who gets absorbed will be able to claim weightage on the basis of the seniority that is carried by him and accordingly disposed of the OA of the respondent, directing the petitioner to examine the claim of the respondent for counting past service as qualifying service, in terms of the order aforesaid of the Full Bench of CAT.

11. The counsel for the petitioner has argued, (i) that though in 2001, Rule 8 of CHS Rules aforesaid, providing for filling up of duty post by transfer on deputation, was amended to provide for absorption of deputationists but vide amendment of the year 2006, the provision for absorption was deleted; (ii) that the provision for absorption did not exist when the respondent came on deputation on 10th October, 2008 and when she was absorbed in CHS cadre in the year 2010; (iii) that the letter dated 10th March, 2010 of absorption of the respondent clearly stipulated that the respondent will be treated as a direct recruit in the grade of Medical Officer;

(iv) that the respondent is thus not justified in her claim for counting of past service for the purposes of qualifying service for promotion, as the respondent was appointed in CHS as a direct recruit and joined on 22nd March, 2010; (v) that though the respondent, post joining, vide her letter dated 4th May, 2010 claimed absorption as Chief Medical Officer on the ground that she was already working in that grade in her parent cadre but the said claim was rejected vide order dated 2nd June, 2010; (vi) that in the year, 2012, the respondent's seniority in the grade of Medical Officer was fixed vide letter dated 18th September, 2012, with effect from 16th November, 1990 i.e. the date of initial appointment in the parent cadre but with the specific stipulation that for the purposes of promotion to the next grade in GDMO sub-cadre of CHS, the required qualifying service will be counted from the date of absorption; (vii) that the respondent did not challenge the letter dated 10th March, 2010 absorbing her, the letter dated 2nd June, 2010 rejecting her representation for absorption as a Chief Medical Officer and letter dated 18th September, 2012, also stipulating that qualifying service would be counted from the date of absorption; (viii) that the respondent was absorbed as a direct/new recruit in the grade of Medical Officer and her further advancement in GDMO cadre is governed by CHS Rules which, *inter alia*, in Schedule III, prescribe criteria for further promotions in the GDMO cadre and required qualifying service for such promotions; (ix) that for promotion to the grade of Senior Medical Officer, 'Medical Officer in General Duty sub-cadre with four years regular grade' is required; (x) that service rendered outside the GDMO sub-cadre in CHS is not eligible to be counted for qualifying service for promotion in CHS service, as per CHS Rules and for the purposes of promotion, the service rendered under CHS

Rules alone can be counted; and, (xi) that the qualifying service for promotion in the GDMO cadre is governed by terms settled in the letter dated 10th March, 2010 read with letter dated 18th September, 2012 and the same is as per the law declared by the Supreme Court in the matter of *Mrigank Johri Vs. Union of India* (2017) 8 SCC 256.

12. The counsel for the respondent has argued, (a) that the respondent is entitled to counting of her entire past service in her parent cadre, as also on deputation, for all intents and purposes including seniority, promotion and all other consequential benefits; (b) that the petitioner having not complied with the order of CAT, is in contempt and cannot even be heard in the matter; (c) that the petitioner kept on assuring the respondent that the petitioner was in the process of implementing the impugned order and thereby dissuaded the respondent from filing contempt petition; (d) that this writ petition itself has been filed after nearly two years of the order of CAT and is liable to be dismissed; (e) that the only defence of the petitioner before CAT was that the order dated 22nd April, 2009 of the Full Bench of CAT was qua the applicants therein only and not qua others and which defence of the petitioner was not accepted by CAT, as respondent is similarly situated as those applicants in the matters before the Full Bench of CAT; (f) that the petitioner, before this Court has tried to make out a totally different case; (g) that in the interregnum, persons junior to the respondent are serving in higher grade and drawing more salary than the respondent; (h) that the petitioner, on 22nd March, 2010 wrongfully absorbed the respondent as Medical Officer, when the respondent was already working in Chief Medical Officer scale in her parent cadre; (i) that the respondent ought to have been absorbed as Chief Medical Officer; (j) that on 18th September,

2012, though the petitioner fixed the seniority of the respondent in the civil list of Medical Officer, with effect from 16th November, 1990 but did not extend the benefit of seniority to the respondent for promotion and other consequential benefits and instead counted qualifying service from the date of absorption; and, (k) that the respondent has thereby been thrown back by twenty years, because of which she has been denied promotion and pay.

13. We have enquired from the counsels, that if in the CHS Rules, there was no power of absorption of a deputationist, on the date when the respondent was absorbed, in exercise of what power was the respondent, a deputationist in CHS, absorbed on a permanent basis in CHS.

14. The counsel for the petitioner states that the respondent was absorbed under the inherent powers of the Central Government. On further enquiry, as to the source of such inherent powers, it is stated that the same flow from Article 309 of the Constitution of India.

15. The counsel for the respondent confirms that the decision of absorption of the respondent was taken under the CHS Rules as amended with effect from 2006 i.e. when the power of absorption did not exist.

16. We have considered the aforesaid contentions and would first deal with the reasoning of CAT in the impugned order.

17. CAT, in the impugned order has not given any reasons of its own and merely referred to and followed the order dated 22nd April, 2009 of the Full Bench of CAT. The counsels are however *ad idem* that the applicants before the Full Bench of CAT, though employed as Senior Medical Officers in the Health Department of various State Governments, were appointed as Senior Medical Officers on deputation basis in CHS with effect from 15th

July, 1999, 17th May, 2000 and 10th September, 2001 and on 29th September, 2003 i.e. between the time of CHS Rules Amendment Act, 2001 permitting such absorption and CHS Rules Amendment Act, 2006, again taking away the power of absorption, were absorbed permanently in CHS as Senior Medical Officers in General Duty sub-cadre. The counsels are also *ad idem* that the Full Bench of CAT did not notice the Amendment of 2001 of the CHS Rules but allowed the claim of the applicants before it, reasoning (i) that the stand of the petitioner that the minimum qualifying service required by the applicants therein for being eligible to be considered for promotion to the post of Chief Medical Officer shall be reckoned from the date of absorption in CHS, was in violation of the dicta of the Supreme Court in ***Sub-Inspector Rooplal Vs. Lt. Governor, Delhi*** (2000) 1 SCC 644; (ii) that in the scheme of CHS Rules, deputation was not a source of appointment to the post of Senior Medical Officer and Chief Medical Officer; (iii) that the past service rendered in the parent department could not be forgotten and the applicants did not have any probationary period *de novo*; (iv) that the applicants would thus be qualified to press the benefit of their whole past service for promotion to the immediate next grade; and, (v) that additional incumbency of actual service in CHS was not postulated or to be insisted upon.

18. This Court, vide judgment dated 22nd July, 2010 in W.P.(C) No.3845/2010 titled ***Union of India Vs. Pankaj Agnihotri*** reported as 2010 SCC OnLine Del 2438 (DB) preferred against the order of the Full Bench of CAT, held (a) that every person holding a post in a cadre in a government department has a legitimate expectation of being considered for promotion as per his seniority in the cadre; (b) that he can also legitimately expect that

no person from outside his cadre will join in his cadre in such a way so as to disturb his seniority in the cadre; (c) that it thus follows that where the recruitment rules do not provide for absorption in the cadre by a deputationist walking in but a deputationist walks in, he must do so at the cost of his experience in the same post in the parent department being excluded while reckoning his eligibility for promotion in the department where he is absorbed permanently but after making initial entry as a deputationist; (d) that where the recruitment rules provide for absorption of persons coming on deputation on permanent basis, the existing employees in the cadre would be expected to know that anyone from outside can walk into the cadre and thus the question of their legitimate expectation being affected does not arise; (e) that the Delhi Police (Appointment and Recruitment) Rules 1980, subject matter of *Sub-Inspector Rooplal* supra provided for absorption of deputationists; (f) that in U.P. Development Authorities Centralised Service Rules, 1985, subject matter of *Indu Shekhar Singh Vs. State of U.P.* (2006) 8 SCC 129, there was no provision for appointment by way of transfer or for appointment on permanent absorption of the deputed employees and thus once the deputationists opted to be absorbed, they could not, for the purposes of qualifying service for promotion in the new service, claim benefit of past service in the parent cadre; (g) that thus, (i) where one of the sources of appointment to a post in a cadre is deputation, service rendered by a deputationist on an equivalent post in his parent department shall be taken into consideration while computing his period of service in the deputed post for the purposes of determination of his seniority and eligibility for promotion in the transferred department; (ii) in cases where deputation is not the source of appointment in a cadre under the recruitment

rules and a deputationist is absorbed in the transferred department in exercise of its residuary powers, whether service rendered by a deputationist in his parent department shall be taken into consideration while computing his period of service in deputed post for the purposes of determination of his seniority and eligibility for promotion in transferred department, would be dependent upon terms and conditions of deputation or absorption of deputationists in transferred department; (iii) no strait jacket formula of universal application can be evolved in respect of said cases and each case would have to be examined independently on its own facts and the statutory framework; and, (iv) the reason behind this principle is obvious; where one of the source of appointment in a cadre in the transferred department is deputation, no employee in said cadre can have any legitimate expectation of non-disturbance of his seniority and promotional prospects by deputationists, for they are well cognizant of the fact that a deputationist can be appointed in the cadre at any time and that the said appointment would have an effect on their seniority and promotional prospects; and, (h) that since in CHS Rules, at the time of absorption of the respondents in that case, there was a provision for absorption of deputationists, the respondents were entitled to seniority for the purposes of qualifying service for next promotion from the post. This Court, thus, for reasons other than that which prevailed with the Full Bench of CAT, allowed the claim of the applicants before CAT.

19. As would become immediately obvious, the reliance placed by CAT in the impugned order on the earlier order of the Full Bench of CAT, is misconceived. CAT did not consider that while at the time of absorption of the applicants before the Full Bench, there existed a provision in the CHS

Rules for absorption of deputationists, the said provision did not exist at the time when the respondent herein was absorbed.

20. Once it is found that at the time when the respondent was absorbed in CHS, there was no provision in the CHS Rules for absorption of deputationists, as per the dicta of a Coordinate Bench of this Court in **Pankaj Agnihotri** supra, the question whether the services rendered by the respondent in her parent department shall be taken into consideration for the purpose of eligibility of the respondent for promotion in CHS, is dependent upon the terms and conditions of deputation or absorption of the respondent in CHS. As per the said terms and conditions, the absorption of the respondent was as a direct recruit; consequently, the qualifying service under the CHS Rules for making the respondent eligible for promotion has to be in the cadre post in the CHS Rules and not in any other department.

21. Mention may also be made of **Mrigank Johri** supra relied upon by the counsel for the petitioner. The appellants therein were Junior Engineers in All India Radio, who on applications being invited for deputation as Junior Engineer in the Electrical Wing of the Postal Department, opted for the same and were sent on deputation in 1996 and were permanently absorbed in the Department of Posts. The terms and conditions *inter alia* clearly stated that they would be treated as new recruits and service in the earlier cadre would be counted for all purposes except seniority in the cadre. It was held, (a) that as per the OM dated 29th May, 1986, as modified by OM dated 27th March, 2001, benefit of previous service rendered in the cadre was required to be given; (b) that this was in effect also the ratio of **Sub-Inspector Rooplal** supra; (c) that this would also be in conformity with the

normal service jurisprudential view; (d) however it would be a different position, if the absorbing department clearly stipulates a condition of giving willingness to sacrifice the seniority while preserving all other benefits for the absorbee; (e) that the terms and conditions in that case were categorical in their wording, that the absorbees would be deemed to be new recruits and the previous service would be counted for all purposes except seniority in the cadre; (f) that the appellants accepted this with open eyes and did not challenge the same; and, (g) that it was not subsequently open to them to challenge the same.

22. The counsel for the respondent, faced therewith, has contended that the terms and conditions of absorption in *Mrigank Johri* supra, besides providing for the absorbee to be deemed to be a new recruit, also expressly provided that past service will not count for the purposes of seniority in the cadre and the absorbee will stand junior to all Junior Engineers who had already joined before the absorption of the appellants therein. It is argued that there is no such specific provision in the appointment letter of the respondent in the present case.

23. We are unable to agree. The OM dated 10th March, 2010 of absorption of the respondent in the present case clearly provided that the respondent will be treated as a direct recruit in the grade of Medical Officer. In our view, once it was so provided, non-mention of what was further expressly found to be contained in the appointment order/letter in *Mrigank Johri* supra is irrelevant. It cannot also be lost sight of that the respondent, as per her own case, on the date of absorption was enjoying the grade of Senior Medical Officer in the Government of Madhya Pradesh and was

holding the said grade when had come on deputation vide letter dated 10th October, 2008. She however, with eyes open, opted to be absorbed at a lower post of Medical Officer in the CHS and for the reason of non-mention of other terms and conditions as found in *Mrigank Johri* supra, it cannot be said that the respondent had any doubt as to those terms and conditions. Not only so, the respondent, in OA No.3328/2013 only sought the relief of counting of her entire length of service starting from 16th November, 1990 till 22nd March, 2010 towards qualifying service including for promotion and did not challenge her absorption, instead of as Senior Medical Officer/Chief Medical Officer, as Medical Officer in the CHS and at a Pay-Scale of a Medical Officer in the CHS only. CAT also in the impugned order did not find the respondent entitled to the Pay-Scale on absorption as she was drawing in the Government of Madhya Pradesh and the respondent was satisfied therewith and has not challenged the same before CAT. The plea now taken, that the absorption of the respondent at a junior post was wrong or illegal, is an afterthought and cannot be permitted to be raised. The respondent unequivocally accepted the offer of absorption and if at that time was not willing for joining as a direct recruit at a junior post and lesser pay-scale, should not have accepted the appointment. The respondent however at that time, in a desire to continue at Delhi and lured by time bound promotions in CHS, chose to enter CHS on a permanent basis, to eliminate the possibility of again being repatriated back to the State service on completion of maximum term of deputation and having done so cannot now turn around and agitate what she had willingly given up. It is not as if she was absorbed in CHS against her wishes, for her to agitate that she should not be deprived of the benefit of past service for future promotions in CHS.

24. It cannot be lost sight that the rights claimed by the respondent are to the prejudice of direct recruits through examination in the GDMO sub-cadre of CHS. The posts of Medical Officer, Senior Medical Officer and Chief Medical Officer and Chief Medical Officer (NMSG) are limited in number and to be filled by seniority. If past service of respondent in the State service is to be counted towards qualifying service for the purposes of promotion in CHS, the respondent on the basis thereof will jump above those directly recruited in CHS through examination and safe in the belief that the provision made in the Rules for absorption and in force for about five years, had been done away with, with the passage of time, been aspiring for promotion to the next grade; if the respondent on the basis of her past service in the State, is promoted to a higher grade in CHS, their promotions will be delayed or may not even come during their service. The respondent, in her OA before CAT did not even implead them as parties and cannot be permitted to steal a march over them.

25. Once it is so, as per the dicta of the Coordinate Bench of this Court in ***Pankaj Agnihotri*** supra and as per the dicta of the Supreme Court in ***Mrigank Johri*** supra, the respondent is not entitled to the benefit of past service for computing qualifying service for the purposes of promotion in CHS and the impugned order of CAT cannot be sustained. CAT did not also notice that the applicants before the Full Bench of CAT were directly absorbed as Senior Medical Officer i.e. in the same grade in which they were serving in their parent cadre and were so absorbed during the time when there was a provision for absorption in the CHS Rules and when direct recruits in CHS through examination could not complain of absorbees taking away the seniority earned by them in CHS. CAT also did not notice the

reasoning in *Pankaj Agnihotri* supra preferred against the decision of its Full Bench and which reasoning deprived the respondent herein of the relief claimed.

26. For the aforesaid reasons, the pleas taken by the respondent in her reply to this petition, of delay on the part of the petitioner in preferring this petition and of the petitioner being in contempt of the order of CAT, also do not come in the way of allowing this petition as such delay and contempt, even if any on the part of the petitioner, cannot entitle the respondent to relief prejudicial to other members of CHS.

27. Though equities may be in favour of the respondent but no relief contrary to law and merely on the basis of equities be granted to the respondent. The CHS Rules and the jurisprudential law on the subject, as noticed above, do not entitle the respondent to the relief. The respondent has not disclosed any right, under any law, to the relief claimed.

28. Resultantly, W.P.(C) No.4731/2017 is allowed; the impugned order dated 5th May, 2015 of CAT in OA No.3328/2013 is set aside and OA No.3328/2013 preferred by the respondent is dismissed.

W.P.(C) No.4830/2017

29. The challenge in this petition is to the order dated 5th May, 2015 of CAT in OA No.3287/2013 preferred by the respondent. The respondent in this case filed OA No.3287/2013, pleading (i) that the respondent, on 20th July, 1999 joined the Government of Haryana as a Medical Officer; (ii) that on the basis of the letter dated 20th September, 2001 of the CHS, Government of India, (referred to in the narrative of W.P.(C) No.4731/2017), the State of Haryana forwarded the bio-data of the

respondent to the Government of India for transfer of the respondent to the CHS on deputation/absorption basis; (iii) that the Government of India, on 26th December, 2001 asked the UPSC for approval for appointment of the respondent as Medical Officer, in the CHS on transfer on deputation basis; (iv) that on recommendation of the UPSC, on 4th March, 2002, the respondent was appointed as Medical Officer on transfer on deputation basis, in the CHS, in the Pay-Scale of Rs.8,000-13,500/-; (v) that on 10th March, 2010, the respondent was absorbed as a Medical Officer in the CHS in Pay-Band III with Grade Pay of Rs.5,400/-; (vi) that on 8th June, 2012, the CHS issued an order wherein it was mentioned that the required qualifying service in respect of officers on deputation absorbed in CHS will be counted from the date of their absorption in CHS, although their seniority had been fixed from the date of appointment in the parent cadre, and which in the case of the respondent, with the State of Haryana, was 12th July, 1999; (vii) that on 29th January, 2013, the respondent represented for counting her service rendered with the State of Haryana as qualifying service; and, (viii) that the said representation of the respondent was rejected on 2nd May, 2013.

30. As would be obvious from the above, the respondent herein, like the respondent in W.P.(C) No.4731/2017 aforesaid also, was absorbed in CHS on a day when in the CHS Rules there was no provision for absorption of the deputationists. The only difference is that unlike the respondent in W.P.(C) No.4731/2017, the respondent herein joined the CHS on deputation during the time when the rule for absorption of deputationists existed. However the same is irrelevant for the purposes of the present case, inasmuch as the relevant date as per the dicta of a Coordinate Bench of this Court in **Pankaj Agnihotri** supra, is the date of absorption and on which

date admittedly the provision in the CHS Rules for absorption of deputationists stood deleted. Else, the OM dated 10th March, 2010 of absorption of the respondent on deputation in CHS, from the Government of Haryana, on permanent basis, as Medical Officer, is identical to that in the case of the respondent in W.P.(C) No.4731/2017 and expressly provides that the respondent will be treated as a direct recruit in the grade of Medical Officer.

31. Thus, what has been held qua W.P.(C) No.4731/2017, applies equally to the present case.

32. Accordingly, W.P.(C) No.4830/2017 is allowed; the impugned order dated 5th May, 2015 of CAT (penned by the same member who has penned the order in W.P.(C) No.4731/2017) is set aside and OA No.3287/2013 preferred by the respondent is dismissed.

W.P.(C) No.3809/2018

33. The challenge in this writ petition is to the order dated 28th October, 2016 of CAT in OA No.1699/2012 preferred by the respondent.

34. The respondent herein joined the Government of Himachal Pradesh as a Medical Officer, on 9th August, 1985, after selection through the Himachal Pradesh Public Service Commission. Her services were regularized on 18th April, 1988. In pursuance to the letter dated 20th September, 2001 of the Central Government (referred to in the narrative of W.P.(C) No.4731/2017) the respondent sought deputation to CHS and on 2nd July, 2001 was appointed as Senior Medical Officer in CHS on deputation basis. Thereafter, the respondent requested and on 26th September, 2003 she was recommended for appointment on absorption basis in CHS, on the post of

Senior Medical Officer i.e. the post which she was already occupying on deputation basis. It was however a term of appointment on absorption basis, that the seniority of the respondent will be subject to the condition as laid down in DoPT OM dated 3rd October, 1989 and will be subject to the orders issued by the Government in consultation with UPSC, on the basis of the dicta in ***Sub-Inspector Rooplal*** supra. Vide OM dated 26th September, 2003, the respondent was absorbed as Senior Medical Officer in the CHS. The same OM also stipulated that the respondent will be treated as direct recruit in the grade of Senior Medical Officer in the CHS.

35. CAT, in the impugned order dated 28th October, 2016 has relied on the order dated 22nd April, 2009 of the Full Bench of CAT and ***Sub-Inspector Rooplal*** supra, though declined the relief of fixation of initial pay in CHS in the higher Pay-Scale as had been granted to the respondent in her previous substantive employment with Himachal Pradesh Government, reasoning that the respondent had knowingly and willingly accepted her absorption under the CHS cadre only as a Senior Medical Officer in the Pay-Scale of Rs.10,000-15,200/-, in the interest of her remaining in Delhi instead of reverting back to her earlier parent cadre in Himachal Pradesh, but directed that the weightage of the respondent having already rendered analogous service during the period of her deputation also would be provided to her for promotion.

36. Thus, what transpires is that though the respondent herein was absorbed in CHS during the time when Rule 8(3) existed in the CHS Rules permitting absorption of deputationists but the absorption of the respondent was as a direct recruit. As per the dicta of the Coordinate Bench of this

Court in *Pankaj Agnihotri* supra, where one of the sources of appointment to a post in a cadre is deputation, service rendered by a deputationist on an equivalent post in his parent department is to be taken into consideration while computing his period of service in the deputed post for the purposes of determination of his seniority and eligibility for promotion in the transferred department. Following the said dicta, this writ petition has to be dismissed.

37. We have however considered, whether in view of *Mrigank Johri* supra, considering that the respondent with her open eyes got absorbed as a direct recruit and at a lower Pay-Scale, the aforesaid dicta would not apply to the respondent. *Mrigank Johri* supra unequivocally lays down that where the absorption is on specific terms and conditions, the benefit of past service, cannot be claimed. We may also notice that though the 2001 Amendment to the CHS Rules permitted absorption as a method of recruitment in the GDMO sub-cadre of CHS but no consequent change was made in Schedule III to the CHS Rules which, for the purposes of qualifying service for promotion in CHS, continued to require such service in CHS. Thus, notwithstanding the absorption of the respondent herein being during the time Rule 8(3) was in force, for the purposes of promotion, her qualifying service has to be in a cadre of CHS. In view thereof, the respondent herein, despite difference in the facts of her case, has to suffer the same fate as the respondents in W.P.(C) No.4731/2017 and W.P.(C) No.4830/2017.

38. Resultantly, W.P.(C) No.3809/2018 is allowed; the order dated 28th October, 2016 of CAT in OA No.1699/2012 is set aside and OA No.1699/2012 preferred by the respondent is dismissed.

W.P.(C) No.9348/2018

39. The challenge herein is to order dated 15th November, 2016 passed by CAT in OA No.3150/2012 preferred by the respondent. The respondent herein was appointed as Assistant Surgeon in the Health and Medical Education Department, of Government of Jammu & Kashmir, on 29th August, 1989. The respondent requested the State Government for deputation to the CHS and the State Government vide its letter dated 16th November, 2000 requested the Ministry of Health and Family Welfare, Government of India for respondent's deputation and the respondent on 24th April, 2001 joined the CHS as Medical Officer. While on deputation, the respondent, vide OM dated 26th September, 2003, was absorbed in the GDMO sub-cadre of CHS as a Medical Officer.

40. OA No.3150/2012 was filed by the respondent claiming the relief of directing the petitioner to count her service from 1st April, 1997 for the purposes of promotion to the next higher grade of GDMO sub-cadre of the CHS, and to give all consequential benefits to the respondent.

41. CAT, in the impugned order dated 15th November, 2016, though did not hold the respondent entitled to absorption as a Senior Medical Officer / Chief Medical Officer with effect from 26th September, 2003, held that for the purposes of computing the qualifying service for next promotion, the service of the respondent in the State of Jammu & Kashmir shall be counted.

42. The respondent herein also was thus absorbed in CHS at the time when Rule 8(3) existed in the CHS Rules permitting absorption and the facts of the present case are the same as facts of W.P.(C) No.3809/2018 and what has been held therein equally applies to this petition as well.

43. W.P.(C) No.9348/2018 is accordingly allowed; the impugned order dated 15th November, 2016 of CAT in OA No.3150/2012 is set aside and OA No.3150/2012 preferred by the respondent is dismissed.

44. No costs in any of the writ petitions.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

MARCH 02, 2021

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