

(1980) 03 DEL CK 0058

In the Delhi High Court

Case No : Civil Writ Appeal No. 894 of 1971

Bhim Singh Jain

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 17-03-1980

Acts Referred:

Central Health Service Rules, 1963 — Rule 2

Citation : (1981) ILR Delhi 235

Hon'ble Judges : Sultan Singh, J;Prakash Narain, J

Bench : Division Bench

Advocate : Arun Kumar, for the Appellant;

Judgement

Sultan Singh, J.

(1) The petitioner is Dr. Bhim Singh Jain who is admittedly a highly qualified doctor being L.M.S. (Punjab), Lrcps (Edin), Lrfp & S(GLG), Mrcp (Edin), Frcs (Edin) and Doms (Punjab). On 26th August, 1957 he was appointed by Respondent No. 1 on the recommendation of the Union Public Service Commission as Eye Specialist, Willingdon Hospital, New Delhi. Under proviso to Article 309 of the Constitution of India, the Central Health Service Rules, 1963 (hereinafter called C.H.S. Rules, 1963) were framed by the President of India and a new service known as the "Central Health Service (hereinafter referred to as CHS) was constituted. The Chs under Rule 4 was then divided into four categories of Class I, namely, (1) Super time Scales categories A & B, (2) Senior Scale category "C", (3) Junior Scale category "D", and (4) Class Ii Scale category "E". The Union Public Service Commission, it appears, constituted Selection Committee in terms of Rule 7(1) of Chs Rules 1963. The Selection Committee so constituted determined the suitability of persons for appointment to categories A to F of the service. On the recommendation of the Selection Committee the Government of India thus constituted the C.H.S. in 1963. On 1st January, 1965 the petitioner was appointed after selection, against the post of Eye Specialist, Willingdon Hospital, New Delhi in the Senior Scale category "C" of

the CHS. After sometime he was appointed as Professor of Ophthalmology (on deputation), Assam Medical College, Dibrugarh. He joined this post in October, 1965 keeping his lien in category "C" post under the CHS. By notification dated 8-1-1968 (Annexure "C") the petitioner was appointed to Specialist Grade category of the Chs with effect from 9-9-1966 in pursuance of Rule 7A(1)(b) of Chs Rules, 1963 as amended in 1966. From 29-7-1968 the petitioner worked as Associate Professor of Ophthalmology, H. P. Medical College, Simla and was getting special pay @ Rs. 200 per month under Rule 12(4) of C.H.S. Rules, 1963 as amended in 1966. By notification dated 4-12-1970 (Annexure "E") the petitioner was appointed to Supertime Grade Ii category of C.H.S. with effect from 29-7-1963 on probation and was posted as Chief Ophthalmologist-cum-Associate Professor of Ophthalmology, Himachal Pradesh Medical College, Simla. From 18-2-1971 he worked as Senior Eye Specialist, Willingdon Hospital, New Delhi. On 18-8-1971 the present Writ Petition was filed, with following prayers :

"In the premises it is most respectfully prayed that this Hon"ble Court may be pleased to

(A) issue a Writ Of Mandamus or any Other appropriate Writ, Order or Direction commanding Respondent No. 1

(I) to appoint the petitioner on substantive to one of the permanent Specialists posts in Supertime Grade Ii specified in Part A or Part B of the First Schedule with effect from 9-9-1966 i.e. the date of the commencement of the Amended Rules which were lying vacant even on 4-12-1970 when the notification was issued, giving him the benefits of revised scale of pay and non-practicing allowance with effect from 1-7-1965. In the alternative to refix his pay under F.R. 27 at par with the pay of Respondent No. 6;

(II) not to recover the special pay paid to the petitioner for the period he worked as an Associate Professor, H. P. Medical College, Simla i.e. from 20-7-1968 to 19-2-1971;

(III) not to give effect to para 2 of the Memorandum dated 22-7-1967, in the grade of Supertime Ii both in the matter of confirmation and in the matter of seniority after confirmation to his prejudice:

(IV) to declare the petitioner to be confirmed Super time Grade Ii Officer ;

(B) Award costs of the proceedings arising out of this petition, and

(C) Pass such further or other order or orders as this Hon"ble Court may deem fit and proper".

(2) The petitioner was being governed by the C.H.S. Rules 1963. It appears that on the demand of the Chs doctors for better pay scales and better opportunities for promotion, the Chs Rules, 1963 were amended by "The Central Health Service (Amendment) Rules 1966" (hereinafter called the Chs (Amendment) Rules, 1966) which came into force on 9th September, 1966 being the date of

their publication in the official gazette. As a result of amendment the Central Health Service was thoroughly reorganized. Rule 4 of Chs Rules, 1963 was substituted. Instead of categories A to E, four categories were created and the scales of pay as introduced by Chs (Amendment) Rules, 1966 are as under :

Categories Scale of Pay Classification 1.(a)Supertime Grade 1 (i) Director General of Rs. 2,750 Class I Health Services. (ii) Additional Director Rs. 2,250 Class I of Health Services. (iii) Other posts Rs. 1800-100-2,000- Class I 125-2,250. (b) Supertime Grade Ii Rs.. 1300-60-1600-100- Class I 1800. 2. Specialists" Grade Rs. 600-40-1000-EB- Class I 50-1300, 3. General Duty Officers Rs. 450-30-660-EB-40- Class I Grade I 1100-50-1250. 4. General Duty Officers Grade Ii (i) Graduate Officers Rs. 350-25-500-30-590- Class Ii EB-30-830-35-800. (ii) Licentiate officers Rs. 350-15-380-20-500- Class Ii EB-20-600.

(3) By substituted Rule 5 of Chs Rules 1963 as amended in 1966 the authorised strength of the various categories of doctors in the Chs on 9-9-1966, the date of commencement of Chs (Amendment) Rules 1966. was also raised. Under the Chs Rules, 1963. the authorised permanent strength of all categories i.e. Duty posts and deputation posts was 1030 while the temporary strength was 1303. Under Chs (Amendment) Rules, 1966 authorised strength of the permanent and the temporary posts was raised to 3064 as retailed in part "C" of the First Schedule of the Chs (Amendment) Rules 1966. In category "B" under Chs Rules. 1963 the permanent strength was 34 and the temporary strength was 37. After amendment . by Chs (Amendment) Rules 1966 the permanent strength of Supertime Grade Ii equivalent to category "B" was raised to 96 and that of temporary strength to 41. By insertion of Rule 7A vide Chs (Amendment) Rules 1966, every person in category "A" prior to Chs (Amendment) Rules 1966 was appointed to Supertime Grade I and every person in category "B" was appointed to Supertime Grade Ii of the Chs automatically. For the appointment of persons in old categories C, D and E to the new categories of Chs, a Selection Committee was to be constituted in accordance with the provisions contained in Rule 7(1) of the Chs Rules. 1963. Rule 8 was substituted by Chs (Amendment) Rules. 1966 and it provides for future maintenance of the service. Other rules were also amended drastically which will be noticed hereinafter.

(4) The following points require decision in this Writ Petition under Article 226 of the Constitution : (1) Whether the petitioner is entitled to be appointed to the Supertime Grade Ii with effect from 9th September, 1966 when the Chs (Amendment) Rules 1966 came into force or from 29th July. 1968 as notified by Respondent No. 1 and he entitled to revised Scale of pay mentioned in Rule 4 read with Rule 7A (4) of CHS (Amendment) Rules, 1966 with effect from 1st July, 1965 ?

(2)Whether the petitioner is entitled to Special pay of Rs. 200 per mensum attached to the post of Associate Professor under Rule 12(4) of Chs (Amendment) Rules 1966 during the period he was holding the post of Associate

Professor of Ophthalmology ,H. P. Medical College, Simla ?

(3)Whether the petitioner is entitled to be confirmed in Supertime Grade Ii ?

Point No. 1

(5) By a notification dated 8th January, 1968 petitioner was appointed to Specialists Grade of Chs with effect from 9th September, 1966 in pursuance of Rule 7A(1)(b) of Chs Rules, 1963 inserted by Chs (Amendment) Rules 1966. Feeling aggrieved by non inclusion of his name in the list of officers approved for appointment to the higher category of Supertime Grade Ii and by the appointment of officers junior to him against vacancies in the higher category of Supertime Grade Ii in preference to him, the petitioner moved the High Court of Delhi (Himachal Bench) Simla, by writ petition No. 60 of 1969 praying for the issue of a writ for the inclusion of his name in the higher category of Supertime Grade II. The writ petition was allowed by the learned Single, Judge vide judgment and order dated 3rd October, 1969 but on appeal by the Union of India it was dismissed on 5-8-1970. The judgment is reported as 1971 (2) S.L.R. 111. The Division Bench in the last paragraph of its judgment however, observed :

" Before we conclude we may mention that at the end of the arguments, the learned counsel for the appellant has brought to our notice the copy of office memorandum No. 1/3/65-Estt. (d) dated 20-2-1967 from the Ministry of Home affairs regarding review of recommendations of Selection Committees in a case where the adverse entries in the confidential reports of an individual are expunged or toned down. He has also shown us a letter dated 23rd July, 1970 addressed by the Ministry of Health to its counsel wherein it is stated that the case of Respondent No. 1 for promotion to Supertime Grade Ii will be referred to the Commission for review and consideration by the Departmental Promotion Committee at an early date in accordance with the prescribed procedure. We have every hope that the claim of the respondent will receive due consideration and if it is discovered that he has been prejudiced in any manner by the unmerited adverse entries and was otherwise quite suitable for being included in list Iv, he will not only be promoted to Supertime Grade Ii but will also be assigned his due seniority with retrospective effect and any other benefits to which he may be considered entitled according to law. With these observations, the appeal is accepted and the order made by the learned single Judge is set aside. The parties, are however left to bear their own costs throughout."

(6) In pursuance of the above observation of the Division Bench, the case of the petitioner for appointment to Supertime Grade Ii category was reviewed by the Selection Committee in its meeting held on 21st September, 1970 and he was found suitable for appointment to Supertime Grade II. The Selection Committee however, stipulated that the appointment would take effect from the actual date of his taking over the charge of the post. As the petitioner had taken charge of the post of Associate Professor of Ophthalmology, H. P. Medical College, Simla on 29th July, 1968 a notification dated 4th December, 1970 (Annexure "E") was

issued appointing him in pursuance of Rule 7A(2) of the Chs Rules, 1963 as inserted by Chs (Amendment) Rules, 1966 on probation and posted him as Chief Ophthalmologist-cum-Associate Professor of Ophthalmology ,H. P. Medical College, Simla. In other words, the post of Associate Professor of Ophthalmologist ,H. P. Medical College, Simla held by the petitioner since 29th July, 1968 was redesignated as Chief Ophthalmologist-cum-Associate Professor with retrospective effect from 29th July, 1968. By this notification the grievance of the petitioner to the extent that he was not appointed to Supertime Grade Ii was removed but his grievance that he ought to have been appointed to this category with effect from 9-9-1966 from which date Chs (Amendment) Rules. 1966 came into force still remained. The question for decision, Therefore, is whether he should be deemed to have been appointed from 9-9-1966 to the Supertime Grade II. It may be mentioned that previously the Selection Committee under Rule 7A (1) (b) of C.H.S. (Amendment) Rules had selected the petitioner for appointment to Specialists Grade and he was appointed to Specialists Grade category" from 9-9-1966. The contention of the respondent. Union of India is that the petitioner was appointed to Supertime Grade Ii with effect from 29th July. 1968 on the recommendations of the Selection Committee which reviewed his case. The respondent has also referred to the cases of other officers who were appointed to Supertime Grade Ii with effect from dates subsequent to 9-9-1966 although they were in service since prior to 9-9-1966. the date when Chs (Amendment) Rules came into force. It appears that the contention of the respondent to the effect that the petitioner cannot be deemed to have been appointed to Supertime Grade Ii with effect from 9-9-1966 is incorrect. Relevant portions of Rule 7A of the Chs (Amendment) Rules 1966 are as follows :

"7A.Appointment of departmental candidates :

(1)As soon as may be after the commencement of the Central Health Service (Amendment) Rules 1966

(A)Every departmental candidate who was appointed immediately before such commencement to any post in Category A or Category B of the Service or in any equivalent post. shall be appointed to the corresponding Supertime Grade I or Supertime Grade Ii of the Service;

(B)Every departmental candidate who was appointed, immediately before such commencement, to any post in any category (other than Category A or Category B), or in any other post, shall be appointed to the appropriate category after selection made on the recommendation of a Selection Committee constituted in accordance with the provisions of sub-rule (1) of Rule 7, on the basis of his experience and the conditions of eligibility as specified below:

Conditions Of Eligibility

.....

(2) Vacancies in each category shall be filled by the appointment of departmental candidates selected under sub-rule (1) and in the event of the non-availability of suitable departmental candidates for filling a vacancy, such vacancy may be filled by direct recruitment through the Commission.

(3)(i) Every departmental candidate who is not absorbed under sub-rule (I) shall, (i) In the case of a candidate appointed to the Central Health Service before the commencement of the Central Health Service (Amendment) Rules, 1966, continue to be a member of the Service holding a post specified before such commencement in Part A or Part B of the First Schedule, as the case may be, subject to the condition that for the purpose of pay and non-practicing allowance, he shall be governed by these rules as they stood before the commencement of the Central Health Service (Amendment) Rules, 1966 ;

(II).....

(4) Notwithstanding anything contained in these rules, any person who has been appointed to the Service under sub-rule (1) shall be entitled to draw salaries in the scales of pay specified in Rule 4 and non-practicing allowance at the rates specified in Rule 15.

(A) if his appointment to the Service was made on or before the 1st day of July, 1965, from that date; or

(B) if his appointment to the Service was made after the 1st day of July, 1965, from the date of such appointment,

As if such scales of pay and rates of non-practicing allowance were in force, and the categories of posts were in existence, on the 1st day of July, 1965, Or on the date of such appointment, as the case may be".

RULE 15 of Chs (Amendment) Rules 1966 reads :

"Persons appointed to the Service shall not be allowed private practice of any kind whatsoever, including consultant and laboratory practice. They shall, however, be entitled to a non-practicing allowance at the rates indicated below:

(a) Officers appointed to General Duty 50 per cent of pay subject Officers Grade I, Specialists' Grade to a maximum of six and Supertime Grades I & II. hundred rupees per mensem. (b) Officers appointed to General Duty 33-1/3 per cent of pay subject Officers, Grade II (Graduate Officers) to a minimum of one hundred and fifty rupees per mensem.

RULE 7A(1) deals with appointment of departmental candidates of old categories A to E to the new appropriate categories namely Supertime Grade I, Supertime Grade II, Specialists Grade, Junior Duty Officers Grade I and General Duty Officers Grade II. All departmental candidates in categories A and B of Chs Rules, 1963 were automatically appointed to the corresponding Supertime Grade I or super-time Grade II of the Chs under Clause (a) of sub-rule (1) of Rule 7A. The petitioner admittedly was a departmental candidate in category "C" of Chs Rules,

1963. He was selected for appointment to Supertime Grade II by the Selection Committee under Rule 7A(I)(b) of Chs Rules. By notification dated 4th September, 1970 (Annexure "E") he was appointed to Supertime Grade II of the Chs under Rule 7A(2) of the Chs (Amendment) Rules 1966. All departmental candidates in categories A to E were to be appointed to the new categories of the CHS. The petitioner accordingly on the recommendation of the Selection Committee presumably under Clause (b) of sub rule (1) of Rule 7A was selected and appointed to Supertime Grade II. Rule 7A(I)(b) deals with appointment of departmental candidates to the appropriate categories after selection and merely lays down the basis for such appointment. Rule 7A(2) actually deals with the filling up of vacancies by making such appointments in the first instances by the appointment of departmental candidates who have already been selected under Rule 7A(1) covering all categories of the CHS. Under sub-rule (4) of Rule 7A of Chs (Amendment) Rules, 1966 a person appointed to the Chs under sub-rule (1) is entitled to draw salary in the scales of pay specified in Rule 4 and also non-practicing allowance at the rates specified in Rule 15. The petitioner was admittedly in the Central Health Service before 1st July, 1965. The petitioner is Therefore, entitled to scales of pay and rates of non-practicing allowance with effect from 1st July, 1965. Sub rule (4) presupposes that the categories of posts such as Supertime Grade II, Scales of pay and the rates of non-practicing allowance were in force on 1st July, 1965. The word "Service" used in sub-rule (4) means" Central Health Service as defined in Rule 2(k) of Chs Rules, 1963. It was argued that departmental candidates selected under Rule 7A(I)(b) for appointment to Supertime Grade II category were to be appointed from the various dates when vacancies suitable to their qualifications and experience arose, and that the Selection Committee while reviewing the case of the petitioner made a stipulation that his appointment to Supertime Grade II would-take effect from the actual date of his taking over charge of the post This argument has no merit and is liable to be rejected. There is no reference to existence of vacancy in any category or to qualification of the candidate in Rule 7A(4) of Chs (Amendment) Rules, 1966. The word "Service" in Rule 7A(4) refers to the Central Health Service constituted by Chs Rules, 1963. As soon as a person in service prior to 9-9-1966 is appointed to any of the new categories mention- ed in Rule 4 of Chs (Amendment) Rules, 1966 he becomes entitled to the pay and allowances with effect from 1st July, 1965 if he was in Chs on that date and if he was appointed to the Chs Service after 1st July. 1965 then from the date of such appointment.

(7) The next question is : from which date the petitioner is deemed to have been appointed to Supertime Grade II category. The new categories in Chs were created by the Chs (Amendment) Rules 1966 which came into force on 9-9-1966. Rule 7A provides for appointment of existing departmental candidates in the new categories of the service. The old categories in the service ceased to exist as soon as Rule 4 of Chs Rules 1963 was substituted. Thus all departmental candidates who were in the Chs prior to 9-9-1966 when Chs (Amendment) Rules

1966 came into force and were selected by the Selection Committee for appointment to the various new categories of Chs under Rule 7A (1) (b) are deemed to have been appointed to the new categories of the service on 9-9-1966 as old categories of the service ceased to exist from that date. Under sub rule (3) of Rule 7A as amended on 5-9-1967 the departmental candidate who is not selected under sub rule (1) however continues to be the member of old category of Chs governed by rules as they stood before the commencement of the Chs (Amendment) Rules, 1966, This sub-rule (3) of Rule 7A also Therefore, suggests that departmental candidates selected for new categories are deemed to have been appointed to such categories from 9-9-1966 when Chs (Amendment) Rules came into force and new categories in Chs were created. The Selection Committee under Rule 7A(1) (b) is to select departmental candidates for various categories but it has no power to determine the date from which a candidate shall be deemed to have been appointed to the new category and no such power has been conferred upon it. The question of availability of vacancy suitable to the qualification of departmental candidate has no relevancy. The strength of Chs in Supertime Grade Ii category and also in other categories was raised by Chs (Amendment) Rules 1966. It has not been pointed out that there was no vacancy in Supertime Grade Ii on 9-9-1966 for the absorption of the petitioner. Rule 7A was inserted only to reconstitute the Chs in recordance with and from the date of commencement of the Chs (Amendment) Rules 1966, as after appointment under Rule 7A, the manner of filling in future vacancies was separately provided for by Rule 8 of the Chs Rules 1963 as amended in 1966. The petitioner's appointment to Supertime Grade Ii category admittedly has been made under Rule 7A and Therefore, he came in service on 9-9-1966 when the Chs was reconstituted. The petitioner's appointment to Supertime Grade Ii category from 29-7-1968 is thus held to be contrary to Rule 7A of Chs (Amendment) Rules 1966. The petitioner, is Therefore, deemed to have been appointed to Supertime Grade Ii category of the Chs with effect from 9-9-1966 when Chs (Amendment) Rules came into force. He became entitled to the scale of pay specified for the category of Supertime Grade Ii as mentioned in Rule 4 and also the non practicing allowance as mentioned in Rule 15(a) of the Chs (Amendment) Rules 1966 with. effect from 1-7-1965.

Point No. 2

9. On 29th July, 1968 the petitioner was posted against a temporary vacancy of Associate Professor of Ophthalmology, H. P. Medical College, Simla in the Specialists Grade category, in the pay scale of Rs. 600 1300 plus the Special pay of Rs. 200 per mensem under Rule 12(4) of the Chs Rules, 1963 as amended in 1966, which reads as under :

"Any person appointed as Reader, or Assistant Professor shall be granted a special pay of one hundred rupees per mensem and a person appointed as Associate Professor shall be granted a special pay of two hundred rupees per mensem.

(8) Under this rule any person appointed as Associate Professor is entitled to the grant of Special Pay of Rs. 200 per mensem. When the petitioner was appointed as Associate Professor on 29th July, 1968 he was granted special pay of Rs. 200 per mensem under this rule. Subsequently on a review of the petitioner's case for his appointment to Supertime Grade II category in the Chs he was appointed to Supertime Grade II and was posted as Chief Ophthalmologist-cum-Associate Professor of Ophthalmology, H. P. Medical College, Simla as per notification dated 4th December, 1970 (Annexure "E"). The contention of the petitioner is that by this notification he was posted as Associate Professor in addition to his duties as Chief Ophthalmologist with effect from 29th July, 1968 and Therefore, he claims that he identified to the special "pay of Rs. 200 per mensem as mentioned in Rule 12(4) of the Chs Rules 1963 as amended in 1966. A bare reading of this rule shows that any person holding the post of Associate Professor irrespective of the fact whether he is in the Specialists Grade or in the Supertime Grade II category of the Chs is entitled to the special pay. It is contended on behalf of the respondent that the post of Associate Professor in the Medical College is included in the Specialists Grade of the Chs and that an officer of the Specialists Grade appointed to such a post is only entitled to the special, pay of Rs. 200. In other words it is contended that the special pay is admissible only to the officers of Specialists Grade category appointed to these posts and not to an officer of the Supertime Grade II. The reason given is that the scale of pay of the Specialists Grade is Rs. 600 1300 while the scale of pay of Supertime Grade II is Rs. 1300 1800. Rule 12(4) of the Chs Rules as reproduced above does not state that the special pay is payable only to an officer of the Specialists Grade category and not to an "officer of the Supertime Grade II category. It is, Therefore, apparent that the respondent is not correct when it says that the special pay is admissible only to Specialists grade officers. The special pay is attached to the post and not to any particular category of the CHS. Part A of the first schedule to the Chs Rules mentions various posts under Supertime Grade II as well as under Specialists Grade. There is no post of Associate Professor in H. P. Medical College, Simla in either of these two categories of CHS. Supertime Grade II category further mentions 19 unspecified Specialists post in Supertime Grade II. It thus follows that the petitioner having been appointed as an Associate Professor would be entitled to the special pay of Rs. 200 per mensem during the period he was holding the said post. He was admittedly appointed as Senior Eye Specialist, Willingdon Hospital, New Delhi from 18th February, 1971. He is, Therefore, held entitled to receive special pay of Rs. 200 per mensem for the period from 29th July, 1968 to 17th February, 1971 during which period he was holding the post of Associate Professor in H. P. Medical College, Simla.

Point No. 3

(9) By notification dated 4th December, 1970 Annexure "E") the petitioner was appointed to Supertime Grade II category of the Chs with effect from 29th July, 1968 but as discussed under Point No. 1 above he is deemed to have been appointed to this category with effect from 9th September, 1966. The petitioner

claims that he was entitled to be appointed to this Supertime Grade Ii category of the Chs in a substantive capacity with effect from 9-9-1966 with benefits of scale of pay and non-practicing allowance Rule 9 of Chs Rules, 1963 as substituted by Chs (Amendment) Rules 1966 reads as under :

"PROBATION

9.(a) Persons appointed to the Service by selection or by promotion, shall be on probation for a period of two years : Provided that the Controlling Authority may at its discretion

(I)count any period of service in a post carrying equivalent or higher responsibilities ;

(II)count in the case of promotees to any Grade, any period of officiating service in that Grade, for counting the said period of two years ;

(B) On the completion of the period of probation, a candidate shall, if considered fit for permanent appointment, be confirmed in that post subject to the availability of vacancies.

(C)The Controlling Authority may, extend the period of probation specified in clause (a).

(D) If on the expiration of the period of probation referred to in clause (a), or any extension thereof under clause (c), as the case may be, the Controlling Authority is of opinion that a person is not fit for permanent appointment, or if at any time during such period of probation or extension, the Controlling Authority is of opinion that a person will not be fit for permanent appointment on the expiration of such period of probation or extension, It may discharge or revert him to his substantive post or pass such orders as it thinks fit.

(E)During the period of probation, the candidate shall undergo such training as may be prescribed by the Controlling Authority."

(10) Under Rule 9 (a) person appointed to the Chs by selection or promotion is appointed on probation for a period of two years and that period can be extended under Rule 9 (c). The power to confirm a person appointed to the service vests with the Controlling Authority. The Controlling Authority under Rule 9 (b) is authorised to confirm the candidate in the post if it considers the candidate fit for permanent appointment. The power to confirm a candidate in any category of the Chs or the post thus rests with the Controlling Authority and not with the Court. The question of petitioner's selection to Supertime Grade Ii and also the question of his confirmation has been pending since the date when Chs (Amendment) Rules, 1966 came into force i.e. 9-9-1966. The petitioner admittedly is highly qualified doctor and it is hoped that his claim for confirmation would receive due consideration by the Controlling Authority.

Conclusions

(11) As discussed above the petitioner is deemed to have been appointed to the Supertime Grade Ii category of the Central Health Service with effect from 9-9-1966 when Chs (Amendment) Rules", 1966 came into force. He also became entitled to the scale of pay specified for the category of Supertime Grade Ii as mentioned in Rule 4 and also the non-practicing allowance as mentioned in Rule 15 (a) of the Chs (Amendment) Rules, 1966 with effect from 1st July, 1965. It is further held that the petitioner is entitled to special pay of Rs. 200 per mensem under Rule 12(4) of the Chs Rules as amended in 1966 for the period he was holding the post of Associate Professor from 29th July, 1968 to 17th February, 1971. The question of confirmation of the petitioner in Supertime Grade Ii category of the Chs, it is hoped would be considered by the Controlling Authority in accordance with law. The Writ Petition is accordingly allowed to the extent already mentioned. A Writ/direction be Therefore, issued to the respondents under Article 226 of the Constitution of India to comply with the same. Considering the facts and circumstances of the case there will be no order as to costs.