

OFFICE MEMORANDUM

Subject:-Restriction on regularization of
ad-hoc appointment - regarding.

The undersigned is directed to say that as per the Department of Personnel and Administrative Reforms O.M. No.22011/3/75-Estt(D) dated October 29, 1975 and the Department of Personnel and Training O.M.No.28036/8/87-Estt (D) dated March 30, 1988, persons appointed on ad-hoc basis to a grade are to be replaced by persons approved for regular appointment by direct recruitment, promotion or transfer (absorption), as the case may be, at the earliest opportunity. These instructions also provide that whenever an appointment is made on ad-hoc basis, the fact that the appointment is ad-hoc and that such an appointment will not bestow on the person a claim for regular appointment should be clearly spelt out in the orders of appointment. It should also be made clear that the service rendered on ad-hoc basis in the grade concerned would not count for the purpose of seniority in that grade and for eligibility for promotion to the next higher grade

2. Instances have, however, come to the notice that despite the clear provisions, as mentioned above, persons appointed on ad-hoc basis, when replaced, approach the courts of law for regularizing their appointment and in many cases, directions are given for regularizing the period of ad-hoc appointment with consequential benefits like seniority etc.

3. In this regard, it is stated that issue of regularization of ad-hoc employees has been considered in several judgements of the Hon'ble Supreme Court. In the case of R.N. Nanjundappa Vs T. Thimmaiah & Ors (AIR 1972 SC 1767), the Supreme Court observed that regularization is not itself a mode of recruitment and any act in the exercise of executive power of the government can not override rules framed under Article 309 of the Constitution. In the case of State of Orissa Vs Sukanti Mahapatra (AIR 1993 SC 1650), the Supreme Court has observed that assuming that their having served for long years is a valid reason for regularization, that without any thing more, will not meet the requirement of the action being in public interest and what has been done under the impugned orders is to regularize the illegal entry into service as if the Rules were not in existence. In another case of K.C. Joshi Vs Union of India (AIR 1991 SC 284), the Supreme Court observed that the ad-hoc appointees can not be put on a higher pedestal over the candidates who stood the test of merit and became successful in a competitive recruitment and secured ranking according to the merit in

the approved list of candidates. In the case of State of Haryana and others Vs Piara Singh and others (1992 SC 2130), the Supreme Court observed that direction to regularize ad-hoc appointments, work charged employees would only result in encouraging of unhealthy practice of back door entry-what can not be done directly can not be allowed to be done in such indirect manner. In the case of Dr. M.A. Haque Vs Union of India (1993 2SCC 213), the Supreme Court held that the recruitment rules made under Article 309 of the Constitution have to be followed strictly and not in breach. If a disregard of the rules and the bypassing of the Public Service Commission are permitted, it will open a back-door for illegal recruitment without limit. In the case of Dr Arundhati A. Pargaonkar and another Vs State of Maharashtra (AIR 1995 SC 962), the Apex Court has held that a continuous service by itself do not give rise to the claim of regularization.

4. Therefore, as already stated in DoP&T's O.M.s referred to above, an ad-hoc appointee has to be replaced by a regularly selected candidate as per provisions of the recruitment rules and in accordance with the prescribed procedure at the earliest possible and in no case such an officer should be regularized. In the cases, where a judicial order is received for regularization of an ad-hoc employee, steps may be taken to contest the same in the light of the specific conditions on which the offer of appointment on ad-hoc basis was made, the policy of the Government in this regard and the various judicial pronouncements of the apex court. If in a particular case, the concerned Ministry/Department desires to consider acceptance of the judicial order, the matter should be invariably referred to the Department of Legal Affairs and the Department of Personnel and Training as per this Department's O.M.No.28027/9/99-Estt(A) dated May 1, 2000, which says that whenever there is a court order against the Government of India, pertaining to service matters, no such order shall be implemented by the concerned Ministry/Department without first referring the matter to the Department of Legal Affairs and to the Department of Personnel and Training for advice

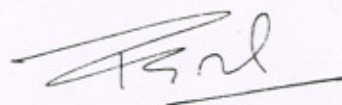
5. It has all along been emphasized in the existing instructions that ad-hoc appointments should be made only in rare cases and in real exigency of work, where the post cannot be kept vacant until regular candidate becomes available. It has been emphasized, in particular, that ad-hoc appointment by direct recruitment from the open market should be resorted to only as a last resort. This is because, once a person is appointed from outside the Government on ad-hoc basis, such arrangement is generally continued for long periods, either because a regularly selected candidate is not available or some other vacancy in the grade/cadre becomes available against which he is adjusted. Consequently, when efforts are made to replace such an officer, he/she invariably approaches a court of law for regularization of their appointment. Apart from the fact that regularization of appointment in such cases is not in public interest as they have not come through proper selection procedure and on merit, regularization also creates problems in the matters of seniority, promotion, pension etc. However, notwithstanding these instructions, ad-hoc appointments by direct recruitment from open market are being made as a matter of routine. In fact, on many occasions, such appointments are being made only to avoid the post getting abolished in terms of the relevant instructions of the Ministry of Finance, providing for automatic abolition of posts if they remain vacant for more than one year. Of late, instances of ad-hoc appointments from open market have substantially increased resulting in more and more court cases being filed for regularization of service of such ad-hoc appointees.

6. In view of the aforesaid undesirable trend, the matter has been reviewed and it has been decided that hereafter **no appointment shall be made on ad-hoc basis by direct recruitment from open market.** Where the vacant post cannot be kept vacant for functional considerations, efforts may be made to entrust the additional charge of the post to a serving officer under provisions of FR-49, failing which only appointment by ad-hoc promotion/ad-hoc deputation may be considered. If in an exceptional case (e.g. in the case of an operational organization), it is inescapable to resort to ad-hoc appointment by direct recruitment, prior concurrence of the Department of Personnel and Training (Establishment 'D' Section) may be obtained by giving full and complete justification for the same.

7. Continuation of an ad-hoc appointment beyond one year will, as per the existing instructions, continue to require the prior approval of Department of Personnel and Training as before.

8. This order takes effect from the date of its issue.

9. All Ministries/Departments are requested to bring these instructions to all concerned for guidance and compliance.



(R.K. GOEL)

Deputy Secretary to the Government of India

To

All Ministries/Departments of the Government of India

Copy to: -

1. The President's Secretariat, New Delhi.
2. The Prime Minister's Office, New Delhi.
3. Rajya Sabha Secretariat, New Delhi.
4. The Lok Sabha Secretariat, New Delhi.
5. The Comptroller and Audit General of India, New Delhi.
6. The Union Public Service Commission, New Delhi with reference to their letter No. 2/3/2001-S.II dated 2.2.2001.
7. The Staff Selection Commission, New Delhi.
8. All attached offices under the Ministry of Personnel, Public Grievances and Pensions.
9. All Officers and Sections in the Department of Personnel and Training.
10. Establishment (D) Section (**200 copies**).
11. Facilitation Center, DOPT (**20 copies**).
12. NIC, DoP&T for placing the order on the *website* of the DoP&T (persmin.nic.in).