

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1189 of 2002

New Delhi, this the 24th day of January, 2003

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Dr. Sharad Kumar Gupta
Ex-Medical Officer,
School Health Scheme,
Department of Health & Family Welfare,
Government of NCT of Delhi

R/o 609/2 Indira Colony,
Mandavli, Fazalpur,
Delhi-110 092.

-APPLICANT

(By Advocate: Shri K.N.R. Pillai)

Versus

Government of NCT of Delhi through

1. The Secretary (Medical)
Department of Health and Family Welfare,
Government of NCT of Delhi,
Delhi Secretariat,
I.P. Estate,
New Delhi-110 002.
2. The Director of Health Services Delhi,
Swastya Bhavan,
Karkardooma,
Delhi-110 092.

-RESPONDENTS

(By Advocate: Shri George Paracken)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (Judl)

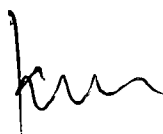
Applicant has filed this OA whereby he has impugned respondents order dated 10.2.2000, Annexure A-1 vide which his services had been terminated forthwith.

2. The facts in brief are that the applicant was appointed as Medical Officer on contract terms by the Director of Health Service vide letter dated 9.7.97 and was posted under the Chief Medical Officer, School Health Scheme. The applicant along with some other Medical

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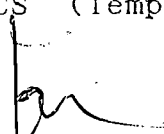
Officers filed a petition before the Principal Bench of the Central Administrative Tribunal bearing number OA No. 2685/97 against the harsh terms in the contract of appointment. The said judgment is stated to have been allowed and the harsh terms of contract were set aside following the judgment in Dr. Sangeeta Narang's case. It is also pleaded that it was held that termination of such an officer is governed by the Temporary Service Rules.

3. The applicant further alleges that while he was continuing in service he had to face serious family problems and had to file a suit for divorce. In retaliation his wife got filed an FIR against the applicant alleging bigamy, demand for dowry, rape etc. and the applicant was arrested by U.P. Police on 9.7.99 and was detained in custody and after prolonged trial, the Special Judge found that there was no evidence to support the false charges and he acquitted the applicant on 2.5.2001 and it was only in the middle of the previous year. i.e., 2000 the applicant was able to obtain bail for the first time from the High Court of Allahabad and after that he approached the CMO in-charge, School Health Scheme with a view to rejoin his duties but the CMO in-charge vide his letter dated 26.6.2000 sent him a copy of the impugned order of the Director of Health Services dated 10.2.2000 saying that in pursuance of the terms and conditions of the original appointment on contract, his services had been terminated.



4. It is further stated that the applicant wanted to challenge his illegal termination but his immediate need was to get some money to support himself as he had no financial resources, but then he approached the CMO, School Health Scheme as he could get the arrears of salary as admissible in terms of the order issued by the respondents based on the judgment of the CAT. Thereafter he had been collecting information and after getting the legal advice for challenging the termination which is stated to be in terms of the appointment, but since these terms of contract have been modified by the judgment of the Tribunal following the judgment in Sangeeta Narang's case and it has been specifically held in U.O.I. Vs. Arun Kumar Roy that termination of such an officer will be governed not by the contract of appointment but by the Temporary Service Rules. So it is stated that as per the judgments cited above, the order of the Director of Health Service terminating the applicant's service in terms of the contract of appointment is not sustainable and in case his services were to be terminated then the same could be terminated under CCS (Temporary Service) Rules. Since it is not a case of termination under Rule 5 of the CCS (Temporary Service) Rules it is obviously for misconduct, either for unauthorised absence or for some other fault and if it is based on some other misconduct then the departmental enquiry was required to be held.

5. It is further pleaded that in view of the judgment of the Arun Kumar (Supra) his service could not be terminated under the terms of contract but under the CCS (Temporary Service) Rules so it is prayed that the



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impugned order be quashed and set aside and respondents are directed to treat the applicant as having continued in service as Medical Officer with all consequential benefits including arrears of pay and allowances from 10.1.2000 to the date he is physically put back to duty.

6. The respondents are contesting the OA. The respondents pleaded that the OA is barred by limitation. The applicant has filed this OA on 28.4.2002 and he is aggrieved by the order dated 10.1.2000 vide which his services had been terminated. Obviously the applicant has filed this OA on 28.4.2002 beyond the period of limitation so on this ground alone the present OA is liable to be dismissed.

7. It is denied that the order dated 10.1.2000 was received by him only on 26.6.2000 whereas the order of termination dated 10.1.2000 was sent to him on the same date. Annexure A-1A is a letter dated 26.6.2000 annexed by the applicant along with the OA is only a reply to his application dated 7.8.2000 which he himself admits in para 4 of the representation dated 17.9.2001. Therefore, the present application is liable to be dismissed.

8. It is admitted that the applicant was appointed on contract basis for a period of six months. It is further stated that the applicant was arrested on 8.8.99 as per the information of Smt. Usha Siddharthan on various criminal charges including bigamy/dowry etc. and since he was working on contract basis, so under the above circumstances there was hardly any option except to



terminate the services as the applicant was not fulfilling his terms of contract and the very purpose of his appointment on contract basis was defeated.


9. Applicant has been sending applications for leave stating that due to unavaoidable circumstances he will not be able to join duties and will remain out of town. But after Annexure R-4 dated 28.8.99, Smt. Usha Sidharthan wrote a letter stating that the applicant was arrested on various criminal charges and that he would be joining very soon but he did not mention anything about the intervening period of his absence.

10. The respondents insist that the termination of service is not covered by any service conditions and it is denied that the applicant is governed by Temporary Service Rules.

11. Rejoinder to this was filed denying all these allegations and reiterating the pleas taken by the applicant.

12. I have heard the learned counsel for the parties and gone through the records of the case.

13. The learned counsel appearing for the applicant forcefully argued that once a person joins a Government service though on contract basis but immediately thereafter he acquires the temporary status and thereafter the only rule governing the service conditions applicable to him will be temporary service rules and it will not be permissible for him to rely upon

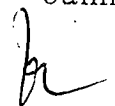


the terms of contract which are not in consonance with the rules of service.

14. The learned counsel further submitted that that the applicant had earlier filed an OA 2564/97 along with certain other applicants who had filed different OAs which was decided by a common order dated 23.4.98 vide which the applicant was allowed same scale of pay and allowances and also the same benefits of leave, increment on completion of one year, maternity leave and other benefits of service conditions, as are admissible to Medical Officers appointed on regular basis in the corresponding pay scale and they shall be deemed to have continued in service till regular appointments are made by the respondents. That OA was allowed based on the judgment of Sangeeta Narang's case. The counsel for the applicant then submitted that after this OA was allowed the contract of appointment had been superseded by the judgment and the applicant had become regular temporary servant and his services could be terminated only under the CCS (Temporary Service) Rules and in support of his contention he has also referred to another judgment reported in AIR 1986 SC 737 entitled as U.O.I. and Others Vs. Arun Kumar and particularly relied upon para 18 and 19 which is reproduced hereinbelow:-

"18. Thus it is clear and not open to doubt that the terms and conditions of the service of an employee under the Government who enters service on a contract, will, once he is appointed, be governed by the rules governing his service conditions. It will not be permissible thereafter for him to rely upon the terms of contract which are not in consonance with the rules governing the service.

19. The powers of the Government under Article 309 of the Constitution to make rules regulating the service conditions of the government employees cannot, in any manner, be fettered by any agreement. The respondents, cannot, therefore, succeed either on the



terms of the contract or on the notification on which the High Court has relied upon. Nor can he press into service the rules of estoppel against the Government".

15. In reply to this, the learned counsel for the respondents submitted that though vide the previous OA filed by the applicant was allowed with a direction to the respondents to pay regular salary etc. but the terms of contract was not modified by the earlier OA. The status of the applicant remained to be contractual appointee and the court had given the direction that in case when the regular appointments are to be made the applicant may be given age relaxation as per rules but he continued with the status of contractual employee and since the applicant had not been coming to join the service and he had not informed about his arrest so the respondents have properly terminated the contract when they terminated the service of the applicant vide impugned order.

16. Besides this the counsel for the respondents also urged that the applicant is challenging the order dated 10.1.2000 and has filed the OA on 3.5.2002 so the OA is highly belated and the same should be dismissed on the ground of limitation alone.

17. In my view also the contentions, as raised by the learned counsel for the applicant, have no merits because the previous OA filed by the applicant which had been allowed that does not confer on the applicant any other status than that of a contractual employee. Merely because the applicant had been allowed regular pay scale does not entitle him to become regular nor makes him the temporary government servant. His status remained to be that of contractual appointee. On going through the

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judgment in the case of U.O.1 Vs. Arun Kumar (Supra), as relied upon by the applicant, I find that in that case the sole question before the court was whether the order of termination was bad since one month's salary and allowances were not paid to him in lieu of notice period. This is the only question which falls to be decided in this appeal as observed by the Hon'ble Apex Court in paragraph 8, which is reproduced hereinbelow:-

"8. The learned single Judge who heard the Writ Petition, held that the respondent was a temporary Government servant and that he was governed by Rule 5(1) of the Central Civil Service (Temporary Service) Rules, 196. Rule 5(1)(b) as amended, provided in its proviso that on termination of a temporary Government servant, one month's notice has to be given and the shall be entitled to claim a sum equivalent to the pay and allowances for the period of his notice at the same rate at which he was drawing them immediately. The learned single Judge held that the order of termination was valid. The Division Bench, disagreeing with the learned single Judge held that the Order of termination was bad since one month's salary and allowances was not paid or tendered to the appellant along with the notice. This is the only question that falls to be decided in this appeal (emphasis supplied)".

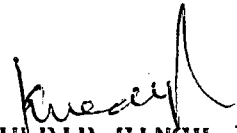
18. The question of acquiring temporary status has not been discussed in this case. So this judgment does not help the applicant at all.

19. The status of the applicant continues to be that of a contractual employee as modified by the directions given in the previous OA only to the extent of payment of salary, leave, allowances etc. at par with regular employees and by no stretch of imagination it can be said that the previous judgment has conferred status of temporary employee on the applicant. Since the applicant has not observed the terms of contract, the respondents were within their right to terminate his services.

20. I may further observe that in this case the

applicant has challenged the order dated 10.1.2000 which was served on him on 26.6.2000 but according to the respondents the same was served upon him on the same day when the same was passed so I do not find any reason as to why the applicant could not come to the court earlier and even as per his own showing he was released from jail on 7.6.2000 and thereafter he contacted the senior authorities in the School Health Scheme on 26.6.2000 but still he did not take any step and filed the OA only on 3.5.2002 that also shows that the OA is highly belated so the same has to be dismissed on the ground of limitation also.

21. In view of the above, nothing survives in the OA and the same is dismissed. No costs.


(KULDIP SINGH)
MEMBER(JUDL)

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