

Central Administrative Tribunal
Principal Bench

(3)

O.A.No.3353/2002

Hon'ble Shri Govindan S. Tampi, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 8th day of January, 2003

Pradeep Kumar Goswami
Sh. Bhagwan Giri Goswami
r/o H.No.1/7475, Gali No.12-A
East Gorakh Park
Shahdara
Delhi - 110 032. ... Applicant

(By Advocate: Sh. S.K.Sinha)

Vs.

1. Chief Secretary
Govt. of N.C.T. of Delhi
I.P.Sachivalaya
New Delhi.
2. Principal Secretary
Health Family Welfare
Govt. of N.C.T. of Delhi
I.P.Sachivalaya
New Delhi.
3. Director
Directorate of Indian System of
Medicine Homeopathy
Tibbia College Campus
Karol Bagh
New Delhi - 5.
4. Union of Public Service Commission
through the Secretary
Dhaulpur House
Shahajan Road
New Delhi. ... Respondents

(By Advocate: Sh. Ajesh Luthra)

O R D E R (Oral)

By Shri Shanker Raju, M(J):

Applicant in this OA has sought consideration for regularisation as Medical Officer (Ayurveda) with all consequential benefits and as an ad-interim measure prayed maintenance of status-quo as he apprehends termination.

2. By an order dated 24.12.2002 Vacation Bench directed the respondents not to dispense with the services of the applicant.

3. In pursuance of an advertisement issued by the respondents to fill up the posts of Medical Officers (Ayurvedic) on contract basis applied for the same and after a written examination conducted by the Staff Section Commission, he was appointed as Medical Officer (Ayurvedic) on contract basis for a period of six months or till the regular appointment is made whichever is earlier with certain terms and conditions. Applicant continued for one and half years and now regularly selected candidates are being appointed, he apprehends termination and is accordingly filed the present OA.

4. Shri S.K.Sinha, learned counsel for applicant, contended that applicant is a Physically Handicapped having more than 40% permanent disability and is covered under the Physically Handicapped quota as such the respondents have sanctioned conveyance allowance to him vide their letter dated 16.1.2002.

5. Shri Sinha further placed reliance on Section 33 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 to contend that it is for the appropriate Government which is not exempted from the provisions of the Act to reserve not less than 3% vacancies for disabled persons which includes 1% for locomotor disability.

6. Further placing reliance on Section 37 of the Act ibid, it is contended that it is mandatory upon the respondents to maintain records in relation to the persons with disability.

7. In the conspectus of the above provisions, it is contended that respondents have not reserved any quota for locomotor disability and have not identified the post, as such applicant who has been appointed as OBC and is Orthopaedically Handicapped, he has a right to be regularised against 1% quota meant for locomotor disability persons. In the alternative, he should be continued till he is replaced by a person in his quota regularly selected by the UPSC.

8. Shri Sinha contended that applicant having been continued on ad hoc for a period of more than one year, regularisation is to be deemed and by placing reliance of a decision of the Division Bench of High Court in G.P.Sarabhai and Ors. v. Union of India & Ors., it is contended that Doctors who had worked on ad hoc basis for more than one year, are deemed to be permanent.

9. It is further stated that applicant being Orthopaedically Handicapped there the cadre should be separately maintained and by placing reliance on a decision of the Apex Court in Moti Lal v. Union of India & Others, AIR 1990 SC 629, it is contended that if two interpretations are possible, the one which is as a measure of welfare and favours the employee should be adopted. According to him, out of 13 posts to be filled up, at least 1% quota should be reserved for the applicant.

10. On the other hand, respondents' counsel, Sh. Ajesh Luthra, though has not filed reply, who at the outset, has stated that there is no provision for regularising an incumbent appointed on contact basis against Group 'A' post, the vacancies of Ayurvedic Medical Officers is to be filled up through usual process and by the UPSC. As the applicant was only appointed on contract basis till the regular incumbent joins, there is no provision for resort to 1% reservation for Orthopaedically Handicapped in posts filled up on contract basis. However, the aforesaid quota is meticulously followed in regular appointment to Group 'A' service.

11. Shri Luthra further stated that despite an opportunity to participate in selection conducted by the UPSC, applicant having failed to apply he cannot have any right to claim for regularisation against to Group 'A' post dehors the Rules.

12. We have carefully considered the rival contentions of the parties and perused the material on record.

13. Shri Sinha has failed to bring to our notice any rule or provision of law which envisages reservation in appointment on contract basis of disabled having locomotor disability. What has been provided under Section 33 of the Act ibid is an appointment by the appropriate Government on regular basis. This would not be extended to contract appointment for a limited period. Moreover, applicant has not been appointed against the quota meant for Physically Handicapped. It is incidental that subsequently on production of handicapped certificate,

the benefits provided by the Government regarding conveyance allowance has been accorded to the applicant would not be deemed to be extended on the fact that applicant was appointed on contract basis in the quota meant for handicapped.

14. Moreover, in appointment to Group 'A' services as per the Government of India's instructions, regularisation dehors the rules is not permissible. The regular selection is to take place with the UPSC and as admittedly the appointment of the applicant was by Staff Selection Board for a period of six months or till the regular appointment is made is without selection by the UPSC, as such applicant has no right to continue indefinitely and has to give way to the regularly appointed candidates by UPSC.

15. Moreover, merely because the applicant had continued for more than one year would not vest him with a right to be deemed permanent or appointment on permanent basis. In fact, the subsequent continuation of the applicant has been till the posts are filled up on regular basis and the regularly selected candidates are available who are to be appointed. In so far as the appointment to Group 'A' service is concerned, if the applicant applies in pursuance of advertisement to be issued, and qualifies through the regular process, his case would be considered in the light of reservation provided under the Act ibid, on availability of vacancy and as per the extant rules and eligibility of the applicant. With these observations, we do not find any merit in the present OA, which is accordingly dismissed. No costs.

S. Raju
(SHANKER RAJU)
MEMBER (J)

G. Govindan S. Tampi
(G. GOVINDAN S. TAMPI)
MEMBER (A)