

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2020/2001
M.A. NO.1696/2001

New Delhi this the 25th day of September, 2002.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

- (1). Dr.Bharat Singh (BAMS)
Son of Shri Sudama Rai
R/o B-118, Nanhey Park
Uttam Nagar
Delhi-110043.
 - (2). Dr.Rabinder Nath Padhi (BAMS)
S/o Shri Nakul Padhi
R/o R2-17A, Gopal Nagar
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 - (3). Dr.(Mrs.) Prathibha Sharma (BAMS)
D/o Shri H.S.Sharma
R/o RZ/C-5, Vishnu Garden
New Delhi-110018.
 - (4). Dr. (Mrs.) Preeti Chaudhary (BHMS)
W/o Dr.Rajbir Singh
13J, Vashishta Park
Pankha Road
New Delhi-110046.
 5. Dr.Ankush Budhiraja (BHMS)
S/o Dr.B.L.Budhiraja
R/o Sector-15, G-18/18
Rohini
Delhi.
- Applicants

(By Shri S.N.Gupta, Advocate)

-versus-

1. Union of India through
Secretary
Ministry of Home Affairs
North Block
New Delhi.
2. Lt.Governor of Delhi
Raj Niwas
5, Sham Nath Marg
Delhi-110054.

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3. Office of the Additional
Director General of Prison/
Inspector General of Prison
Central Jail
Tihar
New Delhi-110064.

.... Respondents

(By Mrs.Sumedha Sharma, Advocate)

O R D E R

Justice V.S.Aggarwal:-

MA No.1696/2001

MA No.1696/2001 is allowed subject to just exceptions. Joint Application is permitted.

OA No.2020/2001

Applicants are working in the office of the Director General of Prisons, Central Jail, Tihar, New Delhi. By virtue of the present application, they seek a direction to the respondents to prepare a scheme giving scales of pay as are available to Government servants depending upon their qualifications, experience and grant the same to the applicants. They further pray that they should be given the same scale on the principle of 'equal pay for equal work' and their services should not be dispensed with. The scales claimed are those of Doctors.

2. The facts alleged by the applicants are that they had been called for interview by the

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respondents and after the same, they were assigned duties in the Central Jail hospitals and dispensaries from day to day. They performed the duties as medical practitioners in the capacity of Ayurvedic and Homoeopathic Doctors. Initially they were performing these duties in shifts but presently they are performing the regular duties between 8.00 A.M. to 2.00 P.M. on the same pattern as regular employees.

3. Initially they were employed as volunteers and they were being paid Rs.100/- per day. It was promised that salary would be paid to them at par with regular employees. They agitated the question about the payment of Rs.100/- per day in the form of conveyance allowance which was enhanced to Rs.200/- per day but no regular salary had been paid. Applicants contend that in fact they are regular employees and what is being paid to them is the salary. The principle of 'equal pay for equal work' has been violated. They have been working with the respondents for the past 7 years before filing of the application. With these grievances, the abovesaid reliefs are being claimed.

4. In the reply filed, the application as such has been contested. It was asserted that the applicants were appointed not as per any recruitment rules. Nor were there any vacant posts. Applicants are working as Non Government



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Officials (for short, "the NGOs") purely on voluntary basis and they are being paid Rs.200/- per day for their visits as conveyance allowance. Applicants are not holding any civil posts. It is denied that there was any promise made with respect to the payment of salary. In the institutions such as Tihar Jail, the respondents had to organise voluntary service for which roster has to be maintained. The working hours were 8.00 A.M. to 2.00 P.M. but the applicants had not been given any additional responsibility or administrative work. The contention, therefore, that is raised that the applicants can claim the status of Government servant or 'equal pay for equal work' has been controverted.

5. As is apparent from the resume of the facts given above, the short question that, therefore, comes up for consideration is as to whether the applicants can claim that they should be paid the same salary as Doctors in the Government service of the same status or not.

6. The learned counsel for the applicants has urged that the applicants are discharging the same duties as Doctors working in different Government service. They are attending to their work and are being made to do all the work. While the plea of the respondents has been that the applicants are

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nothing but NGOs and, therefore, not entitled to any such provision of law that they are pressing into service.

7. To appreciate the said controversy, we deem it necessary to mention to the advertisement that appeared in Times of India with respect to the said posts. It reads as under:-

" Applications are invited by 10th December 95 on plain paper from Doctors/Nurses (Both Male & Female) and Laboratory Staff on conveyance charges of Rs.200/-(12 Hrs.Night Duty) and Rs.100/-(Six hrs day duty) Per day for community service of prisoner patients lodged in Central Jail, Tihar, New Delhi. Age no bar

Applicant may contact in person between 9.30 A.M. and 2.00 P.M. on working days D.I.G. (P)/A.M.O., Central Jail, Tihar. Contact Phones:5551589, 5553404, 5555305 (PABX) EXTN 7171725.

(R.S.GUPTA)

DIP/1969/95 INSPECTOR GENERAL OF PRISONS"

Thereafter admittedly, the applicants had been called for interview and in the interview letter it was clearly mentioned that it was pertaining to the post of Ayurvedic Physician (NGO). It reads:-

"Sub:-CALL FOR INTERVIEW FOR THE POST OF Ayurvedic Physician (NGO) ALONG WITH ALL ORIGINAL CERTIFICATES.

Sir,

Please refer to your application/letter, Dated 17.6.99 you are hereby directed to appear for an interview in my office on 23.8.1999 at 10.30AM"

It was followed by an order that certain Doctors would be available at specified time for Ayurvedic

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treatment of prisoners in different Jails. Since then admittedly, the applicants have been discharging the duties of Ayurvedic or Homoeopathic Doctors and copies of their attendance in this regard that are being maintained are also placed on record. The applicants had represented to the Director General (Prison) for appointment as regular Ayurvedic/Homoeopathic Doctors in Tihar Jail on 3.12.1999. In para 1 of the said application, the applicants accepted:-

" The application of this representation are N.G.O. Ayurvedic and Homoeopathic Doctors working in Tihar Jail of the past six years i.e.1993 onwards. Our way of working and handling patients and their management has been appreciated by one and all respectively. Recently your goodself was very much pleased with out working and as a reward, increased our conveyance charges to Rs.200.00 per day. Needless to mention, we shall remain every grateful for this kind act."

8. On behalf of the applicants as already referred to above, contention which is being re-mentioned at the risk of repetition is that they are still discharging the same functions as any other Doctor and, therefore, their pay should also be identical. They rely strongly on a decision of this Tribunal in OA No.1479/2000 and batch of cases, (Shri Subodh Kumar and others vs.Union of India and others) rendered on 6.7.2001 and also the decision of the Calcutta Bench of this Tribunal in the case of Samir Kumar Mukherjee & Ors. v. General Manager, Eastern Railway & Ors., A.T.R.1986

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✓ (2) C.A.T.7 besides that of the Apex Court in the case of Dhirendra Chamoli and another v. State of Uttar Pradesh, A.T.R. 1986 S.C.172. So far as the decision rendered by the Calcutta Bench of this Tribunal in the case of Samir Kumar Mukherjee and others (supra) is concerned, it pertained to the question as to whether those persons who started working as volunteers would have the relationship of master and servant. The answer given was in the affirmative subject to certain conditions. That is not the position in the present case because as already referred to above, the applicants are NGOs. Not only the posts were so advertised, even in their representation they have mentioned on similar lines. Therefore, the decision in the case of Samir Kumar Mukherjee (supra) is of no avail.

✓ 9. In the case of Dhirendra Chamoli (supra), the petitioners were certain class IV employees discharging certain duties and it was held that they were working in the organisation and thus they should be paid the salary of Class-IV employees. The Supreme Court held that it is not proper that the Central Government should continue to employ persons on casual basis in organisations which are existing for long time. Once again in the facts of the present case, that is not the position and the cited decisions, therefore, are not at all applicable and must be held to be distinguishable.

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10. On the contrary, we are aware of a decision of this Tribunal in the case of Umesh Chandra Tiwari vs. Additional Director General (P), Prison Headquarters, Central Jail and another rendered in OA Nos.1718/2000 and 1478/2000 on 28.8.2002 wherein this Tribunal held that the applicants were only NGOs and they have no right to claim the relief of regularisation because they were never appointed by the Government. The application as such was dismissed.

11. By now the position of law is well-settled and we take advantage in referring to a decision of the Supreme Court in the case of C.K.Shive Gowda v. Kidwai Memorial Institute of Oncology, Bangalore, 1998(1) A.T.J.625. In the cited case, in the Kidwai Memorial Institute of Oncology, appointments were made for a period of six months but they continued for a number of years. The vacancies had not been notified. The Supreme Court rejected the plea for regularisation because it was held that those persons were appointed through back door entry and, therefore, they were held not entitled to claim the said relief.

12. Similar view was expressed by the Supreme Court in the case of Arun Kumar Rout and Ors. vs. State of Bihar and Ors., 1998(2) A.T.J.

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155 wherein appointments were made on daily wage basis in Class III and Class IV in Health Department but necessary procedure was not followed. Names were not called from the Employment Exchange. The Supreme Court only went to the special facts of the case and gave certain directions to hold that the appellants had not been appointed by following due procedure and cannot claim regularisation as a matter of course. It was thereafter that on special facts of that case, certain directions were given.

13. The Allahabad High Court in the case of **Km. Grih Lakshmi Srivastava v. Director/Chief Engineer, Rural Engineering Services and others**, 1999(2) A.T.J. 331 concluded that judicial process cannot be utilised to support mode of recruitment dehors the rule. Regularisation can be made as per rules and courts could not issue direction for regularisation.

14. From the aforesaid, conclusion that can conveniently be drawn is that before a person can claim regularisation, he must be appointed by the Government against some posts. Appointments could be in terms of the recruitment rules. A back door entrant who attained the job by chance without competing with others for regular appointment, normally should not be allowed to utilise the earlier favour for subsequent regularisation.

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15. While the applicants' counsel may contend that the respondents have been seeking creation of posts and the applicants have been working continuously for many years, their duty roster is being maintained still, it must be held that they are not on the strength of the respondents (Central Jail authorities). They had been appointed as NGOs. They even admitted this that they are NGOs. If they had come for voluntary service and were not recruited in terms of any recruitment rules, indeed they cannot claim parity with any other Government servant. If there was a proper advertisement for regular vacancies, many other persons may have tried hoping to get a job. Herein nothing of that sort happened. For NGOs it would not be proper to seek parity of pay much less regularisation in service. Therefore, we are of the considered opinion that there is no merit in the present application.

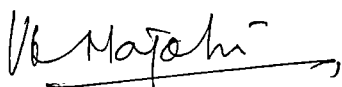
16. While it is true that a Single Bench of this Tribunal in the case of Subodh Kumar (supra) has taken a view to the contrary but we have been told that the matter is sub judice and the operation of the impugned order has since been stayed. Therefore, we are not expressing any opinion while taking a contrary view.

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17. For the aforesaid reasons, the application being without merit must fail and is dismissed. No costs.



(V.K. Majotra)
Member (A)

/sns/



(V.S. Aggarwal)
Chairman