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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 3453 OF 2001
M.A. No. 2859/2001

New Delhi, this the 11th day of July, 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K. NAIK, MEMBER (A)

1. Dr. Mrs. Asha Barman Roy
W/o Air Commdr. T.K. Barman Roy,
R/o C-1/1067, Vasant Kunj,
New Delhi.
2. Dr. G.N. Gupta,
S/o Shri S.L. Gupta,
R/o C-2/6, Ashok Vihar, Phase-II,
Delhi.
3. Dr. K.L. Kathuria,
S/o Late R.S. Kathuria,
R/o E-143, East of Kailash,
New Delhi.
4. Dr. M.C. Pandey,
S/o Shri H.N. Pandey,
R/o 369, Sector-3,
R.K. Puram,
New Delhi.

All working as Medical Officers
(Re-employment Basis)
in Govt. of NCT of Delhi.

....Applicants

(By Shri G.D. Gupta, Senior Counsel
with Shri S.K. Sinha, Advocate)

Versus

1. Govt. of NCT of Delhi,
through the Principal Secretary,
Health and Family Welfare,
Indraprastha Sachivalaya,
New Delhi.
2. Director of Health Services,
Govt. of NCT of Delhi,
Swasthya Bhavan, Karkardooma,
Shahdara, Delhi.

....Respondents

(By Advocate : Shri Rishi Prakash)

ORDER (ORAL)

JUSTICE V.S. AGGARWAL :-

MA 2859/2001

MA 2859/2001 for joining together in OA

3453/2001 is allowed.

OA 3453/2001

Applicants seek a direction to continue their services till regular incumbents through the Union Public Service Commission are made available to replace them or they attain the age of 62 years.

2. Out of the four applicants, applicant No.1 admittedly had attained the age of 62 years during the pendency of the present application. Therefore, it was conceded at the Bar that her claim has become infructuous. Therefore, we are presently concerned with applicants no.2 to 4.

3. It has been asserted that a large number of posts of Medical Officers, Specialists and other para Medical Officers in the hospitals and dispensaries run by the Govt. of India were lying vacant. On account of shortage of manpower to man these posts, the Govt. of National Capital Territory of Delhi had been appointing Medical Officers and Specialists on ad hoc basis. The applicants had applied for these posts. Applicant No.2 had served the Govt. of Punjab for 15 years. He resigned from the service because he was not getting adequate medical facilities and education for his only son. Applicant No.3 had served the Government of India for

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25 years and taken voluntary retirement under compelling circumstances due to illness of his parents while applicant No.4 had served the Central Police Organisation as Chief Medical Officer. Because of pressing family circumstances, he had also taken voluntary retirement.

4. The applicants were appointed for one year or till regular appointment takes place. After initial appointment, they have continued to work for about three years. In the meantime, there was a change in the policy reducing the age limit to 62 years for those personnel who were re-employed. It is further asserted that the respondents required more Medical Officers and 146 Medical Officers had been appointed. The grievance of the applicants is that despite all these facts, their services are being terminated without any regular appointment and accordingly they claim the relief that their services should be continued till the regular incumbents through the Union Public Service Commission are made available to replace them or they attain the age of 62 years.

5. In the reply filed, it has been pointed that the applicants have already served the Government in some capacity or the other in the past and have been re-employed. As per the principles of natural

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justice, the appointments particularly need to be given to unemployed youths who are in more need of employment~. The respondents deemed it appropriate, therefore, to take the young people and recruited them on similar terms.

6. The learned counsel for the respondents at the outset has brought to our notice, a decision of this Tribunal in the case of Dr. S.K.Bhatnagar v. Govt. of NCT of Delhi & Ors., in OA No.3455/2001 rendered on 22.10.2002 to contend that this Tribunal had already dismissed a similar application. However, perusal of the said decision clearly shows that that application was dismissed primarily on the ground that as per the contention of Dr. S.K.Bhatnagar himself on the date of the decision, he was already above 60 years of age. It was thought appropriate, therefore, that the relief claimed that he should be allowed to continue till 62 years would be improper or an exercise in futility. This is not so in the present case. Therefore, the decision in the case of Dr. S.K.Bhatnagar (supra) must be held to be distinguishable.

7. The initial order of appointment in the case of applicant No.2 reads:-

"Consequent upon their selection/appointment on re-employment on regular work charge basis in the Govt. of NCT of Delhi for a period of one year, or till attaining the age of 65 years, Or till regular incumbents are appointed, whichever is earlier, and on their having been reported for

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duty w.e.f. the dates noted against each, the undermentioned retired officers are taken on the strength of the Govt. of NCT of Delhi w.e.f. the dates of their joining and are hereby posted in the departments/Institutions noted against each, subject to the terms and conditions contained in the offer letter of even number dated 12.10.98."

Similar other orders had been passed in the case of other applicants. It is not in dispute that after the initial order, the appointment was extended from time to time till the applicants preferred the present application. Our attention has also been drawn towards a fresh advertisement that had appeared in the press for filling up the posts of Medical Officers in different hospitals on almost identical terms. This clearly shows that the respondents do require the services of Medical Officers till such time the regular appointments are made. In the case of Dr. (Mrs.) Sangita Narang and others v. Delhi Administration ETC., [1988] 6 ATC 405, this Tribunal had held that the short term appointments are made to circumvent the provisions of the recruitment rules and ordinarily the services should only be terminated when they are not required. Similar controversy had again come up for consideration before the Delhi High Court in the case of Government of National Capital Territory of Delhi & Ors. v. Dr. V. S. Chauhan in Civil Writ Petition No. 3641 of 1998 decided on 11.9.1998.

8. Identical is the position herein. The plea of the respondents, that as a policy they want to induct young people and unemployed youths as Medical Officers, must be rejected if it is at the cost of

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experienced Doctors. It is for the respondents to induct proper persons when the vacancies arise, but when the applicants are already working and there is precious little against their work and conduct on the record, we find no reason as to why their services should be put to an end on the grounds referred to above. We hasten to add that the respondents may make regular appointments in accordance with law and thereafter terminate the services of the applicants. The plea put forward, as of policy, must be held to be without any substance or merit.

9. Consequently, we allow the present application with the following directions:-

- (a) Applicant No.1 has already attained the age of 62 and, therefore, her claim has become infructuous;
- (b) The respondents would be at liberty to terminate the services of other applicants in case their performance is not satisfactory;
- (c) Subject to what has been stated above, the other applicants may be allowed to continue till the age of 62 or till such time regular appointments are made through Union Public Service Commission;
- (d) The respondents would be at liberty to take steps to fill up the posts on regular basis; and
- (e) If the regular appointments are made through the Union Public Service Commission, the respondents should be at liberty to terminate the services of the applicants before their attaining the age

of 62 years.

No costs.

Announced.

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(S. K. NAIK)
MEMBER (A)


(V. S. AGGARWAL)
CHAIRMAN

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