

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.3455/2001

New Delhi this the 22nd th day of October, 2002.

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

HON'BLE SHRI M.P.SINGH, MEMBER (A)

Dr.S.K.Bhatnagar
C/o Shri M.L.Bansal
F-37, Vikaspuri
New Delhi-110 018.

...Applicant

(By Shri Pramod Gupta, Advocate)

-versus-

1. Govt.of NCT of Delhi
Through Chief Secretary,
Delhi Secretariat, I.P.Estate
New Delhi-110 002.
 2. The Principal Secretary
Health and Family Welfare Department
Govt.of NCT of Delhi
Delhi Secretariat, I.P.Estate, 9th Floor
New Delhi-110 002.
 3. Director of Health Services
Directorate of Health Services
F-17, Karkardooma
Delhi.
 4. Medical Superintendent
Rao Tula Ram Hospital
Jaffarpur
New Delhi-110 017.
- ... Respondents

(By Ms.Meenu Mainee, proxy for Shri Harvir Singh,
Advocate)

O R D E R

JUSTICE V.S.AGGARWAL:-

Applicant (Dr.S.K.Bhatnagar) seeks to treat him as having continued in service from the date of his first appointment ignoring the break of few days and a direction to the respondents to grant him the conveyance allowance, academic allowance, annual



23

increments etc. and further that in the event of the post of Medical Officer being filled by regular recruits, he should firstly be posted in the vacant post and only after all the vacant posts are filled, regular recruits should replace him. Such replacement should be on the basis of 'last come first go.'

2. The facts alleged are that in the National Capital Territory of Delhi, a large number of ^{posts of} Medical Officers in the hospitals and dispensaries are lying vacant. Since the posts were lying vacant and the procedure for regular recruitment was lengthy, the Delhi Administration had decided to fill up the same on short term basis and was continuing these posts from time to time giving artificial breaks between two periods of appointment.

3. The applicant had taken voluntary retirement at the age of 51 years and 9 months from Haryana Civil Medical Services on 16.5.1994. Before his retirement, he was working as Medical Officer in the pay scale of Rs.4100-5300. In pursuance of an advertisement that appeared in May 1998, the applicant had applied for the post and was selected. He was appointed on regular work-charge post in Rao Tula Ram Memorial Hospital which is under the Directorate of Health Services. Before the expiry of the period of one year, the applicant had submitted a representation requesting to extend his services beyond August 1999. The applicant was given an artificial break and was

Ag

24

re-employed for another period of six months or till attaining the age of 65 years or till such time the post is filled up on regular basis. In this process, the applicant had been re-employed from time to time with artificial breaks. He claims that he is fully eligible for appointment to the post of Medical Officer and there is no dearth of work. The threat of the respondents to put an end to his services prompted the applicant to file the present application for the relief already mentioned above.

4. In the reply filed, the application has been contested. It has been pleaded that the applicant had served the Government in the same capacity or the other in the past. The re-employment was done according to the need and there is no right with the applicant to continue to the post. It has also been asserted that unemployed youths have to be re-employed because the applicant has already enjoyed his tenure with the Government. It has been pleaded that the applicant cannot be equated with youngsters and freshers who are in search of employment.

5. During the course of submissions our attention was drawn to a well-known decision in the case of **State of Haryana and others v. Piara Singh and others**, (1992) 4 SCC 118. Number of questions had come up for consideration before the Apex Court. The Supreme Court besides other questions had held that

LSA

25

blanket direction as such for regularisation could not be given where temporary or ad hoc appointment is continued for long. The Court presumed that there is need and warrant for a regular post. But there is no 'rule of thumb' in such matters. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one.

6. It was not in dispute before us that in pursuance of the earlier decision of this Tribunal dated 8.5.2000 in OA No.2108/99 (**Dr.Aparna Sehgal & Ors. v. Govt.of NCT of Delhi & ors.**) all Medical Officers appointed on contract basis under the Directorate of Indian System of Medicines & Homoeopathy were given pay and allowances in the scale of Rs.8000-13500 besides Non Practising Allowance and all other benefits and benefits of leave, increment, medical facilities etc. Therefore, the short controversy agitated before us pertained to as to whether the services of the applicant could be continued till regular appointments are made or not.

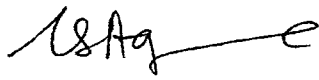
7. One is not impressed by the plea that the young people have to be recruited and, therefore, the applicant must not be given any extension. But the peculiar facts of the present application make us to conclude that the applicant indeed cannot be granted the relief.

As Ag

8. The applicant admits that he had taken voluntary retirement nearly 8 1/2 years ago at the age of 51 years and 9 months. Presently the applicant has crossed the age of 60 years which is the normal age of superannuation for all Government servants. Once that is so, we deem it inappropriate to grant any such relief prayed for by the applicant that till the posts are filled by regular recruits, he should be allowed to continue and the replacement should be on the basis of 'last come first go' for indefinite period. The very concept of fixing the age of superannuation would even lose its significance. It is true that in the order of 16.1.2001 it has been mentioned that the ad hoc appointment is upto 31.12.2001 or till attaining the age of 62 years or till regular incumbents are appointed. However, in the peculiar facts when the applicant has already crossed the age of 60 years at this stage granting the relief in the form and language couched by the applicant, would not be proper and, therefore, the case of the applicant is totally distinguishable.

9. In the peculiar facts, therefore, the application being without merit must fail and is dismissed. No costs.


(M.P. SINGH)
MEMBER (A)


(V.S. AGGARWAL)
CHAIRMAN

/sns/