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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 975/2001

New Delhi, this the 29th day of August, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member(A)

Dr. V.K. Baranwal
General Duty Doctor/Medical Practitioner
(Contract), Railway Divisional Hospital
Lalgarh, Bikaner .. Applicant
(Shri S.K. Sinha, Advocate)

versus

Union of India, through

1. General Manager Northern Railway Baroda House, New Delhi	5. Secretary Ministry of Railways Rail Bhavan, New Delhi
2. Chairman, Railway Board Rail Bhawan, New Delhi	
3. Chief Medical Director Northern Railway Baroda House, New Delhi	
4. Senior Medical Superintendent Northrn Railway, Bikaner ..	Respondents

(Smt. Anju Bhushan, Advocate for R-1 and
Shri J.R. Sharma, proxy for Shri V.S.R.Krishna,
Advocate for R-2)

ORDER(oral)

Justice V.S. Aggarwal

The applicant Dr. V.K. Baranwal by virtue of the present application seeks a direction to allow the applicant to continue on the post of General Duty Doctor till regular recruitment through the Union Public Service Commission is made and that the retrenchment should only be based on 'Last come first go' principle. It is further prayed that the applicant should be granted pay scale and allowances as are admissible to General Duty Doctors appointed on regular basis with consequential benefits of arrears of pay.

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2. The facts alleged are that the applicant was appointed as General Duty Doctor/Medical Officer on 24th December, 1997 for a period of one year. On 25th January, 1999 he was again appointed as General Duty Doctor for a period of one year on contractual basis on a consolidated salary. Similar letter for one more year was again issued on 11.4.2000 and was orally informed that beyond 3.5.2001 no further extension shall be given.

3. The grievance of the applicant in turn is that the order by virtue of which he is not allowed to continue as General Duty Doctor is illegal. Respondents are still advertising the post on contractual basis and otherwise also persons who are appointed after the applicant are being allowed to continue.

4. During the course of arguments, learned counsel for the applicant stated that he is not pressing the relief of equal pay of regularly appointed doctors.

5. On the reply side, respondents pointed out and pleaded that recruitment to Indian Railway Medical Service, which is a Group A service, is made through the combined medical services examination conducted by the Union Public Service Commission. Though sufficient number of doctors are selected by the UPSC, the number of doctors joining the Railways have been less than the requirement. In addition to this, there is always a shortage for some doctors are pursuing higher studies. Since there is no other method for recruitment to the Railway Medical Services, Ministry of Railways have decided to engage medical practitioners on service contract basis. They are paid a lump sum remuneration

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for the services rendered but it is denied that the order suffers from any illegality whereby the applicant has not been allowed to continue in service. This is so because his contractual engagement had come to an end. So far the interim order that was passed when the present application came up for admission is concerned, it was stated that one regular Assistant Divisional Medical Officer was available and services of the applicant were dispensed with.

6. We have heard the parties' counsel and seen the relevant records.

7. During the course of submissions, our attention was drawn towards the advertisements that have been released by the respondents whereby they wanted to recruit certain medical practitioners on contract basis. It is on the strength of the same that the learned counsel for the applicant contended that the respondents do require the services of doctors but for no valid reason the applicant who has served with the respondents for more than three years is not being allowed to continue. It could not be controverted that no advertisements had been issued. We therefore hold that the respondents do require the services of certain doctors till regular appointments are made.

8. In the face of this situation, it was contended that the order referred to above by which the services of the applicant have been terminated and put to an end cannot be sustained.

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9. We know from the decision of this Tribunal in the case of Dr. Sangita Narang & Ors. Vs. Delhi Admn. (1988) 6 ATC 405 that so long as there is need for manning of posts, automatic termination of the services of the ad-hoc employees would not be permissible. Termination shall be permissible if services are no more required or the performance is unsatisfactory. The decision rendered in the case of Dr. Sangita Narang had been upheld by the Supreme Court. Similarly, in the case of Govt. of NCT of Delhi Vs. V.S. Chauhan in Civil Writ Petition No. 3641 of 1998 decided by the Delhi High Court on 11th September, 1998, petition had been filed against the directions of this Tribunal which had held that the persons "concerned would be deemed to have continued in service till regular appointments are made to the posts in accordance with rules and instructions" besides certain other directions, with which we are not concerned. The Government of NCT of Delhi had challenged the said order and the Delhi High Court had dismissed. In addition, further Special Leave Petition No. 949 of 1999 was filed, which was dismissed by the Supreme Court.

10. More recently, in the case of Dr. (Mrs.) Asha Barman Roy Vs. Govt. of NCT of Delhi in OA No. 3453/2001 decided on 11th July, 2003, almost a similar situation has come up. Dr. (Mrs.) Asha Barman Roy and others were recruited keeping in view the shortage of manpower to man the posts in the Hospital. Like the present applicant, they were seeking relief that they should be allowed to continue till regular appointments are made, and other co-related reliefs with which we are not concerned. This

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Tribunal has allowed the said application keeping in view the other questions arrived at in that particular application.

11. From the aforesaid facts, it becomes clear and does not require much controversy. It is obvious as already held above that there are sufficient number of vacant posts available. The respondents are advertising and filling up posts on contract basis. Regular appointments to these posts have not been made. In this backdrop, putting an end to the contract of the applicant, who is otherwise stated to be continuously serving the department satisfactorily, appears to be illegal. We hold accordingly.

12. Resultantly, we dispose of the present application with the following directions:

- (a) The applicant shall be reinstated as a general duty doctor on the same terms as when his services were terminated;
- (b) The respondents would be at liberty to terminate the services of the applicant in case his work and conduct is not found to be satisfactory or there is any dereliction of duty in this regard;
- (c) The applicant shall continue on the terms and conditions already agreed upon till the regular appointments are made; and

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(d) It is expected that while regular appointments are made, the contract employees are replaced on the basis of 'last come first go'.

Naik
(S.K. Naik)
Member(A)

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(V.S. Aggarwal)
Chairman

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