

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2746/99
M.A.No.2772/99
with
O.A.No.2843/99
M.A.No.2855/99

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri Govindan S. Tampi, Member(A)

New Delhi, this the 19th day of October, 2000

O.A.No.2746/99:

1. Dr. Lalit Maini
S/o Dr. Sardari Lal
Junior Specialist
Lok Nayak Hospital
New Delhi

R/o 22, Samachar Apartments
Mayur Vihar, Phase I
Delhi - 91

2. Dr. Nidhi Agarwal
W/o Dr. Lali Maini
Junior Specialist
Lok Nayak Hospital
New Delhi

R/o 22, Samachar Apartments,
Mayur Vihar, Phase I
Delhi - 91

3. Dr. P. N. Pandey
S/o late Shri S.N. Pandey
Junior Specialist
Lok Nayak Hospital
New Delhi

R/o H.S. Type III, Mirdad Lane
MAMC Campus
New Delhi

4. Dr. Namita Arora
W/o Shri Sanjay Arora
Junior Specialist
Lok Nayak Hospital
New Delhi

R/o 180, Mandakini Enclave
Alaknanda,
New Delhi - 19

5. Dr. Lalitha Choudhary
W/o Dr. V.K. Dhull
Junior Specialist,
Lok Nayak Hospital
New Delhi

R/o 83, New Loyalpur,
Delhi - 52

cont'd...2/-

6. Dr. Chandra Prabhakar
S/o Shri G. Lal
Junior Specialist
Dr. N. C. Joshi Hospital
New Delhi

R/o 88D
Poochik A III
Mayur Vihar Ph III
Delhi - 96

7. Dr. Sangeeta Sudarshan
W/o Dr. P. Sudarshan
Junior Specialist
Dr. N.C. Joshi Hospital
New Delhi

R/o AI/317, Janakpuri
New Delhi - 110 058

8. Dr. Neelam Prasad
W/o Dr. Pradeep Govil
Junior Specialist
Aruna Asaf Ali Hospital,
New Delhi

R/o 3/207, Type IV Special Quarter,
Sector-I
Pushp Vihar,
New Delhi

9. Dr. Deepak Batra
S/o Shri K.L. Batra
Junior Specialist
Dr. N. C. Joshi Hospital
New Delhi

R/o 174, Ram Vihar,
Delhi - 92

10. Dr. Sunita Fotedar
W/o Dr. Arun Fotedar
Junior Specialist
L.B. Shastri Hospital
Delhi

R/o A-52, Swasthi Vihar,
Delhi - 92

... Applicants

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(By Shri K. N. R. Pillai, Advocate)

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Vs.

Govt. of NCT of Delhi
Through: The Secretary (Medical)
Health & Family Welfare Department
5, Sham Nath Marg
Delhi - 110 054.

.. Respondent

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(By Shri Rajinder Pandita, Advocate)

O.A.No.2843/99

1. Dr. Sunita Bhatt
W/o Dr. Vikas Bhatt
Junior Specialist
L.B.S. Hospital
Delhi - 91

R/o 369/C Pkt. II
Mayur Vihar Phase I
Delhi - 91
2. Dr. Rajni Khedwal
W/o Dr. P.K. Khedwal
Junior Specialist
L.B.S. Hospital
Delhi - 91

R/o J-33, Sector - 12,
Noida - 201 301
3. Dr. Prashant Jain
S/o Dr. P.S. Jain
Junior Specialist
L.B.S. Hospital
Delhi - 91

R/o A-1, Swasthya Vihar
Delhi - 92
4. Dr. Gurpreet Singh Sethi
S/o Dr. R.S. Sethi
Junior Specialist
S.G.M. Hospital
Delhi

R/o B2-B/16, Janakpuri
New Delhi - 58
5. Dr. Anjali Sethi
W/o Dr. P.K. Sethi,
Junior Specialist
D.D.U. Hospital
New Delhi

R/o C-3/153, Janakpuri,
New Delhi - 58

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6. Dr. Kartik Saxena
S/o Lt.Col K.N. Saxena
Junior Specialist
M.B. Hospital
Delhi

R/o 5-B/1, Tilak Nagar
New Delhi - 18

7. Dr. Anand Kumar Bansal
S/o Shri Jagat Narain
Junior Specialist
M.B. Hospital
Delhi

R/o B-3/28, Main Wali Nagar
Sunder Vihar
New Delhi - 87

8. Dr. Vikas Gupta
S/o Shri S.C. Bindlesh
Junior Specialist
M.B. Hospital
Delhi

R/o MP-30, Maurya Enclave,
Delhi - 39

9. Dr. Rekha Dewan
W/o Dr. D.K. Dewan
Junior Specialist
S.G.M. Hospital
Delhi

R/o UU-188, Vishakha Enclave,
Pitampura, Delhi.

10. Dr. Sanjeev Arora
S/o late Shri V.D. Arora
Junior Specialist
R.T.R.M. Hospital
Delhi

R/o 108, Airport Apartments,
Vikaspuri,
New Delhi

11. Dr. Mrinalini Mani
W/o Dr. Chantamani
Junior Specialist
Tilak Nagar Colony Hospital,
New Delhi

R/o JP-97, Maurya Enclave,
Pitampura,
Delhi - 34.

... Applicants

(By Shri K.N.R. Pillai, Advocate).

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Vs.

Govt. of NCT of Delhi
Through:
The Secretary (Medical)
Health & Family Welfare Department
5, Sham Nath Marg
Delhi - 110 054. ... Respondent

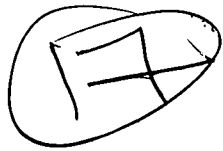
(By Shri Rajinder Pandita, Advocate)

O R D E R (Oral)

Justice V. Rajagopala Reddy:

In response to an advertisement made by the Government of NCT of Delhi inviting applications for filling up the posts of Junior Specialists, on contract basis, and on consolidated salary of Rs.15,000/- Per Month without NPA, applicants having been applied for the same, were appointed to the post of Junior Specialist in the various vacancies of specialities in the various medical institutions under the Government of NCT of Delhi. They were initially appointed for a period of six months vide order dated 12.10.1998 and they have been extended for a period of six months on ad hoc basis vide order dated 19.4.1999, after artificial breaks of 2 to 7 days in between. Specialists Gr.II in Central Health Service are in the pay scale of Rs.10,000-15200 with usual allowances and NPA. Before the expiry of one year period the applicants approached this Tribunal for their continuance as Junior Specialists, with all the benefits and allowances as are payable to the regular Specialists Gr.II in Central Health Service. While issuing notices, this Tribunal vide order dated 28.12.1999 ordered that they shall not be replaced by ad hoc appointments of fresh Doctors until the regular appointments are made subject to the availability of the vacancies. The applicants have thus been continuing in service as on date. Learned counsel for

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the applicants placing reliance upon Dr.(Mrs.) Sangeeta Narang & Others Vs. Delhi Administration & Others, 1988(6) ATC 405 a decision of the Principal Bench and Govt. of NCT of Delhi Vs. Dr. V.S.Chauhan, etc., CWP No.3641/98, a Judgement of the Delhi High Court dated 11.9.1998, strongly urges that in the circumstances of the case, the applicants are equally entitled for the reliefs granted in the above judgements.

2. The learned counsel for the respondents however submits that the OA itself is not maintainable as the applicants filed the OA without making any representation to the Government. It is also the contention of the learned counsel for the respondents that the OA is premature. The applicants, it is further contended, are not entitled for the same for continuing in service as their appointment is for a specific period on contract basis and after expiry of the period they will have to quit. It is also stated that even if they be continued they are not entitled for pay as payable to regular Specialists Gr.II in Govt. of India.

3. The preliminary objection as to the maintainability of the OA has to be considered. The learned counsel for the respondents submits that before approaching this Tribunal two conditions are required to be complied with. One is, a person should be aggrieved by an order and two he must have filed an appeal or representation, and awaited for its disposal for six months. Both the conditions are not complied with he argues. We do not agree. In the present case

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the appointment of the applicants was for a brief period, which itself gave a cause of action to approach the Tribunal, as according to them, they are entitled to be continued till the regularly appointed junior specialists are selected and appointed in their place. The applicants are also aggrieved of their appointment on a consolidated pay. Thus, on both grounds the applicants are aggrieved. The question of making representation and waiting for six months would not also arise as by that period their period of appointment would ^{have} ~~be~~ expired. In fact, similar objection has also been considered by the Tribunal in Dr. J.P.Pallia and Others Vs. Govt. of NCT of Delhi, OA No.2564/97 and batch which rejected the contention. In the circumstances, we do not find any merit in this contention. The decision cited by the learned counsel, i.e., Kumari Pritu Chopra Vs. Managing Director, M.P.Hastshilp Vikas (Delhi), AISLJ 2000(2) HC(Delhi) P-197 (CW No.1006/98) is not applicable in this case.

4. We have carefully considered the contentions raised in this case. It is no doubt undemiable that the applicants are appointed on contract/ad hoc basis on a consolidated pay and in the ordinary course, ad hoc appointees cannot be heard to say that they have a right to continue after the contract period is expired. The case of the applicants, however, should be viewed placing it on a different pedestal. However, in the present case, the proceedings dated 24.4.1998 of the Government of India are brought to our notice which read as under:

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"As no final decision could be taken on the issue regarding the encadrement of these posts in CHS, keeping in view the observations of the former PM as Minister of Health & Family Welfare. Till such time these posts are encadred in CHS, the Ministry of Health will not be in a position to initiate the recruitment process as they would continue to be under the control of Govt. of NCT only, for all practical purposes. Therefore, it is suggested that till such time a decision is taken on the issue of encadrement of the posts of Specialists in GNCT, Delhi in CHS, if considered necessary and expedient, the Govt. of NCT may go in for regular/adhoc/contract appointment."

5. Thus, it is clear that as the posts of Junior Specialists in Govt. of NCT have not been encadred, the Ministry of Health would not be in a position to initiate the recruitment process and all the posts are under the control of the Govt. of NCT of Delhi. Therefore, Government of India has categorically suggested, as it was not possible to appoint Junior Specialist, the Government of NCT was permitted to go on appointing the Doctors "on regular/ad hoc/contract basis". It is not the case of the respondents that the posts having now been encadred so that the regular appointments could be taken up. In view of these circumstances, the Government has, perforce, to continue with the ad hoc appointees to the posts of the Junior Specialists. In the back ground of this situation, the Government cannot be heard to say that the applicants should not be continued or that they should continue only on contractual and on consolidated basis. They are entitled for continuance on the same terms on which the regular Specialists appointed under the Central Health Services with all attendant benefits like NPA, etc. but only till the Junior Specialists are encadred and regular recruitment has been taken up and their posts have been filled up by the Govt. of India. We are supported, in our view, with

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Dr. Sangeeta Narang's case (supra). In that case also the question of continuation and payment of regular pay and allowances to Junior Medical Officers appointed on contractual and ad hoc basis has been considered by the Tribunal (Principal Bench) and allowed the claims made by the Junior Doctors. The OA was disposed of with the following directions:

"Hence, we quash the impugned orders in all these applications and hold that all the Junior Medical Officers, Grade II appointed purely on ad hoc basis would be entitled to the same pay scale of Rs. 700-1300 and allowances as also the same benefits of leave, maternity leave increment on completion of one year and other benefits of service conditions as are admissible to the Junior Medical Officers appointed on regular basis in the pay scale of Rs. 700-1300. Further, notwithstanding the break of one or two days in their service as stipulated in their appointment letters, etc, they shall be deemed to have continued in service ever since the day of their first appointment. As far, the days on which they did not actually discharge the duties on account of artificial breaks, etc. at the end of every 90 days, we direct that the said period would count as duty for continuity of service and the same will be treated as leave to which the applicants will be entitled at par with regular Junior Medical Officers, Grade II."

6. The SLP filed against this Judgement was dismissed. Similar is the decision of the Delhi High Court in Dr. V.S. Chauhan's case and the SLP filed against the said judgement has also been dismissed by the Supreme Court. Thus, it is clear that the claims of the applicants are covered by two judgements which have been upheld by the Supreme Court. Learned counsel for the respondents, Shri Rajinder Pandita, cited several decisions in support of his contention that basically the contract employees or employees appointed on ad hoc basis are only governed by the terms of their appointments and they do not have any right for parity of pay scales with regularly appointed employees as per their recruitment rules.

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This contention is unexceptional. However, in view of the factual matrix of the case, as stated supra as the Government is unable to proceed to recruit Junior Specialists on regular basis and the necessity of the Junior Specialists to attend to the medical care which is pitifully lacking in the hospitals of the Govt. and the serpentine cues of the poor patients ever on the increase the Govt. cannot afford to dispense with their services. It is also necessary for the Government to pay the specialist doctors keeping with the dignity of their profession and considering their super speciality qualifications. Doctors have been chosen from among the meritorious among the students. They would have undergone rigorous training to complete their course for long years and it is eminently desirable for the Government to pay them suitable pay for their life saving services.

7. The contention of the learned counsel for the respondents that the applicants should be given the benefits only prospectively but not retrospectively is not valid. There can be no reason to deprive them of the benefits, as the same was also given retrospectively, in Sangeeta Narang's case (Supra).

8. In the circumstances and also in view of the Judgements of the Tribunal and the High Court as well as the Supreme Court, we allow these two OAs. Respondents shall continue the applicants in service paying the same pay scales as are being paid to the regularly appointed Junior Specialists Gr.II in the

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Government of India with all attendant benefits, from the date of their respective initial appointments on contractual basis. The direction shall be implemented within a period of three months from the date of receipt of a copy of this order.

(GOVINDAN S. TAMPI)
MEMBER(A)

(V. RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

/RAO/