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Central Administrative Tribunal, Principal Bench

Original Application No.701 of 1999

New Delhi, this the 9th day of December, 1999

Hon'ble Mr.R.K.Ahooja, Member (Admnv)
Hon'ble Mr.Kuldip Singh, Member(J)

Dr. Mohd. Parvez Khan s/o Mr. Mohd.
Mian Khan r/o 17 Old Residents Hostel Lok
Nayak Hospital New Delhi - 110 002 till
the impugned action employed as Senior
Resident (Adhoc basis) - Applicant

(By Advocate: Shri B.S.Jain)

Versus

1. Chief Secretary Government of N.C.T.
2. Lok Nayak Hospital (LNJP Hospital)
through its Medical Superintendent Lok
Nayak Hospital New Delhi - 110 002. - Respondents

(By Advocate: Shri Vijay Pandita)

O R D E R

By Mr. R.K.Ahooja, Member(Admnv)

The applicant after doing his Post-graduation in Medicine sought an appointment as a Senior Resident with the LNJP Hospital and was called for interview and claims that he had topped in merit for selection. However he was not appointed because it was found that having been born on 29.8.1965, he was over age by two days on 31.8.1998 which was the cut off date for the upper age limit of 33 years. He says that he made an appeal to the Lt.Governor but in the meantime he was appointed as a Senior Resident in LNJP Hospital on an ad hoc basis by an order dated 14.10.1998 (Annexure-A-4). This ad hoc appointment was for 89 days which was further extended by another 89 days. His grievance is that the respondents annoyed by his appeal to the Lt.Governor, which came afterwards to them, issued the impugned order dated 18.3.1999 giving him one day's notice of termination of adhoc services w.e.f. 20.3.1999. The applicant now has approached the

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Tribunal to quash the aforesaid impugned order and also seeks an order to quash the fixation of the upper age limit of 33 years by the respondent-Hospital as being arbitrary and without any rational basis.

2. The contentions of the applicant are two fold. On the question of age of 33 years, he states that this upper age limit is arbitrary as no rational basis for fixing it has been shown. He points out that in some Institutions like Sanjay Gandhi Post Graduate Institute (for short 'SGPGI') Lucknow, it is 35 years. Secondly, he contends that the applicant was called for an interview for the post of Senior Resident after verifying his particulars; what is more, the respondents had also given him an appointment as Senior Resident on an adhoc basis despite their own objection that he was overage for this appointment; and in view of this position, the respondents are now estopped from taking the plea of his being overaged.

3. We have heard the counsel. In regard to the argument that there is no rational basis for fixing the upper age limit of 33 years, we are unable to agree with the submission made on behalf of the applicant. The Residency Scheme, a copy of which has been annexed by the applicant at RJ-1 shows that it is applicable to all Central Government hospitals, statutory and autonomous bodies wholly financed by the Central Government. According to Para 3(b)(ii) the age limit for appointment to the positions of Senior Residents shall be 33 years in case of Post-graduates; and 35 years in case of post-doctoral degree holders, with effect from 6.5.1991.

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The relaxation of five years is available only for SC/ST candidates; and upto 35 years in case of widows, divorced women, and women judicially separated from their husband. The object of the Residency Scheme is to provide opportunity of 'hands on training' after graduation and post-graduation. The Senior Residency is also a pre-qualification for consideration for appointment against teaching posts in Medical Colleges. The Junior Residency has to follow immediately after acquisition of MBBS degree and Senior Residency after acquisition of MD/Ms degree. The learned counsel for the applicant was unable to show as to whether on the basis of the time taken for acquiring MD/MS degree there is any sound basis for raising the upper age limit for appointment as Senior Resident. So long as the prescribed age limit is applied uniformly and no exceptions are made but for those provided in the Scheme itself, this Tribunal cannot, in judicial review, interfere in the matter. As to the point that certain other Medical Institutions like SGPGI at Lucknow have fixed the upper age as 35 years, admittedly, the said Institution is not a part of the hospitals and institutions covered by the Residency Scheme of Government of India. We are also not aware as to whether the SGPGI is on equal footing in terms of courses and degrees awarded as is LNJP Hospital. Hence no comparison can be drawn between the two.

4. As regards the second limb of applicant's case, namely, that having been granted an adhoc appointment it must be deemed that the requirement of upper age had been relaxed, we find that no claim can arise de hors the provisions of the Scheme. We have not

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been shown as to whether there is a provision for relaxation beyond what is already provided in the Scheme. It has been held in State of Punjab Vs. Jagdip Singh, AIR 1964 SC 521 that where a Government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given the particular status. Therefore, the appointment of the applicant on adhoc basis contrary to the provisions of the Scheme does not give any right to the applicant to continue in the said position. Even the argument that the applicant because of his appointment has given up other options would not be relevant. As held in Ahmedabad Municipal Corporation Vs. Virendra Kumar Jayantibhai Patel, JT 1997(7) SC 14 if any room is given for equity or sympathy, the statutory recruitment rules would become nugatory, which would lead to nepotism. It is, therefore, not safe to bend the arms of law only for adjusting equity. If the applicant's disqualification in age was to be overlooked, then there would be discrimination against those who did not apply because of being overaged or who had applied and were rejected.

5. The learned counsel for the applicant sought to rely on the judgment of this Tribunal in case of Dr.(Mrs.)Sangeeta Narang and others Vs. Delhi Administration and others, ATR 1988 (1) 556. The applicants before the Tribunal were short-term Junior Medical Officers who had been appointed for a period of 90 days in the first instance. The contract

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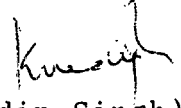
appointments were renewable for another 90 days. The applicants were paid consolidated monthly wage of Rs.650/- per months besides NPA and other allowances. Their prayer before the Tribunal was that they were entitled to equal pay and allowances as Junior Medical Officers appointed on regular basis and further that their services were not liable to be terminated till the vacancies were filled up on regular appointment. The Tribunal concluded that the services of the applicants could be terminated only if the same were no longer required or if the concerned authority was of the opinion that the performance of the particular applicant was not up to the mark or he was not otherwise suitable for the post. The prayer for equal pay was also granted. The matter was taken before the Supreme Court but their SLP was dismissed. In a later judgment the Tribunal in OA No.2985/97 (Dr. Mala Singh Vs. Govt. of NCT of Delhi and another) and two other connected cases decided on 17.8.1998 also granted a similar relief and this order was also upheld by the Delhi High Court. In our view the ratio of Sangeeta Narang's case (supra) is not applicable to the present case as the prayer of the applicant is not for grant of pay of the Senior Resident but for his regular appointment contrary to the provision of the Scheme. The learned counsel also cited the judgment of this Tribunal in OA No.579/97 as also the CP No.105/97 in the case of Dr. Sandeep Kumar Vs. Govt. of National Capital Territory of Delhi and others, decided on 4.6.1997. In that case the petitioner had been appointed as Senior Resident doctor in a stop gap arrangement against a post meant for a scheduled caste candidate. The respondents in the

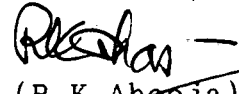
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Contempt Petition gave an undertaking to continue the petitioner as a Senior Resident till such time that a regularly appointed scheduled caste candidate became available. The argument of the learned counsel was that the present applicant should also be allowed to continue on adhoc basis since at any time vacancies were available on one count or the other. We do not consider that these decisions are of any help to the applicant who on his own showing was not qualified to hold the post due to his having exceeded the upper age limit. The appointment of the applicant being ab initio violative of the scheme he can not claim a right to continue either on a regular or on adhoc basis.

6. In the result, finding no merit in the OA, the same is dismissed without any order as to costs.


(Kuldip Singh)
Member(Judicial)


(R.K. Aheer)
Member (Admnv)

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