

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A. No.1603/98

New Delhi this the 16th Day of September, 1998

Hon'ble Mr. Justice K.M. Agarwal, Chairman  
Hon'ble Mr. R.K. Ahooja, Member (A)

Dr. (Mrs) Ritu Chhiber,  
W/o Dr. Sandeep Prabhakar,  
R/o C-84 Pocket B,  
Mayur Vihar II, Delhi-110 091. ... Applicant

(By Advocate: Shri M.M. Sudan and  
Shri B.K. Punj)

-Versus-

Union of India, through

1. Director General,  
Directorate General of Health Services,  
Nirman Bhawan, New Delhi.

2. Medical Superintendent,  
Dr. R.M.L.Hospital, New Delhi.

3. Dr.(Mrs.) Manorma Singh,  
Head of Department,  
Gynaecology & Obstetrics,  
Dr. R.M.L. Hospital,  
New Delhi.

Respondents

(By Advocate: Shri N.S. Mehta)

ORDER

Hon'ble Shri R.K. Ahooja, Member (A)

The case of the applicant is that on the basis of the recommendations of the duly constituted Selection Committee, she was appointed as a Sr. Resident in the Gynaecology and Obstetrics Department of Dr. R.M.L. Hospital, New Delhi w.e.f 16.11.1986. This appointment was termed ad hoc in view of the fact that no post under general category was available and she was adjusted against a post reserved for SC/ST. The applicant continued to work as Sr. Resident on the basis of successive 89 days extentions, the last of which was granted on 4.5.1998 and was effective till 6.8.1998. The applicant alleges that subsequent to her appointment,

another person Dr. Namita Kapoor was also appointed on ad hoc basis and she joined on 28.11.1997. Applicant alleges that since Dr. Namita Kapoor was the daughter of a former Additional Medical Superintendent, the Head of the Department, Respondent No. 3 started harassing the applicant so that if the applicant left service Dr. Namita Kapoor could be regularised instead. According to the applicant this harassment took the form of longer than permissible hours of work and refusal of maternity leave even though the applicant was experiencing medical complications. The applicant submits that this harassment finally culminated in refusal of the respondents to grant her further extention thus terminating her services.

2. The respondents have submitted a short reply. They state that the applicant who belongs to general category was selected against a vacancy reserved for ST candidate and she continued in the ad hoc capacity upto 6.8.1998. During her last extended period, she worked upto 11.5.1998 and submitted an application on 10.5.1998 for maternity leave with effect from the same date but no confinement certificate was submitted. Furthermore, an ad hoc employee is not entitled to maternity leave. She was also not given further extention as the Head of the Department, Respondent No. 3 had recommended against her as the applicant's performance was not satisfactory. The respondents have also pointed out that an advertisement had been published in the Employment Exchange on 11/17.4.98 for filling up the post of Sr. Resident in

Gynaecology. The applicant had applied for this post and had appeared in interview. However, a candidate has already been selected and appointed.

(5)

3. We have heard the counsel. Shri M.M.Sudan, learned counsel for the applicant has strenuously argued that the Residency Scheme, a copy of which has been placed at Annexure A-II is for a tenure of 3 years. Therefore, the applicant having once been appointed had a right to continue for the full tenure of 3 years. He submitted that the experience as Sr. Resident is now a pre-requisite for obtaining teaching posts both in the public and private sectors; even for non teaching posts the requisite experience could be obtained only through the Sr. Residency. It was also argued that if the applicant had been found good enough for grant of an extension over a period of one and a half years, there was no basis for adjudging her work as unsatisfactory when she had been mostly on maternity leave during the relevant period. Shri Sudan pointed out that every female has a right to maternity leave and this facility is available even to apprentices as per Rule 43 of CCS (Leave) Rules, 1972.

4. We have given careful consideration to the above mentioned arguments. Admittedly, the applicant's employment continued on an ad hoc post as this appointment was against a reserved vacancy while she belonged to the general category. In these circumstances the applicant had no automatic right to continue for a period of 3 years. Even otherwise, there cannot be an automatic right to continue for a period of 3 years as

(5)

Sr. Resident irrespective of the performance of the appointee. Para 3 (b) (v) of the Scheme reads as follows:

(b)

"The senior residents serving in institutions/hospitals under the direct control of Govt. will be treated as temporary Govt. servants and governed by the Central Civil Services (Temporary Services) Rules, 1965".

Thus, the services of Senior Residents who are governed by CCS (TS) Rules, 1965 can be dispensed with under Rule 5 thereof by giving one month's notice. The applicant, even if she had been appointed on a regular basis, could not have claimed that her services could not be dispensed with in terms of the Temporary Service Rules. However, in applicant's case the situation was that she was working on an adhoc basis against a reserved vacancy, her service being continued each time for three months with technical breaks. The respondents were, therefore, perfectly within their right to allow the appointment to lapse if for whatever reason she was found to be unsuitable to be continued or because the SC/ST claimant to the vacancy had arrived.

5. We further find that there was a notification ~~for~~ by the respondents <sup>for a</sup> regular appointment, and the applicant participated in the selection process. However, we are told, she did not make the grade and the person selected has also since been appointed. In these circumstances we find no good ground for her claim that she be allowed further extention and her appointment regularised to enable her to complete the full three years of Sr. Residency.

(b)

6. The applicant has also alleged malafide against her head of department. It has been alleged that she was discriminated while being assigned duty and also that she was not granted maternity leave which was due to her. We find from a perusal of the Residency Scheme that Resident Doctors will not normally "be given continuous active duties exceeding 12 hours per day". This means that longer hours can be assigned subject to the exigencies of work. There is no allegation that it was only the applicant who was being assigned longer hours of work; on the other hand, the allegation is that the duty roster was prepared in a manner that by doing consecutive 24 hours duty some of the Sr. Residents could take off the rest of the week as the maximum hours of work prescribed is 48 hours in a week. In regard to her claim to maternity leave, we find that as per Govt. of India OM No. 13018/1/82-Estt(L0 dated 24th July 1986, the leave benefits to which temporary Govt. servants are entitled are made available to ad hoc employees only if they continue beyond a period of three years without break. In the case of the applicant the ad hoc employment was for much less than three years and therefore she could not claim salary for the period she was absent due to her confinement.

7. In the result we find that O.A. is without merit and therefore the same is dismissed. No costs.

*K.M.*  
(K.M. Agarwal)  
Chairman

*R.K. Anooja*  
(R.K. Anooja)  
Member(A)