

Central Administrative Tribunal
Principal Bench

O.A.No.2282/98

with

O.A.No.2283/98

Hon'ble Shri A.V.Haridasan, Vice-Chairman
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 23rd day of November, 1998

O.A.No.2282/98:

Dr. Amita Saxena
age 40 years
w/o Dr. Ashok Kumar
C.M.O. L.B.S. Hospital
Delhi - 110 092
r/o 5, Pariwar Apartments
Plot No.30, Patparganj
Delhi - 110 091. Applicant

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

Vs.

1. Union of India through
The Secretary
Ministry of Health & Family Welfare
New Delhi.

2. Govt. of N.C.T. of Delhi
through
The Secretary (Medical)
5, Shamnath Marg
Delhi - 110 006. Respondents

O.A.No.2283/98:

Dr. Vineet Popli
age 41 years
s/o Shri K.L.Popli
C.M.O., L.N.J.P.Hospital
New Delhi.
r/o AC/127-B, Shalimar Bagh
Delhi - 110 052.

Dr. J.P.Kapoor
age 40 years
s/o late Shri S.P.Kapoor
C.M.O., L.B.S.Hospital
Delhi - 92.
r/o A-112, Vivek Vihar II
Delhi - 110 095. Applicants

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

Vs.

1. Union of India through
The Secretary
Ministry of Health & Family Welfare
New Delhi.

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2. Govt. of N.C.T. of Delhi,
through
The Secretary (Medical)
5, Shambhav Marg
Delhi - 110 006.

... Respondents

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ORDER (Oral)

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

Both these OAs raise the same question for decision and hence they are being disposed of by this common order.

2. We have heard the learned counsel for the applicant in both the cases with patience. Despite this, however, we do not find any merit in either of the cases. In both these cases, the applicants applied for appointment to the Central Health Service. In OA No.2282/98 the applicant was offered appointment as Specialist Gr.II (Obst. & Gynae) at Patna vide letter dated 15.3.1996, Annexure-A/IV. She made a representation that her posting may be made to Delhi. On her failure to join at Patna despite reminders, the impugned order dated 25.4.1997, cancelling her offer of appointment, was issued. In the case of applicants in OA No.2283/98, Applicant No.1 was offered posting as Specialist Grade-II at Dadra and Nagar Haveli vide memorandum dated 11.9.1995. As he also failed to join his posting, the impugned order dated 9.1.1997 cancelling the offer was issued. In the case of Applicant No.2 the relevant dates are 11.9.1995 offering him the appointment at CGHS, Hyderabad and the impugned order cancelling the offer is dated 18.12.1996. In all these cases the impugned orders were issued more than a year ago.

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3. The applicants have filed an application for condonation of delay. In our view no satisfactory ground has been shown for condoning the delay in approaching this Tribunal. The applicants were all the time at Delhi and there is no reason that if they were aggrieved, they could not have come to Tribunal in time. We therefore reject the MA(s) for condoning the delay.

4. On merit also we do not find any case for the applicants. The applicants never accepted the offer of their appointment to the Central Health Service. Therefore they cannot have a grievance on the respondents' action in cancelling the offer of their appointments. The learned counsel for all the applicants, Shri K.N.R.Pillai tried to persuade us that the applicants had certain difficulties and under the guidelines framed by the respondents themselves entitled them for consideration for posting at Delhi. In this context, the learned counsel referred to the guidelines that the husband and wife, if in service, should be posted at the same station. He submitted that the applicant in OA No.2282/98, Dr.Amita Saxena's husband is posted as a Reader in Delhi University and he has a non-transferable job and therefore following the policy to keep husband and wife at the same station, the applicant also should have been considered for retention in Delhi. He also pointed out that in number of other cases the respondents have given posting to those selected, in Delhi but a similar consideration has been denied to the applicants. Even now there are vacancies available in Delhi and the applicants could easily be considered for adjustment at

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Delhi. He also drew our attention in this regard to a notice issued for fresh recruitment for filling up the vacancies at Delhi.

5. The Supreme Court has held, in Bank of India Vs. Jagjit Singh Mehta (1992 (1) SCC 306), that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers are different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In such a case the couple have to make their choice at the threshold between career prospects and family life. The applicants have made a representation to the respondents for considering their cases for posting to Delhi. Despite the fact that the respondents did not find it possible to accede to their request the applicants did not act on the offer made to them. In these circumstances, and not having been accepted the offer of appointment in the first instance, they cannot insist on the respondents to give them a posting of their own preference and choice.

6. The applicants sought an appointment to the Central Health Services fully aware of the fact that the service involves an all India transfer liability. In the present situation, it was a matter of initial appointment to the service and not merely of transfer. Being fully aware of the conditions of the service they yet did not accept the offer. This would ^{mean} have been, in other words, that they did not wish to accept the conditions of the

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service. The respondents therefore cannot be held to have done any wrong in passing the impugned orders in cancelling the offer of appointments made to the applicants.

7. In the facts and circumstances of the case both the OAs are dismissed on the ground of delay as well as on merit.


(A.V. HARIDASAN)
Vice-Chairman


(R.K. Ahuja)
Member (A)

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