

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

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CP No.53 of 1995

in

OA No.2190 of 1994.

New Delhi, this the 28th day of Sept., 1995.

HON'BLE MR B.K.SINGH, MEMBER(A)

HON'BLE Mrs LAKSHMI SWAMINATHAN, MEMBER(J)

Dr. Subodh Seth, M.S.(Genl. Surgery)  
Senior Resident(Experimental Surgery)  
NAMC, New Delhi, R/O, 946 Hari Singh Nalwa  
Street No3,  
Karol Bagh,  
New Delhi. .. .. . Petitioner.  
( through Mr B.S.Jain, Advocate).

vs.

1. Dr. A.K.Gupta,  
The Dean of Maulana Azad Medical College,  
Bahadur Shah Zafar Marg, New Delhi-2.
2. Shri P.C.Sharma, Senior Administrative Officer,  
NAMC New Delhi.-2. .... Contemners,  
(through Mr Rajinder Panditta, Advocate)

ORDER

PER HON'BLE MR B.K.SINGH, MEMBER(A)

This C.P.No.53 of 1995 in O.A.2190/94  
has been filed for non-compliance of the order  
dated 17th January, 1995. The operative  
portion of the order is contained in para 7, which  
reads as follows:

"This OA succeeds in part and is allowed. The  
impugned order dated 20.10.1994 passed by the  
Senior Administrative Officer(Annexure A-1 to  
this OA) is quashed. The Senior Administrative  
Officer is directed to act in accordance with  
law and in the light of the observations  
made by us above."



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2. The Dean of Maulana Azad Medical College, Bahadur Shah Zafar Marg, New Delhi has also been arrayed as one of the alleged contemners and he was asked to appear before Court No.1 in this case. and he did not appear on the date fixed.

3. The respondents have filed the reply to the C.P. In the reply, the alleged contemners have explained that they received a copy of the order dated 17.1.1995 on 31.1.1995. Dr. Seth was asked to appear before the Dean, Maulana Azad Medical College, vide Memo.No.F.50(24-SR)/93/MC/Estt./33507 dated 20.3.1995 on 27.3.1995 at 2.00 P.M. The operative portion of the judgment was considered and the applicant was given a patient hearing. The Dean, Medical Sciences explained to the applicant that as per the records of MAMC and those procured from Lok Nayak Jai Parkash Narain Hospital(LNJPN) it appears that he had worked for three years and two months as Senior Resident in the Department of Surgery of the MAMC and the L.N.J.P.N. Hospital. The provisions of the residency scheme formulated by the Government of India and circulated vide Ministry of Health and Family Welfare letter No.S.11014/45/74-ME (PG) dated the 23rd May, 1974, as amended vide letter No.11014/3/91-ME(P) dated the 5th June, 1992 were referred to and it was explained to him that there was no justification for his continuance in view of the provisions of the residency Scheme as circulated by the Ministry of Health and Family Welfare. Taking into consideration the period spent by Dr. Seth in the MAMC together with L.N.J.P.N. Hospital, the total period came to three years and two months as against the three years period prescribed and he he could not be permitted to continue beyond that

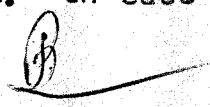


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period and accordingly an order was passed by Dr.A.K.Gupta, Dean, Medical Sciences of MAMC that the request of Dr.Subodh Seth was not tenable for further continuance as Senior Resident since this would militate against the provisions of the Residency Scheme and will amount to extension. This order was passed on 27.4.1995.

4. We have carefully gone through the operative portion of the judgment passed by the Tribunal in O.A.No.2190 /94 on 17.1.1995 and we have perused the counter-affidavit and the supplementary affidavit filed by the respondents.

5. In the additional affidavit, on behalf of the alleged contemners, it has been stated that as per the records available in the Department of surgery and Estt. Branch of M.A.M.College, it was found that Dr.Seth had worked in the department of Surgery w.e.f.28.4.1993 to 15.9.1994. He was given extension w.e.f.16.9.1994 to 20.10.1994. It has been categorically stated that Dr.Seth absented from duties w.e.f.21.10.1994 to 8.11.1994 and it was during this period that he filed a petition vide OA No.2190/94 in the Hon'ble CAT on 31.10.1994 without any information to the institution in which he was serving. On his request, vide application dated 22.10.1994 Dr.Seth was given another extension for a month from 9.11.1994 to 8.12.1994. Thereafter Dr.Seth deserted duties on his own. He could have asked for another extension for a month as a special case but <sup>he</sup> did not do it. It is further stated that there is nothing on record to show that his services were terminated/discontinued. The fact is that he himself deserted his duties. In case he was intending



to leave the job he should have intimated the college authorities/department of his intentions but none of these events took place which fortifies the belief that Dr. Seth deserted duties without any prior intimation.

6. In the additional affidavit filed, it has been clearly stated that the residency scheme permits a maximum period of three years with further extension of one month in exceptional circumstances. The rule is quoted below:

"The tenure of Sr. Residency will be three years. However the candidature of a person, who is already working as Sr. Resident in a Central Institution/Hospital may be considered for appointment as Sr. Resident in another Central Institution/Hospital if his application is received through proper channel. In such cases, the pay drawn in the previous post will not be protected. The total period however should not exceed the maximum period of Sr. Residency of three years."

7. Dr. Seth worked in the LNJP Hospital from 16.9.1991 to 27.4.1993 and computing the service period of WAMC, he completed three years on 15.9.1994, therefore, the earlier order dated 7.5.1995 was superseded restricting the service period of Dr. Seth to 3 years ending on 15.9.1994. Respecting the orders of the Hon'ble Tribunal, Dr. Seth has been paid an amount of Rs. 36,517/- vide orders dated 8.5.1995.

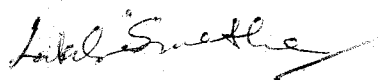
8. The respondents have not only fully complied with the orders and directions of the Tribunal contained in its judgment dated 17.1.1995 but have gone a step further and paid amounts not due to him in deference to the orders of the Tribunal.

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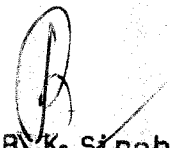
9. During the course of arguments, Shri B. S. Jain, learned counsel for the applicant has stated that the applicant has been allowed encashment of only 44 days instead of 60 days and that this should have been paid to him. He further wanted a certificate even for the period for which he did not work and the amounts were paid to him in deference to the directions of the Tribunal. The amounts were paid to him in deference to the directions of the Tribunal as stated above but were not due to him since he had not worked in view of the categorical averments made in the counter-affidavit/additional affidavit that he had deserted his duties without any intimation to the authorities, under whom he was working as such there is no question of granting any relief to him which were not prayed for in the Original Application in which judgment was given on 17.1.1995. Order 2 of the Code of Civil Procedure clearly lays down that the reliefs have to be framed so as to afford a ground for final decision upon the pleas in dispute and to prevent further litigation concerning them. If a relief is not prayed for, it will be presumed as per Order II(2), that the party or intentionally relinquishes that claim and he shall not afterwards sue in respect of the portion so omitted or relinquished. Order II(2)(iii) lays down that a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits except with the leave of the Court to sue for all such reliefs he shall not afterwards sue for any relief so omitted. The reliefs prayed for during the arguments <sup>in the C.P.</sup> cannot, therefore be considered in the light

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of the provisions contained in Order 2 of the Code of Civil Procedure. This Court is not competent to modify or substitute its own view in place of the directions issued by the Court on 17.1.1995 and we hold that the directions contained in the judgment have been fully complied with and accordingly the notices issued to the respondents are discharged and the contempt proceedings are dropped and the record is consigned to the Record Room.



( Mrs Lakshmi Swaminathan )  
Member ( J )



( B. K. Singh )  
Member ( A )

/sds/