

Central Administrative Tribunal
Principal Bench

33

O.A. No. 2095 of 1996

New Delhi, dated this the 28 - JULY, 2000.

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. KULDIP SINGH, MEMBER (J)

Dr. Manoj Goyal,
S/o Shri G.C. Goyal,
R/o J-379, 1st Floor,
New Rajinder Nagar,
New Delhi-110060. Applicant

(By Advocate: Mrs. Meera Chhibber)

Versus

1. Government of NCT of Delhi
through L.G., Delhi,
Raj Niwas, New Delhi.
2. Principal Secretary (Medical),
5, Shamnath Marg,
Government of NCT of Delhi,
Delhi.
3. Maulana Azad Medical College
through its Dean,
New Delhi. Respondents

(By Advocate: Shri Rajinder Pandita)

ORDER

MR. S.R. ADIGE, VC (A)

Applicant was appointed as Asst. Professor in Dentistry Department, M.A.M. College on ad hoc basis w.e.f. 5.7.91, and his period of appointment was extended from time to time. He applied for the Commonwealth Scholarship Fellowship Plan 1996-97 in Medicine (Dentistry) for U.K. on 17.10.95. M.A.M. College forwarded his application to M&PH Dept., Govt. of NCT of Delhi vide letter dated 10.11.95. Government of NCT of Delhi gave its 'No Objection' to applicant being interviewed by H.R.D. Ministry for the aforementioned Fellowship on 1.1.96 vide letter dated 28.12.95 (Annexure R-1). H.R.D. Ministry

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(34)

informed him that he had been selected for this prestigious award vide letter dated 25.3.96 (Annexure P-VI). Applicant sought for 'No Objection Certificate' and grant of leave of the kind due to enable him to participate in the scholarship programme vide letter dated 20.8.96 which was forwarded by M.A.M. College to Government of NCT of Delhi on 10.9.96 (Annexure P-VII Colly.). On 13.9.96 (Annexure P-VIII) he was communicated the formal notification of the award of the scholarship, whereby he was placed at Eastman Dental Institute, London University. On 18.9.96 (Annexure P-IX) he received a fax message instructing him to register by 30.9.96.

2. Applicant states, and respondents do not deny, that thereafter on 19.9.96 itself, and on several subsequent occasions, he met the concerned authorities to expedite orders permitting him to proceed to U.K. to attend the programme, but received no reply. Meanwhile he contacted the University authorities in U.K. by fax message explaining his difficulty, who by reply dated 25.9.96 (Annexure P-X) advised him to register on 30.9.96 and if not by that date, then latest by 7.10.96 failing which he would not be allowed to join it.

3. Not getting the necessary clearance from the authorities of Govt. of NCT of Delhi even thereafter despite personal requests, applicant filed this O.A. on 30.6.96 seeking directions that

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- i) he was entitled to the study leave or leave of the kind due for pursuing further studies which was in the public interest.
- ii) direct respondents to regularise the period he would spend on further studies.
- iii) pass any further order.

4. The O.A. came up on 30.9.96. After hearing both sides and having regard to the fact that time was very short, an interim direction was given that directing respondents to relieve applicant provisionally that day itself, without prejudice to the outcome of the O.A. and without prejudice to applicant's eligibility for grant of such leave as prayed for according to law.

5. In compliance with those directions respondents issued office order dated 30.9.96 (Annexure M-1) relieving applicant provisionally w.e.f. 30.9.96.

6. Pursuant to the aforesaid relieving order, applicant proceeded to U.K. and completed his M.Sc in maxillo facial surgery (Annexure M-11) and also acquired on his own a Fellowship in Dental Surgery from the Royal College of Surgeons where he won a Medal (Annexure M-11A).

7. On completing his studies in U.K. on 30.9.98, he returned to India on 3.10.98, and 4.10.98 and 5.10.98 being holidays, he reported for duty on

2

6.10.98 to Dean, M.A.M. College, and submitted joining report (Annexure M-III) but he was not ~~was~~ allowed to join.

8. In this connection applicant has filed M.A. No. 2341/98 seeking a direction to respondents to permit him to join duty immediately. In reply respondents contend that applicant was appointed in M.A.M. College on ad hoc basis from 5.7.91 which was extended from time to time and the extension came to an end on 30.9.96. It is contended that applicant was relieved to attend the scholarship course only as per interim directions of the Tribunal, and as he was appointed on ad hoc basis, there is no provision for retaining lien for ad hoc employees. Respondents contend that as applicant is not a Government employee after 30.9.96 he does not enjoy an enforceable legal right to compel respondents to take him back on duty.

9. These contentions are denied by applicant in his rejoinder who states that M.A.M. College had been ~~recommend~~ ^{recommending} his name for extension beyond 30.9.96 like other doctors.

10. Additional pleadings have also been filed, from which it is clear that applicant has been paid his salary in India by respondents beyond 30.9.96 while he was attending the scholarship in U.K. atleast upto January, 1997 if ~~not~~ ⁷ ^{and} beyond, ~~that~~ he has also been permitted by respondents to retain

the Government accommodation allotted to him in M.A.M. College while he was participating in the scholarship programme.

11. In the background of respondents' own conduct as noticed in paragraph 10 above, an irresistible inference is raised that they themselves treated applicant to be ^{on} their rolls well beyond 30.9.96 and they cannot now take the stand that applicant has no enforceable legal right to compel them to take him back on duty.

12. The question whether doctors employed on contract basis were entitled to the same pay scales and allowances, as well as the same benefits of leave, increment after completion of one year, maternity leave and other benefits of service conditions as were admissible to medical officers appointed on regular basis in the corresponding pay scales, was examined by the C.A.T., P.B. in O.A. No. 2984/97 Dr. J.P. Paliya & Others Vs. Government of NCT of Delhi and others and connected cases. Those O.As were allowed by C.A.T., P.B. in its order dated 23.4.98. While doing so the C.A.T., P.B. noticed the C.A.T., P.B. order in Dr. (Mrs.) Sangeeta Narang and others Vs. Delhi Administration & Others ATR 1988 (1) CAT 56 6 which had been upheld by the Hon'ble Supreme Court, pursuant to which Health Ministry, Government of India had issued order dated 2.11.88 in which it had been stated that all the medical officers appointed on monthly wage (contract basis) on a consolidated salary would be ^{entitled to a} ~~appointed~~

(38)

the same pay scale and allowances and also the same benefits of leave, maternity leave, increment on completion of one year service and other benefits as were admissible to medical officers appointed on regular basis.

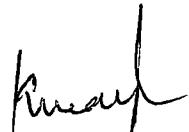
13. Relying on the judgment in Dr. (Mrs.) Sangeeta Narang's case (supra) and other rulings, the Tribunal in Dr. Paliya's case (supra) while allowing those O.As ~~to be appointed~~ by its order dated 23.4.98, had directed Respondents to grant those applicants the same pay scales and allowances and also the same benefits of leave, increment on completion of one year, maternity leave and other benefits of service conditions as were admissible to Medical Officers appointed on regular basis in the corresponding pay scales.

14. The challenge to the aforesaid order dated 23.4.98 was rejected with costs of Rs.2000/- for each petitioner by the Delhi High Court in its order dated 11/9/98 in CWP 3641/98, and SLP No. 949-957/99 filed against the aforesaid order was also dismissed by the Hon'ble Supreme Court on 1.2.99. Review Petition No. 547/99 seeking review of the Hon'ble Supreme Court's order dated 1.2.99 was also rejected on 28.4.99.

15. Applicant who was appointed as Assistant Professor, Dentistry on ad hoc basis on 5.7.91 and

whose appointment was extended from time to time is certainly not in a worse position than those covered by the Tribunal's order dated 23.4.98 in Dr. Palia's case (supra) and would be entitled to the benefits flowing from that order.

16. In the result this O.A. succeeds and is allowed. Respondents should take applicant back on duty forthwith, if they have not already done so, and treat the period between 1.10.96 and 6.10.98 as periods spent on study leave or leave of the kind due in accordance with rules, instructions and judicial pronouncements on the subject. Furthermore the manner in which the period from 6.10.98 till the date applicant rejoins his duty is to be treated, shall also be determined by respondents in accordance with rules, instructions and judicial pronouncements on the subject and shall pass a detailed and reasoned order in this regard under intimation to applicant. These directions should be implemented within two months from the date of receipt of a copy of this order. No costs.


(Kuldip Singh)
Member (J)

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(S.R. Adige)
Vice Chairman (A)