

8

CENTRAL ADMINISTRATIVE TRIBUNAL  
Principal Bench

O.A. No. 2158 of 1996

New Delhi, dated this the <sup>16<sup>th</sup></sup> January, 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)  
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Dr. Vikas Bajpai,  
Senior Resident,  
Dept. of Radio-Therapy,  
Room No. 55, Doctors' Hostel No.1,  
Safdarjung Hospital,  
New Delhi. ... APPLICANT  
(By Advocate: Shri A.K.Panda along  
Shri K.K.Patel)

VERSUS

1. Union of India  
through the Secretary,  
Ministry of Health & F.W.,  
Nirman Bhawan,  
New Delhi.
2. The Medical Superintendent,  
Safdarjung Hospital,  
New Delhi. ... RESPONDENTS

(By Advocate: Mrs. Raj Kumari Chopra)

J U D G M E N T

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

Applicant seeks quashing of the impugned order dated 1.10.96 (Ann. A-1) relieving him from the strength of Safdarjung Hospital w.e.f. 27.9.96 and directing him to vacate the hostel accommodation allotted to him.

2. Admittedly the applicant was offered the post of Senior Resident in the Department of Radio-Therapy, Safdarjung Hospital on ad hoc basis for a period of 89 days only, or till the post is filled on regular basis, whichever is earlier, by Respondents' Memorandum dated 27.6.96 (Ann. R-1) and the applicant accepted the offer vide his joining report dated 1.7.96 (FN) (Ann. R-2).

2.

9

The said post is a reserved post, and the Respondents have separately advertised the vacancy for being filled up on regular basis from reserved candidates, and till then as a purely stop-gap arrangement, they offered the post to the applicant who had accepted the offer, as noted above. The applicant had filed a confidential report signed by the Head of the Dept. Dr. K.T. Bhowmik (page 29 of the O.A) indicating that his work during the said period was very good. He has also filed photo copy of list of Senior Residents working in that hospital, in which the applicant features at Sl. No.6<sup>and</sup> against his name is a tick mark to show that the HOD had recommended his extension for a further period of three months, but his contention is that the Medical Superintendent at the instance of certain other doctors in the Hospital have illegally, arbitrarily and malafidely denied him that extension, merely because he was trying to root out corruption in the hospital.

3. On the other hand the Respondents in their reply state that the offer made to the applicant was purely on ad hoc basis for a period of 89 days which he accepted and he was bound by the terms and conditions of the offer. However, instead of confining himself to his profession and his own association of

A

doctors recognised by the hospital, he attempted to create a Union in the name of Samyukt Karamchari Sangharsh Morcha and Workers during August, 1996 without any registration and started instigating groups of Karamcharis, mainly belonging to Group 'D'; held meetings during office/work hours, pasted posters all over the premises, and held lunch-hour meetings/ demonstrations near the office of the Medical Superintendent called Vijay Chowk and used unparliamentary languages through public address system, against the Medical Superintendent and other Heads of Department. It is stated that he disrupted the functioning of the operation theatre and its staff involved in conducting of operation on serious patients, resorted to 'Cherao' of the Medical Superintendent for one or the other reasons, and pressurised the Medical Supdt. to issue orders for grant of extension of adhoc appointment beyond 89 days by bringing 50 or more persons at a time inside the M.S's office, and used intimidatating tactics to obtain certain files and papers. It is stated that the language of these employees was unparliamentary, crude and abusive, which created an unhealthy and unpleasant situation for the Hospital Administration because of which the day-to-day work was held up. Apart from the above, it is stated that the

*n*

11

applicant took away official papers which he <sup>has</sup> annexed with the O.A. at pages 29, 30, 31, 32 and 33. As the applicant was not attending to his duties properly and had been indulging in anti-hospital, anti-patient care activities besides gheraoing the M.S. being the appointing authority, <sup>letter</sup> he instructed the officer-in-charge of the Academic Section not to give further extension <sup>to</sup> the applicant beyond 27-9-96, and also directed the applicant to vacate the hostel premises in his occupation.

4. We have heard applicant's counsel Shri Pandit and the respondents' counsel Mrs. Raj Kumari Chopra. We have perused the materials on record, and given the matter our very careful consideration.

5. Admittedly the applicant's appointment by order dated 27.6.96 was on purely ad hoc basis for a period of 89 days, or <sup>til</sup> the post is filled up on regular basis whichever is earlier. It is also admitted that by applicant's letter dated 1.7.96 he accepted the offer of appointment on the terms and conditions contained in the Respondents' letter dated 27.6.96. Respondents' counsel has contended that the offer and the acceptance having been completed, the applicant must be deemed to have acquiesced in the terms and conditions of the appointment which was for 89 days, in accordance with the doctrine of acquiescence.

12

In this connection she has relied upon the Hon'ble Supreme Court's judgment in T.R. Kapoor & others Vs. State of Haryana & Ors. AIR 1990 (1) 89, wherein it has been held that when one has acquiesced in something one cannot challenge it later on.

6. Furthermore it is not denied that this post was a reserved one and had been advertised for filling up on regular basis, and the present adhoc arrangement was a purely stop-gap and interim till the post was filled up on a regular basis. Applicant's counsel has invited our attention to the Respondents circular dated 14.9.96 (Page 28 of the OA) outlining the procedure for extension on ad hoc basis to resident doctors, and has stated that as per that circular, in the absence of any adverse remarks received from the HOD concerned, in respect of resident doctors desirous of further extension, it would be presumed that his/her work/conduct was satisfactory and he/she will be given further extension if required. He has stated that the applicant's work was found to be very good ( page 29) and the HOD had ticked his name for recommending him for further extension (page 30), and certain notings in the departmental records of the respondents were also in favour of the applicant in granting extension ( page 32 & 33) and the M.S. therefore for purely

^

extraneous reasons declined to extend the applicant's appointment. On the other hand Mrs. Chopra has emphasised that as the applicant was admittedly appointed on purely adhoc basis he has no enforceable legal right to claim extension. Reliance has been placed on the Hon'ble Supreme Court's ruling in Director, Institute of Development & Management Vs. Pushpa Srivastava AISLJ1993 (1) 47 P.124 wherein it has been held that an ad hoc appointee has no right for regularisation. Another Hon'ble Supreme Court's ruling relied upon by the respondents is Govt. of A.P. & another Vs. A.V.Rao AISLJ 1995(2)56 P. 76 wherein it has been held that the Tribunal should not interfere with interim arrangements which have a nexus with the public interest, and in this connection it has been emphasised that the present arrangement was a purely and interim one, which warrants no judicial interference.

7. In our view, the main ground on which the respondents challenged to the OA, succeeds is the conduct of the applicant during his adhoc appointment for 89 days. Although there is a confidential report stating that the applicant's work during the period from 1.7.96 onward is very good (page 29) which appears to have been signed by the HOD. Dr. Bhowmik, the respondents have also filed a copy of a note submitted by the same Dr. Bhowmik (page 20 to the respondents' repl-y), in which it has been stated that he

had learnt that the applicant was involved in "gheraoing" the M.S. between 10.30 a.m. to 15.30 on 23.9.96, which action is not only in violation of the Govt. Servants Conduct Rules, but is wholly illegal and punishable under the relevant sections of the IPC.

The respondents are themselves on record in their reply as stating that the applicant resorted to "gheraoing" the M.S; putting pressure on him for issuing orders for grant of extension to him beyond 89 days; taking 50-60 persons at a time when he went to meet the M.S. , and while in the M.S.'s Office intimidating him to hand over certain files/ papers; using coarse , crude and abusive language to his superior officers; and threatening them with dire consequences if their demands were not met; all of which resulted in genuine hospital work being seriously hampered of . These assertions have not been successfully repelled by the applicant, and prima facie we have no materials before us to deny their correctness.

8. We have already noticed the photocopies of the various confidential documents relied upon by the applicant in support of his case (pages 29-33 of the OA). When we asked the applicant's counsel during hearing how his client came into possession of these confidential documents, no satisfactory reply was forthcoming although the applicant himself was present in Court at that time. It was claimed that he had been handed over these documents by one Dr. Somuya Rai, President, Resident Doctors Association, but under what rules and

instructions Dr. Rai had obtained them was not explained

9. Furthermore, although this does not feature in the pleadings, the applicant has himself admitted during hearing that while continuing to occupy a room in the hostel on the strength of the exparte orders issued by us on 21.11.96 he was arrested under ESMA on 31.10.96 and was released on bail on or about the next day.

10. Applicant's counsel has contended that no show cause notice was given to him before a decision was taken not to extend his adhoc appointment beyond 27.9.96 and has argued that this violates the principle of natural justice. Support has been sought from the Hon'ble Supreme Court's ruling in Neelima Mishra Vs. A.K.Pantil 1990(2) SCC 740., and also the CAT PB judgment dated 20.5.96 in OA No.985/96 Dr. Kapil Kochar & another Vs. Govt. of NCT., Delhi. In Dr. Kochar's case (Supra) the judgment itself states that the appointment was for one year renewal for another year for a maximum period of three years, subject to satisfactory service and good conduct certificate after completing one year, from the HOD concerned, and even before completion of one year's period, the service of those applicants were dispensed with. That judgment has therefore no relevance to the facts and circumstances of the present case.

11. In the present case, we hold that the applicant by his own conduct, as contained in the pleadings, has not come to the Tribunal with clean hands, and has forfeitted any claim for interference by the Tribunal. Those who invoke the law must themselves live by the law, but in the case before us we find that the applicant has himself admitted that

A

he was arrested under ESMA while enjoying the benefit of an ex parte interim order issued by the Tribunal allowing him to continue in the hostel premises in his occupation. Furthermore we have no materials to doubt the averments made by the respondents in their reply affidavit, that he subjected the M.S. to illegal pressure and intimidation; compelled him to handover confidential Govt. documents; incited Group D Karamcharis in the guise of organising a Union (unregistered) named Samyukt Karamchari Sangharsh Morcha & Workers Union; who conducted themselves in a manner wholly out of keeping with genuine Trade Union Activity; and generally behaved in a manner incompatible with his duties and responsibilities as a Govt. Officer. Under the circumstance the claim that the respondents have not complied with the principles of natural justice falls to the ground and the ruling in Neelima Mishra's case (Supra) does not help the applicant.

12. This OA therefore fails and is dismissed. Interim orders are vacated. No costs.

*A. Veda Valli*  
( DR. A. VEDA VALLI )  
MEMBER (J).

*S. R. Adige*  
( S. R. ADIGE )  
MEMBER (A).

/ug/