

(10)

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 2235 of 1997 decided on 23/6/98

Name of Applicant: Shri Dharamvir Dalal

By advocate: Shri H.K.Gupta

Versus

Name of Respondents: The D.G., ESI Corp., New Delhi.

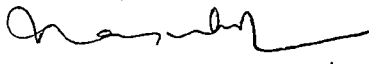
By advocate: Shri G.R.Nayyar

Coram

Hon'ble Mr. N. Sahu, Member (A)

Hon'ble Dr.A.Vedavalli, Member(J)

1. To be referred to the Reporter or not? No
2. Whether to be circulated to other Benches of the Tribunal? No


(N. Sahu)
Member (A)

28/6/98

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2235 of 1997

New Delhi, this the 29th day of June, 1998

Hon'ble Mr. N. Sahu, Member(Admnv)
Hon'ble Dr. A.Vedavalli, Member(J)

Shri Dharamvir Dalal, 36, S/o Shri
Raghuvir Singh, 1C Naosona appts West
Enclave, Pitam Pura, New Delhi-34

-APPLICANT

(By Advocate Shri H.K.Gupta)

Versus

The Director General, Employees State
Insurance Corporation Panchdeep Bhavan,
Kotla Road, New Delhi.

-RESPONDENT

(By Advocate Shri G.R.Nayyar)

O R D E R


By Mr. N. Sahu, Member(Admnv) -

In this Original Application the applicant prays for quashing an order of termination of his services dated 26.8.1997 (Annexure-A-1) and prays that there should be an equation of his services to those rendered by the medical officers although his services are as a Part-time Ayurvedic Physician. He further prays for grant of all benefits of regular service and seeks a declaration that the Annexure-A-1 is violative of Articles 14, 16 and 311 of the Constitution of India. He finally prays for considering him against existing vacancies as a regular medical officer.

2. The impugned order is extracted hereunder -

"Sub: Termination from the engagement as
Part - time Ayurvedic Physician
under ESI Scheme, Delhi

Pursuant to terms and conditions of
engagement of Dr. Dharamvir Dalal as
Part-time Ayurvedic Physician as laid down
in offer of engagement No.12(22)-1/90-Med.
dt.29.8.90.



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The services of Dr. Dharamvir Dalal as Part-time Ayurvedic Physician is not required w.e.f. 25.9.97(AN) in compliance with the terms of engagement on Part-time basis.

This communication may be treated as one month's notice."

3. The applicant states that he rendered seven years of service as a Part-time Ayurvedic Physician. He was appointed by an order dated 29.8.1990. There are number of vacancies in the rank of Ayurvedic Physician in the Employees State Insurance Corporation (hereinafter referred to as "the Corporation") even after his termination. He further points out that the Director General of the Corporation is competent to relax the recruitment rules and as the applicant has the requisite qualification besides the job experience he should be re-engaged. He further states that there was a legitimate expectation on his part after 7 years of service. He has now become overaged for any other public appointment.

4. The learned counsel for the respondents stated the background in which the applicant and other temporary Part-time Ayurvedic Physicians were appointed. Section 17 of the Employees' State Insurance Act, 1948 was amended in 1979. Recruitment regulations were framed with an independent selection board. Till the regular recruitment is done the Corporation appointed Part-time Ayurvedic Physicians on ad-hoc basis and as a stop gap arrangement. It appointed as many as 214 Ayurvedic Physicians. They were gradually replaced by regularly recruited


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Ayurvedic Physicians as per recruitment regulations. Amongst the Part-time Ayurvedic Physicians those who became eligible were absorbed. Services of about 60 Part-time Ayurvedic Physicians were terminated and 50 others resigned. The Part-time Ayurvedic Physicians who are continuing on a fixed part time remuneration of a lump sum of Rs.2,500/- are doing so because they are allowed private practice and they are running nursing homes. The Part-time Ayurvedic Physicians who are continuing are either retired persons or those who could not be selected through the Union Public Service Examination. The applicant falls in the latter category. As it is a contract engagement, it is totally outside the recruitment regulations. It is further stated that Part-time Ayurvedic Physicians perform only five hours duty with full freedom to do private practice. Their duties are more restricted and narrow than the duties of a regular Ayurvedic Physician who have to perform night duties, emergency duties and are liable for transfer to other States and stations. In para 4 of the counter, the respondents have stated that four Benches of the Tribunal have rejected the plea of automatic regularisation of Part-time Ayurvedic Physicians. In para 6 of the counter the respondents have specifically stated that "the services of the applicant have been terminated on a candidate selected in accordance with statutory regulations becoming available". It is further stated that the applicant had two chances to get selected on regular basis in the course of his part time engagement but


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he failed to pass the tests laid down in the statutory regulation. These tests were conducted in 1993 and 1996. The respondents admitted that the Government sanctioned six posts of Ayurvedic Physicians but it takes a long time to organise the ground work and the establishment of the Ayurvedic wings like finding accommodation, arranging for equipment and furniture etc. It is stated that no post of Ayurvedic Physician is available against which the applicant can be continued at present.

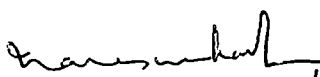
5. We have carefully considered the submissions. It is very clear from the order of appointment dated 29.8.1990 that the engagement was part time, temporary and terminable by giving one month's notice. This was complied with as the impugned order was dated 26.8.1997 made the termination effective from 25.9.1997 afternoon. The applicant was engaged to perform only five hours duty in a day with a consolidated remuneration of Rs.2,500/- per month. His duties were also restricted to give medical advice and treatment to ESI patients attending ESI Medical Institutions. We hold that a part-time physician has a no right to hold a post. The respondents are correct in saying that the vacancies have to be filled up in accordance with the recruitment regulations which are currently in force. If a regularly selected candidate through procedure established in law is available, the part-time physician has to yield the place for the regularly selected physician. The only right the



part-time physician can claim is a right of consideration along with other similarly situated persons, if he is eligible and qualified otherwise. In this connection it is necessary to mention an order no.A-12018/2/94.SS.I dated 17.3.1997 of the Government issued by the Ministry of Labour to the Director General of the Corporation. The Government directed the Corporation to give the part-time doctors a chance for appearing in any selection through the prescribed recruitment procedure by giving relaxation in the prescribed age limit equal to the period of adhoc part time service with the Corporation. The applicant, therefore, can compete in any future selection, if he comes within the relaxed age limit as per the Directives of the Government referred to above. This is the only right he can enforce against the respondents, namely, that he can compete with others in the event of a selection to a regular post provided he has the necessary qualification and the Government shall consider the age relaxation not only according to the OM mentioned above but by any other discretionary powers they have in view of the long service rendered by the applicant to the Corporation. With these observations, the O.A. is dismissed. No costs.


(Dr. A. Vedavalli)
Member (J)

rkv.


(N. Sahu) 29.6.98
Member (Admin)