IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 2564/97(MA 2535/97,MA 2895/97)
with
OA 2984/97(MA 125/98),OA 2983/97,OA 2599/97,
OA 2858/97, OA 2685/97,OA 2750/97,OA 114/98
and OA 115/98

New Delhi this the23th day of April,1998.

Hon'ble Smt.Lakshmi Swaminathan, Member (J)
Hon'ble Shri K.Muthukumar, Member (A)

OA 2564/97

1.Dr.J.P.Palyia S/O N.C.Palia,
R/o 1871,Malka Ganj, Gali Aniran,
Delhi.

2.Dr.Naveen Kumar
R/O 1799,D.A.Flats,
Gulabi Bagh, New Delhi.

3.Dr.Neeraj Khanna,
R/O BB-54-B,Janakpuri,
New Delhi.

4.Dr.Ram Chandra,
R/O 7-G,Aram Bagh,
New Delhi.

5.Dr.B.N.Mishra
R/O Doctors Hostel,
Tihar Jail,New Delhi.

6.Dr.Sanjeev Sharma
B-3-A/52-B,Janakpuri,
New Delhi.

7.Dr.Manoj Dhingra,
565/GH-14,Paschim Vihar,
New Delhi.

8.Dr.Parmeshwar Ram,
Qr.No.22,Type-I,
New H.M.D.Colony,Shahdara,
Delhi.

..Applicants

(By Advocate Sh.Gopal Subramaniam,Senior Counsel
with Sh.K.N.R.Pillay and Sh.S.K.Sinha)

Vs

1.Govt.of NCT of Delhi,
through the Secretary(Medical),
5, Shamnath Marg, Delhi-54.

2.Director of Health Services,Delhi,
E-Block,Saraswati Bhawan,
Connaught Place, New Delhi.

3.The Union Public Service Commission,
Shah Jahan Road, New Delhi.

..Respondents

(By Advocate Shri Rajinder Pandita)

OA 2984/97

Dr.Beena Bahl,
D/O Dr.S.S.Bahl,
R/o KU-70,Pritampura,
Delhi.

..Applicant

(By Advocate Sh.K.N.R.Pillay with
Shri S.K.Sinha)

Vs

1.Govt.of NCTof Delhi-through
The Secretary(Medical)
5,Sham Nath Marg,
Delhi-110054.

2.The Director of Health Services
Delhi
E-Block, Saraswati Bhavan,
Connaught Place, New Delhi.

..Respondents

(By Advocate Shri Rajinder Pandita)

OA 2983/97

In the matter of

Dr.Archana Saxena,
D/O Prof.V.S.Saxena,
Medical Officer,
R/O 303, Ambica Vihar,
Near Paschim Cihar,
New Delhi-87.

..Applicant

(By Advocate Shri K.N.R.Pillay with
Shri S.K.Sinha)

Vs

1.Govt.of NCT of Delhi-through:

The Secretary(Medical),
5,Sham Nath Marg,
Delhi-54.

2.The Director of Health Service
Delhi
E-Block, Saraswati Bhawan,
Connaught Place, New Delhi. ..Respondents

(By Advocate Shri Rajinder Pandita)

OA 2599/97

1.Dr.Abha Rani
W/o Sh.Ram SIngh,
R/o B-8A,
Shashi Garden,
Mayur Vihar,
Phase-I, New Delhi.

2.Dr.Deepti Mittal,
W/O Dr.Arun Kumar,
R/O D-2/5,Residential Complex,
D.D.U.Hospital,
New Delhi.

(13)

3.Dr.Jayshree Kumar,
W/O Dr.N.K.Girdhar,
R/O 75,Tarun Enclave,
Pitampura, Delhi-34.

4.Dr.Manoj Kumar Prasad,
S/O Mr.Narendra Prasad,
R/O RZ-20A,Madanpuri,
West Sagarpur, New Delhi.

5.Dr.Rita Roy W/O Dr.R.Mandal,
R/O 205, Pragati Vihar Hostel,
Lodhi Road, New Delhi-3

6.Dr.Manor Raj Sharma,
S/O Mr.R.C.Sharma,
R/O H.No.32/5,Gali No.5,
Subzi Mandi, Maujpur, Delhi.

All working as Medical Officer in
D.H.S.N.C.T.of Delhi.

.Applicants

(By Advocate Shri K.N.R.Pillay with Shri S.K.Sinha)

Vs

1.Govt.of N.C.T. of Delhi,
through the Secretary,
Medical 5,Shamnath Marg,
Delhi-110054.

2.Director of Health Services,
Delhi, E-Block, Saraswati Bhawan,
Connaught Place, New Delhi.

3.The Union Public Service Commission,
Shah Jahan Road, New Delhi.

.Respondents

(By Advocate Shri Rajinder Pandita)

OA 2858/97

Dr.Anjala Chaudharym
D/O Shri P.Prasad,
Medical Officer,
Directorate of Health Services
NCT of Delhi.

.Applicant

(By Advocate Shri K.N.R.Pillay with
Shri S.K.Sinha)

Vs

1.Govt.of NCT of Delhi
through the Secretary,Medical,
Old Sectt.,Delhi-54

2.The Director of Health Services
(Delhi) E-Block,Saraswati Bhawan,
Connaught Place, New Delhi.

3.The Union Public Service Commission,
Shah Jahan Road, New Delhi.

(By Advocate Shri Rajinder Pandita) .Respondents

(74)

OA 2685/97

1.Dr.Ranjana Amar,
W/O Dr.Sunil Kakkar,
Medical Officer,
R/O A-2/B, 135-A,Paschim Vihar,
New Delhi-63.

2.Dr.Savita Saini,
W/O Dr.A.K.Saini,
Medical Officer,
R/O 128-D,Sunder Apartments,
Paschim Vihar, New Delhi-87.

3.Dr.Gayatri,
W/O Dr.R.P.Singh,
Medical Officer,
R/O 164,Sector III,
R.K.Puram, New Delhi-22

4.Dr.Ram Ratan Rathi,
S/O Sh.Dharam Singh
Medical Officer,
R/O 1140 Rajgarh, St.No.4,
Jheel, Delhi-31.

5.Dr.Sameer Pandit,
S/O Shri R.K.Pandit,
Medical Officer,
R/O E-4,Nawada Housing Complex,
Kakrola More, Uttam Nagar,
New Delhi-59.

6.Dr.Yogeshwar Prasad,
S/O Sh.Sudarshan Ram,
Medical Officer,
R/O Type-1,Qr.No.16,
Old HMD Colony,Shahdara, Delhi-95.

7.Dr.Rajiv Kumar Aggarwal,
S/O Shri Krishna
Medical Officer
R/O 40, Rail Vihar,
Sector-30, Noida(UP)

8.Dr.Sharad Kumar Gupta,
S/O Shri M.L.Gupta
Medical Officer,
R/O I-16,Street No.8,Vijay Chowk,
Laxmi Nagar, Delhi-92.

9.Dr.Meenakshi Garg,
W/O Dr.Alok Garg,
Medical Officer,
R/O 163, Balco Apartments,
581P Extn.Delhi-110092

10.Dr.Sunila Mehra,
D/O Shri R.P.Mehra,
Medical Officer
R/O S-455,Ground Floor,
Greater Kailash-1,New Delhi-48.

11.Dr.Anita Pathroliya,
W/O Dr.R.K.Lookar,
Medical Officer,
R/O 75-76,Looker Niwas,
Narela Road, Alipur,Delhi-36. ..Applicants

(By Shri K.N.R.Pillay with S.K.Sinha)

(13)

1. Govt.of NCT of Delhi
   through the Secretary(Medical),
   5, Sham Nath Marg,Delhi-54

2. The Director of Health Services,
   Delhi, E-Block,
   Saraswati Bhawan, Connaught Place,
   New Delhi.

..Respondents

(By Advocate Sh.Rajinder Pandita)

OA 2750/1997

1. Dr.Seema
   D/O Sh.Gauri Shankar
   Medical Officer
   Directorate of Health Services
   NCT of Delhi.
   R/O Shiv Mandir, Lucknow Road,Timarpur,
   Delhi-54.

2. Dr.Vimal Kaushal,
   S/O Sh.Lachhman Das Kaushal,
   Medical Officer
   Directorate of Health Services
   NCT of Delhi
   R/O Z-202,Siddartha Apts.
   M.P.Enclave,Pitampura, Delhi-34.

3. Dr.Shintoo Doomra
   S/O Sh.K.K.Dhoomra,
   Medical Officer,
   Directorate of Health Services
   NCT of Delhi
   R/O D-23,Kalkaji, New Delhi-19

4. Dr.Seema Dua
   W/O Dr.Shintoo Doomra
   Medical Officer
   Directorate of Health Services
   NCT of Delhi
   R/O D-23,Kalkaji, New Delhi-19

5. Dr.Sushma Garg,
   W/O Col.VijayKumar
   Medical Officer
   Directorate of Health Services
   NCT of Delhi
   R/O D-6,Green Park,
   New Delhi-16.

6. Dr.Abhay Kumar Jha
   S/O Shri R.K.Jha
   Medical Officer,
   Directorate of Health Services
   NCT of Delhi.
   R/O RZ 38/216,J Block,
   West Sagarpur,New Delhi.

(By Advocate Shri K.N.R.Pillay with Shri S.K.Sinha)

..Applicants

Vs

1. Govt.of NCT of Delhi
   through the Secretary(Medical),
   5 Sham Nath Marg,
   Delhi-110054.

(76)

2. The Director of Health Services,
Delhi,E-Block,Saraswati Bhawan,
Connaught Place, New Delhi.

..Respondents

(By Advocate Shri Rajinder Pandita)

OA 114/98

Dr.Rita Chanana
W/O Shri Lovnesh Chanana,
Medical Officer,
Directorate of Health Services,
NCT of Delhi.
R/O B-22,New Multan Nagar,
Main Rohtak Road,
New Delhi-56.

...Applicant

(By Advocate Shri K.N.R.Pillay with
Shri S.K.Sinha)

Vs

1. Govt. of NCT of Delhi-through

The Secretary(Medical)
5,Shamnath Marg,
Delhi-110054.

2. The Director of Health Services(Delhi)
E-Block,Saraswati Bhawan,
Connaught Place, New Delhi.

..Respondents

(By Advocate Shri Rajinder Pandita)

OA 115/98

Dr. V.S. Chauhan
S/O Shri Q.S.Chauhan
Medical Officer
Directorate of Health Services,
N.C.T. of Delhi.
R/O 18-H, Jia Serai,
New Delhi-110016

..Applicant

(By Advocate Shri K.N.R.Pillay with
Shri S.K.Sinha)

Vs

1. Govt.of NCT of Delhi-through:

The Secretary(Medical),
5,Sham Nath Marg,
Delhi-110054.

2. The Director of Health Services(Delhi),
E-Block, Saraswati Bhavan,
Connaught Place, New Delhi.

..Respondents

(By Advocate Sh.Rajinder Pandita)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

On the request of the learned counsel for the parties in the aforesaid Original Applications, they were taken up together for hearing as they raise similar issues and they are accordingly being disposed of by this common order.

2. Arguments were advanced by Dr. Gopalsubramaniam, learned Senior Counsel, with S/Shri K.N.R. Pillay and S.K. Sinha in OA 2564/97 (Dr. J.P. Palyia & Ors. Vs. Union of India and Ors.) in which we have also heard Shri Rajinder Pandita, learned counsel who appears in all these cases for the respondents. In other cases, learned counsel for the applicants have submitted that they would adopt the same arguments as advanced in O.A. 2564/97.

3. The applicants in O.A. 2564/97 are aggrieved by some provisions contained in the appointment letter dated 17.5.1997 recruiting them as Doctors on contract basis. They are aggrieved that the respondents have failed to give them the same pay scales of Junior Medical Officers (JMOs) and other benefits like Leave, Provident Fund, Medical Attendance, etc. as admissible to other JMOs performing similar duties. In this appointment letter, the applicants and other similarly situated Doctors in other O.As have been given appointment on purely contractual basis for a period of one year on a consolidated pay of Rs.6000/- per month. They have submitted that there are no recruitment rules for recruitment of Doctors by Respondent 1 i.e. Government of NCT. They have been recruited on their responding to an advertisement given by the respondents. Dr. Gopalsubramaniam, learned Sr. Counsel has

submitted that against the consolidated pay of Rs.6000/- a JMO is entitled to Rs.8000/- pre-revised. He has submitted that whatever benefits have been given to similarly situated Doctors in Dr. (Mrs.) Sangeeta Narang and Others Vs. Delhi Administration and Ors. (ATR 1988 (1) CAT 566) should also be granted to the applicants. He has submitted that this judgement has been approved by the Hon'ble Supreme Court which is not disputed by the respondents.

4. In Para 20 of Dr. Sangeeta Narang's case (supra) the Tribunal has observed that the terms and conditions laid down in the appointment letters issued to the petitioners are surely unfair, arbitrary and harsh. The Tribunal has held that all the JMOs Grade-II appointed purely on ad hoc basis would be entitled to the same pay scale of Rs.700-1300 and allowances as also the same benefits of leave/maternity leave/increment on completion of one year and other benefits of service conditions as are admissible to the JMOs in the pay scale of Rs.700-1300. Further, it was directed that notwithstanding the break of one or two days in their service as stipulated in their appointment letters, they shall be deemed to have continued in service ever since the day of their first appointment. It was further ordered that till regular appointments are made to these posts, they shall be continued in service on ad hoc basis. After the judgement in Dr. Sangeeta Narang's case (supra), the Government of India, Ministry of Health and Family Welfare passed order dated 2.11.1988 (Annexure A-IV). In this order, it has been stated that all the Medical Officers appointed on monthly wage (contract) basis would be entitled to 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 of service conditions as are admissible to the Medical Officers appointed on regular basis in the pay scale of Rs.700-1300 (revised to Rs.2200-4000 w.e.f 1.1.1986) from the date(s) of their respective appointments. The learned counsel has also relied on the judgement of the Supreme Court in **Dr. Ashok Jain Vs. Union of India and Ors.** (1987 Supp. SCC 497). He has submitted that a large number of vacancies of Doctors exist which is not disputed by the respondents and hence he submits that till regular appointments are made, the applicants should be allowed to continue, with the last-cum-first go principle applicable as and when fresh appointments are made. He has submitted that in view of the fact that large number of vacancies of JMOs still exist, the continuing threat of termination of the services of the applicants is arbirary and unfair ~~unfair~~ and, therefore, their services should be continued so long as regular appointees have not joined.

5. Shri Rajinder Pandita, learned counsel for the respondents, has taken some preliminary objections. He has submitted that having regard to the provisions of Sec. 19 of the Administrative Tribunals Act, 1985, these O.As are not maintainable as there was no order against which they could have come to the Tribunal. He relies on **B. Parameshwara Rao Vs. The Divisional Engineer, Telecommunications, Eluru and Anr.** (CAT Full Bench Judgements (Vol.II) P-250) and **S.S. Rathore Vs. Union of India** (AIR 1990 SC 10) and submits that no representations have been made by the applicants to the respondents before filing these applications in the Tribunal. He relies on the judgements of the Tribunal in **Dr. Sharda Dhamija Vs. Govt. of NCT of Delhi and Anr.** (O.A 222/98) and **Dr. Archana Dhawan Vs. Govt. of NCT, Delhi & Anr.** (OA

2900/97) and has submitted that the applicants should have made representations to them in the first instance before rushing to the Tribunal. Another objection is that under Section 52 of the NCT Act, 1991 the suit has to be against Union of India which is a necessary party and, therefore, the applications suffer from non-joinder of necessary party. The learned counsel has also submitted that **Dr. Sangeeta Narang's case (supra)** was not applicable to the present cases as that was a case of Doctors who were appointed on ad hoc basis whereas the present cases involve Doctors who are appointed on contractual basis and they have accepted the terms and conditions of the contract. He has submitted that it is only by virtue of the interim orders passed by the Tribunal that they have continued the applicants in service although he does not deny that Government of NCT does require the service of Doctors to run their hospitals.

6. In reply, Dr. Gopalsubramaniam, learned Sr. Counsel, has submitted that as there was no duty cast on the applicants to make representations under any statutory rules, this cannot be held against them. He has submitted that the contract is a self operating instrument and finally the relationship ceases at a given point of time and, therefore, no further order was required to be passed by the respondents against which alone they should come but can challenge the terms and conditions of the contract which are contrary to law. He has also submitted that the basis of the contract entered into by the respondents and the applicants should have an element of fairness, which is lacking in this case. The learned counsel has submitted that similar benefits as given to Dr.Sangeeta Narang and other Doctors as per the Government of India, Ministry of Health and Family Welfare order dated

2.11.1988 should also be given to the applicants. He has submitted that the applicants are not asking for regularisation of their services. He has also pointed out that the Union of India who had been earlier included as respondents have been deleted by Tribunal's order dated 24.11.1997. Learned counsel contends that Respondent 1 has given the advertisement as well as employed the applicants as Doctors on contractual basis and in the circumstances, the Union of India was not a necessary party. He has submitted that Section 52 of the NCT Act, 1991 is not applicable here as admittedly, in the present case the power to enter into a contract has been delegated to the Government of NCT and there is, therefore, no infirmity on this ground also.

7. We have carefully considered th pleadings and the submissions made by the learned counsel for the parties, including the case law.

8. In the first instance we will deal with the preliminary objections taken by the learned counsel for the respondents. The impugned terms and conditions of the contract under which the applicants have been appointed is for a period of one year although they have been continued even thereafter. In the facts and circumstances of the case, this itself can be considered to be the order against which the applicants have filed the applications seeking certain reliefs and no further order is required. Regarding the question of lack of representation, having regard to the provisions of Section 20 of the Administrative Tribunals Act, 1985 which provides that the Tribunal shall not "ordinarily" admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the

relevant service rules as to redressal of grievances, and the fact that there are no statutory rules applicable to the present cases for filing appeal or representation, we are of the view that this is not sufficient to hold that the cases are not maintainable. These objections are, therefore, rejected.

9. The next preliminary objection of non-joinder of the Union of India as necessary party is also rejected as the grievance of the applicants is confined to the terms and conditions of the contract entered into between them and the Government of NCT - Respondent 1. The respondents have admittedly appointed the applicants as doctors in pursuance of their advertisement on contractual basis, where some of the terms and conditions have been impugned. In the circumstances, the provisions of Sec.52 of NCT Act, 1991, dealing with contracts entered into for and on behalf of the Union of India would not be applicable to the facts and circumstances of the present O.As. Therefore, this objection that Union of India is a necessary party in these cases, is also rejected.

10. On merits, the main ground taken by Shri Rajinder Pandita, learned counsel is that the judgement in **Dr. Sangeeta Narang's case (supra)** is not applicable to the present set of applications, as the applicants have been appointed on contractual basis whereas Dr. Sangeeta Narang had been appointed on ad hoc basis. We are again not impressed by this argument considering the facts and circumstances of the appointments. It is not the case of the respondents that they do not require large number of doctors

to provide necessary medical services to the public in the hospitals run by them. In Dr. Sangeeta Narang's case (supra), the Tribunal has held:

> "In other words, short term appointments even for a specified period can be made by the Govt but the critical question is whether once having made such appointments it will be open to the concerned authority to dispense with the services of temporary/ad hoc employee at any time at its sweet-will even when the need for filling the posts on temporary/ad hoc basis still persists. In other words, will it be just and fair on the part of the govt. to terminate the services of a temporary employee who may have been appointed for a specific period even though the post has not been filled up by regular incumbent and there is still need for manning such post uptil the time it is occupied by a regular appointee. On a careful consideration of the matter, we venture to reply in the negative".

11. As mentioned above, the respondents have themselves admitted that there are a number of vacancies for Doctors in their hospitals and they need their services in order to provide adequate medical facilities to the public in Delhi. If that be so, we respectfully agree with the Tribunal's order in Dr. Sangeeta Narang's case (supra), which has been approved by the Hon'ble Supreme Court, that it is not open to the respondents to terminate the services of the temporary employees who may have been appointed for a specified period, at any time at their own sweet will, even where there is need for their services.

12. The applicants in the cases before us are not claiming any regularisation of their posts but other benefits applicable to Medical Officers appointed on regular basis. As regards these reliefs, namely, same pay scale and allowances, benefits of leave, maternity leave and other benefits as are admissible to JMOs, we see no good reason to distinguish these

cases from the judgement in Dr. Sangeeta Narang's case(supra) merely on the ground that the appointments in the present cases are based on contract whereas that case was on ad hoc basis. Besides, the Government of India's letter dated 2.11.1988 seems to use these expressions inter-changeably when it refers to all Medical Officers appointed on 'contractual basis' while dealing with Dr. Sangeeta's case (supra). In this view of the matter, the present applications are entitled to succeed.

13. In the result, the aforesaid O.As are allowed. The respondents shall grant the applicants the same pay scale and allowances and also the same benefits of leave, increment on completion of one year, maternity leave and other benefits of service conditions, as are admissible to Medical Officers appointed on regular basis in the corresponding pay scales. Notwithstanding the break of one or two days in servic stipulated in their contact, they shall be deemed to have continued in service from the date of their first appointment till regular appointments are made by the respondents to these posts in accordance with the extant rules and instructions. In the circumstances of the case, respondents shall also consider giving age relaxation to the applicants in accordance with the rules, if they are candidates before UPSC for regular appointment, to the extent of the number of years of service they have rendered on contract/ad hoc basis.

14. The aforesaid 9 O.As are all allowed with the above directions to the respondents to implement the order within three months from the date of its receipt. No order as to costs.

Let a copy of this order be kept in each of the aforementioned files.

(K. Muthukumar)
Member(A)

(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'

Attested
Section Officer
C.O.C.IV