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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No 2190/94

NEW DELHI THIS THE 17th DAY OF JANUARY, 1995

MR. JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
MR. B.N.DHOUNDIYAL, MEMBER(A)

Dr. Subodh Seth, MS(Genl. Survey)
Senior Resident(Exp. Surgery) MAMC
S/o late Sh.R.D.Seth
R/o 946 Hari Singh Nalwa Street No.3
Karol Bagh,
New Delhi-110005.

APPLICANT

BY ADVOCATE SHRI B.S.JAIN.

Vs.

1. National Capital Territory, Delhi
(through Chief Secretary)
Delhi Administration, Delhi
5-Sham Nath Road,
Delhi-54.
2. The Dean Maulana Azdad Medical College
New Delhi.
3. The Head of Surgery Department
LNJP Hospital, New Delhi.

RESPONDENTS

BY ADVOCATE SHRI RAJINDER N.PANDITA.

ORDER

JUSTICE S.K.DHAON:

The applicant, who holds a degree of Master of Surgery, was on 16.9.1991 offered, an appointment to the post of Senior Resident on purely ad hoc basis by the Medical Superintendent of the Lok Nayak Jai Prakash Narayan (LNJP) Hospital, New Delhi. The post of Senior Resident falls in the category of Class III non-Gazetted in the department of Surgery and the appointment was to be made on ad hoc & emergent basis for a period of 44 days only from the date of joining. He rendered service in the LNJP Hospital with effect from 16.9.1991 to 27.4.1993. However, in between, there was a break in service as there was a practice of giving a 3 days' break after every 44 days' of appointment on ad hoc basis. By a letter dated 30.3.1993 of the Senior Administrative Officer, Maulana Azad Medical College(MAMC), he was offered an appointment as a Senior Resident in the department of Experimental Surgery on the recommendations of the Staff Selection Committee. He resigned from the post of ad hoc Senior Resident in the LNJP Hospital on 28.4.1993 and joined as Senior Resident in the MAMC on 28.4.1993. This appointment was for a period of three months beginning

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from 28.4.1993 and ending on 27.7.1993 on ad hoc basis subject to regular appointment pending verification of character and antecedents. After verification, the appointment was extended upto 27.4.1994 on regular basis. On 7.5.1994, the Senior Administrative Officer issued another order in continuation of the order dated 6.9.1993 extending the appointment of the applicant from 28.4.1994 to 27.4.1995 on regular basis. By an order dated 20.10.1994, the Senior Administrative Officer of the MAMC purported to supersede his order dated 7.5.1994 and stated therein that the appointment of the applicant has been extended as Senior Resident of Exp.Surgery for a further period of one month w.e.f. 16.9.1994 to 1.10.1994. The reason given was that the applicant had completed the tenure of 3 years of Senior Residency on 15.9.1994. The said order dated 20.10.1994 of the Senior Administrative Officer is being impugned in the present OA.

2. The scheme of Senior Residency is before us. According to it, the appointment of a Senior Resident has to be made on the recommendations of the Staff Selection Committee and the tenure of appointment is fixed i.e. three years. The appointment is governed by the Central Civil Services(Temporary Service) Rules, 1965.

3. The following submissions have been made by the learned counsel for the applicant in support of this OA.

(1) The applicant was given a fresh appointment on the recommendations of the Staff Selection Committee as a Senior Resident in the MAMC by the letter dated 16.6.1993 and, therefore, in the normal course, the appointment was to enure for a period of three years from the dte of joining of the applicant on the basis of the said letter dated 16.6.1993. The applicant, therefore, acquired a right to continue as a Senior Resident some time till the year 1997.

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(2) In any view of the matter, the order dated 7.5.1994 of the Senior Administrative Officer fixed the period of appointment of the applicant till 27.4.1995 on regular basis and that period could not be curtailed.

(3) The impugned order is bad as the same was passed in violation of Article 311(2) of the Constitution and, in any case, in violation of the principles of natural justice as no opportunity was given to the applicant to make a representation against the proposed change in the order dated 7.5.1994.

(4) The applicant was not given his increments etc. when he was given appointment as a Senior Resident purely on ad hoc and emergent basis in the LNJPN Hospital during the period from 16.9.1991 to 27.4.1993.

(5) The Residency Scheme did not and does not contemplate an ad hoc appointment of a Senior Resident and, therefore, the period spent by the applicant as an ad hoc appointee in the LNJPN Hospital from 16.9.1991 to 27.4.1993 should be excluded for computing his tenure as Senior Resident in the MAMC.

4. A counter-affidavit has been filed. Therein the material averments are these. On a report submitted by the Head of Department (Surgery), LNJPN Hospital, it came to the notice of the Dean, MAMC (respondent No.2) that the applicant had already rendered service as a Senior Resident in the LNJPN Hospital with effect from 16.9.1991 to 27.4.1993 and this fact was confirmed from the Attestation Form. Thus taking into account the previous service rendered by him for the aforesaid period in the MAMC, supersession orders were issued and a view was taken that his initial appointment

came to an end on 15.10.1994. However, on the request of the applicant, he was appointed for one month more with effect from 9.11.1994 to 8.12.1994 on ad hoc and emergent basis. Since the applicant had completed the period of three years and two months as a Senior Resident in the LNJPN Hospital he has not right to continue against the post of a Senior Resident in the MAMC and, therefore, there is no need even to issue a notice for the termination of his services.

5. We do not propose to examine the various contentions advanced by the learned counsel for the applicant in support of this OA because we are satisfied that the applicant is bound to succeed on the short ground i.e. that the impugned order was passed without affording any opportunity of hearing to him and thereby violating the principles of natural justice. According to the respondents own case, no opportunity was given to the applicant. Under the order aforementioned, the applicant, at any rate, acquired some sort of right to continue as a Senior Resident till April 1995. The impugned order, therefore, visited him with evil consequences. Had he been given an opportunity to represent his case, possibly he could have pursued the authorities concerned, in view of the terms of the Residency Scheme and in view of the fact that he was given a short-term appointment as a Senior Resident in the LNJPN Hospital/ his ad hoc appointment in that institution should not be taken into account for computing the period of three years as envisaged in the Residency Scheme. The authority concerned shall, therefore, now give an opportunity of hearing to the applicant by following the principles of natural justice. If any reply is given by the applicant, the authority concerned shall examine the same on merits and in accordance with law and dispose of the proceedings initiated by it by a speaking order.

6. The learned counsel for the respondents has taken the following preliminary objections:

(1) This OA is not maintainable in the present form as the Government of India has not been impleaded as one of the respondents to this OA. Reliance is placed upon Section 52 of the Govt. of National Capital Territory of Delhi Act, 1991 which provision falls in Part V of the said Act under the heading "Miscellaneous and Transitional Provisions". The marginal note of Section 52 is "Contracts and suits". Section 52, as material, provides that for the removal of doubts it is hereby declared that all suits and proceedings in connection with the administration of the Capital shall be instituted by or against the Government of India. The expression "Capital" is defined to mean the National Capital Territory of Delhi. Section 52, in our opinion, has no application to this case for more than one reasons. First, an application under Section 19 of the Administrative Tribunals Act, 1985 is really in the nature of a writ proceeding under Article 226 of the Constitution. In view of the judgement of the Supreme Court in Sampat Kuamr's case, this Tribunal is a substitute of the High Court in service matters. Article 226 of the Constitution by itself does not provide as to who should be impleaded as a respondent to a writ petition. Therefore, the normal rule as to who should be considered to be a necessary party has to be applied. It cannot be said that the Government of India is a necessary party to the present OA for adjudicating upon the controversy which has been raised in it. The impugned order has been passed by the Senior Administrative Officer of the MAMC and he is cited as one of the respondents to this OA. It is not the case of the respondents that the Senior Administrative Officer had

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no jurisdiction to pass the order.

Secondly, the present proceedings cannot be said to be in connection with the administration of the National Capital Territory of Delhi. The preamble to the Act may also be considered while answering this question. It states that the Act is to supplement the provisions of the Constitution relating to the Legislative Assembly and a Council of Ministers for the National Capital Territory of Delhi for matters connected therewith or incidental thereto.

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The Ministry of Health in the Government of India and the Head of the Department (Surgery) of the MAMC are necessary parties. It is urged that since the Residency Scheme has been formulated by the Ministry of Health in the Government of India and since the OA relates to that Scheme, no binding adjudication to the controversy can take place without the impleadment of the Ministry of Health in the Government of India. It is to be noted that the validity of the scheme is not under-challenge. If at all, the interpretation of the scheme is under consideration. In these circumstances, it cannot be said that the Ministry of Health in the Government of India is a necessary party to this OA.

We may note that Dean of the MAMC is one of the respondents to this OA. Head of the Department (Surgery) of the MAMC is not assigned any role in this OA. As already indicted, the Senior Administrative Officer of the MAMC issued the various letters of appointment to the applicant and he also issued the impugned order. We are, therefore, satisfied that the Head of the Department (Surgery) of the MAMC is neither a necessary nor a proper party.

7. 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.

8. There shall be no order as to costs.

B.N. DHOUDIYAL
(B.N.DHOUDIYAL)
MEMBER(A)

S.K. DHAON
(S.K.DHAON)
VICE-CHAIRMAN(J)

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