

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1040/94
T.A. No.

199

DATE OF DECISION 10.6.1994

<u>Dr. (Miss) Radha Dubey</u>	Petitioner
<u>Shri S. Venkataramani</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India</u>	Respondent
<u>Shri M.K. Gupta</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. N.V. Krishnan, Vice-Chairman(A)

The Hon'ble Mr. C.J. Roy, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

~~JUDGEMENT~~


 (N.V. Krishnan)
 Vice-Chairman(A)

Central Administrative Tribunal
Principal Bench: New Delhi

5

OA No.1040/94

New Delhi this the 10th Day of June, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Sh. C.J. Roy, Member (J)

Dr. (Miss) Radha Dubey,
U/o Dr. late M.P. Dubey,
R/o D-1/39, Rabindra Nagar,
New Delhi-110 003.

...Applicant

(By Advocate Sh. S.Venkatramani)

Versus

Union of India through:

1. Secretary,
Ministry of Health & Family Welfare,
Deptt. of Health,
Nirman Bhawan, New Delhi.
2. The Additional Director,
Central Govt. Health Services,
Nirman Bhavan, New Delhi.
3. The Administrative Officer,
Central Govt. Health Scheme,
Nirman Bhavan, New Delhi.

...Respondents

(By Advocate Sh. M.K. Gupta)

ORDER:

Mr. N.V. Krishnan:-

The applicant was appointed on compassionate grounds as a Medical Officer in the Central Government Health Scheme (CGHS) by the order dated 27.8.92, purely on an ad hoc basis for a period of six months or till the post was filled up on a regular basis, whichever was earlier, on the terms and conditions mentioned therein (Annexure-I). Condition No.9 indicated that the appointment did not confer any claim or right on the applicant for regularisation. It also indicated that for regular appointment the applicant has to qualify in the combined Medical Service Examination conducted by the U.P.S.C. Condition No.10 is that the applicant's services are liable to be terminated at any time without assigning any reason or notice.

2. Admittedly, the applicant's appointment was continued from time to time. The last such extension was issued on 11.4.94 (Annexure-III) by which she was allowed to continue for a further period of six months beyond 27.3.94 or till a regular candidate joined, whichever is earlier on the existing terms and conditions. Nevertheless, the first respondent, i.e., The Ministry of Health and Family Welfare has in its letter dated 16.5.94 (page 10A of the paperbook) informed the second respondent the Additional Director, C.G.H.S. about the President's decision to terminate the services of the applicant with immediate effect. He was directed to relieve the applicant accordingly.

3. When the applicant got scent of these developments she proceeded on leave and it is stated that this impugned letter has still not been served on her, though she has managed to get a copy.

4. Aggrieved by this order this O.A. has been filed for a direction to quash the letter dated 16.5.94 and to direct the respondents to allow the applicant to continue as a Medical Officer till 26.9.94 or till a regular candidate joins as mentioned in the Annexure-III letter. She has also prayed for one more chance to be given to her to pass the combined Medical Service Examination in 1995.

5. When the matter came up for admission, notice was directed to be issued to the respondents and by way of interim direction an order was passed on 20.5.94, directing that the status quo of the applicant should be maintained till 2.6.94. This is still continuing.

6. The respondents have filed a short reply in regard to the continuance of the interim order. It is stated that initially an extension was given to enable the applicant to appear in the competitive examination held by the U.P.S.C. Admittedly, she did not qualify in that examination which was held in 1993. The applicant did not appear in the 1994 examination. However, the applicant made a submission by her letter of September, 1993 (Annexure R-3) that she had earlier passed an examination conducted by the U.P.S.C. as a Class-I officer (Lady Medical Officer Family Welfare in the Armed Forces) and that her name has been recommended for selection by the U.P.S.C. She, therefore, requested for regularisation of her appointment in the C.G.H.S. on compassionate grounds on this basis. This was forwarded to the U.P.S.C. for consideration by the respondents in October, 1993 (Annexure R-4) and for this purpose her ad hoc appointment was continued for a period of six months beyond 27.9.93.

7. However, as this meant continuing her appointment for more than one year a reference was made to the Department of Personnel and Training in the context of the standing instructions dated 30.3.88 (Annexure R-5). That department regretted its inability 19.11.93 to on/ accede to the propose to extend the applicant's ad hoc appointment.

8. Nevertheless, as the representation made by her was pending in the U.P.S.C., the Annexure-III order dated 11.4.94 was issued extending the period of ^{ad hoc} appointment for six months beyond 27.3.94. Immediately thereafter, the U.P.S.C. informed the respondents by their letter dated 22.4.94 that it

8

was not possible to agree to the proposal to regularise her under the C.G.H.S. on the basis of her earlier selection for the post of Lady Medical Officer under the Armed Forces. It is on receipt of this letter that the matter was considered by the respondents and a decision was taken to terminate her services forthwith by the letter dated 11.5.94 (page 10A of the paperbook). This decision is in accordance with condition No.10 of the initial order of appointment dated 27.8.92 viz. that the services are liable to be terminated at any time without assigning any reason or notice, which condition is incorporated in all the subsequent orders of extension of her ad hoc appointment. The respondents, therefore, submitted that the application has no merit and deserves to be dismissed.

9. We have heard the learned counsel in respect of the interim order, but, as the arguments covered the basic issue raised in the O.A. we are disposing of this O.A. by this order.

10. The learned counsel for the applicant submitted that the respondents have specifically continued the applicant's appointment by the Annexure-III order for a further period of six months beyond 27.3.94 or till a regular candidate joins, whichever is earlier. Admittedly, no regular candidate has been selected and, therefore, the appointment ought to have continued till 27.9.94. The learned counsel for the applicant also contended that the mere fact that the U.P.S.C. had declined to regularise the appointment of the applicant on the basis of her earlier selection for a posting as Lady Medical Officer in the Armed Forces cannot be a ground to terminate

9

her services. It was contended that as the termination is in pursuance of condition No.10, the reason given cannot justify the termination. The learned counsel relied on the decision of the Supreme Court in Govt. Branch Press v. D.B. Belliappa (1979) 1 SCC 477 and 1989 (JT) 4 SC/Union of India & Ors. v. Shaik Ali.

11. On the contrary, the learned counsel for the respondents asserted that even though the Department of Personnel had not given its concurrence for continuing the ad hoc appointment of the applicant beyond one year, the respondents took an extremely sympathetic view of the matter and felt that as a representation for regularisation sent by the applicant is pending consideration by the U.P.S.C., it would only be proper to continue the ad hoc appointment. However, when the U.P.S.C. declined to regularise the services of the applicant the respondents were left with no alternative except to terminate the services of the applicant. It is also contended that this was permissible in the light of condition No.10 attached to the first order of appointment at Annexure-I.

12. We have carefully considered the matter. We are of the view that condition No. 10 of the first order of appointment undoubtedly vests in the respondents. the right to terminate the services of the applicant without giving any notice or without assigning any reason during the currency of her appointment. What is important is that this power may not be exercised arbitrarily. Even with this condition of service there should necessarily be a valid reason for terminating the applicant's services. The respondents have shown in their reply the specific reason for ordering the termination of the applicant's services.

10

13. In our view condition No.10 cannot be invoked for termination without any ground or reason existing for termination. That ground has necessarily to be different from whatever explicit condition for termination is incorporated in the order of appointment/extension. In the present case the order at Annexure-III says the appointment is ad hoc and can go upto only 27.9.94 when it will be terminated, unless terminated earlier if a regular candidate joins. The UPSC's decision was that the applicant's services could not be regularised. This meant that she has to continue only as an ad hoc employee. If so, Annexure-III order will come into play. The ground adduced is not any thing new.. It is already present in the Annexure-III order.

14. That apart, in our view, a provision like condition No.10 is incorporated to terminate the services of an employee if his service is found to be unsatisfactory or for any other similar reason. This enables the appointing authority to issue an order of termination without casting any stigma on the employee. Otherwise, any order passed giving a reason amounting to a stigma would have given a cause of action alleging illegal termination. In other words, resort to termination of service under condition No.10 is made only in such circumstances where the employee is found at fault or he suffers from some deficiency or other and it is thought fit to terminate the services by an order of termination simpliciter.

15. That is not the position in the present case. Excepting for the fact that the applicant did not pass the examination, there is no allegation of any misconduct or any unsatisfactory work which could be the motive for such termination.

11

16. In the circumstances, we are of the view that the reason assigned for termination of service cannot legitimately be covered under clause-10 of the terms and conditions of service specified in Annexure-I and accordingly the order of termination is liable to be set aside. We, therefore, dispose of this O.A. with the following order/directions:-

- i) The impugned letter dated 11.5.94 conveying the decision of the respondents to terminate the applicant's services is quashed.
- ii) The respondents are directed to reinstate the applicant in service immediately.
- iii) The services of the applicants with the respondents will now be determined in accordance with the Annexure-III letter dated 11.4.94.
- iv) The period of absence of the applicant till the date of her reinstatement shall be regularised by the grant of such leave, as may be due to her.

17. In so far as the prayer of the applicant to direct the respondents to give her one more chance to pass the Combined Medical Service examination is concerned, we are of the view that this issue does not arise out of this O.A. and, therefore, that prayer cannot be granted. It is, however, open to the applicant to seek any permissible remedy in this regard.

19. The O.A. is disposed of, as above. No costs.

(C.J. Roy)
Member(J)

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(N.V. Krishnan)
Vice-Chairman