

Central Administrative Tribunal  
Principal Bench

(2)

OA No.1953/94

New Delhi this the 27th Day of September, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)  
Smt. Lakshmi Swaminathan, Member (J)

Dr. Miss Radha Dubey,  
D/o Dr. Late M.P. Dubey,  
R/o D-1/39, Rabinder Nagar,  
New Delhi.

...Applicant

(By Advocate Shri A.K. Behera)

Versus

1. Union of India through:  
The Secretary, Ministry of  
Health & Family Welfare,  
Department of Health,  
Nirman Bhawan, ~~XXX~~  
New Delhi.
2. The Additional Director,  
Central Govt. Health Services,  
Nirman Bhawan,  
New Delhi.
3. The Administrative Officer,  
Central Govt. Health Services,  
Nirman Bhawan, New Delhi.
4. Chief Medical Officer incharge  
Constitutional House Dispensary No.33,  
Kasturba Gandhi Marg,  
New Delhi-110 003.

...Respondents

ORDER (ORAL)

Hon'ble Mr. N.V. Krishnan:-

We have heard him. This is the second round of litigation. The applicant had earlier appeared before us in OA-1040/94 which was disposed of by an order dated 10.6.94. The applicant was a compassionate appointee as a Medical Officer in the Central Government Health Scheme and she was appointed on an ad hoc basis for a period of six months or until a regular appointment was made, whichever is earlier, by the order dated 28.7.92. That appointment continued from time to time. In the meanwhile, the applicant apprehended termination and she approached the Tribunal for a direction to the respondents to continue her ad hoc

appointment. That matter was considered in detail. The applicant had prayed that she should be allowed to continue till 26.9.94 or till a regular candidate joins as mentioned in the last order of extension, i.e., Annexure-3 letter of that D.A. That was disposed of with a direction to the respondents that the applicant should be taken back in service and that her service can be determined only in accordance with the Annexure-3 letter dated 11.4.94, i.e., either on the expiry of six months or whenever a regular appointee joins, whichever is earlier.

2. In the present D.A. it is now stated that the period of six months is coming to an end today and inspite of her representation ~~said~~ it appears that her services are going to be terminated w.e.f. 27.9.94 in accordance with the terms and conditions contained in the last order of extension, referred to above.

3. The applicant states that the need for her service still exists as the Chief Medical Officer has recommended her continuance on an ad hoc basis, ~~By~~ the Annexure-A-7 letter dated 12.9.94. It is also stated that there are a number of others who are working on ad hoc basis and whose services are being continued after every six months, even though they have also not qualified by passing the necessary competitive examination. In the circumstances, the applicant has prayed for a declaration that the decision of the respondents not to continue the applicant as a Medical Officer on ad hoc basis from 27.9.94 is arbitrary, unreasonable and discriminatory under Articles 14 and 16 of the Constitution and to direct the respondents to continue the applicant as ad hoc Medical Officer till the regular incumbents are available through the U.P.S.C. and also to pass an order directing the respondents to

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give her one more chance to pass the Combined Medical Examination to be conducted by the U.P.S.C. in 1995.

4. The learned counsel relies mainly on the judgement of the Tribunal in Dr. (Mrs.) Sangeeta Narang Vs. Delhi Administration - ATR 1988 (1) CAT 556, in which the Tribunal answered in the negative the question it posed whether it was just and fair on the part of the respondents to terminate the services of a temporary employee who may have been appointed for a specified period even though the post has not been filled up by a regular incumbent and there was still need for granting such posts until it is occupied by the regular appointee.

5. We have heard the learned counsel for the applicant. We notice from para 4 of the earlier ~~judgement~~ <sup>order</sup> that the prayer made therein was that the respondents should be directed 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-3 letter. The prayer now made is larger in scope. This prayer could and ought to have been made in that O.A., if it is based on the above reported decision. As that was not done, we are of the view that the present O.A., in which a prayer is made that the services of applicant should not be terminated even after completion of the tenure and there should be a declaration that the applicant may continue till regular appointments are made, is barred by the principles of constructive res judicata. Therefore, this O.A. is dismissed.

*Lakshmi Swaminathan*  
(Smt. Lakshmi Swaminathan)  
Member(J)

'Sanju'

*(N.V. Krishnan)*  
V.C.(A)

*27/9/94*