

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1109/2000

New Delhi, this the 10th day of April, 2001

Hon^{ble} Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon^{ble} Shri Govindan S. Tampi, Member (A)

1. Dr. Pamila Bhatia
W/o Pradeep Dua
R/o BK-2/27, Shalimar Bagh
Delhi - 110052.
2. Dr. Anil Chhikara
S/o Shri Mahinder Singh Chhikara
R/o B-12/138
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Dev Nagar, Karol Bagh, New Delhi.
3. Dr. Monica Verma
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R/o House No.1117
Sector-17, Faridabad - 121007
4. Dr. Madhu Gupta
D/o Shri R.G.Gupta
R/o BF-31 Janakpuri
New Delhi.
5. Dr. Mamta Jain
D/o Shri Ajit Prasad Jain
R/o B-1/52, Yamuna Vihar
Delhi - 110053.
6. Dr. Pankaj Kumar
S/o Shri Arvind Kumar
R/o House No.569
Pocket D, Dilshad Garden
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7. Dr. Munesh Sharma
D/o Shri B.N.Sharma
R/o B-2/415
Yamuna Vihar
Delhi - 110053
8. Dr. Manish Sharma
S/o Shri B.S.Sharma
R/o AA74, Shalimar Bagh
New Delhi.

(By Advocate : Shri Pramod Gupta)

...Applicants

V E R S U S

1. Government of NCT of Delhi
Through :
Its Chief Secretary
5, Shammath Marg
Delhi - 110 054.

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2. The Principal Secretary
Health and Family Welfare Department
Govt. of NCT of Delhi
5, Shamnath Marg
Delhi - 110 054

3. The Director
ISM & Homoeopathy
Govt. of NCT of Delhi
Tibbia College
Ajmal Khan Road
Karol Bagh, New Delhi.

4. The Union Public Service Commission
through Secretary
Dholpur House
Shah Jahan Road
New Delhi.

... Respondents.

(By Advocate : Shri A.K.Chopra through
Shri R.K.Singh)

O R D E R (ORAL)

By Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)

In this application, the applicants have
prayed for the following main reliefs :-

(i) directing the respondents to grant to the applicants the same scale of pay and allowances, leave, increments, maternity leave and also the benefits of service conditions as are admissible to regularly appointed Medical Officers (Ayurveda) from the date of their initial appointment.

(ii) further directing the respondents to treat the applicants as having continued in service from the date of their first appointment ignoring the break of few days given in their service and they shall be so continued till regular appointments are made to the post.

(iii) directing the respondents that in the event of posts of Medical Officers (Ayurveda) being filled by regular recruits, the same shall first be posted in vacant posts and only after all the vacant posts are filled, should regular recruits replaces the present applicants and such replacement shall be on the basis of last come first go.

(iv) directing the respondents to grant the applicants age relaxation to the extent of the service put in on contract basis in case the applicants apply for regular appointments as Medical Officers (Ayurveda).

(v) quash the impugned order dated 29-10-99 and 19-1-2000, whereby the working hours of the applicants are reduced.

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(vi) direct the respondents to allow the applicants to work on full time basis.

2. We have heard Shri Pramod Gupta, learned counsel for the applicants and Shri R.K.Singh, learned proxy counsel for the respondents.

3. This application has been filed by 8 applicants who have been appointed as Medical Officers (Ayurveda) on contract basis, from various dates as given in the OA in September 1998 and June 1999.

4. On perusal of the facts and issues raised in this application, we are satisfied that this case is fully covered by the judgement of this Tribunal in Dr. J.P.Paliya & Ors. Vs. Govt. of NCTD & Ors. (OA 2564/97 with connected cases) decided on 23-4-98, in which one of us (Smt. Lakshmi Swaminathan was also a Member). Against the order of the Tribunal, the respondents had filed Writ Petitions in the Hon'ble Delhi High Court which were disposed of by the order dated 11-9-98. In this order the Hon'ble High Court had observed that :-

"the Govt. of NCTD is attempting to take unfair advantage of the situation prevalent in the country on account of large scale unemployment. It is not the case of the petitioner that the respondents are in any manner inferior to the services rendered by the regularly employed doctors. The respondent doctors took up employment on contractual basis for short term on account of force of circumstances and should not be made to suffer on this account. The stand taken by petitioners apart from being legally untenable, is unfair, unreasonable, arbitrary and unjust. In the circumstances, the petitions were dismissed awarding the costs of Rs.2000/- (rupees two thousand only) for each petition."

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5. Against the aforesaid order of the Hon'ble Delhi High Court, the Govt. of NCT of Delhi had filed a Special Leave Petition in the Hon'ble Supreme Court, which was also dismissed by the order dated 1-7-99. Further, Review Petition filed by them was also dismissed, in which the Hon'ble Apex Court has observed that "we do not find any merit in the same". It is an admitted fact that thereafter the respondents have implemented the Tribunal's order dated 23-4-98 in Dr. J.P.Paliya's case (supra), which judgment has also been followed in a catena of cases filed in the Tribunal and again upheld by the High Court, one such case is of Dr. Aparna Sehgal & Ors. Vs. Govt. of NCT of Delhi (OA 2108/99) decided on 8-5-2000. In this judgement, the benefits given to the Allopathic doctors as in Dr. J.P.Paliya's case (supra), by way of parity of pay scale, leave, medical leave, etc. were extended to Medical Officers (Homeopathic), who were similarly appointed by the respondents on contractual basis to discharge the functions of Medical Officers. We find that the claims of the applicants in the present case are identical to the claims in Dr. J.P.Paliya's case (supra) and Dr. Aprana Sehgal's case (supra), praying for a direction to the respondents to grant the same pay scale and allowances, leave allowances, maternity leave and other service benefits which were admissible to regularly appointed Medical Officers (Allopathic and Homeopathic). During the hearing, learned counsel for the respondents has also fairly conceded that he has no objection if similar benefits as granted to the

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other Doctors in the applications mentioned above, are granted to the applicants so far as pay scale, leave and service conditions are concerned.

6. Learned counsel for the applicants has also submitted that the respondents have actually required the applicants to work on full time contract basis. In the circumstances, he has mentioned that their orders dated 25-10-99 and 19-1-2000 whereby their working hours were reduced are not applicable. This has, however, been controverted by the learned proxy counsel for the respondents, who has submitted that the applicants have been required to work on part-time basis for four hours a day only. However, we note that the respondents have further issued an Advertisement for recruitment of more doctors on contract basis. Therefore, we are unable to agree with the contentions of the learned proxy counsel that the applicants were required to work only for four hours a day. Apart from this, we also note that the learned counsel for the applicants states that the applicants have, in fact, done full eight hours of work per day, that is on the same terms and conditions as they were originally employed. This is a question of fact and in any case, noting the facts that the respondents themselves have advertised the need for more doctors on part-time basis and have in fact also appointed some during the pendency of the present OA, the impugned OMs reducing the working hours of the applicants do not appear to have any justifiable basis. They are accordingly quashed and set aside.

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7. In this view of the matter, the OA is allowed with the following directions :-

The respondents to grant similar benefits as they have given to Medical Officers in other disciplines of Medicine, like Allopathy & Homoeopathy, to the present applicants, who are Medical Officers (Ayurveda), in pursuance of the Tribunal's order in Dr. J.P. Paliya's case (supra) which has been upheld by the Hon'ble Apex Court, as follows :-

(i) the applicants shall be granted the same pay scale and allowances and also the benefits of leave, increment on completion of one year, maternity leave and other benefits of service conditions as admissible to Medical Officers appointed on regular basis in the corresponding pay scales, notwithstanding the break of one or two days in service stipulated in their contracts. They shall be deemed to have continued in service from the dates 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 previously.

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(ii) Further, it is clarified that the pay and allowances and other service conditions as applicable and given to other Medical Officers shall be given to the applicants from the date of their initial appointments as mentioned in the Tribunal's order dated 8-5-2000 in Dr. Aparna Sehgal's case (supra), following the decision in Dr. J.P. Paliya's case (supra).

(iii) The above orders shall be implemented by the respondents within three months from the date of receipt of a copy of this order.

No order as to costs.

(Govindan S. Jampi)
Administrative Member

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(Smt. Lakshmi Swaminathan)
Vice-Chairman (Judicial)