

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2011/2000

WEDNESDAY, THIS THE 9TH DAY OF MAY, 2001

Dr. Anupreet Batra
(Shri Vibhu Shankar)

..Applicant

Versus

Govt.of NCT of Delhi & Ors.
(Shri Harvir Singh)

...Respondents

Corum:-

HON'BLE MRS. LAKSHMI SWAMINATHAN, VICE CHAIRMAN (J)
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

1. To be referred to the reporter or not? YES
2. Whether it needs to be circulated to
Benches of the Tribunal? NO


(S.A.T. Rizvi)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2011/2000

New Delhi on this the 9th day of May, 2001

Hon'ble Mrs. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Mr. S.A.T. Rizvi, Member (A)

Dr. Anupreet Batra
W/O Dr. Sandeep Batra
H.No.E-9/7, Malviya Nagar
New Delhi-110 017.

..Applicant

(By Advocate: Shri Vibhu Shankar)

VERSUS

1. Government of National Capital
Territory of Delhi through Secretary, Health
Old Secretariat, Delhi.
2. The CMO Malviya Nagar Colony Hospital
New Delhi.
3. The CMO (HQ)
Directorate of Health Services,
Govt. of NCT of Delhi
E-Block, Saraswati Bhawan,
Connaught Place, New Delhi.
4. The Administrative Officer (Health)
Govt. of National Capital Territory of Delhi
(Health & Family Welfare Deptt.)
5, Shyamnath Margh, Delhi-54.

..Respondents

(By Advocate: Shri Harvir Singh)

O R D E R

By Hon'ble Shri S.A.T. Rizvi, Member (A):

Dr. Anupreet Batra, the applicant in the present
OA was appointed by the respondents' order dated
10.12.1998 (Annexure A-2) as Civil Assistant Surgeon
(Dental) (for short "CAS (Dental)") in the Directorate of
Health Services, Govt. of NCT of Delhi, purely on adhoc
basis for 89 days which period was by a subsequent
corrigendum of 18.12.1998 (Annexure A-2/1) reduced to 44
days. She was re-appointed in the same capacity for a
further period of 44 days by the respondents' order of

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2.2.1999 (Annexure A-3). However, her services were dispensed with abruptly by the respondents' order dated 22.2.1999 (Annexure A-1). The aforesaid order was to take effect immediately. Aggrieved by the respondents' action as above, the applicant has filed the present OA. (2)

2. We have heard the learned counsel on either side and have perused the material placed on record.

3. The learned counsel appearing in support of the OA has drawn our attention to the very first letter (Annexure A-2) by which the applicant was first appointed for 89 days to contend that in view of the stipulations made in the said order, the applicant should have been allowed to work as CAS (Dental) until the post was filled up on a regular basis. The aforesaid order, for the sake of convenience, is reproduced below:-

"Dr. Anupreet Batra is hereby appointed as Civil Asstt. Surgeon (Dental) under this Dte. purely on adhoc basis for a period of 89 days and posted in East Zone against vacant post of Medical Officer in the pre-revised scale of 2200-4000 + NPA and Usual allowance till such post is filled up on regular basis and detailed to work at Malviya Nagar Colony Hospital." (emphasis supplied)

4. When the aforesaid period of 89 days for which the applicant was first appointed was reduced to 44 days by respondents' corrigendum of 18.12.1998, the abovementioned condition for filling up of the post on regular basis and the retention of the applicant in service till then remained unchanged. A little later when her term was extended by another 44 days by

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(3)

respondents' order of 2.2.1999 (Annexure A-3), the very same condition regarding filling up of the post on regular basis was maintained. We have also noted that in both the orders (Annexures A-2 and A-3), it has further been clarified that the applicant was being appointed against a vacant post and in the pre-revised scale of Rs.2200-4000/- + NPA and Usual Allowances. Thus, in our view, the applicant was properly appointed even though on adhoc basis and she had every reason to feel confident that she will continue in the aforesaid post until replaced by a regular appointee.

5. We have also noted that the period of her first appointment for 89 days was reduced to 44 days ostensibly without any reason and in an arbitrary manner. The same arbitrariness prevailed when her services were dispensed with on an immediate basis by the impugned order of 22.2.1999 (Annexure A-1). The respondents did not bother to serve a show cause on the applicant before dispensing with her services abruptly and in an arbitrary manner. Her work and conduct had remained satisfactory until she worked as CAS (Dental).

6. The learned counsel appearing on behalf of the applicant has also drawn our attention to the respondents' order placed at Annexure A-5 (page 29 of the paper book) by which the appointment of as many as 25 CAS (Dental) was continued for a period of one full year from 31.12.1999 containing the stipulation that the doctors appointed thereby could continue till 31.12.2000 or until the posts were filled on regular basis whichever was

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earlier. The applicant's counsel has also drawn our attention to a further order issued by the respondents whereby 23 CAS (Dental) have been continued in service beyond 31.12.2000 for a further period of one year containing the very same stipulation for filling up of posts on regular basis as in the earlier order placed at Annexure A-5. The applicant is aggrieved by the continued retention of the aforesaid CAS (Dental) by means of the aforesaid two orders without considering her claim. According to the applicant's counsel, one Dr. Anjula Yadav has also been retained by the aforesaid orders even though she is a new comer having joined the service after the services of the applicant were dispensed with.

7. The learned counsel appearing on behalf of the respondents has raised a contention with regard to the competence of the appointing authority. According to him, while the applicant was not appointed by the competent authority, the others have been appointed by the competent authority, namely, the Health & Family Welfare Department. The aforesaid orders placed at Annexure A-5 and the other order extending the term of the CAS (Dental) by a further period of one year from 31.12.2000 are, according to him, competent orders having been issued with the approval of the Lt. Governor of Delhi. We are not convinced by the said argument. In our view, the deficiency pointed out by the learned counsel could have been rectified without any problem whatsoever but this could happen only if the respondents wished to proceed in a fair manner. We regret to find

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that the respondents have acted, insofar as the appointment of the applicant is concerned, with a great deal of arbitrariness and without observing the principles of natural justice. We also find that if the respondents wished to terminate the appointment of the applicant before the expiry of the tenure of 44 days, they should have given her an opportunity of being heard. The same opportunity should have been given to the applicant when the period of her appointment was reduced from 89 days to 44 days. On that occasion also, the respondents failed to observe the principles of natural justice. That several others similarly placed have been treated differently and have been given long term extensions at once shows that the respondents' action against the applicant is informed by a lurking bias and, in the peculiar circumstances of this case, it is not difficult to infer malafide in the matter of appointment of CAS (Dental). The respondents' action in relation to the applicant is thus both arbitrary as well as discriminatory and is accordingly violative of Articles 14 and 16 of the Constitution.

8. On being asked to tell us whether any vacancy in the rank of CAS (Dental) existed in the Health & Family Welfare Department, the learned counsel for the respondents has stated at the bar that only 23 sanctioned posts existed, against each of which a CAS (Dental) is currently working on adhoc basis. In this connection, he has drawn our attention to the latest order placed before us by the learned counsel for the applicant by which the services of 23 CAS (Dental) have been continued for a

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year beyond 31.12.2000. According to the learned counsel, the appointments made against the aforesaid 23 posts, though on an adhoc basis, have been made in accordance with the policy of reservation followed by the Government and accordingly, if the applicant who is a general category candidate, is to be appointed back in service, one of the general category candidates figuring in the aforesaid order will have to make way for her.

On the basis of the above understanding, we are inclined to allow the OA in part by directing the respondents to find a place for the applicant, if necessary by dislodging the junior-most in the list of general category CAS (Dental) of those included in the aforesaid list of 23 CAS (Dental) forming part of the aforesaid order. This will, however, be subject to the aforesaid junior-most being in turn found to be junior to the applicant. We will also like to direct the respondents to ensure that in the event of the applicant's appointment, orders will be passed by the competent authority wholly in accordance with the orders placed at Annexure A-5 and the latest order supplied to us by the learned counsel for the applicant. In other words, the orders to be passed in the case of the applicant will contain the stipulation that she would continue in service for a period of one year or until the post occupied by her is filled by a regular candidate whichever was earlier. We further direct the respondents to pass a speaking and a reasoned order in the event of the decision to be taken by them being adverse to the applicant. Action as required in terms of the aforesaid

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directions will be completed by the respondents in a maximum period of two months from the date of receipt of a copy of this order.

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10. The OA is partly allowed in the aforestated terms. No costs.

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S. A. T. Rizvi

(S.A.T. Rizvi)
Member (A)

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)
Vice Chairman (J)

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