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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2590/2000

New Delhi, this 16th day of March, 2001

Hon'ble Shri Kuldip Singh, Member(J)
Hon'ble Shri M.P.Singh, Member(A)

Dr. Anita Nanda & 17 others
as per details given given
in the memo of parties .. Applicants

(Shri P.P.Khurana, Sr.Counsel with Shri Pramod
Gupta, Advocate)

versus

1. Chief Secretary
Govt. of NCT of Delhi
5, Shamnath Marg, Delhi
2. Principal Secretary
Health & FW Department
Govt. of NCT of Delhi, Delhi
3. Director of ISM&H
Govt. of NCT of Delhi, New Delhi
4. Assistant Director, ISMH
Nehru Homeopathic Medical College Buiding
Defence Colony, New Delhi
5. Secretary
UPSC, Shahjahan Road, New Delhi .. Respondents


(By Shri Ajesh Luthra, Advocate)

ORDER (ORAL)

By Shri M.P. Singh

1. Applicants, eighteen in number, have filed the present OA seeking directions to the respondents to regularise their services in the post of Medical Officer (Homoeopathy) (MO(H), for short) as they have been working in this post for the last 2-3 years without any break and that they are eligible for the said post as they have been recruited by a duly held selection committee.

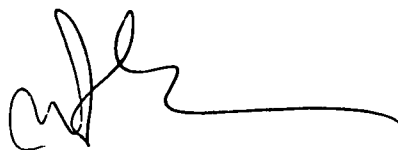
2. Brief facts of the case are that the applicants are working as MO(H) with the Govt. of NCT of Delhi in its various hospitals and dispensaries across the city of



Delhi. They have been appointed on contract basis for a period of 89 days on a consolidated salary of Rs.6000/- per month as against the scale of Rs.8000-13500 which is admissible in the case of other MOs. As per the appointment letter, they are not entitled to any benefit like PF, gratuity, etc. as are available to other government servants.

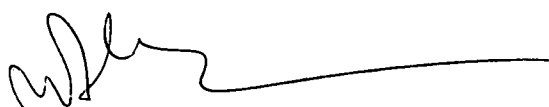
3. Applicants have earlier filed OA No.2108/99 (Aparna Sehgal & Ors Vs. Govt. of NCT of Delhi & Ors. with the prayer to allow them service benefits like leave, PF etc. as are admissible to MOs. This Tribunal vide its judgement dated 8.5.2000 allowed the said OA with the following directions:

"9. We, therefore, direct the respondents that the applicants should be continued in service till regular appointments are made to the post and applicants should be treated as having continued in service from the date of their first appointment ignoring the artificial break of one or two days in their service. In the event of the posts being filled by regular recruits, the same shall be adjusted against vacant posts and only after all the vacant posts are filled should regular recruits replace the present applicants and such replacements shall be on the basis of last come first go. Respondents are further directed to grant age relaxation to the applicants to the extent of the service put in by them on contract basis in case they apply for regular appointment. We also direct the respondents to grant to the applicants same scale of pay and allowance, leave, increment, medical facilities and also other benefits of service conditions as are applicable to other MOs(H) from the date of their initial appointment"



4. Respondents in February, 2000 have issued an advertisement to initiate the process of recruitment for the post of MO(H) in the Employment News (Annexure G). Applicants herein also applied but this is without prejudice to the contentions raised in the present OA. According to the applicants, their initial appointment was through open market and their names were duly sponsored by the Employment Exchange and their selection had all the tenets of regular selection as they were recruited after complying with all the procedures and formalities of recruitment. Since the respondents are proceeding with fresh selection process through the aforesaid advertisement, they are not either treating the applicants as regular or in the alternative regularizing them/considering them for regularization on the said post on the basis of their performance record and work and conduct report by treating them as separate block and not asking them to compete with the aspirants, the applicants have been left with no other alternative remedy but to invoke the jurisdiction of this Tribunal. That is how they are before us seeking the aforesaid reliefs.

5. Respondents have contested the case and stated that the applicants have already filed OA No.2108/1999 which was disposed on 8.5.2000 with the aforesaid directions. According to the respondents, recruitment to the post of MO(H) has to be made through UPSC. As appointment of applicants was made through the Employment Exchange for contract basis and not through the UPSC, the same has not been treated to be regular as per the judgement of this Tribunal supra. Further their appointments cannot



be regularised as these suffer from the inherent defect of having been made through the Employment Exchange and not in accordance with prescribed procedure. Applicants were allowed age relaxation and also allowed to appear/join the prescribed selection procedure through UPSC by this Tribunal in the interest of justice and fairplay. Selection through UPSC is essential and therefore applicants should not have any grievance at all in the matter.

6. Respondents have also submitted that at the time when the previous OA filed by the applicants were pending adjudication, the UPSC had notified the filling up of the said posts on regular basis and the applicants had also applied for the same during pending litigation on the said OA. As per the R/Rules for the post of MO(H) prescribed under Note 1 below Column 11, service records of JMOs and MOs were sent to the UPSC.

All the JMOs and MOs so found suitable were recommended by the UPSC for appointment on regular basis as per the provisions of the R/Rules. Therefore, the contention of the applicants for application of the same principles in their case does not apply since they are not similar situations to those Junior MOs(H) redesignated as MO(H) by virtue of restructuring in the Directorate of ISM&H.

7. Respondents have further denied that the applicants were selected on contract basis through a regular selection process. Moreover, in view of the judgement



dated 8.5.2000 (supra), no further claim of the applicants can lie in the present OA. It is also contended that no representation has been received from the applicants. The OA is therefore not maintainable and liable to be dismissed.


8. Heard the learned counsel for the parties and perused the records.

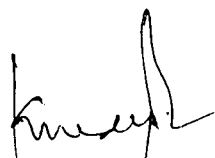
9. During the course of the arguments, the learned counsel for the applicants stated that as per Note I in Column 11 of the R/Rules for the post of MO(H) notified in April, 1999, the suitability of the regular holders of the posts of Junior MO(H) since redesignated as MO(H) and MO(H) will be initially assessed by the Commission for appointment to the upgraded post of MO(H) in the scale of Rs.8000-13500. If assessed suitable they shall be deemed to have been appointed to the post at the initial constitution. If assessed not suitable for appointment to the upgraded scale of pay he/they shall continue to be in the revised scale of Rs.6500-105000 and his/their case would be reviewed every year. According to the counsel, the applicants were appointed through Employment Exchange by a duly selection process and therefore they are to be appointed on regular basis under the aforesaid clause of R/Rules. On the other hand, the learned counsel for the respondents stated that the applicant were appointed on contract basis and



their case is not covered under Note I, Column 11 (supra). Junior MOs(H) already working on regular basis in the Directorate and 2 MOs namely Dr.S.P. Singh and Dr.A.K. Kasana are covered under this clause and accordingly cases of two aforesaid MOs(H) were sent to UPSC alongwith other regular Jr. MOs(H) and they have been recommended by the UPSC and they have been appointed as MOs(H) on regular basis.

10. On a perusal of the case, we are of the considered view that the applicants' case is covered by Note I, Column (11) of the R/Rules of 1999 (supra) as they were initially appointed as ~~MOs(H)~~ ^{Cast Libs} MOs(H) by a duly selected committee after their names were sponsored by the Employment Exchange. In view of this position, we allow the present OA and direct the respondents to send records of the applicants to UPSC to enable the Commission to consider regularisation of the applicants against the post of MO(H) as per Rules. This shall be done within a period of 4 months from the date of receipt of a copy of this order. There shall be no order as to costs.


(M.P. Singh)
Member(A)


(Kuldip Singh)
Member(J)

/gtv/