

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.135/89

DATE OF DECISION: 15.5.90

RAJENDRA KUMAR &amp; OTHERS

APPLICANTS

CAPTAIN VIRENDRA KUMAR

ADVOCATE FOR THE APPLICANTS

VERSUS

UNION OF INDIA &amp; OTHERS

RESPONDENTS

SHRI S.P. KALRA

ADVOCATE FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

J U D G E M E N T

(Delivered by the Hon'ble Mr. I.K. Rasgotra, Member(A))

The three applicants in this OA are working in All India India Institute of Medical Sciences (AIIMS), New Delhi as per particulars given below:-

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|----|---------------------|--------------------|
| a) | Shri Rajendra Kumar | Senior Physicist.  |
| b) | Shri R.C. Joshi     | Medical Physicist. |
| c) | Shri T. Ganesh      | Medical Physicist. |

They have filed this application under Section 19 of the Central Administrative Tribunals Act, 1985 and Article 226 of the Constitution of India, seeking relief against the impugned order No.V-16020/7/87-F-II dated 17th November, 1988 at Annexure-2 (page 11 of the paper book) issued by respondent, Ministry of

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Health & Family Welfare (Union of India), turning down the recommendation of AIIMS (proforma respondent) for grant of pay scales as applicable to corresponding post of Physicist, in Safderjung Hospital..

2. The application was admitted on 20.1.1989 and notice was issued to the respondents to file counter affidavit within five weeks. The case was argued by the learned Counsel of both the parties on 28.7.1989 on the matter of jurisdiction. Captain Virender Kumar, learned Counsel for the applicants contended that real grievance of applicants was against respondents No.1 and that respondent No.2 (AIIMS) was only a proforma party. He submitted that the applicants are working as Senior Physicists and Medical Physicist in the AIIMS and are seeking same scale of pay as have been granted by respondent No.1, to the employees, holding similar posts, in Safderjung Hospital. The learned Counsel contended that it is respondent No.1 who has rejected the claim of the applicants for grant of scale of pay allocated to Physicist in Safdarjung Hospital and it is for this reason that they have impleaded Union of India as respondent No.1. Further as the AIIMS has no say in the matter, it has been impleaded as a proforma respondent.

3. On the other hand, the learned Counsel for proforma respondent No.2 Shri S.P. Kalra, submitted that the applicants are the employees of the AIIMS which is a statutory body, set up under an Act of the Parliament, and is not a Government Department. Since AIIMS is not a body notified under Sub-Section 2 of Section 14, of the Central Administrative Tribunals

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Act the employees of the AIIMS cannot approach the Tribunal to seek redressal of their grievances in service matters. In short the Central Administrative Tribunal has no jurisdiction in the matter.

4. In view of the above arguments the learned Counsel for proforma respondent was directed to file a copy of the All India Institute of Medical Sciences Act and Rules & Regulations framed thereunder for the perusal of the Court. He was further directed to file a reply on this aspect of the matter. This order was repeated on 8.2.1990.

5. We heard the learned Counsel on the issue of jurisdiction on 2.4.1990 and have perused the All India Institute of Medical Sciences Act, 1956. The relevant sections of the Act are

Section 3 (2).

"The Institute shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall be the said name sue and be sued."

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Section 10 (1).

"There shall be a Governing Body of the Institute which shall be constituted by the Institute from among its members, in such manner as may be prescribed by

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regulations.

"The Governing Body shall be the executive committee of the Institute and shall exercise such powers and discharge such functions as the Institute may, by regulations made in this behalf, confer or impose upon it."

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Section 11 (1).

"There shall be a chief executive officer of the Institute who shall be designated as the Director of the Institute and shall, subject to such rules as may be made by the Central Government in this behalf, be appointed by the Institute."

"Provided that the first Director of the Institute shall be appointed by the Central Government.

(2) The Director shall act as the Secretary to the Institute as well as the Governing Body.

(3) The Director shall exercise such powers and discharge such functions as may be prescribed by regulations or as may be delegated to him by the Institute or the President of the Institute or by the Governing Body or the Chairman of the Governing Body.

(4) Subject to such rules as may be made by the Central Government in this behalf, the Institute may appoint such number of other officers and employees as may be necessary for the exercise of its powers and discharge of its functions and may determine the designations and

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grades of such other officers and employees.

(5) The Director and other officers and employees of the Institute shall be entitled to such salary and allowances and shall be governed by such conditions of service in respect of leave, pension, provident fund and other matters as may be prescribed by regulations made in this behalf."

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Section 29 (1)

"The Institute with the previous approval of the Central Government, may by notification in the Official Gazette make regulations consistent with this Act and the rules made there under to carry out the purposes of this Act, and without prejudice to the generality of this power, such regulations may provide for:-

(a).....

(b).....

.....

(f) the tenure of office, salaries and allowances and other conditions of service of the Director and other officers and employees of the Institute including teachers appointed by the Institute;

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Underlining - Emphasis supplied

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6. It is clear from the above provisions in the Act that the AIIMS is a body corporate established under the Act of the Parliament and is a distinct entity. Its affairs are governed by a Governing Body as provided in Section 10 (1) and 10 (2) of the Act. The officers and the employees are appointed by the AIIMS and not by the Central Government. Their salaries and allowances and other conditions of service are in accordance with the Regulations made in pursuance of the provisions of the Act. AIIMS has separate funds, separate annual budget. Although substantial part of its funds come from the Government, that alone is not the criterion for determining, if such a body corporate comes under the jurisdiction of the Tribunal.

7. Having considered the status of the AIIMS, we may apply the touch-stone of Section 14(2) of the Central Administrative Tribunals Act, 1985 which provides as under:-

"(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations (or societies) owned or controlled by Government, not being a local or other authority or corporation (or society) controlled or owned by a State Government:

....."

Sub section (3) relates to the powers of the Tribunal to deal with service matters of the employees of local or other

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authority or corporation or society. Central Administrative Tribunal can exercise these powers on such bodies only if a notification to that effect is issued by the Central Government in terms of Section 14 (2) of the Central Administrative Tribunal Act. This notification to bring the organisation within the jurisdiction of the Tribunal is absolutely necessary to adjudicate in the service matter disputes of the employees of such <sup>an</sup> organisation. As the AIIMS is an autonomous statutory body having its own governing council, and other attributes of a body corporate, this Tribunal cannot entertain the present application. We are not impressed by the argument that service matter disputes would come within the purview of the Tribunal on the ground that the recommendations made by the AIIMS to grant certain scale of pay to the applicant did not find favour with the Central Government. The application is accordingly returned for being presented, if so advised, before the appropriate forum.

*I.K. Rasgotra*  
(I.K. RASGOTRA)  
MEMBER (A) 15/5/90

*T.S. Oberoi* 15.5.90  
(T.S. OBEROI)  
MEMBER (J)