

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1598/89

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T.A. No.

DATE OF DECISION 28.9.1990.

<u>Shri Hakim Ali Murtaza</u>	Petitioner
<u>Shri S.S. Tewari & Shri K.N. R. Pillay & Shri B.N. Singor, counsel</u>	Advocate for the Petitioner(s)
<u>Union of India & Others</u>	Respondent
<u>Shri P.P. Khurana</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN (J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The applicant, who has worked as Unani Physician in C.G.H.S. Unani Unit at South Avenue, New Delhi, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that his appointment should be treated as permanent and that he should be granted seniority from the date of his appointment.

2. The respondents had terminated his services by an order dated 9.3.1989. The impugned order states that on joining duty by Dr. Talat Usmani, regular Unani Physician, approved by the UPSC under the CGHS, Delhi in the A/N of 9.3.1989, the services of the applicant are terminated with effect from the A/N of

9.8.1989.

3. On 28.11.1989, the Tribunal heard the learned counsel of both parties on MP 2337/89 in which the applicant had prayed for quashing the impugned order dated 9.8.1989, for staying the operation of the said order during the pendency of the application and to reinstate him to his original post. The Tribunal passed an order directing that in case any vacancy exists in the office of the respondents and if it is going to be filled up, the applicant should be given preference to outsiders.

4. The applicant filed SLP (Civil) No.4749/90 against the Tribunal's order dated 28.11.1989 which was disposed of by the Supreme Court by order dated 29.3.1990. The Supreme Court directed that the Tribunal shall dispose of the main application expeditiously at any any rate not later than two months from 29.3.1990.

5. The case of the applicant in brief is that his name was sponsored by the Employment Exchange and on selection by a Committee, he was appointed as Unani Physician on monthly wage for a period of 90 days by Memorandum dated 26.12.1986. It was stipulated in the said Memorandum that appointment made on monthly wage basis will not bestow any claim for regular appointment to the post of Medical Officer and that it will be outside CHS and the expenditure will be debited to contingencies. He continued to work as Unani Physician till his services were terminated by the impugned order

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dated 9.3.1989.

6. According to the applicant, there are 10 posts of Unani Physician under the CGHS scheme in Delhi, out of which 7 posts are filled up by regular candidates and 3 by ad hoc doctors, including the applicant. He further states that at present there are 2 vacancies of Unani Physician remaining vacant in Calcutta and that the applicant is willing to serve in the same post in Calcutta.

7. The respondents have stated in their counter-affidavit that they have strictly followed the principle of "last come first go" while terminating the services of the applicant. A regular nominee of the UPSC has been appointed in place of the applicant at the Unani Unit in South Avenue. The applicant was working only on ad hoc basis. According to them, no post of Unani Physician is lying vacant in Delhi.

They ^{have} further contended that those who have been appointed on ad hoc basis are not liable to transfer throughout India. As regards the posts at Calcutta, they have contended that one vacancy there is reserved for SC/ST candidate for which requisition to UPSC has already been sent for appointment under special drive for SC/ST.

8. We have carefully gone through the records of the case and have considered the rival contentions. The learned counsel of the applicant has relied upon the

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decision of this Tribunal in Dr.(Mrs.) Sangeeta Narang and Others Vs. Delhi Administration & Others, AIR 1988(1) CAT 556 and of the Supreme Court in Dr. A.K. Jain and Others Vs. U.O.I., JT 1987(4) SC 445. In our opinion, the ratio in the aforesaid cases will apply to the facts and circumstances of the instant case.

9. In Sangeeta Narang's case, the Tribunal quashed the impugned order of termination and held that the cases of all the Junior Medical Officers should be reported to the UPSC for consultation and upon such consultation, they shall be continued in service in the light of the advice of the UPSC till regular appointments are made to these posts.

10. In Dr. A.K. Jain's case, the Supreme Court has given some directions to the respondents regarding regularisation of ad hoc Medical Doctors in the Railways. The Supreme Court, inter alia, directed that the Medical Officers selected by the UPSC shall first be posted to the vacant post available wherever they may be. If all those selected by the UPSC cannot be accommodated against the available vacant post, they may be posted to the post now held by the doctors appointed on ad hoc basis and on such posting, the doctors holding the post on ad hoc basis shall vacate the same. While making such posting, the principle of

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"last come first go" shall be observed. If any doctor who is displaced pursuant to the above directions is willing to serve in any other zone where there is a vacancy, he may be accommodated on ad hoc basis in such vacancy.

11. In the light of the aforesaid judicial pronouncements, we dispose of the present application with the following orders and directions:-

(i) The respondents shall offer to the applicant the vacancy of Unani Physician at Calcutta and in case he agrees to join the post, he shall be appointed to the same. He shall not be replaced by any newly recruited Unani Physician unless he is a nominee of the UPSC.

(ii) The respondents shall report the case of the applicant to the UPSC for consultation and upon consultation with the UPSC, he shall be continued in service in the light of the advice of the UPSC till regular appointment is made to the post at Calcutta offered to him.

(iii) If the applicant applies for selection by the UPSC for any post that may fall vacant, the respondents shall consider giving him relaxation in age to the extent of the period of service rendered by him on ad hoc basis.

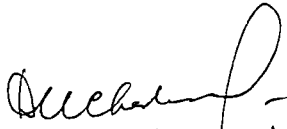
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(iv) The respondents shall comply with the above directions within a period of one month of the receipt of this order.

There will be no order as to costs.


(D.K. CHAKRAVORTY)
MEMBER (A)
28/9/90


28/9/90
(P.K. KARTHA)
VICE CHAIRMAN (J)