

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

3

Regn.No. OA 2314/89

Date of decision: 02.02.1990.

Dr. Gurbinder Kaur Hora and 9 OthersApplicant(s)

Vs.

U.O.I. through the Secretary, MinistryRespondents
of Health and Family Welfare

OA 2326/89

Dr. Dalvir Singh and 13 Others Applicant(s)

Vs.

Union of IndiaRespondents

OA 2339/89

Dr. Ravi Prakash Mawal & 20 OthersApplicant(s)

Vs.

Union of IndiaRespondent(s)

OA 2352/89

Dr. Anita Chawla & 2 OthersApplicant(s)

Vs.

Union of IndiaRespondents

OA 2368/89

Dr. Brij Kumar & 9 OthersApplicant(s)

Vs.

Union of IndiaRespondents

OA 2373/89

Dr. Raman K. MehtaApplicant

Vs.

Union of IndiaRespondents

OA 5/90

Dr. Bhawana TewariApplicant

Vs.

Union of IndiaRespondents

For the Applicants in all the
above mentioned cases

....Shri K.N.R. Pillay
Counsel

For the Respondents in all the
above mentioned cases

...Shri P.P. Khurana,
Counsel

OA 2343/89

Dr. Prasant Singh & 6 Others

Vs.

Delhi Administration & Another

For the Applicants

For the Respondents

...Applicant(s)

...Respondents

....Shri K.N.R.
Pillay,
Counsel

...Mrs. Avnish
Ahlawat, Counse
with Shri Mukul
Talwar, Counsel
for respondent 1

Shri P.P. Khura
Counsel for
respondent No.2.

OA 2513/89

Dr. Hira Lal .

Vs.

Union of India

For the Applicant

For the Respondents

...Applicant

...Respondents

...Shri J.K. Bali,
Counsel

...Shri P.P. Khurana
Counsel

OA 2518/89

Dr. Sujata Bakshi

Vs.

Union of India & Another

For the Applicant

For the Respondents

...Applicant

...Respondents

...Shri Shyam
Moorjani, Counsel

...Shri P.P. Khurana
Counsel

OA 2566/89

Dr.(Ms.) Inderpali Gajral & 3 Others

Vs.

Union of India

For the Applicants

For the Respondents

...Applicant(s)

...Respondents

...Shri Mahabir Singl
with Shri Rana
Ranjit Singh,
Counsel

.. Sh. P.P. Khurana,
Counsel

OA 2556/89

Dr. Meena Saini

.....Applicant

Vs.

Union of India

.....Respondents

For the Applicant

.....Shri G.B. Tulsaini,
Counsel

For the Respondents

.....Shri P.P. Khurana,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

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

The seventy four applicants in these twelve applications were appointed as ad hoc Medical Officers in the various Government Hospitals in Delhi and their services have been sought to be terminated by the respondents. By virtue of the stay orders passed by this Tribunal, they are, however, continuing in service. As their grievances are common and as common questions of law have been raised in these applications, it is proposed to dispose them of by a common judgment.

2. The applicants were initially appointed for a period of six months and their services were sought to be terminated by giving them notice with effect from the dates they completed six months of service. They

have contended that they are entitled to claim the benefit of the judgment of this Tribunal in Dr. (Mrs.) Sangeeta Narang & Others Vs. Delhi Administration & Others, reported in the ATR 1988(1) CAT 556 and the Hon'ble ^a Supreme Court in Dr. A.K. Jain & Others Vs. Union of India, J.T. 1987(4) SC 445. According to them, they are similarly situated like the petitioners in the aforesaid cases.

3. The respondents have denied the above contention.

4. The applicants have averred that they are fully qualified Doctors who hold the MBBS Degree and have also done their Internship Courses. Some of them have worked as Junior Resident Doctors in recognised Hospitals. Some are Post Graduates, holding Post Graduate Medical Degree/Diploma.

5. In June 1989, there had been agitations and strikes or threats of strike by Doctors working in the various Hospitals in Delhi. During and after this period, the Directorate General of Health Services under the Ministry of Health and Family Welfare recruited Doctors on ad hoc basis for a period of six months extendable upto twelve months and terminable by one month's notice. The place of duty was indicated as Delhi/New Delhi in the advertisement which was published in the News Papers in this regard on 19.6.1989 by the Government of India. It was also mentioned that Post Graduate Degree Holders will be paid consolidated remuneration inclusive of pay and allowances to the extent of Rs.4,000/- per month, Post Graduate Diploma Holders Rs.3,800/- per month and MBBS Degree Holders Rs.3,200/- per

month. Selected persons were required to attend duty forthwith. The selected candidates coming from outside Delhi/New Delhi will be reimbursed actual train fare and Hostel accommodation could be provided to them on payment of 10% of the consolidated remuneration.

6. Two days later, the Delhi Administration issued a similar advertisement in the News Papers through Maulana Azad Medical College, New Delhi (Technical Recruitment cell) inviting applications for appointment of approximately 440 Doctors on ad hoc basis in various specialities for the Medical Institutions under the Delhi Administration. The period of appointment, the remuneration payable and the facilities for accommodation were also specified on the same lines as in the advertisement dated 19.6.1989.

7. The stand of the Union of India is as follows.

The applicants were appointed only for a particular contingency due to strike by the Resident Doctors and when the strike was over, they have been rendered surplus. They have no legal right or fundamental right to continue in their present post. Their appointment was for a contract period of six months which has not been extended. Though no notice for termination is required to be given, they were put on notice. Their services are no longer required. They are not going to be replaced by another set of fresh ad hoc Doctors. The action taken by the respondents to fill up the existing regular vacancies from the nominees of the UPSC is at an advanced stage and there is no room for

accommodating the applicants any longer. There is no budget allocation for continuing their services. There are, however, vacancies outside Delhi (in Assam Rifles) where they could be considered for appointment, if they apply for the same.

8. The Delhi Administration (in OA 2343/89) has also adopted a similar stand.

9. Counsel for the respondents sought to distinguish this Tribunal's judgment in Dr.(Mrs.) Sangeeta Narang's case, relied upon by the applicants. According to them, the judgment in that case pertained to the Doctors appointed on monthly wage (contract) basis (and not on ad hoc basis) against vacant posts borne on the Central Health Service on regular pay scale of Rs.700-1300 (revised to Rs.2200-4000). In the instant case, ad hoc Medical Officers were appointed purely on ad hoc emoluments and against the vacancies of Resident Doctors which are not regular Central Health Scheme Posts.

10. Counsel for the applicants submitted that the applicants are similarly situated as those in Dr. (Mrs.) Sangeeta Narang's case and that in view of the decision of the Tribunal in the said case which became final after the SLP filed by the respondents in the Supreme Court was dismissed and in view of the judgment of the Supreme Court in Dr. A.K. Jain & Others Vs. Union of India, reported in JT 1987(4) SC 445, the applicants are entitled to the reliefs sought in these applications.

11. The reliefs sought by the applicants are as under:-

(a) to quash the impugned termination order and to direct

that the applicants shall be continued in service as ad hoc

Medical Officers till they are replaced by regular Medical

Officers recruited through the UPSC. The regular Junior

Medical Officers shall first be posted against all available

vacancies in the CHS and only after all available vacancies

are filled should the applicants be replaced. Such replacement

should be on the basis of "last come first go". After

replacement, if vacancies are found to exist or arise

subsequently anywhere in the participating units of the

CHS, the replaced ad hoc Medical Officers shall be offered

those vacancies, priority being determined by total length

of ad hoc service rendered in participating units of the CHS;

(b) to issue a direction that on completion of one year

of ad hoc service, the cases of the applicants should be

referred to the UPSC for consultation regarding their

suitability for further continuance and they shall be

continued on the basis of such advice as may be given by

the UPSC; and

(c) to issue a direction that if the applicant applies

to the UPSC for regular recruitment, he should be given

age relaxation.

12. In the grounds for reliefs, the applicants have

urged that they are also entitled to the same pay and

allowances as well as other service conditions as admissible

to regular Medical Officers who do similar work.

13. In our opinion, the grounds on which the respondents have sought to distinguish the instant case from that of Dr.(Mrs.) Sangeeta Narang and Others are neither valid nor tenable. There are no doubt slight variations in the terms and conditions of the offer of appointment of these cases but basically the appointment is on ad hoc basis and for a specified term.

14. The advertisement published in the News Papers on 19.6.1989 did not mention that the recruitment was in the context of the strike. The recruitment was based on interview and selection on all India basis. If the appointment was only for tiding over the strike period, the respondents were expected to notify to the candidates about this in the advertisement itself. In fact, the respondents used the applicants as strike breakers.

After the strike was over, the respondents should have, in all fairness, on their own evolved a scheme to eventually regularise them and continued them on ad hoc basis in the available vacancies in C.H.S. till such regularisation.

The applicants have stated in this context that 500 ad hoc Medical Doctors, who were appointed pursuant to the advertisement, were exposed to considerable harassment and even assaults during the strike period because of which many had to leave. Only 120 are left now including the applicants before us.

15. The contention of the respondents that the applicants were appointed against the vacancies of Resident Doctors appears to be an oversimplification. The applicants

have explained the concept of the Residency Scheme

in the rejoinder affidavits filed by them. Junior

Residents, also called House Surgeons, are appointed each ^a

for two periods of six months immediately after

Internship and taking the M.B.B.S. Degree. These two

periods of Junior Residency are for the purpose of

getting experience in the speciality for those who

take the Post Graduate Course. Senior Residency is

on tenure for three years. This is intended to gain

experience which is an essential qualification for

Post Graduates who apply for recruitment as Specialists

and as Assistant Professors. The applicants are

neither fresh graduates nor are they seeking appointment

as Specialists, or Assistant Professors. They belong

to a higher age-group, many being 30-40 years of age

and they have considerable experience rendered either

in private Hospitals or in State Medical Service. All

of them had undergone their Junior Residency long ago

immediately after they took the M.B.B.S. Degree. Even

for Senior Residency, many of them have crossed the

prescribed age-limit of 30 years. Junior Residents

are paid total emoluments of Rs.4,074/- and Senior

Residents, Rs.5,100/-. These pay-scales were not

extended to the applicants. In this light, the

contention raised by the respondents appears to be

hardly convincing.

16. The respondents have stated that in the case of Dr.(Mrs.) Sangeeta Narang, the recruitment through the U.P.S.C. had not been dispensed with and that the applicants in that case had been holding the posts for long periods of nearly four years, whereas in the terms of appointment order issued to the applicants before us, the maximum period was specified as six months and the termination orders were issued well in advance of the said period.

17. The fallacy in the above contention is brought out by the following particulars:-

	OAs covered by the judgment in Dr.(Mrs.) Sangeeta Narang's case	Period of service rendered by <u>ad hoc</u> Doctors
1.	OA-716/87	Six months
2.	OA-706/87	-do-
3.	OA-677/87	-do-
4.	OA-704/87	-do-
5.	OA-1135/87	-do-
6.	OA-777/87	-do-
7.	OA-1072/87	-do-
8.	OA-1014/87	-do-
9.	OA-888/87	Three months
10.	OA-1390/87	Two months

18. It will be noticed that no applicant in Dr.(Mrs.) Sangeeta Narang batch of cases had more service than six months put in by the applicants before us. In fact, some of them had as little service as three months and two months.

19. The strike was over in June, 1989. Some of the applicants had, however, been appointed in July, 1989.

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This is borne out from the Office Order issued by the respondents on 27.10.1989. It will be seen therefrom

that 8 persons were appointed in July, 1989 and their

services were sought to be dispensed with only in

January, 1990 (vide Annexure V, pages 26-28 of the

paper-book in OA-2314/89).

20. It is true that all the vacancies are to be

filled through the U.P.S.C. after competitive examinations.

The applicants have stated that many of them who are

within the age-limit, have appeared/are appearing for the

U.P.S.C. examination. They have also submitted that

those who are over-age, deserve to be considered for

age relaxation in the light of the judgment of this

Tribunal in Dr.(Mrs.) Sangeeta Narang's case and of the

Supreme Court in Dr. A.K. Jain's case, mentioned above.

The basic relief sought by them is that they should be

allowed to continue till regular Medical Doctors recruited

through the U.P.S.C. become available.

21. The question arises whether there are enough

vacancies to accommodate the applicants in the CHS.

22. In this context, the applicants have stated the

sanctioned strength of the Central Health Services

consists of 514 Senior Medical Officers' posts (of which

234 are in CGHS, Delhi, 26 in Safdarjung Hospital, 8 in

R.M.L. Hospital, and 114 under the Delhi Administration).

There are 376 Junior Medical Officers' posts in C.G.H.S.,

Delhi, 39 in Safdarjung Hospital, and 35 in R.M.L. Hospital.

This was the position in 1982, when the Central Health

Service Rules were notified. Since then, there has been a great increase in the Cadre, especially that under the Delhi Administration where a number of new dispensaries have been opened in the resettlement colonies and also the School Health Scheme has been introduced which provides a Health Centre in all Government Schools. The respondents have initiated action for recruitment through the U.P.S.C. of 200 Doctors in the C.H.S. through the 1989 Examination and 300 through the 1990 Examination. The first batch of the 200 recruits of the 1989 Examination will be available by June, 1990 at the earliest and the second batch of 300 will be available by June, 1991. They have further stated that by an order dated 21.8.1987, the

respondents have promoted 454 Junior Medical Officers of the C.H.S. as Senior Medical Officers. This is in addition to the 440 posts of Doctors for which advertisement has been issued by the Delhi Administration, as mentioned earlier.

23. The plea of the respondents is that the vacancies are to be filled through U.P.S.C. after a competitive examination, that the vacancies are only probable or anticipated, that the applicants have already been rendered surplus after the strike was over and the Resident Doctors have joined duty and that there is no budget allocation to accommodate the applicants. In our opinion, the above plea is not convincing. The

avermnt made in the applications as regards the proposal to fill up 500 vacancies of C.H.S. through

the U.P.S.C., has not been controverted in the counter-affidavit filed by the respondents.

24. The respondents have not contended that the work and conduct of the applicants have not been upto the mark.

In our opinion, the ratio in Dr. (Mrs.) Sangeeta Narang's case decided by this Tribunal and in Dr. A.K. Jain's case decided by the Hon'ble

Supreme Court will apply to the facts and circumstances of these applications. Holding that such

ad hoc appointees should be continued in service till

the posts are filled up by regular incumbents, this

Tribunal made the following observations in Dr. (Mrs.)

Sangeeta Narang's case:-

"The crucial question which still survives for consideration, however, is whether even as ad hoc appointees the petitioners can be shunted out unceremoniously just on the expiry of a total period of 180 days with an intermittent break of a day or so on the expiry of first 90 days. There can be no two opinions that the Government can make short-term appointments even against permanent posts so as to meet its immediate requirements pending appointments to the said posts on regular basis. In other words, short-term appointments, even for a specified period can be made by the Government, but the critical question is whether once having made such appointments it will be open to the concerned authority to dispense with the services of temporary/ad hoc employees at any time at its sweet will even when the need for filling the posts on temporary/ad hoc basis still persists. In other words, will it be just and fair on the part of the Govt. to terminate the services of a temporary employee who may have been appointed for a specified period even though the post has not been filled up by a regular incumbent and there is still need for manning such post upto the time it is occupied by a regular appointee. On a careful consideration of the matter, we venture to reply in the negative."

XXXXX XXXXX XXXXX XXXXX XXXXX

In this view of the matter, therefore, the services of the petitioners could be terminated only if the same were no longer required or if

76.
the concerned authority was of the opinion that the performance of the particular petitioner is not upto the mark or he is not otherwise suitable for the post. The third eventuality for termination of services can arise by way of disciplinary action but we have grave doubt that the services would stand automatically terminated by efflux of time under the contract for a short term viz., 180 days in the instant case".

25. In the light of the above, the Tribunal in

Dr.(Mrs.) Sangeeta Narang's case, quashed the impugned

orders and held that all the Junior Medical Officers

appointed purely on ad hoc basis, would be entitled

to the same pay-scale and conditions of service as are

admissible to the Junior Medical Officers appointed on

regular basis. The Tribunal also directed the respondents

to report the cases to the U.P.S.C. of all those who were

likely to be appointed on these posts on ad hoc/temporary

basis for more than one year, for consultation, and

upon consultation with the U.P.S.C., they shall be

continued in service in the light of the advice of the

U.P.S.C. till regular appointments are made to these

posts.

26. In Dr. A.K. Jain and Others Vs. Union of India

Hon'ble reported in J.T. 1987(4) SC 445, the Supreme Court has

given some directions regarding the regularisation of

ad hoc Medical Officers in the Railways. In that case,

the petitioners had been appointed initially for a

period of six months, but most of them had actually

put in periods of service from less than a year to

four years by the time the judgment was delivered.

Hon'ble The Supreme Court held as follows:-

"2. The services of all doctors appointed

the concerned authority was of the opinion that the performance of the particular person at ad hoc basis was not satisfactory. The thing which is noticeable is that the person concerned is not fit to be considered for services in the Railways.

either as Assistant Medical Officers or as Assistant Divisional Medical Officers on ad hoc basis upto 1.10.1984 shall be regularised in consultation with the Union Public Service Commission on the evaluation of their work and conduct on the basis of their confidential reports in respect of the period subsequent to 1.10.1982.

XXXX XXXXX XXXXX XXXXXX XXXX XXXX

3. The petitions of the Assistant Medical Officer/Assistant Divisional Medical Officers appointed subsequent to 01.10.64 are dismissed. But we now direct that the Assistant Divisional Medical Officers who may have been now selected by the Union Public Service Commission, shall first be posted to the vacant posts available wherever they may be. If all those selected by the UPSC cannot be accommodated against the available vacant posts, they may be posted to the posts now held by the doctors appointed on ad hoc basis subsequent to 1.10.1984 and on such posting the doctor holding the post on ad hoc basis shall vacate the same. While making such postings the principle of 'last come, first go' shall be observed by the Railways on Zonal basis. If any doctor who is displaced pursuant to the above direction is willing to serve in any other Zone where there is a vacancy he may be accommodated on ad hoc basis in such vacancy.

XXXX XXXXX XXXXX XXXXXX XXXX XXXX

4. All Assistant Medical Officers/Assistant Divisional Medical Officers working on ad hoc basis shall be paid the same salary and allowances as Assistant Divisional Medical Officers on the revised scale with effect from 1.1.1986. The arrears shall be paid within four months.

5. No ad hoc Assistant Medical Officer/Assistant Divisional Medical Officer may be working in the Railways shall be replaced by any newly appointed AMO/ADMO on ad hoc basis. Whenever there is need for the appointment of any AMO/ADMO on ad hoc basis in any zone the existing ad hoc AMOs/ADMOs who are likely to be replaced by regularly appointed candidates shall be given preference.

6. If the ad hoc doctors appointed after 1.10.1984 apply for selection by the Union Public Service Commission, the Union of India and the Railway Department shall grant relaxation in age, to the extent of the period of service rendered by them as ad hoc doctors in the Railways.

27. The applicants have prayed that they should be

given age relaxation upto 40 or 50 years as given

to ad hoc Medical Officers serving the Railways,

as observed in Dr. A.K. Jain's case. On a perusal

of the judgment of the Supreme Court, we see no

such direction issued by the Court in this regard.

28. In the conspectus of the facts and circumstances

of these applications and following the ratio of the

judgment of the Tribunal in Dr.(Mrs.) Sangeeta

Narang's case and that of the Supreme Court in

Dr. A.K. Jain's case, we order and direct as follows:-

(i) The impugned orders in all these

applications are quashed. The

respondents are directed to continue

the applicants in service as ad hoc

Medical Officers till they are replaced

by regular Medical Officers recruited

through the Union Public Service

Commission. The U.P.S.C. nominees shall

first be posted against all available

vacancies in the C.H.S. and only after

all the available vacancies are so

filled, should the applicants be replaced.

The replacements should be on the basis of

'last come, first go'. After the

replacement, if vacancies are found to

exist or arise subsequently anywhere in

the participating Units of the CHS, the

being as early as possible.

replaced ad hoc Medical Officers shall be

offered these vacancies, priority being

determined on the basis of total length

of ad hoc service put in by them;

(ii) The applicants would be entitled to the

same pay-scale and allowances as also

the same benefits of leave/maternity

leave/increment on completion of one

year and other benefits of service

conditions as are admissible to

regularly appointed Medical Officers.

In the facts and circumstances of the

case, we do not, however, direct the

respondents to pay to them arrears of

pay and allowances for the past

period;

(iii) The respondents are directed to report

the cases to the U.P.S.C. in respect of

those applicants who are likely to

continue on the posts held by them on

ad hoc basis for more than one year.

for consultation and upon consultation

with the U.P.S.C., they shall be continued

in service in the light of the advice of

the U.P.S.C. till regular appointments

are made to the posts held by them;



- (iv) In no event, shall the applicants be replaced by newly recruited Medical Officers by whatever designation and on whatever terms and conditions they may be;
- (v) If the applicants apply for selection by the U.P.S.C., the respondents shall consider granting relaxation in age to them to the extent of the period of service rendered by them on ad hoc basis;
- (vi) The interim orders passed restraining the respondents from terminating the services of the applicants are made absolute; and
- (vii) The parties will bear their own costs.

Let a copy of this order be placed in all the twelve case files.

(D.K. CHAKRAVORTY)
MEMBER (A)

(P.K. KARTHA)
VICE CHAIRMAN (J)