

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 531  
T.A. No.

1988

DATE OF DECISION July 27, 1989.

Dr. (Mrs.) Sushma Dube, Applicant (s)

Shri J.K. Bali, Advocate for the Applicant (s)

Union of India & Ors. Respondent (s)  
Versus

Shri P.H. Ramchandani, Senior Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. P.S. Habeeb Mohamed, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? ☒
2. To be referred to the Reporter or not ? ☒
3. Whether their Lordships wish to see the fair copy of the Judgement ? ☒
4. To be circulated to all Benches of the Tribunal ? ☒

JUDGEMENT

By: Hon'ble Mr. Justice Amitav Banerji, Chairman.

This Original Application has been filed by Dr. Sushma Dube, Assistant Medical Officer, Northern Railway, Moradabad, who is aggrieved by order dated October 12, 1987, continuing her appointment as ad hoc Assistant Medical Officer for a further period of six months upto 31st March, 1988 in spite of her selection by the Union Public Service Commission. She has prayed that the order dated 12.10.1987 be declared null and void and be directed the respondents to regularise her ad hoc appointment as she had been selected by the Union Public Service Commission.

A reply has been filed by the respondents who have raised two preliminary objections apart from other objections.

Firstly, the Application is misconceived and not in proper form, and secondly, the respondent No.1 Union of India cannot be impleaded through General Manager, Northern Railways and respondent No.2 'Railway Board' cannot be sued through Joint Director, Establishment, G., and as such the O.A. is liable to be dismissed on this ground.

We feel that it will not be necessary to refer in detail to the case of the applicant or the reply of the respondents as the learned counsel for the applicant had made a categorical statement before the Chairman on 16.3.1989 as follows:

"Mr. Bali, learned counsel for the applicant states that major relief which had been sought by the applicant in OA 531/88 has been settled and she is now in Class I post from 13.1.1989. He also states that certain minor matters of her like seniority and consequential benefits are pending."

The hearing was expedited and 10th July, 1989 was fixed.

Shri J.K.Bali for the applicant and Shri P.H.Ramchandani, learned counsel for the respondents were heard on the 25th July, 1989.

Shri J.K.Bali contended that even though the applicant has been given appointment as Assistant Divisional Medical Officer by the appointment letter dated 13.1.1989, and paid at the same rate as a ADMD Doctor in the Railways from 1.1.1986, yet her seniority and certain consequential benefits have not been granted. He, therefore, urged, firstly, that her continuation in ad hoc capacity even after selection by the UPSC was wrong; secondly, the appointment letter dated 13.1.1989

should have mentioned that it was effective from 1986 after the U.P.S.C had made the selection; thirdly, her seniority be fixed with effect from the date of her continuous officiation in ad hoc capacity. 7

It may be noted here that none of these points, nor the basic narrative of facts are mentioned in the O.A. These were only orally stated by the learned counsel for the applicant. Further, there was at no time any effort to amend the O.A. or to seek any other or further relief.

A question arises: whether any further relief can be granted at all in this case when there is a total absence of pleading in respect of the reliefs now being sought? Learned counsel for the applicant argued that where there is a change of circumstances, the Court can mould relief. Similarly, he urged, the Court will not deny relief to a party on a narrow technical ground. Further that the Court is precluded from taking a myopic view in matters of pleadings. He cited the following cases:

1982 (2) S.L.R. 405 (Maya Mukherji Vs. State of West Bengal).

1981 (3) S.L.R. 108 (SC) (B.R. Ramabhadriah Vs. Secretary Food & Agriculture Deptt., Andhra Pradesh and others.)

1976 (1) SLR 805 (State of Kerala Vs. N.M. Thomas).

1976 (1) SLR 276 (Harsukh Vs. The State of H.P. & Ors.).

In our opinion none of these cases would be helpful to the case of the applicant. Where there is a total absence of pleadings on a point, that point cannot be raised.

In these proceedings, which are akin to writ proceedings in the High Court. See Daljit Singh Minhas Vs. State of Punjab (1978 (1) SLR 32 (F.B)(Pb.& H). The Punjab & Haryana High Court has laid down the law that a point not taken in the writ petition cannot be allowed to be taken at the time of argument. See Gian Chand Vs. U.C.I. & Ors. (1980(1)SLR 587 (Pb. & H). In the case of S.S.Sharma Vs. Union of India (1980(3)SLR 511), the Supreme Court has held:

"courts should ordinarily insist on the parties being confined to their specific written pleadings and should not be permitted to deviate from them by way of modification or supplementation except through the well-known process of formally applying for amendment.

... ..

But there is a procedure known to the law, and long established by codified practice and good reason, for seeking amendment of the pleadings. If undue laxity and a too easy informality is permitted to enter the proceedings of a court it will not be long before a contemptuous familiarity assails its institutional dignity and ushers in chaos and confusion undermining its effectiveness. Like every public institution, the courts function in the security of public confidence, and public confidence resides most where institutional discipline prevails. Besides this, oral submissions raising new points for the first time tend to do grave injury to a contesting party by depriving it of the opportunity, to which the principles of natural justice hold it entitled, of adequately preparing its response."

If the applicant wanted any other relief, as a sequel of the order of appointment, she should have amended her O.A. and incorporated relevant facts, grounds and reliefs prayed for. She had not done anything of this kind. Pleadings are necessary so that the other side is not taken by surprise and the latter may meet the case taken up by the applicant. The Court or the Tribunal has the added advantage to know exactly what is the case of the parties. The Court or the Tribunal may frame the points for decision and decide the matter after the hearing. It is not permissible to urge a case beyond the pleadings except where the point or matter urged arises out of the pleadings.

As seen above, even if the applicant is allowed latitude in the matter of pleadings, she cannot set up a new

case altogether. In this case there is no new pleadings nor any prayer for amendment of pleadings to incorporate new facts and circumstances, nor grounds for relief. Consequently, all these arguments raised by the learned counsel for the applicant are of no avail.

In the present case the applicant is asking for fixation of seniority, and from the date of her continuous officiation, none of which had even been remotely mentioned in her Original Application. These would have arisen had the appointment been given to her prior to her filing the O.A. She was aggrieved by the fact that she was not being given appointment even though she had been selected by the U.P.S.C. She resented the extension of her ad hoc service for six months.

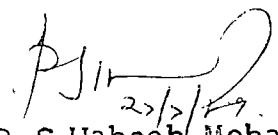
No question of seniority could have arisen then. No question of relating back the date of seniority could have arisen then. These were new questions which could be raised in a separate O.A. on the basis of relevant facts and circumstances.


As it is, after the issue of the letter of appointment and her regularisation in the service as ADMO and her being paid salary at the scale admissible to ADMO, with effect from 1.1.1986, nothing remains to be granted. All the reliefs claimed in the O.A. have been given which render the O.A. infructuous. She had asked for her service to be regularised. This had been done. She had prayed for the ad hoc appointment to be

ended. This had been done. She had been paid pay and allowances of ADMD from 1.1.1986, and that took care of consequential benefit too. Practically nothing remains in the O.A. to be decided, as framed and filed by her. The O.A., therefore, merits to be dismissed on this ground alone.

We are further of the view that the O.A. in this case was poorly drafted and even the parties arrayed as respondents were not through proper officials.

Having considered the arguments of the learned counsel for the parties, and having perused the record of the case, we are of the view that nothing remains to be decided in this O.A. and that it has become infructuous. The new pleas urged by the learned counsel for the applicant are not entertainable in this O.A. and as such not considered. In the result, this O.A. is dismissed as infructuous. Costs on parties.

  
(P.S. Habeeb Mohamed)  
Member (A)

  
(Amitav Banerji)  
Chairman