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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 1085/88

Dated: 27.9.1993

Bhartendu Saraswat

Applicant

Vs.

Union of India & Anr.
(D.G., C.G.H.S.)

Respondents.

None for the applicant.

Shri P.P. Khurana, Counsel for the Respondents.

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1. Hon'ble Mr. C.J. Roy, Member (J)
2. Hon'ble Mr. B.K. Singh (Member (A))

JUDGEMENT (ORAL)

(Delivered by Hon'ble Mr. C.J. Roy, Member(J))

Heard Mr. P.P. Khurana, the learned counsel for the respondents. The applicant filed this O.A. under Sec.19 of Central Administrative Tribunal Act, 1985. The brief facts of the case are:

The applicant possesses Bachelor Degree in Ayurvedic Medicine and Surgery called as BAMS and the same is duly recognised. He also got his name registered with the Employment Exchange. It is alleged that vide communication dated 3.12.86 the respondent No.1 had asked for names of qualified Ayurvedic Physicians to be appointed with them to work in the Ayurvedic Units of C.G.H.S Dispensaries. The applicant appeared before the Selection Committee for interview conducted on 16.12.86. He was selected and then he received appointment order dated 4.8.87 from the respondent No.1 stating that the applicant has been selected for the aforesaid post for a period of 90 days on monthly wages basis in the pay-scale of Rs.650-1200 (pre-revised) plus non-practicing allowance. The applicant joined duty on 10.8.87. On 8.11.87 he received a letter saying that his

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services stand terminated w.e.f. 9.11.87 and that he could be reconsidered for fresh appointment. He was so appointed for 90 days and ultimately his services were terminated on 1.7.1988 when he attained the age bar of 35 years, i.e. he served for a period of 11 months.

2. The applicant further alleges that the appointment order was issued under Government of India, Ministry of Health Rules being framed under Art.311 of the Constitution and the the applicant was appointed in accordance with the qualifications and that he was holding the civil post and therefore his services cannot be dispensed with. The respondents after filing counter contested the O.A. mainly on the ground that the applicant was appointed on ad-hoc basis temporarily for a period of 90 days on monthly wages basis (short-term basis). The respondents have filed annexure-I which states:

"It has been brought to the notice of this Ministry that a number of organisations are finding it difficult to get suitable candidates for appointment as medical officer on monthly wage basis within the age-limit of 30 years. Accordingly, it has now been decided that the age-limit for making such appointments on monthly wage (contract) basis may be taken as 35 years instead of 30 years. The candidate should be within the prescribed age-limit for the first appointment for a period of six months. It may please be ensured that if after the expiry of an initial spell of appointment, a candidate is appointed again, he/she must be within the age-limit of 35 years at the commencement of each fresh spell of appointment of 90 days, if any, made thereafter."

(9)

3. Heard the learned counsel for the respondents and have gone through the records. The appointment of the applicant was on purely short-term monthly wage basis as per the letter dated 4/10.6.85. As per letter cited supra it is clear that this appointment could be made only upto the age-limit of 30 years. Since nobody came forward for the post due to the age-limit of 30 years, it has been increased to 35 years. After going through carefully this letter we find that the terms and conditions contained in this letter clearly stipulate:

"It may please be ensured that if after the expiry of an initial spell of appointment, a candidate is appointed again, he/she must be within the age-limit of 35 years at the commencement of each fresh spell of appointment of 90 days, if any, made thereafter."

The applicant after having accepted these terms and conditions joined the service on short-term basis purely on monthly wages and now he cannot go back on the terms and conditions.


4. Besides, when the initial appointment was made the applicant was within the age-limit of 35 years and beyond that period under the scheme nobody could be appointed under the short-term contract basis. That apart, the applicant was more than 34 years when he joined for the first time on 4.8.87 and when he was terminated on 1.7.88 he had already completed 35 years. Therefore he has not been reconsidered for fresh appointment.

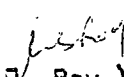
Annexure-I is the appointment order dated 20.5.88. It may be

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seen that the said applicant was appointed on monthly wages basis for a period of 52 days from 10.5.88 to 30.6.88 with a break in service for one day on 9.5.88, i.e. one day prior to this appointment was done. Under this order accepting the terms and conditions, the applicant joined the Respondents. The respondents further communicated the terms and conditions of the appointment vide their Memo. No. F.25-15/86-CGHS(G.E./11,118 dated 4.8.87 they being unchanged. It is, therefore, logically follows that this short-term contractual appointment on monthly wages basis does not entitle him to continue in service, as if he is holding a civil post. It is more so because he accepted the conditions and joined the service, and as per condition laid down in annexure-I of the counter the applicant could not have been appointed after he completed the age-limit of 35 years on 1.7.88. We therefore feel that the application has no merit and is therefore dismissed.

No orders as to costs.


(B.K. Singh)
Member (A)


(C.B. Roy)
Member (J)

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