

**Central Administrative Tribunal
Principal Bench**

OA No.901/2015

New Delhi, this the 12th day of March, 2020



**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)**

Dr. Prashant Kumar,
Aged about 43 years
S/o Shri J. Kishore,
R/o 93, United India Apartments,
Mayur Vihar Phase-I Extension,
Delhi-110091.

...Applicant

(By Advocate : Shri U. Srivastava and Shri Jugal Kishor)

Versus

Government of NCT of Delhi Through

1. The Chief Secretary,
Govt. of NCT of Delhi,
5th Floor, Wing-A, Delhi Secretariat,
I.P. Estate, New Delhi-110002.
2. The Secretary,
Department of Health and Family Welfare,
Govt. of NCT Delhi, Level-9, A Wing,
Delhi Secretariat, New Delhi.
3. The Medical Superintendent,
LN Hospital, J.L.N. Marg,
New Delhi-110002.
4. Dr. V.K. Ramteke
5. Dr. V.K. Goyal
6. Dr. B.K. Sainanee

(Notice to respondent Nos.4,5 & 6 be served through
respondent No.3)

...Respondents

(By Advocate : Shri Ujjawal K. Jha with Shri Prabhakar
Thakur)

ORDER (ORAL)**Justice L. Narasimha Reddy, Chairman :-**

The applicant was appointed as Sr. Resident in the Lok Nayak Hospital, New Delhi, the 3rd respondent herein, on a tenure basis, for a period of one year, through an order dated 07.07.2003. It was renewed thereafter twice, for a period of one year each.

2. The applicant was issued a Show Cause Notice dated 08.09.2005, stating that he remained unauthorisedly absent between (i) 09.05.2005 to 11.06.2005; (ii) 11.07.2005 to 16.07.2005 and (iii) 30.08.2005 onwards. It was also mentioned that an FIR was registered against him by the Anti Corruption Branch. He was required to explain as to why his services be not terminated w.e.f. 09.05.2005. Stating that the applicant did not submit any explanation, the 3rd respondent passed an order dated 21.09.2005, terminating his services w.e.f. 30.08.2005.

3. It was only in the year 2013 that the applicant filed OA No.2975/2013, challenging the order of termination. The OA was not entertained on the ground that the



applicant did not avail the remedy of appeal. Thereafter, he preferred an appeal. OA No.2016/2014 was filed, complaining that the appeal was not disposed of. An order was passed on 07.07.2014, directing the respondents to dispose of the appeal. Accordingly, the appellate order was passed on 19.01.2015, dismissing the appeal. Challenging the order of termination, as upheld vide order dated 09.01.2015, this OA is filed.

4. The applicant contends that the allegations made against him are baseless and though he applied for leaves from time to time, the same was not sanctioned. He states that though an FIR was registered against him, he obtained anticipatory bail. The applicant further contends that in an inquiry conducted by a team of doctors, appointed by the 3rd respondent, it was held that the allegations of corruption made against him are without any basis.

5. On behalf of the respondents No.1to3, a detailed counter affidavit is filed. It is stated that the appointment of the applicant was for a period of one year and the renewal thereof was, subject to his satisfactory conduct and performance. It is stated that though the



applicant was granted two renewals, it emerged that he was unauthorisedly absent for long spells and that he was involved in corrupt practices and an FIR was registered by the Anti Corruption Branch. The respondents contend that the applicant has no right to continue in service. It is also stated that the Appellate Authority undertaken a detailed discussion and the factum of the applicant being arrested in the year 2007, was also taken note of.

6. We heard Shri U. Srivastava and Shri Jugal Kishor, learned counsel for applicant and Shri Ujjawal K. Jha, learned counsel for respondents.

7. It is not in dispute that the appointment of the applicant was on a tenure basis. The very text of the order dated 07.07.2003 makes this clear. The same reads as under :-

“MEMORANDUM

1. On the recommendations of the Staff Selection Committee, the Medical Superintendent is pleased to offer to Dr. Prashant Kumar tenure post of Sr. Resident in the department of Anesthesiology in the pay scale of Rs.10940-11295-11650. The appointee will also be entitled to draw Dearness and other allowances at the

rates admissible under the subject to the conditions laid down in rules and orders governing the grant of such allowances in force from time to time.



2. The terms and conditions of appointment are as follows :-

- I) The appointment is temporary and on a tenure basis as per rules of the Residency Scheme.
- II) His/her present tenure of appointment will be for one year renewable every year for a maximum period of 3 years subject to the satisfactory service and good conduct certificate after each completed year from the Head of the Department concerned. The period of service rendered by him/her as Senior Resident prior to this appointment, if any, will be counted while reckoning the tenure as Senior Resident.
- III) The appointment may be terminated at any time by one months notice given by either side viz the appointee or the Appointing Authority without assigning any reason. The Appointing Authority however, reserves the right of terminating the services of the appointee forthwith or before the stipulated period of notice by making payment to him of a sum equivalent to the pay and allowances for the period of notice or the un-expired portion thereof.”

(remaining clauses are not extracted as not being immediately relevant for the purpose of this OA)

8. It was clearly mentioned that the appointment is purely on tenure basis and the renewal is at the discretion of the respondents. The applicant was issued a Show Cause Notice dated 08.09.2005. It reads as under:-



“SHOW CAUSE NOTICE

It has been reported that you are absented from duty/ availed leave without prior approval and permission from the competent authority as under:-

- (1) 9.5.2005 to 11.6.2005
- (2) 11.7.2005 to 16.7.2005
- (3) 30.8.2005 onward

Your above act a seen of a unbecoming of a Govt. servant.

Besides above there are so many cases are under process against you. In addition to above it has also come to the notice that you have been arrested by the Anti-Corruption Branch and F.I.R. has been lodged against you.

Keeping in view the above reasons your continuation in service is not in public interest and you are asked upon to Show Cause Notice that why your services should not be terminated w.e.f. 9.5.2005 under clause 8(b) and provisions of sub rule (1) of Rule 5 of the Central Civil Services (Temp. Service), Rules 1965 being a temporary Govt. servant.

Your explanation should reach the undersigned within 3 days from the receipt of this notice.”

9. The applicant did not submit any explanation. It is stated that the applicant did not receive the Show Cause Notice, at all. However, it is too late for us at this stage, to verify that fact. The third respondent filed an order dated 21.09.2005. It reads as under :-



“O R D E R

On remaining absent from 9.5.05 to 11.6.05, 11.7.05 to 16.7.05 and 30.8.2005 onwards and after having been booked by the Ante-Corruption Branch Govt. of Delhi in a corruption related case, you were issued Show Cause Notice vide No.1992-93 on 8.9.2005 to explain your position within three days from the receipt of that notice but noting has been receipt in this office from your side which indicate that you are not having any supporting material to offer in your deffence.

The A.C.P. of the Ante-corruption Branch of the Govt. of Delhi has also conveyed vide their letter No.6625-35/JP/YCB dated 6.9.2005 that ISR in case FIR No.36/05 dated 1.9.05 u/s 7/13 POC Act & r/w 384 IPC P.S. Anti Corruption Branch, GNCT of Delhi.

After going through the available material in the records it is not possible that your services can not be continued in the present circumstances and are hereby terminated w.e.f. 30.08.2005 since when you are reportedly remaining absent from duties without any approval of the competent authority because due to your negligence in attending your duties is effecting the patient case.”



10. The first contention urged by the applicant is that Rule 5(1) of the CCS (Temporary Service) Rules, 1965, does not apply to him at all. Even if that is accepted, the applicant is not able to point out the alternative procedure. Once the appointment is purely on a tenure basis, he does not have any right to continue in the service, except in accordance with the terms of the order. It is purely at the discretion of the respondents. At any rate, the law requires the compliance of principles of natural justice and that stood complied with, with the issuance of the Show Cause Notice.

11. Extensive reference is made to an inquiry, said to have been conducted by a team of doctors. The report runs into 14 pages. What astonishes us is that the team of doctors tried to white wash the heinous crime of the corruption, alleged against the applicant. Just by pointing out small discrepancies about the dates, they dismissed the entire allegation of corruption. It only shows the level of the malady prevailing in the hospital.

12. When the appointment of the applicant itself is on a tenure basis and renewable, subject to the satisfactory performance, remaining absent for months together,



cannot be countenanced at all. After remaining absent for two spells between May and June and 15 days in July of 2005, the applicant remained absent continuously from 30.08.2005 onwards. The applicant was engaged as an Anaesthetist, who is required to be available at any point of time, to enable the conducting of surgeries in emergency cases. However, he has chosen to remain absent for weeks and months together.

13. The third and most unfortunate aspect is that the applicant was shown as accused in the corruption related cases. Though he obtained anticipatory bail in a case, at a later stage, he was arrested also in 2007. One just cannot afford to have a person with such a background, at a hospital, which is expected to render public service.

14. We do not find any merit in the OA and the same is accordingly, dismissed.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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