

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.161/2020

This the 30th day of July, 2020

**Coram : Hon'ble Shri J.V.Bhairavia, Member (J)
Hon'ble Shri A.K.Dubey, Member (A)**

Dr. Niranjan Lumbani
Son of Kakubhai Lumbani
Age – 55 years
Resident – 19, Manhar Plot,
Jagdish Apartment, 2nd Floor
Rajkot 360 311. Applicant

(By Advocate : Ms. Vilas Purani)

VERSUS

1. Union of India,
Notice to be served through
The General Manager
Western Railway, Churchgate,
Mumbai 400 020.
2. The Divisional Railway Manager
Western Railway, Kothi Compound
Rajkot 360 002.
3. Chief Medical Superintendent
Western Railway, Rajkot Division
Divisional Hospital, Rajkot. **Respondents**

(By Advocate : Shri M.J.Patel)

O R D E R – ORAL

Per : Hon'ble Shri J.V. Bhairavia, Member (J)

In the instant OA, being aggrieved by the impugned order dated 04.07.2020 (Annexure A-1), the applicant has filed present OA.

2. The relief sought by the applicant in this OA is as under :

“(A) The Hon’ble Tribunal be pleased to declare the decision of the respondent No.2 discontinuing the contract/ engagement of the applicant as Contractual medical practitioner vide impugned order dated 04.07.2020 letter No.ED/889/12/1 Vol.III, thereby terminating the services of the applicant as medical practitioner, under the Railway Hospital at Rajkot as illegal, unjust and arbitrary, capricious and violative of Article 14 & 16 of the Constitution of India and also contrary to the judgment of the Hon’ble Courts, hence required to quashed and set aside.

(B) The Hon’ble Tribunal be pleased to declare that the respondents has acted illegally and arbitrarily and by ignoring the fact that the applicant is the senior most Contractual Medical Practitioner / Doctor, passed the impugned decisions without applying the principles of first come last go or last come first go and further have acted contrary to the railway ministry’s O.M. dated 30.6.2020 and 01.4.2020, which has stated that over and above vacancy the CMPs engagement is to be extended till 31.12.2020, due to present covid-19 situation.

(C) The Hon’ble Tribunal be pleased to direct the respondents to act according to the O.M. dated 30.6.2020 as well as 01.04.2020 and extend the engagement of the applicant as CPM in the interest of justice.

(D) Any other relief this Hon’ble Tribunal deem fit and proper in the interest of justice be granted.”

3. The brief facts of the case are as under :-

3.1 It is contended by the counsel for the applicant that the applicant was engaged as Medical Practitioner at Railway Hospital, Rajkot on contractual basis under the Scheme called “Engagement of Medical Practitioner on Contract Basis”. He had rendered his service for more than 11 years.

3.2 Since April, 2008 applicant was engaged and time to time, his engagement has been extended as Contract Medical Practitioner (hereinafter referred as C.M.P.). It is further contended that by order dated 24.09.2019, the respondent No.2 i.e. Divisional Railway

Manager, Western Railway, Rajkot had approved his engagement as 12th term for another period of one year. In the said order, it has been categorically stated that the engagement of the applicant as C.M.P. shall continue for a period of one year on contract basis on usual terms and conditions. (Annexure A-3 refers).

3.3 It is also contended by the counsel for the applicant that though 12th term as C.M.P was going to be expired on 23.09.2020, however, prior to the said date, the Respondent No.2 vide order dated 18.06.2020 (Annexure A-2) had informed the applicant that his engagement as C.M.P will be discontinued w.e.f. 04.07.2020.

3.4 It is contended by the counsel for the applicant that as per existing instruction issued by the Railway Board from time to time regarding engagement as well as extension of the scheme for C.M.P, thereby the contractual engagement of C.M.P. cannot be terminated at any time by giving 15 days notice period that too without assigning any reason and therefore, the orders dated 04.7.2020 discontinuing the engagement / terms of the applicant is bad-in-law.

3.5 It is contended by the Applicant that the Applicant is senior most C.M.P. and since last 11 years he is rendering his service as C.M.P in the hospital/ office of the Respondents. There are total 18 sanctioned posts of medical officer, out of which, 11 posts were filled by way of C.M.P including the applicant whereas 07 posts were filled up with regular Medical Officer. Therefore, ignoring the seniority of

the applicant that too without applying the principle of first come, last go or last come, first go, the respondents had adopted pick and choose policy and erroneously decided to discontinue his services whereas other 10 C.M.P who are junior to the applicant are allowed to work.

3.6 Being aggrieved, the applicant had submitted his representation dated 20.6.2020 before the respondent No.2 stating therein that he had worked for last 11 years without any complaint and is a senior most C.M.P. He further submits that according to the Master Circle No.22, junior must move out first, and requested to allow him to continue as C.M.P.. However, the respondents have not considered the request of the applicant.

3.7 As the representation made by the applicant remained unanswered, he approached both the recognized Unions and they had also submitted their representations dated 23.6.2020 (Annexure A-6) and dated 25.6.2020 (Annexure A-7) regarding illegal discontinuation of his service and further requested to allow the applicant to continue his service as C.M.P. However, the same remained unanswered.

3.8 Therefore, the applicant had filed OA No.152/2020 which was disposed of on 01.07.2020 by this Tribunal by granting liberty to the applicant to submit his fresh representation and further directed that till the consideration of his representation, the respondents were directed to keep termination of the applicant in abeyance. Accordingly, the applicant had submitted his fresh representation

dated 02.07.2020, however, again in mechanically way the respondents had rejected the said representation vide impugned order dated 04.7.2020 (Annexure A-1). Hence, this OA.

3.9 Counsel for the applicant has laid emphasis on the order dated 30.6.2020 passed by the Railway Board (Annexure A-12) and submitted that in the said order the Railway Board has categorically instructed all the Railway Hospitals that the term of C.M.P. are extended over and above the vacancies in IRHS to meet the local requirement for handling the COVID-19 pandemic be further extended from 01.7.2020 to 31.12.2020 with the same terms vide Board letter dated 30.6.2020, though the said order dated 30.6.2020 was brought to the notice of the respondents, however, without considering it the respondents has passed the impugned order which is contrary to the instructions contained in Railway Board's letter dated 30.6.2020.

3.10 Counsel for the applicant has placed reliance upon the order dated 27.08.2014 passed in OA No.48/2014 by the Principal Bench in the case of Dr. Renu Patel v/s. Govt. of NCT of Delhi & Ors.(Annexure A-9). The Judgment passed by Ho'ble Rajasthan High Court in the case of Jitendra Sharma v/s. State of Rajasthan dated 04.8.2011 (Annexure A-10), as also she has also relied upon the order dated 24.10.2018 passed in OA No.2276/2017 of the Principal Bench of this Tribunal (Annexure A-11) and submitted that in an identical

cases, the various Benches of this Tribunal directed the respondents that they would resort to the principle of last come first go i.e. the contractual doctor appointed last would be discontinued first.

4. On the other hand, counsel for the respondents, Shri M.J.Patel submits that the applicant was appointed purely on contractual basis and not on regular basis. He further submits that in the order of the offer of the appointment it is clearly stated that “this offer is for a period of one year not exceeding for one year from the date you join the hospital to which you are being posted or till a regular UPSC doctor is posted against the post of whichever is earlier”. It is submitted that since regular UPSC doctor has been appointed and he joined his duty at Rajkot against the existing vacancy, therefore the regular appointed of the doctor who is posted against that post, under the circumstances, the contractual service of the applicant discontinued in terms of his appointment order. Therefore, the impugned decision is just and proper and the applicant is not entitled for any relief sought for.

4.2. Since the appointment of the applicant was purely on contractual basis with certain terms and condition, the seniority rules/criteria are not applicable in this case.

4.3 It is submitted that the Railway Board’s Master Circular No.22 dated 28.2.2020 is not applicable in the case of the applicant as it is

applicable only to the regular Railway employees and not for those who are engaged on contractual basis.

4.4 It is submitted that the applicant's case cannot be represented by any of the recognized Railway trade Union as he is not regular employee of the Railway and therefore, he cannot be terms as 'member' of such Union. Thus, it cannot be said that even though representations were made through both the recognized Unions, they were not considered.

4.5 It is submitted that facts of the present case is different than the facts of the case relied upon by the applicant and therefore, same will not applicable in the facts and circumstances of the present case.

5. Heard the learned counsel for both the parties at length and perused the materials available on record.

6. It is noticed that in response to direction issued by this Tribunal in earlier OA of the applicant i.e. OA No.152/2020 the representation of the applicant with regard to his discontinuation as C.M.P. has been rejected by the respondents vide impugned order dated 04.7.2020.

7. It is noticed that in the case of the applicant, his extension as Contract Medical Practitioner (C.M.P.) – Medical Department Rajkot Division, Western Railway, was allowed vide order dated 24.9.2019 for a period of one year on contract basis on usual terms and conditions. However, before his extended one year term get over, the respondents vide their letter dated 18.6.2020 (Annexure A/1(a))

inform the applicant that as per instruction issued by Railway Board as well as extension of scheme of the Contract Medical Practitioner on contract basis stipulates that the contract can be terminated by the Railway at any time during the contract by giving 15 days notice without assigning any reasons as per the terms and conditions laid down in Railway Board's letter dated 23.2.2000, according he was given 15 days notice period for discontinuation from the contract/ disengagement and further informed him that his contract stands terminated w.e.f. 04.7.2020. Thereafter, as noted hereinabove, the request of the applicant for continuation of his service has been rejected on 04.7.2020 therein the respondents had considered the various submissions of the applicant and rejected the same. The reasons stated in the said decision are mainly on the ground that the respondents have appointed regular doctor on the vacant post and applicant being engaged on contract basis, he has no indefeasible right to continue as C.M.P., the applicant had accepted the terms and condition while he was offered engagement as C.M.P. that he shall have no claim whatsoever for extension of the period of contract or his continuity or regularization in any manner. The said temporary engagement sought to be terminated in between the extended term period by any of the party to the contract after giving the prescribed notice as stipulated in the contract. Since the respondents had issued the fifteen days notice about their intention to terminate the contract,

we do not find any infirmity in the said action of the respondents as it is the sole discretion of the employer to allow further continuation of the contract which they entered into with the C.M.P. herein.

8. So far instructions, guidelines issued by the Railway Board with respect to meet local requirement for handling the COVID-19 pandemic and engagement of C.M.Ps over and above the vacancies, on which the counsel for the applicant placed reliance and submission that the respondents ought to have followed the said guidelines and not to discontinue the engagement of the applicant is concerned, it is required to mention that in contra; the respondents have submitted that the process of engagement of doctors for COVID-19 pandemic is governed by separate notification issued for the purpose containing applicable condition and eligibility. It is open for the applicant to apply for such requirement as and when the same is called for. Since contractual employee does not have any indefeasible right to be continued on contractual arrangement. We do not find it appropriate to accept the submissions of the applicant that as per the Railway Board's instructions as referred hereinabove during pandemic COVID-19 his engagement should not be discontinued. It is proscriptive of the employer to engage or grant extension of C.M.P. to meet with COVID-19 pandemic.

9. The counsel for the applicant also submitted that the order passed by the Principal Bench of this Tribunal in the case of

Sh.Prakash Rathod & Ors. v/s. Union of India & Ors. in OA No.2276/2017 decided on 24.10.2018 (Annexure A-11) is squarely applicable in this case. It is noticed that in the said case, the Principal Bench while dealing with the claim of the Staff Nurses working at different places under Ministry of Health and family Welfare and its hospitals, in the said order, it is held that *“it is the settled principles of law that if a vacancy is filled up with a regular recruitment, any person who is working on causal / daily wages/contract/ temporary basis etc. has to give way to the regularly recruited employees.”*

Further, it is held that *“there is no fault with the action of the respondents in terminating the service of the applicant wherever regularly recruited employee have joined. However, the applicants are working on contractual basis since long and their right for continuation against any subsisting vacancies on the same terms, also cannot be ignored and finally directed the respondents to continue the service of the applicant on the same terms if there is work and vacancies are still available after filling up the vacancies on regular basis, and in preference to any of their juniors /fresher /outsource employees.”*

10. In the present case, as noticed hereinabove, out of 18 sanctioned posts of Medical Officer in the hospital, 08 posts are filled up by regular UPSCs selected doctor and 10 are working as C.M.P i.e. on contract basis. Thus, we are of the view that considering the facts and

circumstances of the present case, as also in the light of observation and directions issued in the case of Sh. Prakash Rathod & Ors.(supra), the applicant cannot claim to continue to work on contract basis as C.M.P. as a matter of right. The impugned order cannot be said to be suffered from any infirmities. At the same time, considering his continuous engagement as C.M.P. since 2008, we dispose of this OA by directing the respondents to continue the services of the applicant on the same terms of his extended terms vide order dated 24.9.2019 (Annexure A-3) , if there is work and vacancies are still available after filing up the vacancies on regular basis, and in preference to any of his juniors/ fresher / outsource employees.

(A.K.Dubey)
Member (A)

(J.V.Bhairavia)
Member (J)

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