

8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 582 & 589 of 1987
T.A. No.

DATE OF DECISION 6.1.88

Dr. Sunil Kumar Arya Petitioner
and others

Mr. C.S. Vaidyanathan and Advocate for the Petitioner(s)

Mr. S.R. Setia
Mr. S.P. Pandey Versus

Central Government Health Scheme Respondent

Mr. P.P. Khurana Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice J.D. Jain, Vice-Chairman

The Hon'ble Mr. Birbal Nath, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? —
3. Whether their Lordships wish to see the fair copy of the Judgement ? —

6/1/88
(Birbal Nath)
Administrative Member

J.D.
(J.D. Jain)
Vice-Chairman

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Regn.No. OA 582/87

Date of Decision: 6.1.88

Dr. Sunil Kumar Arya

O.A.No.589/87

Dr. Pramod Kumar

...Petitioners

Versus

Deputy Director,
Central Govt. Health Scheme,
New Delhi.

...Respondents

For Petitioners: Mr. C.S. Vaidyanathan and
Mr. S.R. Setia, Advocates
Mr. S.P. Pandey, Advocate (OA 589/87)

For Respondents: Mr. P.P. Khurana, Advocate

CORAM: HON'BLE MR. JUSTICE J.D. JAIN, VICE-CHAIRMAN
HON'BLE MR. BIRBAL NATH, ADMINISTRATIVE MEMBER

JUDGMENT:

(Judgment of the Bench delivered by
Mr. Justice J.D. Jain, V.C.)

The petitioners in both the above-mentioned O.As. under Section 19 of the Administrative Tribunals Act are qualified Medical Graduates. Both of them were appointed as Junior Medical Officer by respondent No.1 vide separate orders on monthly wage basis. Their initial appointments were for 90 days, but the same were continued from time to time after intermittent breaks of one day. Thus, Dr. Sunil Kumar Arya, petitioner in O.A.No.582/87 has continued to function as Junior Medical Officer w.e.f. 30.1.86 with intermittent breaks of one day on the expiry of each 90 days of his posting. He is being paid Rs.650/- per mensem on monthly wage basis plus non-practising allowance and other usual allowances. However, no leave of any kind is admissible to him and his service is liable to be terminated at any time without any notice or without assigning any reason whatsoever, thereafter at the discretion of the appointing authority. Further it stands automatically terminated

10

on the expiry of a spell of 90 days each. However, on account of successive appointments, he has continued to be in service as Junior Medical Officer with respondent No.1 upto 29th April, 1987 w.e.f. which date his service was terminated by respondent No.1 vide Office Order dated 13th April, 1987 (Annexure XIV in the aforesaid O.A.). Faced with this situation he filed this application under Section 19 of the Administrative Tribunals Act on 28th April, 1987, inter alia, challenging the legality and validity of the termination of his service and seeking a declaration that he having continued in service as Junior Medical Officer beyond a period of one year would be deemed to have been employed regularly under the U.P.S.C. (Exemption from Consultation) Regulations, 1958. He has also asserted that the terms and conditions of his appointment were totally violative of the doctrine of equality enshrined in Articles 14 and 16 of the Constitution of India being wholly arbitrary and unreasonable.

2. Likewise, Dr. Pramod Kumar, applicant in O.A.589/87 was appointed by respondent No.1 as Junior Medical Officer on short term break of 90 days on monthly wages of Rs.650/- per mensem, besides, of course, usual allowances like N.P.A., D.A. and H.R.A. etc. He was initially appointed w.e.f. 15.1.86 for 90 days in the first instance, but his short term contract was renewed from time to time with a break of one or two days on the expiry of each spell of 90 days upto 14.4.87 when his last extension expired. He filed O.A.No.589/87 on 27th April, 1987 seeking almost identical reliefs inter alia asserting that he was entitled to be declared in permanent employment

of the respondents as Junior Medical Officer w.e.f.

15.1.86, i.e., the date on which he was appointed initially and that the termination of his service was illegal and wrongful. However, he was not granted any interim relief as he already stood relieved of his duties.

3. Since common questions of law and fact arise in these applications, we propose to dispose them of vide this common judgment.

4. The respondents resist these applications primarily on the ground that the petitioners were appointed on short term contract basis and therefore, their services were terminated in accordance with the terms and conditions of their contract. They explain that the vacancies occurring in the Central Health Service are filled up through agency of U.P.S.C. in accordance with the Central Health Service Rules, 1982 (hereinafter referred to as "the Rules"), which govern the constitution, maintenance and recruitment to the said service through a competitive examination etc. On the contrary, the petitioners in both these cases were sponsored by the Employment Exchange and were appointed to the post of Junior Medical Officer on contract basis for a period of 90 days in Central Government Health Scheme. They ^{have} pointed out that the competent authority to make appointments of Junior Medical Officer on monthly wage basis is Deputy Director, Central Government Health Scheme whereas the competent authority to appoint Medical Officers on regular basis in the pay scale of Rs.700-1300 is Government of India, in the Ministry of Health and Family Welfare who has been designated as the Controlling Authority in the Rules. Thus, according to them, the question of the petitioners having become regular government employees as Junior Medical Officer in C.G.H.S. by mere efflux of time does not arise.

5. We had ~~xx~~ occasion to deal with the policy and practice of the Government in appointing Junior Medical Officer on short-term contract on monthly wage basis with a break of one or two working days on the expiry of each spell of 90 days in Dr. (Mrs.) Sangita Narang (AND) others Vs. Delhi Administration and others (O.A.716/87) (besides several other O.As. of similar type) decided on 18.12.87. Since the terms and conditions in the instant case are identical, we have nothing more to add so far as the petitioners are paid monthly wage at Rs.650/- per mensem and not the minimum of the time-scale of Rs.700-1300 admissible to Regular Junior Medical Officer of Central Health Scheme, the intermittent breaks of one or two days on the expiry of each spell of 90 days, non-entitlement of the applicants to any kind of leave including casual leave and automatic termination of the services of the applicants on the expiry of the term of the contract and their fresh appointments to the same posts after a break of a day or so. Hence, for the reasons recorded in the aforesaid judgment we hold that the petitioners would be entitled to the same reliefs which we have given to the petitioners ~~in the~~ in the aforesaid cases.

6. However, there is one aspect of the matter which is special to the instant cases and with which we had no occasion to dwell upon at length in the aforesaid O.As. Additional plea taken by the petitioners in the instant cases is that having worked for more than a year ever since their initial appointments as Junior Medical Officers although with intermittent breaks they must be deemed to have become regular government employees having regard to the provisions contained

- 5 -

in the U.P.S.C. (Exemption from Consultation) Regulations, 1958 (hereinafter referred to as "the Regulations") issued by the Ministry of Home Affairs on 1.9.58. We therefore, proceed to deal with the tenability of this plea of the petitioners.

7. It bears repetition that the regular appointment and governed to the Cadre of Central Health Service is regulated by the Rules of 1982. The expression "duty post" has been defined therein as any post whether permanent or temporary of the designation specified in Part-A of Schedule-II. Rule 3 provides that there shall be constituted a service to be known as 'Central Health Service' consisting of persons appointed to the Service in accordance with Rule 4(5) Rule 7 and Rule 8. Sub-Rule (5) of Rule 3 provides that the Government may in consultation with the Commission, i.e., U.P.S.C. appoint an officer whose post is included in the Service under sub-rule (4) of the Rule (3) to the appropriate grade of temporary or in a substantive capacity as may be deemed fit. Under sub-rule (4) of Rule 3, the Government may, in consultation with the Commission include in the Service any post other than those included in Schedule II or exclude from the Service a post included in the said Schedule. Rule 5 provides that (a) persons appointed to the posts under sub-rule (5) of Rule 4, (b) persons appointed to the posts under Rule 7 and (c) persons appointed to the posts under Rule 8, shall be the members of the Service. Rule 6 prescribes the methods of recruitment to the Service, namely,

- (i) by promotion;
- (ii) by direct recruitment;
- (iii) by transfer on deputation of suitable officers holding analogous posts under the Central Government (including Ministry of Railways and Ministry of Defence) or State Governments;

- (iv) by short-term contract of suitable officers holding analogous posts under the statutory bodies, autonomous bodies, semi-Government organisation, Universities or recognised Research Institution. etc.

Rule 7 deals with initial constitution of the Service from amongst Medical Officers already working and holding Group 'A' on regular basis posts etc. immediately before the commencement of the Rules. It also contemplates selection from general duty officers Grade II subject to their suitability being assessed by Screening Committee. Rule 8 provides for future maintenance of the Service. It inter alia lays down that the recruitment to the post of Medical Officers (Rs.700-1300) shall be made by direct recruitment on the basis of the written examination conducted by the Commission followed by an interview or selection by interview only by the Commission in accordance with the age limit and educational qualifications and experience as may be prescribed in consultation of the Commission, the exact method of recruitment to be followed to be decided by the Controlling Authority in consultation with the Commission on each occasion. Sub-rule (6) lays down that the minimum educational qualifications and other qualifications experience and the age limit for appointment to various duty posts and deputationist posts in the service by direct recruitment shall be as specified in Schedule V. Sub-rule(7) of Rule 8 is in the nature of an exception and it empowers the Controlling Authority, notwithstanding anything contained in the Rules, to appoint in consultation with the Commission an officer in a vacancy in a duty post or in a deputationist post included in Schedule II or on short term contract basis under the method mentioned in Clause (iii) or as the case may be, clause (iv) of Rule 6.

[Handwritten signature]

8. A perusal of the relevant Schedule would show that the post of a Medical Officer is to be filled by direct recruitment on the basis of the written examination to be conducted by the Commission to be followed by an ^{or selection by the Commission by interview} interview ~~only~~ in accordance with the educational qualifications and experience as may be prescribed in consultation with the Commission, i.e., the same thing as specified in Rule 8(2) above. Schedule V prescribes the minimum qualification and experience for direct recruitment to Group 'A' duty posts and deputation posts in the Central Health Service etc.

9. Admittedly, the applicants in these O.As. were not recruited to the Service by any of the methods prescribed in the Rules. So, the crucial question for determination is whether they can still acquire the status of a member of the Service by virtue of their appointments on purely ad hoc basis by Deputy Director, C.G.H.S. without consulting the U.P.S.C. Reliance in support of their contention has been heavily placed by the petitioners on the Exemption Regulations (Copy Annexure-XVI in O.A.582/87). The said Regulations provide that -

"4. It shall not be necessary to consult the Commission in regard to the selection for a temporary or officiating appointment to a post, if -

- (a) the person appointed is not likely to hold the post for a period of more than one year; and
- (b) it is necessary in the public interest to make the appointment immediately and reference to the Commission will cause undue delay -

Provided that -

- (i) such appointment shall be reported to the Commission as soon as it is made;
- (ii) if the appointment continues beyond a

period of six months, a fresh estimate as to the period for which the person appointed is likely to hold the post shall be made and reported to the Commission; and

(iii) if such estimate indicates that the person appointed is likely to hold the post for a period of more than one year from the date of appointment the Commission shall immediately be consulted in regard to the filling of the post."

On a plain reading of Para 4 of the Regulations, it is crystal clear that consultation with the Commission has been dispensed with in respect of the selection for a temporary or officiating appointment to a post only and not in respect of regular appointment to a post in the service. Even then the appointing authority is required to report to the Commission ^{an} such appointment. Further, proviso (iii) to para 4 obligates the appointing authority to immediately consult the Commission in case the estimate indicates that the person so appointed is likely to hold the post for a period of more than one year from the date of appointment in regard to filling of the post. Obviously, this consultation is with regard to continuation of such person on temporary or officiating basis beyond a period of one year. There is nothing in these Rules which dispenses with the requirement of complying with the procedure laid down in the Rules for regular appointment. It is, therefore, unintelligible as to how the service of a Junior Medical Officer appointed on a purely ad hoc basis can be deemed to have automatically been transformed from temporary appointment ⁱⁿ⁻ to a regular appointment to the Service by mere lapse of period of one year without going through the procedure of consultation with the Commission etc. as laid down in the Rules. Surely, the temporary/officiating appointments for a short term by way of stop-gap arrangement or otherwise cannot be equated with or considered as a substitute for regular

appointment in accordance with the various provisions of the Rules, some of which have been adverted to above by us.

10. We may with advantage advert to a recent decision of Court No.1 of this Bench in Dr. (Mrs.) Prem Lata Chaudhary Vs. Employees' State Insurance Corporation: (1987) 3 ATC 879.

In that case, the Employees' State Insurance Corporation had employed doctors on ad hoc basis initially for 90 days but their services ^{were} continued after giving a few days break subject to the condition that the total spell was not allowed to exceed one year. This policy was also adopted apparently on a construction, or say, misconception of Section 17 of the E.S.I.C. Act. Sub-section (3) of Section 17 reads as under

"(3) Every appointment to posts corresponding to Group A and Group B posts under the Central Government shall be made in consultation with the Union Public Service Commission;

Provided that this sub-section shall not apply to an officiating or temporary appointment for an aggregate period not exceeding one year."

On its plain reading the aforesaid sub-section makes it obligatory on the part of the Corporation to consult the U.P.S.C. in the matter of appointment to a post corresponding to Group A and Group B posts under the Central Government (which will naturally include duty post in the service as contemplated in the Rules). However, the proviso which is in the nature of an exception clause dispenses with consultation with the U.P.S.C. to an officiating or temporary appointment for an aggregate period not exceeding one year. On a critical examination of the proviso we entertain no manner of doubt in our mind that the consultation was made obligatory in case the officiating or temporary appointment was to exceed an aggregate period of one year. In other words, an officiating or temporary appointment exceeding one year could continue in

consultation with the U.P.S.C., but not otherwise. The learned Chairman speaking for the court directed sub-section (3) analytically and observed:-

"It would be noticed that the exception made under the proviso is to the power exercisable under sub-section (3) which makes consultation with the UPSC obligatory. In other words, by virtue of the power conferred by this proviso, the Corporation could without consulting UPSC, make temporary officiating appointments for a maximum period of one year. But neither sub-section (3) nor the proviso prohibits appointment beyond a period of one year on an officiating basis in consultation with the UPSC. The proviso is intended to enable the Corporation ~~the Corporation~~ to make appointments even without consulting the UPSC for a period not exceeding one year on an officiating or temporary appointment; it does not prohibit appointment beyond a period of one year on an officiating and temporary basis in consultation with the UPSC."

The position in the instant case is almost similar because the Regulation too are designed to dispense with the consultation with the UPSC in the case of temporary/officiating appointments for a period not exceeding one year, but that would not mean that if the temporary/officiating appointment, in fact, runs beyond one year, it would automatically amount to a regular appointment and even consultation with the UPSC /compliance with the Rules would not obviate. Indeed true meaning and scope of the proviso (iii) to Para 4 of the Regulations is that a temporary/officiating appointment for a period of more than one year can be continued only after consultation with the Commission and not otherwise. Of course, the appointing authority has to act in accordance with the advice tendered by the Commission whether to continue the temporary of officiating appointment further, i.e., beyond one year or not.

11. Findings themselves in this predicament, the learned counsel for the applicants made a desperate attempt to urge that the concerned authority can at any rate in a case like this exercise the power of relaxation conferred on it by Rule 17 of the Rules. For ready reference the said Rule is reproduced below:-

"17. Power to relax - Where the Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, and in consultation with the Commission, relax any of the provisions of these rules in respect of any class or category of persons."

On a plain reading of this Rule, it is clear that the Government is vested with the power of relaxing any provision of the Rules "in respect of any class or category of persons". Obviously, the power of relaxation can be exercised not in respect of any individual candidate, but in respect of any class or category of persons as a whole. Moreover, the word "relaxation" cannot be equated with the expression "dispensed with". In the Shorter Oxford English Dictionary the word "relax" has been given the meaning, (1) to make a thing less compact or dense, to loosen or open up by separation of parts, (b) to render a part of the body less firm or rigid; to make loose or slack; to enfeeble or enervate; (c) to diminish the force or tension of, to loosen (one's hold or grasp). (2) to make less strict, severe, or rigid; to mitigate, tone down, modify; (b) to slacken, abate in seal or force. Similarly in Legal Thesaurus of William C. Burton, the meaning assigned to the word "relax" is "abate, allay, assuage, be lenient, bend, diminish, ease, give, lenify, lessen, mildren, mitigate, moderate, modify, modulate, reduce, relent, remit, show clemency, show pity, slacken, soften, temper,

weaken, yield." In the Random House Dictionary of the English Language, the meaning assigned to the word "Relax" is "1. to make less tense, rigid, or firm; make lax. 2. to diminish the force of (effort, attention, etc.), 3. to make less strict or severe, as rules or discipline, 4. to release or bring relief from the effects of tension, anxiety, etc. 5. to become less tense, rigid or firm. 6. to become less strict or severe; grow milder. 7. to reduce or stop work or effort, esp. for the sake of rest or recreation. 8. to release oneself from inhibition, worry, tension. etc."

dictionary.

12. On a plain meaning of the word "relax", therefore, it is crystal clear that the Government may lessen the rigour of any particular condition to some extent. It cannot altogether dispense with the provisions contained in the Rules for making regular appointments to the Service. Further, ~~xx~~ the power of relaxation too has to be exercised in consultation with the Commission only if the Government is of the opinion that it is expedient and necessary to do so. That apart, it is obligatory upon the Government to record reasons in writing for doing so. Evidently, the power of relaxation vests in the Government and not in a court of law which, of course, may step in if it is of the view that the Government has in a particular case failed to exercise the discretion vested in it or has exercised the discretion vested in it arbitrarily, capriciously or malafide. So it is not for the court in the instant case to direct the respondent-Union of India to relax any of the conditions of appointment to the Service ~~xxxxxxxxxxxx~~ ~~xxxx~~ and it is for the Government to consider whether it is expedient or necessary so to do. We do not think that we will be well advised to make any direction in this behalf especially when the appointments in the instant case have not been made by the authority competent to make appointments of Medical Officers to the Service under

the Rules. Further the UPSC has not been consulted by the appointing authority in the instant case for the obvious reasons that the appointments were sought to be made strictly in accordance with the Exemption Regulations of 1958 (Annexure XVI) and that is why, the petitioners were appointed on short-term contracts. The submission of the learned counsel for the petitioners is virtually tantamount to saying that the method of procedure laid down in the Rules for appointment of Medical Officers to the Service be totally dispensed with and given go-by. The learned counsel of the respondents has stated at the bar that all the vacancies occurring during the next two years have already been notified to the Commission for regular recruitment. So the petitioners too can try their luck. Surely, we will not be well advised to make any suggestion or pass any order in the instant case, except saying that in case they have become overaged, the Government may sympathetically consider relaxation in age limit keeping in view their temporary service.

13. To sum up, therefore, we are of the considered view that the petitioners in the instant case are entitled to the same relief as has been awarded to the petitioners in Dr. (Mrs.) Sangita Narang and others (supra). Hence, we quash the impugned orders in both these applications and hold that the petitioners appointed as Junior Medical Officers, Grade II purely on ad hoc basis would be entitled to the same pay-scale of Rs.700-1300 and allowances as also the same benefits of leave, increment on completion of one year and other benefits of service conditions as are admissible to the Junior Medical Officers appointed on regular basis in the pay scale of Rs.700-1300. Further, notwithstanding the break of one or two days in their service as stipulated in their appointment letters etc., they shall be deemed to have continued in service ever since the day of their first appointment. As for the days on which they did not actually discharge the duties on account of artificial breaks

- 14 -

etc. at the end of every 90 days, we direct that the said period would count as duty for continuity of service and the same will be treated as leave to which the applicants will be entitled at par with regular Junior Medical Officers Grade II. Lastly, we direct the respondent-Union of India to report the cases to the U.P.S.C. of the petitioners ^{they have continued or} as are likely to continue on these posts on ad hoc/temporary basis for more than one year as required by proviso (iii) to ~~Clause (b) of~~ Regulation 4 of the U.P.S.C. (Exemption from the Consultation) Regulations, 1958 for consultation and upon such consultation they shall be continued in service in the light of the advice tendered by the U.P.S.C. till regular appointments are made to these posts. We allow these applications accordingly and direct the respondents to implement this order within three months from the date of receipt of this order.

6/1/88

(Birbal Nath)
Administrative Member

J. D. Jain
(J.D. Jain)
Vice-Chairman