

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1109
T.A. No.

1987.

DATE OF DECISION 7.7.1983.

Dr. Ramesh Kumar & Others. Petitioner/Applicants.

Shri K.N.R.Pillai, Advocate for the Petitioner(s)

Versus

Delhi Administration & Ors. Respondent

Shri B.R.Parasher, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judicial).

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

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

S.P.M.

(S.P. Mukerji)
Administrative Member

P.K.K.

(P.K. Kartha)
Vice-Chairman (Judl.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Regn. No. OA-1109/87

Date of Decision: 7.7.1988

Dr. Ramesh Kumar & Ors.

.... Applicants.

Versus.

Delhi Administration & Ors.

.... Respondents.

For Applicants:

.... Shri K.N.R.Pillai,
Advocate.

For Respondents:

.... Shri B.R.Parasher,
Advocate.

CORAM: Hon'ble Mr. P.K.Kartha, Vice Chairman (Judl.)
Hon'ble Mr. S.P.Mukerji, Administrative Member.

JUDGEMENT

(Judgement of the Bench delivered by
Mr. P.K.Kartha, Vice-Chairman (Judl.)

The applicants who had been recommended by the Employment Exchange, Delhi for appointment as Junior Medical Officers in the Directorate of Health, Delhi Administration, Delhi were appointed in these posts with effect from 19.2.1987. It has been stated that the respondents have a system by which a break in service of one day is imposed on ad-hoc Junior Medical Officers after three months although the vacancies are permanent. Accordingly, the applicants were also given a break of one day and were reappointed in the same post. In the case of the applicants, the reappointment letter dated 19.5.1987 provides that their services will be terminate on 18.8.1987.

2. It has been alleged that the respondents are having a large number of permanent vacancies of Junior Medical Officers and that they are making appointments against these posts on ad-hoc basis for stretches of three months only. The respondents intentionally give a break of one day at the end of three months to avoid giving service benefits to the doctors. The applicants have contended that this amounts to infringement of the provision of Articles 14 and 16 of the Constitution.

3. Accordingly, the applicants have sought the following reliefs in the present application: -

- a) The respondents may be directed not to terminate the services of the applicants as long as there are vacancies of Junior Medical Officers which are not filled by direct recruits through the U.P.S.C.
- b) The respondents may be directed to forward the applicants' case to the UPSC for -
 - (i) direct recruitment to permanent posts of Junior Medical Officers,
 - (ii) continuance on temporary basis beyond one year as per the UPSC Consultation Regulations.
- c) The respondents may be directed not to give any break in the service of the applicants as long as vacancies continue.
- d) The respondents may be directed to provide to the applicants the same pay and allowances, increment, leave and other benefits as applicable to regularly appointed Junior Medical Officers.
- e) Any other order or direction as the Hon'ble Tribunal may think fit in the circumstances of the case.

4. A batch of applications praying for the grant of similar reliefs was disposed of by this Tribunal in its order dated 18.12.1987 (Dr. (Mrs.) Sangita Narang and another Vs. Delhi Administration etc.). In those cases, the impugned orders were quashed by the Tribunal holding that all the Junior Medical Officers, Grade II appointed purely on ad-hoc basis would be entitled to the same pay scales of Rs.700-1300 and allowances as also the same benefits of leave, maternity 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. It was further held that notwithstanding the break of one or two days in their services 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 break etc. at the end of every 90 days, it was directed 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. Finally, it was directed that the respondents should report the cases to the U.P.S.C. of all those applicants who are likely to continue on these posts on ad-hoc/temporary basis for more than one years as required by proviso (iii) to clause (b) of Regulation 4 of the U.P.S.C. (Exemption from ~~the~~ ^{of} Consultation) Regulations, 1958 dated 1.9.1958, for consultation and upon such consultation, they shall be continued in the service in the light of the advice of the U.P.S.C. till regular appointments are made to these posts.

5. In this context, reference may be made to the decision of the Supreme Court in Dr. A.K. Jain & Ors. Vs. Union of India & Ors., JT 1987(4) S.C. 445 ^{delivered on 24.9.87.} In that case, the petitioners who were working as Assistant Medical Officers in the Indian Railways challenged the action of the respondents in terminating their services on the plea that they were ad-hoc appointees and replacing them by freshly recruited persons. Disposing of the batch of petitions filed by the Assistant Medical Officers, the Supreme Court passed an order on 24.9.1987 which inter alia directed as follows: -

1) Those who have ~~been~~ been selected by the U.P.S.C. shall first be posted to the vacant posts available whereever ~~they~~ ^{they} may be. If all those selected by the U.P.S.C. cannot be accommodated against the available vacant posts, they may be posted to the posts now held by the doctors appointed on ad-hoc basis subsequent to 1.10.1984 and on such posting the

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the doctor holding the post on ad-hoc basis shall vacate the same. While making such postings the principle of 'last come, first go' shall be observed by the Railways on zonal basis. If any doctor who is displaced pursuant to the above direction is willing to serve in any other zone where there is a vacancy he may be accommodated on ad-hoc basis in such vacancy.

2) All the Medical Officers working on ad-hoc basis shall be paid the same salary and allowances on the revised scale with effect from 1.1.1986 at par with the regular appointees. They would also be entitled to the arrears.

3) No ad-hoc doctor shall be replaced by any newly appointed person on ad-hoc basis. Whenever there is need for any doctor on ad-hoc basis in any zone, the existing ad-hoc doctors who are likely to be replaced by a regularly appointed candidate shall be given preference.

4) If the ad-hoc doctors appointed after 1.10.1984 apply for selection by the U.P.S.C. the Union of India and the Railways shall grant relaxation in age to the extent of the period of service rendered by them as ad-hoc doctors in the Railways.

6.1 In the light of the above, following the directions contained in the aforesaid orders passed by ~~or this tribunal and on~~ the Supreme Court, we order and direct as follows: -

a) The services of the applicants shall not be terminated by the respondents as long as there are vacancies of Junior Medical Officers which are not filled by direct recruits ~~or~~ through U.P.S.C. Those selected by the U.P.S.C. shall first be posted to the vacant posts available.

b) The respondents shall not give any break in service of the applicants as long as vacancies continue in the post of Junior Medical Officers.

c) The respondents shall provide to the applicants the same pay and allowances, increment, leave and other benefits as are applicable to regularly appointed Junior Medical Officers.

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d) The respondents shall report to the U.P.S.C. the cases of all those applicants who are likely to continue on these posts on ad hoc/temporary basis for continued appointment till regular appointments are made, as contemplated in the U.P.S.C. (Exemption from Consultation) Regulations, 1958.

e) If the applicants apply for selection by the U.P.S.C., the respondents shall grant relaxation in age to the extent of the period of service rendered by them as ad-hoc doctors with the respondents.

There will be no order as to costs.

S.P.M.

(S.P. Mukerji)
Administrative Member

7/7/88

(P.K. Kartha)
Vice Chairman (Judl.)