

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

C.C.P. No.182/1991

in

D.A.2193/89.

Date of decision: February 14, 1992.

All India General Duty
Medical Officers
Association & Anr.

...

Petitioners.

Vs.

Shri R.L.Misra & Anr.

...

Respondents

CORAM:

HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.

HON'BLE MR. S. GURUSANKARAN, MEMBER (A).

For the petitioners

...

Shri Ajit Puddiserry,
counsel.

For the respondents

...

Mrs. Raj Kumari Chopra,
counsel.

ORDER (ORAL)

(MR. JUSTICE V.S. MALIMATH, CHAIRMAN)

The petitioners came to this Tribunal complaining that the doctors are being made to work over time without being compensated. The Tribunal by its judgment dated 22.2.1991 felt that solution to the problem should be found by the respondents themselves keeping in view all the relevant aspects. It further said that "in case, night duty is unavoidable, the doctors who are put on such duty deserve to be compensated for the extra hours put in by them by way of a special allowance or honorarium, whichever is feasible from the administrative angle." After making these observations, the positive directions is in these terms:

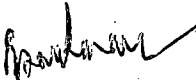
"The respondents shall finalise their decision as expeditiously as possible but in no event, later than two months from the date of receipt of this order."

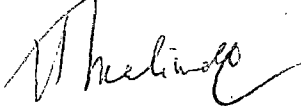
It is obvious that the respondents did not take a decision within the time granted by the Tribunal. It is explained by the respondents' counsel that they have filed an application for setting aside the judgment of the Tribunal on the ground that it is an ex parte judgment and that the said application is pending. Be that as it may, the respondents were duty bound to comply with the judgment of the Tribunal within the prescribed time. If they had any difficulty, it would have been possible for them to move the Tribunal for granting them extension for compliance. That has also not been done. It is, however, submitted by the learned counsel for the respondents that the judgment of the Tribunal has since been complied with and an office order has been made on 13.2.1992, copy of which was placed before the court today. This order was passed only yesterday. The purport of this order is to assign new set of timings for the functioning of the doctors. They have arranged ~~the~~ timings in such a way as to avoid extra hours of duties being performed. The counsel for the petitioners submitted that this is a clever move to circumvent the judgment of the Tribunal. It was submitted that the respondents had no discretion to pass an order of the type they have now passed. He submitted that the only

discretion that was left to the respondents was to make a provision for payment either of special allowance or honorarium whichever is feasible from the administrative angle. It is difficult to accept this submission for it is clearly stated in the judgment of the Tribunal that in case, night duty is unavoidable, the doctors who are put on such duty deserve to be compensated for the extra hours put in by them by way of a special allowance or honorarium whichever is feasible from the administrative angle. The order of the Tribunal makes it clear that it is only ^{when} the night duties are unavoidable, the question of compensation by special allowance or honorarium would arise. The order did not preclude the respondents from regulating their activities in such a manner as to avoid altogether extra duty calling for compensation. The Tribunal has left to the respondents to take appropriate decision in the matter. We are not concerned with the question as to whether the decision now taken by the respondents finds acceptance by the petitioners or as to whether a more convenient and comfortable order would have been made or not. As the only command of the Tribunal was to take a decision and the same has been taken, we are inclined to take the view that the judgment of the Tribunal has been complied with, though belatedly.

2. Having regard to the fact that the respondents were agitating the matter by pursuing their remedy for setting aside the judgment of the Tribunal by making an

application for that purpose, we are inclined not^{to} take
a serious view of the delay in complying with the
judgment of the Tribunal. Hence, these proceedings
are dropped. Rule is discharged.


(S. GURUSANKARAN)
MEMBER (A)
14.2.1992.


(V. S. MALIMATH)
CHAIRMAN
14.2.1992.

SKS