

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(21)

Regn. Nos. (1) OA 1259/90
(2) OA 1270/90
(3) OA 1271/90
(4) OA 1310/90
(5) OA 1318/90
(6) OA 1364/90
(7) OA 1482/90

Date of decision: 8.10.1991.

(1) OA 1259/90

Dr. Jitender Singh & Others

.....Applicants

Vs.

Union of India through the
Secretary, Ministry of Health
and Family Welfare & Others

.....Respondents

(2) OA 1270/90

Dr. (Mrs.) Amita Bahl & Others

.....Applicants

Vs.

Union of India through the
Secretary, Ministry of Health
and Another

.....Respondents

(3) OA 1271/90

Dr. Padma Panikkar

....Applicant

Vs.

Union of India through the
Secretary, Ministry of Health
and Another

....Respondents

(4) OA 1310/90

Dr. Bhawana Tiwari

...Applicant

Vs.

Union of India through the
Secretary, Ministry of Health
and Family Welfare and Another

...Respondents

(5) OA 1318/90

Dr. Neera Sachdev

...Applicant

Vs.

Union of India through the
Secretary, Min. of Health and
Family Welfare & Others

...Respondents

(6) OA 1364/90

Dr. Poonam Bahl

...Applicant

Vs.

U.O.I. through the Secretary,
Ministry of Health & Family
Welfare and Another

...Respondents

(7) OA 1482/90

Shri Narender Goyal

Vs.

U.O.I. & Another

For the Applicants in (1) above

For the Applicants in (2) and (4) above

For the Applicant in (3) above

For the Applicants in (4), (6) and (7) above

For the Respondents in (1) to (7) above

....Applicant

....Respondents

....Mrs. Shyamla Pappu, Counsel with Shri Ashok Aggarwal, Counsel

....Shri R. Venkatramani, Counsel

....Shri Madhav Panikkar, Counsel

....Shri K.N.R. Pillai, Counsel

....Shri P.H. Ramchandani, Sr. Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. B.N. DHOONDIYAL, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not. *Yes*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice Chairman(J))

In these batch of applications, the applicants who were appointed as Medical Officers on ad hoc basis in the various Hospitals in Delhi since June, 1989 are seeking for the regularisation of their services and consequential benefits. As their grievances are common and as common questions of law have been raised in these applications, it is proposed to dispose them of by a common judgment.

1. The applicants are continuing at their respective places of posting pursuant to the interim orders passed by the Tribunal.

3. Similar applications had been filed in the Tribunal earlier which were disposed of by judgment dated 2.2.1990 (OA 2314/89 and other connected matters, Dr. Gurbindra Kaur and Others Vs. Union of India). The applicants in the present applications are seeking a direction to the respondents to give them all benefits enumerated in the judgment dated 2.2.1990.

4. The applicants are well qualified Doctors and have also done their Internship Courses. Some of them have worked as Junior Resident Doctors in recognised Hospitals. Some are Post Graduates, holding Post Graduate Medical Degrees/Diplomas.

5. In June, 1989, there had been agitations and strikes or threats of strike by Doctors working at various Hospitals

in Delhi. During and after this period, the Directorate General of Health Services under the Ministry of Health and Family Welfare recruited Doctors on ad hoc basis for a period

of six months extendable upto twelve months and terminable by one month's notice. The place of duty was indicated as

Delhi/New Delhi in the advertisement which was published in the News Papers in this regard on 19.6.1989 by the Government

of India. It was also mentioned that Post Graduate Degree Holders will be paid consolidated remuneration inclusive of pay and allowances to the extent of Rs.4,000/- per month, Post Graduate Diploma Holders Rs.3,800/- per month and MBBS Degree Holders Rs.3,200/- per month. Selected persons were required

to attend duty forthwith. The selected candidates coming from outside Delhi/New Delhi will be reimbursed actual train

fare and Hostel accommodation could be provided to them on payment of 10% of the consolidated remuneration.

6. Two days later, the Delhi Administration issued a similar advertisement in the News Papers through Maulana Azad Medical College, New Delhi (Technical Recruitment Cell) inviting applications for appointment of approximately 440 Doctors on ad hoc basis in various specialities for the Medical Institutions under the Delhi Administration. The period of appointment, the remuneration payable and the facilities for accommodation were also specified on the same lines as in the advertisement dated 19.6.1989.

7. The stand of the Union of India was as follows. The applicants were appointed only for a particular contingency due to strike by the Resident Doctors and when the strike was over, they have been rendered surplus. They had no legal right or fundamental right to continue in their present post. Their appointment was for a contract period of six months which had not been extended. Though no notice for termination was required to be given, they were put on notice. Their services were no longer required. They were not going to be replaced by another set of fresh ad hoc doctors. The action taken by the respondents to fill in the existing regular vacancies from nominees of the UPSC was at an advanced stage and there was no room for accommodating the applicants any longer. There was no budget allocation for continuing their services. There were, however, vacancies outside Delhi (in Assam Rifles) where they could be considered for appointment, if they apply for the same.

8. In judgment dated 2.2.1990, the Tribunal observed that the advertisement published in the News Papers on 19.6.1989 did not mention that the recruitment was in the context of the strike. The recruitment was based on interview and selection on all India basis. If the appointment was only for tiding over the strike period, the respondents were expected to notify to the candidates about this in the advertisement itself.

In fact, the respondents used the applicants as strike breakers. After the strike was over, the respondents should have, in all fairness, on their own evolved a scheme to eventually regularise them and continued them on ad hoc basis in the available vacancies in C.H.S. till the regularisation. The applicants had stated in this context that 500 ad hoc Medical Doctors, who were appointed pursuant to the advertisement, were exposed to considerable harassment and even assaults during the strike period because of which many had to leave. Only 120 are left now including the applicants before us.

9. The Tribunal further observed that the contention of the respondents that the applicants were appointed against the vacancies of Resident Doctors appeared to be an oversimplification. The applicants had explained the concept of the Residency Scheme in the rejoinder affidavits filed by them. Junior Residents, also called House Surgeons, are appointed for two periods of six months each immediately after Internship and taking the M.B.B.S. Degree. These two periods of Junior

Residency are for the purpose of getting experience in the speciality for those who take the Post Graduate Course.

Senior Residency is on tenure for three years. This is intended to gain experience which is an essential qualification for Post Graduates who apply for recruitment as Specialists and as Assistant Professors. The applicants were neither fresh graduates nor were they seeking appointment as Specialists, Assistant Professors. They belonged to a higher age-group, many

being 30-40 years of age and they had considerable experience rendered either in private Hospitals or in State Medical Service. All of them had undergone their Junior Residency long ago immediately after they took the M.B.B.S. Degree. Even for

Senior Residency, many of them had crossed the prescribed age-limit of 30 years. Junior Residents were paid total emoluments of Rs.4,074/- and Senior Residents Rs.5,100/-. These pay-scales were not extended to the applicants. In this light, the contention raised by the respondents appeared to be hardly convincing.

10. The applicants in the earlier Dr. Gurbinder Kaur and Others had contended that they were entitled to claim the benefit of the judgment of this Tribunal in Dr.(Mrs.) Sangeeta Narang & Others Vs. Delhi Administration & Others reported in the ATR 1988(1) CAT 556 and the Hon'ble Supreme Court in Dr. A.K. Jain & Others Vs. Union of India, J.T. 1987(4) SC 445.

According to them, they were similarly situated like the petitioners in the aforesaid cases.

(3)

11. In Dr.(Mrs.) Sangeeta Narang's case, the Tribunal observed that the services of the petitioners could be terminated only if the same were no longer required or if the concerned authority was of the opinion that the performance of a particular petitioner was not upto the mark or he was not otherwise suitable for the post. The third eventuality for termination of service can arise by way of disciplinary action but there was grave doubt that the services would stand automatically terminated by efflux of time under the contract for a short term viz., 180 days in the instant case. The Tribunal held that all the Junior Medical Officers appointed purely on ad hoc basis, would be entitled to get same pay scale and conditions of service as are admissible to the Junior Medical Officers appointed on regular basis. The Tribunal also directed the respondents to report the cases to the UPSC of all those who were likely to be appointed on these posts on ad hoc/temporary basis for more than one year, for consultation and upon consultation with the UPSC they shall be continued in service in the light of the advice of the U.P.S.C. till regular appointments are made to these posts.

12. In Dr. A.K. Jain's case, the Supreme Court has given some directions regarding the regularisation of ad hoc Medical Officers in the Railways. In that case, the petitioners had been appointed initially for a period of six months, but most of them had actually put in periods of service from less than a year to four years by the time the judgment was delivered. The

Hon'ble Supreme Court held as follows:-

"2. The services of all doctors appointed either as Assistant Medical Officers or as Assistant Divisional Medical Officers on ad hoc basis upto 1.10.1984 shall be regularised in consultation with the Union Public Service Commission on the evaluation of their work and conduct on the basis of their confidential reports in respect of the period subsequent to 1.10.1982.

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3. The petitions of the Assistant Medical Officer/ Assistant Divisional Medical Officers appointed subsequent to 1.10.1984 are dismissed. But we however direct that the Assistant Divisional Medical Officers who may have been now selected by the Union Public Service Commission, shall first be posted to the vacant posts available wherever they may be. If all those selected by the UPSC 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 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.

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4. All Assistant Medical Officers/Assistant Divisional Medical Officers working on ad hoc basis shall be paid the same salary and allowances as Assistant Divisional Medical Officers on the revised scale with effect from 1.1.1986. The arrears shall be paid within four months.

5. No ad hoc Assistant Medical Officer/Assistant Divisional Medical Officer who may be working in the Railways shall be replaced by any newly appointed AMO/ADMO on ad hoc basis. Whenever there is need for the appointment of the AMO/ADMO on ad hoc basis in any zone the existing ad hoc AMOs/ADMOs who are likely to be replaced by regularly appointed candidates shall be given preference.

6. If the ad hoc doctors appointed after 1.10.1984 apply for selection by the Union Public Service Commission, the Union of India and the Railway Department shall grant relaxation in age, to the extent of the period of service rendered by them on ad hoc doctors in the Railways".

13. In the light of the above, the Tribunal disposed of the applications in the case of Gurbinder Singh & Others

with the following orders and directions:-

(i) The impugned orders in all these applications are quashed. The respondents are directed to continue the applicants in service as ad hoc Medical Officers till they are replaced by regular Medical Officers recruited through the Union Public Service Commission. The UPSC nominees shall first be posted against all available vacancies in the C.H.S. and only after all the available vacancies are so filled, should the applicants be replaced. The replacements should be on the basis of 'last come, first go'. After the replacement, if vacancies are found to exist or arise subsequently anywhere in the participating Units of the C.H.S., the replaced ad hoc Medical Officers shall be offered these vacancies, priority being determined on the basis of total length of ad hoc service put in by them;

(ii) The applicants would be entitled to the same pay scale 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 regularly appointed Medical Officers. In the facts and circumstances of the case, we do not, however, direct the respondents to pay to them arrears of pay and allowances for the past period;

(iii) The respondents are directed to report the cases to the U.P.S.C. in respect of those applicants who are likely to

continue on the posts held by them on ad hoc basis for more than one year, for consultation and upon consultation with the U.P.S.C., they shall be continued in service in the light of the advice of the U.P.S.C. till regular appointments are made to the posts held by them;

(iv) In no event, shall the applicants be replaced by

newly recruited Medical Officers by whatever designation and on whatever terms and conditions they may be;

(v) If the applicants apply for selection by the U.P.S.C., the respondents shall consider granting relaxation in age to them to extent of the period of service rendered by them on ad hoc basis.

(vi) The interim orders passed restraining the respondents from terminating the services of the applicants are made absolute.

14. The respondents did not file any Review Petition before the Tribunal or S.L.P. in the Supreme Court against the aforesaid judgment in Dr. Gurbinder Kaur's case. The said judgment has, therefore, become final and binding on both parties.

15. We have gone through the records of the cases and have considered the rival contentions. The applicants have worked for over two years as Medical Officers on ad hoc basis. They have continued to work in various Hospitals in Delhi in view of the interim orders passed by the Tribunal. The

respondents have taken the stand that there are not enough vacancies to accommodate all the applicants at Delhi, that there are only 17 vacancies in Delhi, that the applicants were appointed on ad hoc basis against the sanctioned scheme of striking Resident Doctors, that they cannot be regularised/ confirmed as Medical Officers under C.H.S. unless they qualify combined Medical Services Examination conducted by the UPSC because recruitment to the posts of Medical Officer in C.H.S is made based on the said examination and that ~~xxxxx~~ extension of ad hoc service is after consultation with the UPSC.

16. As against the above, the stand of the applicants is that there are enough vacancies in Delhi to accommodate them, that the respondents should have in all fairness regularised their services in consultation with the UPSC on the basis of evaluation of their work and service records and that after their regularisation, the respondents may post them at places where vacancies exist.

17. In Jacob M. Puthuparambil Vs. Kerala Water Authority, 1990(2) SCALE 588, the Supreme Court allowed the appeals and Writ Petitions in which regularisation of employees of Kerala Water Authority was in issue. The Supreme Court directed, inter alia, regularisation of services of the employees possessing the requisite qualifications in consultation with the Kerala Public Service Commission as a separate block. In doing so, they were also directed to take the age bar as waived.

18. In Dr. A.K. Jain and Others vs. Union of India & Others, 1987 Supp. SCC 497, the Supreme Court directed regularisation of the services of the ad hoc Assistant Medical Officers in the Railways in consultation with the UPSC "on the evaluation of their work and conduct based on the confidential reports". Such regularisation was to be from the dates from which they were continuously working.

19. All the Medical doctors before us and those similarly situated were recruited at a time when the respondents had to meet the crisis arising out of a strike by Doctors in the Hospitals at Delhi in June, 1989. Their appointment was in public interest and they had to discharge their duties in difficult circumstances and despite various threats from the striking Doctors. Their work and conduct have been throughout satisfactory. They are also fully qualified for regular appointment, except that they were not recruited through the Medical Services Examination held by the UPSC. Contentwise and qualitywise, the work done by them is on par with that of regular Medical Officers. In our opinion, the applicants and those similarly situated deserve to be regularised by

treating them as forming a separate block and on the basis of evaluation of their work and service. After they are so regularised, it will be open to the respondents to post the applicants at places where vacancies exist.

20. The applications, are, therefore, allowed and disposed

of with the following orders and directions:-

(i) The respondents are directed to refer the cases of the applicants and those similarly situated to the Union Public Service Commission for the purpose of regularisation of their services as Medical Officers. They should be treated as forming a separate block for the purpose of regularisation. Regularisation should be based on the evaluation of work and service records of the applicants and those similarly situated. The respondents shall do the needful in the matter within a period of four months from the date of receipt of this order.

(ii) After the services of the applicants are regularised through the Union Public Service Commission, their seniority shall be reckoned from the dates of their initial appointment on ad hoc basis as Medical Officers, after condoning the technical breaks in their ad hoc service.

The service rendered by them during the period of operation of the stay order passed by the Tribunal shall also count as service for the purpose of regularisation.

(iii) After regularisation of the services of the applicants as indicated in (i) and (ii) above, the respondents will be at liberty to post the applicants as Medical Officers at places where vacancies exist. Till they are so regularised, the respondents are directed to accommodate the applicants at their present places of postings in the Hospitals at Delhi. The interim orders already passed in these cases are hereby made absolute.

(iv) Till the applicants are so regularised, they would be entitled to the same pay scales, allowances and benefits of leave, increments etc. and other benefits of service conditions as are admissible to regularly appointed Medical Officers. In the facts and circumstances, we do not direct the respondents to pay them arrears of pay and allowances for the past period.

(v) There will be no order as to costs.

Let a copy of this order be placed in all the several officers' and members' case files.

(B.N. DHUNDIYAL) 915791

MEMBER (A)

8/10/81

(P.K. KARTHA)
VICE CHAIRMAN (J)