

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 594/90
T.A. No.

199

DATE OF DECISION 16,8,1990.

Dr. Renu Chawla	Petitioner Applicant
Shri P.P.S. Ahluwalia	Advocate for the Retitioner(s) Applicant
Versus	
Union of India & Others	Respondent
Shri P.P. Khurana	Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr. D.K. Chakravorty, 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? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

(Judgement of the Bench delivered by Hon'ble
Mr. D.K. Chakravorty, Member)

The applicant, who has worked as a Lady Medical Officer in the C.G.H.S., filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that the respondents be directed not to terminate her services, that she should be deemed to have been regularised, and that if any selection of other persons has been made by the respondents over her head, the same should be quashed.

2. The facts of the case in brief are that the applicant was appointed as a Lady Medical Officer pursuant to the Memo. dated 9.9.1988. She joined duty on 25.10.88 and since then she has been working in the said post continuously without any break.

3. Initially, the applicant was appointed on monthly-wage basis as an ad hoc Doctor on the fixed pay of Rs.2,000/- per month, excluding other allowances. Subsequently, the scale was revised to Rs.2,000-4000 plus other allowances which are admissible to Medical Officers appointed under the C.G.H.S.

4. The applicant has been continued in the ad hoc employment from time to time in terms of office order dated 24.1.1989, 1.6.1989, etc. One of the conditions stipulated in the extension letters was that "regularisation of service is only through UPSC by exam/interview." The applicant has been waiting for her chance to appear before the U.P.S.C. for regularisation, but the UPSC has not held any interview or test, or examination for the purpose. In the meanwhile, at the time of filing the application on 4th April, 1990, she was under the apprehension that her services would be terminated by the respondents.

5. The respondents have stated in their counter-affidavit that the applicant was ~~not~~ appointed as a Medical Officer on monthly-wage basis pursuant to their letter dated 20.5.1988 which has been annexed as Annexure I to the counter-affidavit at page 36 of the paper-book. It has been stated in the said letter that Medical Officers on monthly-wage basis have been engaged to tide over the difficult position in running the dispensaries smoothly on account of shortage of Medical Officers, and that the persons appointed cannot be regularised unless they apply to the U.P.S.C. for appointment to the posts of Medical Officer as and when advertised and are recommended by the UPSC for appointment

on regular basis on the basis of combined Medical Service Examination/selection by interview methods. The respondents have also stated that the U.P.S.C. has sent the name of one, Dr. (Mrs.) Vandita Bansal, for appointment on regular basis.

6. We have gone through the records of the case carefully and have heard the learned counsel for both the parties. In the case of Dr. (Mrs.) Sangeeta Narang & Others Vs. Delhi Administration & Others, A.T.R. 1988 (1) CAT 556, this Tribunal has observed as follows:-

" The crucial question which still survives for consideration, however, is whether even as ad hoc appointees the petitioners can be shunted out unceremoniously just on the expiry of a total period of 180 days with an intermittent break of a day or so on the expiry of first 90 days. There can be no two opinions that the Government can make short-term appointments even against permanent posts so as to meet its immediate requirements pending appointments to the said posts on regular basis. In other words, short-term appointments, even for a specified period can be made by the Government, but the critical question is whether once having made such appointments it will be open to the concerned authority to dispense with the services of temporary/ad hoc employees at any time at its sweet will even when the need for filling the posts on temporary/ad hoc basis still persists. In other words, will it be just and fair on the part of the Govt. to terminate the services of a temporary employee who may have been appointed for a specified period even though the post has not been filled up by a regular incumbent and there is still need for manning such post until the time it is occupied by a regular appointee. On a careful consideration of the matter, we venture to reply in the negative."

xxxxx xxxxx xxxxx xxxxx

"In this view of the matter, therefore, 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 the particular petitioner is not upto the mark or he is not otherwise suitable for the post. The third eventuality for termination of services can arise by way of disciplinary action but we have 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."

7. In the light of the above, the Tribunal in Dr. (Mrs.) Sangeeta Narang's case, quashed the impugned orders and held that all the Junior Medical Officers appointed purely on ad hoc basis, would be entitled to the 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 U.P.S.C. 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 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 these posts.

8. In Dr. A.K. Jain and Others Vs. Union of India reported in J.T. 1987 (4) S.C. 445, the Hon'ble 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 judgement 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.

xxxxx xxxx xxxx xxxx

3. The petitioners of the Assistant Medical Officer/Assistant Divisional Medical Officers appointed subsequent to 01.10.84 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.

xxxxx xxxx xxxx xxxx

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 any 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 as ad hoc doctors in the Railways."

9. In a batch of similar cases which was disposed of by judgement dated 2.2.1990 (OA-2314/89 and other

connected matters - Dr. Gurbinder Kaur Hora & Others Vs. Union of India through the Secretary, Ministry of Health & Family Welfare), to which both of us are parties, we had issued directions to the respondents following the ratio of the judgement of this Tribunal in the aforesaid cases.

10. In the light of the above and keeping in view the ratio of the Tribunal's judgement in Dr. (Mrs.) Sangeeta Narang's case and that of the Supreme Court in Dr. A.K. Jain's case, the application is disposed of with the following orders and directions:-

- (i) The respondents are restrained from terminating the services of the applicant as a Lady Medical Officer. They are directed to continue her in service till she is replaced by a regular Medical Officer recruited through the U.P.S.C. The U.P.S.C. nominees shall, however, first be posted against all available vacancies in the C.H.S. and only after all the available vacancies are so filled, should the applicant be replaced. The replacement should be on the basis of 'last come, first go'.
- (ii) After the replacement, if vacancies are found to exist, or arise subsequently, ~~anyway~~ 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.

(16)

(iii) The applicant 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.

(iv) The respondents are directed to report the case of the applicant to the UPSC for continuing her on the post on ad hoc basis for more than one year. Upon consultation with the U.P.S.C., she shall be continued in service in the light of the advice of the U.P.S.C. till regular appointment is made to the post held by her.

(v) In no event, shall the applicant be replaced by newly recruited ^{ad hoc} Medical Officers by whatever designation and on whatever terms and conditions they may be.

(vi) If the applicant applies for selection by the U.P.S.C., the respondents shall consider granting relaxation in age to her to the extent of the period of service rendered by her on ad hoc basis.

The parties will bear their own costs.

D. K. Chakravorty
(D. K. Chakravorty)
Administrative Member

16/8/1990

P. K. Kartha
(P. K. Kartha)
Vice-Chairman (Judl.)
16/8/1990