

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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C.A. NO. 1213/1991

DATE OF DECISION 13.11.91

DR. GIRISH TYAGI

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

COURT

SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (D)

FOR THE APPLICANT

...MS. RASHMI GUJLATHI

FOR THE RESPONDENTS

...SH. SWATANTRA KUMAR,
COUNSEL FOR
RESPONDENT NO. 2

MRS. RAJ K. CHOPRA,
COUNSEL FOR JOI-
OFFICIAL RESPONDENT

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (D))

The applicant, ^aPost Officer in the Department of Neurosurgery, C.B. Pant Hospital, New Delhi filed this application under Section 19 of the Administrative Tribunals Act, 1995 aggrieved by his non-consideration in the appointment of Assistant Professor of Neurosurgery, though on ad-hoc basis in the same hospital. The applicant also challenged the ad-hoc appointment of respondent No.2, Dr. Raj Kumar a private practitioner.

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2. The applicant claimed the relief that the appointment order dt. 1.5.1991 of respondent No.2, Dr. Raj Kumar be quashed and a further direction to the respondents be issued to consider the applicant for the ad-hoc appointment to the post of Assistant Professor of Neurosurgery in G.B. Pant Hospital.

3. The facts of the case are that the applicant is fully qualified and obtained the degree of Master in Surgery (Annexure-A) in 1989 from the University of Delhi. It is further stated that the applicant has also published certain scientific research papers on Neurosurgery. The applicant joined the Department of Neurosurgery in G.B. Pant Hospital as a Pool Officer (under CSIR, New Delhi) and is still working there. One Dr. D.N. Puri, an associate Professor in G.B. Pant Hospital has been promoted to the post of Professor at Guru Teg Bahadur Hospital. For the vacancy so caused, Dr. Brahm Prakash, Director Professor and Head of Neurosurgery Department recommended the name of the applicant for his appointment as Assistant Professor (Annexure-E). However, the applicant has not been considered and he learnt on 14.5.1991 that the respondent No.2 has been appointed on ad-hoc basis, though the respondent No.2 had not joined by that date. The applicant

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has also sent a representation to Hon'ble Minister of Health and Family Welfare. The present application has been filed on 17.5.1991. The applicant has challenged the appointment of respondent No.2 on the ground that non consideration of the applicant for the appointment even on aadhoc basis in an illegal, arbitrary and malafide manner is violative of Articles 14 and 16 of the Constitution of India. It is also against the principles of natural justice. The recruitment of the Assistant Professor is governed by Central Health Services Rules, 1982 and Rule 6 lays down the method of recruitment either by promotion or by direct recruitment or by transfer on deputation or by short term contract of suitable officers holding analogous post under the statutory bodies, autonomous bodies, semi-Government organisations, Universities or recognised research institutions. According to the applicant, as the respondent No.2 is a private practitioner, he could not have been given an aadhoc appointment for the post of Assistant Professor.

4. The official respondents contested the application and in their reply stated that since respondent No.2 has already been given ad hoc appointment, the present application is liable to be dismissed. It is also stated that the present application is barred by jurisdiction and so it is liable to be dismissed. It is stated that Delhi Admin. was

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informed that respondent No.2 may be adjusted against the post of Assistant Professor of Neurosurgery on ad hoc basis to be vacated by Dr. D.N. Paul on his promotion as Professor of Neurosurgery. It is stated that respondent No.2 was fully eligible to be given an ad hoc appointment.

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It is stated that applicant and respondent No.2 have similar experience. Since the application of respondent No.2 was received earlier and processed, so the appointment of respondent No.2 is legal, valid and no error has been committed. It is further stated that Director, G.B. Pant Hospital in his letter addressed to the Additional P.S. to Minister of Health and Family Welfare had recommended the case of Dr. Raj Kumar for ad hoc appointment. Thus it is said that the application be dismissed. The respondents have filed a supplementary reply that the posts to be filled up by ad hoc appointments are not advertised. It is further stated that ad hoc appointments are not made as a matter of routine, but resorted to only in exceptional circumstances. Such appointments are made generally on the recommendations of the institutions itself.

5. Respondent No.2 has filed a separate reply. It is stated that he obtained the ^{M.Ch.} Degree in Neurosurgery in April, 1938 and continued to work in the same hospital till 18.8.1938. The private respondent has also assessed his merit vis-a-vis the applicant certifying that he is more

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competent and experienced than the applicant. It is at variance to the reply filed by the official respondents that he (respondent No. 2) and the applicant have similar qualifications. It is further stated that the answering respondent has joined the Delhi Administration on 16.5.1991. The Director of G.B. Pant Hospital recommended and forwarded the case of the answering respondents. In view of this, it is prayed that the application be dismissed.

6. We have heard the learned counsel of both the parties at length and have gone through the record of the case. The Recruitment Rules cannot be applied for the ad hoc appointments as by the very nature, they are short-term appointments and are in the exigency of the service so that the work may not suffer. The regular appointments often take more time as advertisement is done through J.I.S.C. and applications are called for. However, in any case, there should not be any arbitrariness, unfairness, inequality of treatment even in the matter of ad hoc appointments. In the case of Rama Setty Vs. International Airports Authority-AIR 1979 SC 9-1623, it has been held, "It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in



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confirmity with standard or norm which is not arbitrary, irrational or irrelevant. The power of discretion of the Government in the matter of grant of larges including award of jobs, contracts, quotas, licenses etc. must be confined and structured by rational, relevant and non-discriminatory standard or norms and if the Government departs from such standard or norms in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary but was based on some valid principle which is itself was not irrational, unreasonable or discriminatory."

In the case of V.K. Bhargava Vs. State of Himachal Pradesh-1987 (5) SLR 5-773 para-35, it has been held that even in the case of ad hoc appointments, there should be utmost fairness and reasonableness and it should not be arbitrary.

Inequality in the matter of such appointments attacks the provisions of Articles-14 and 16 of the Constitution.

Inequality and arbitrariness are sworn enemies. The learned counsel for the private respondent has placed reliance on the authority of A.N. Bholi Vs. UOI-1973 (2) SLR 5-726.

In the authority of 1987 SLR (5) 5-773, this authority has been considered. However, we have to see whether the applicant has been considered in this case or his case has gone by default as stated in the reply filed by the official respondent wherein in para-1 it is stated, "Respondent No.2 has already been given ad hoc appointment. The question of considering the applicant for ad hoc appointment does not arise. of the counter of respondent No.1 Further it is stated in para 5(C) "The application of the respondent No.2 was received earlier and was processed."

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Further in para 5 (F), it is stated, "Respondent No.2's application was received before and he was given the appointment." Still further in para-5(L), it is stated, "Director, G.B. Pant Hospital in his letter addressed to the Additional P.S. to HFM had recommended the case of Dr. Raj Kumar for ad hoc appointment."

7. To ascertain further facts, the respondents were directed to place the departmental file of appointment. It appears that as early as in December, 1990, Surender Tiwari, Member, BPCCI (I), Deputy Chairman, INTDC, Bihar has recommended the ad hoc appointment of Dr. Raj Kumar. A copy of respondent No.2's application was also enclosed with this recommendation. Probably it was meant for consideration at the Minister's level. It also appears that there was some correspondence by one of the Ministers with the Minister of Health for ad hoc appointment of respondent No.2. Thus, the appointment of Dr. Raj Kumar, respondent No.2 had already started before any the vacancy arose on the movement of Dr. Paul. The departmental file also discloses that already there have been some processing for appointing respondent No.2. In view of the above facts and circumstances, the applicant has raised a very convincing argument that he has not been considered for the said appointment and the appointment of respondent No.2 has been on extraneous considerations. The case of V.K. Bhargava Vs. State of Himachal Pradesh is a direct authority where in the authority cited by the learned counsel for the private respondent has been considered in



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para-35. The Division Bench has observed as follows in

para-36 :-

"We are not able to persuade ourselves to read this decision ^(Bhaili's case-supra) as laying down an absolute prohibition that in no case and under no circumstances an ad-hoc appointment can be challenged as violative of articles 14 and 16. The true ratio of the decision is that an ad-hoc appointment would not be invalid merely because all eligible persons were not considered provided on the facts and in the circumstances of the case, legitimate criteria was applied in selecting persons for ad-hoc appointments. As it stated that in Bhaili's case, there were no statutory rules nor any policy decision governing ad-hoc appointments and that the impugned ad-hoc appointments were found to have been made following relevant and rational norms. It is, difficult to appreciate how, under such circumstances, certain observations made in the judgments of Pathak, C.J., and Chet Ram Thakur, J., can be read torn out of context and pressed into service to found an argument that the decision can be read as laying down that even though there may be a clear violation of a statutory enactment or policy decision in the making of an ad-hoc appointment or that even if such appointment is made without due regard to valid and relevant principles applicable alike to all similarly situated, there would be no infringement of articles 14 and 16. It would not be out of place to mention also that in view of the decision in L.P.Royappa's case, certain observations made in Bhaili's case will have to be read as confined to the facts of that case as well as conformably to the law declared in L.P.Royappa's case."

In the present case, the authority of V.K. Bhargava(supra) fully applies. In this reported case of V.K. Bhargava, the Himachal Pradesh Medical College, now known as Indira Gandhi Medical College was run by the State Government at Shimla. V.K. Bhargava at the relevant time was Professor

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and Head of the Department of Pharmacology in the college.

The second respondent was holding the substantive post of Professor and Head of the Department of the Preventive and Social Medicine in the college. Dr. R.H. Mehrotra, Director of Medical Education-cum-Principal of the college sought voluntary retirement and retired on 5.8.1983. At that time, Dr. Bhargava was serving on deputation as Professor of Pharmacology in Libya. The second respondent was, therefore, appointed to officiate as the Director and Principal of the college on a temporary and ad hoc basis by the notification dt. 6.8.1983. Dr. Bhargava on return from abroad made request to the authorities for joining as Professor and Head of the Department of Pharmacology and advanced his claim for being considered by selection in that post of Principal of the said college. Dr. Bhargava, therefore, filed the writ Petition praying for various reliefs, even cancelling the appointment of respondent No.2 and to fill up the said post on the basis of merit-cum-seniority. In para-46 in the reported case, it is observed, "Adhoc appointments, the petitioner has a legitimate claim to be considered for ad hoc appointment on resumption of duty. He satisfied all the eligibility conditions for appointment to the post of Principal, if those conditions applied." In the present case, the applicant is a Pool Officer in the same hospital and his case was duly recommended by the Head of the Department,

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Dr. Brahm Prakash, while the case of respondent No.2 was not recommended by the Head of the Department, Dr. Brahm Prakash. The learned counsel for respondent No.2 placed reliance on a certificate given by Dr. Brahm Prakash, but giving certificate will not recommendation be equivalent to to an Authority. Certificate may be obtained for various reasons, but the recommendation is only for a particular appointment. The recommendatory letter is at Annexure-E which clearly shows that the recommendation is for the post of Assistant Professor and in his own words, "I strongly recommend his case to become a teacher research worker and clinician in our Institution as an Assistant Professor."

9. The learned counsel for the applicant argued that the appointment of respondent No.2 has been made totally ignoring the provisions of the Recruitment Rules and also against the principles of natural justice in a malafide official manner. The unseemly haste shown by the respondents in appointing the respondent No.2 and the respondents only stating in their reply that since the application of the applicant was received later ^{than} to that of respondent No.2, which attracts Articles 14, 15 of the Constitution, so respondent No.2 has been appointed. It is emphatically argued that the respondents never advertised the post nor they gave any cut-off date for applying for the said post of Assistant Professor and the very

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process of appointment of respondent No.2 has been adopted in a secret manner. In fact the appointment of respondent No.2 has been processed much earlier when another Dr. Sh.S.N. Singh has gone to Lucknow Medical College. He returned after three months and so subsequently that processing has been taken account of in giving appointment in the vacancy caused by Dr. Paul. In consideration of the applicant in this vacancy is arbitrary and also against the principles of natural justice. Departmental file has been seen regarding the processing of the respondent No.2 for appointment on ad hoc basis. We have no reason to doubt that the procedure adopted for ad hoc appointment of respondent No.2 cannot be said to be a just. The reference to the case of Antulay-AIR 1963 SC 1131 where the Hon'ble Supreme Court held that no court can enlarge its jurisdiction, cannot be applied in the present case. There is inequality in treating the applicant as well as the respondent No.2.

10. The learned counsel for respondent No.2 argued that the appointment of respondent No.2 has been made in a vacancy reserved for SC only on ad hoc basis and the processing for regular appointment on the vacancy caused by Dr. Paul has been undertaken by the official respondents. This will not justify on any ground the appointment, otherwise arbitrary, of respondent No.2. When it is admitted to official respondents that

the applicant as well as respondent No.2 possess equal qualifications, then respondent No.2 cannot have a march in a clandestine manner over the applicant by ignoring the consideration of the applicant on merits vis-a-vis respondent No.2

11. The learned counsel for the respondents further argued that in the interest of the institution, the post should not be kept vacant, but already it is on record that when one Dr. S.N. Singh had gone to Lucknow, the post remained unfilled for a period of three months till Dr. S.N. Singh returned and joined the post in the hospital.

12. In view of the above facts and discussion, the application is allowed. The ad hoc appointment of respondent No.2 is quashed and set aside. The respondents shall not renew the term of appointment of respondent No.2. The official respondent shall, if there is any emergency of filling up the post of Assistant Professor of Neurosurgery on ad-hoc basis, consider the applicant and respondent No.2 as well as all other eligible qualified persons keeping in mind that ^{the ad-hoc} service rendered by respondent No.2 shall not count as an additional qualification in that selection. The ad-hoc appointment of respondent No.2 shall cease automatically. In the circumstances, the parties shall bear their own costs.

J.P. SHARMA
(J.P. SHARMA)
MEMBER (J)

15/11/91
15/11/91

D.K. CHAKRAVORTY
(D.K. CHAKRAVORTY)
MEMBER (A) 13-11-1991