

(P)

In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. Nos.:

Dated: 22.4.1992

1. DA-1069/91

Dr. (Mrs.) Rekha Dogra & Anr. Applicants

2. DA-1070/91

Dr. (Mrs.) Neena Narula Applicant

3. DA-1358/91

Dr. Mool Chand Applicant

Versus

Director General, ESIC Respondents
and Others

For the Applicants Shri G.D. Bhandari, Advocate

For the Respondents Shri D.P. Malhotra and
Shri G.R. Nayyar, Advocates

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Mr. I.K. Rasgotra, Administrative Member.

1. Whether Reporters of local papers may be allowed
to see the judgement? Yes

2. To be referred to the Reporters or not? NO

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

As common questions of law have been raised in
these applications, it is proposed to deal with them in
a common judgement.

2. The applicants have worked as part-time Medical
Officers in the Hospitals belonging to the E.S.I.C. They
have prayed that their services should not be terminated
and that they should be regularised as Medical Officers.

3. Interim orders were passed on 6.5.1991 in OA-1069/91 and OA-1070/91 directing the respondents to provisionally allow the applicants to appear before the Interview Board and in case they were found suitable, appoint them in the post of Medical Officer, for which they had applied. A similar interim order had been passed in OA-1358/91 on 6.6.1991. The interim order passed in OA-1069/91 and OA-1070/91 was modified subsequently on 4.6.1991 to the effect that the respondents shall provisionally allow the applicants to appear before the Interview Board but their results be kept and may not be disclosed. The applicants were, however, directed to be continued as part-time Medical Officers.

4. The respondents had issued an advertisement on 7.8.1988 calling for applications from doctors possessing M.B.B.S. Degree for appointment on part-time basis in the hospitals belonging to the E.S.I.C. located in Delhi/NOIDA for 5 hours' continuous duty per day on a total remuneration of Rs.2500/- per month. The applicants applied for the same. After holding a viva voce test by way of formal selection by a Selection Board consisting of experts constituted for the purpose of interviewing candidates, the applicants were given offers of appointment and they joined duty. The applicant in OA-1069/91 joined duty on

18.5.1990, the applicant in OA-1070/91 on 13.2.1990, and the applicant in OA-1358/91 on 28.9.1989. They continued to work as Medical Officers since then. The applicants have alleged that the regularly appointed doctors are getting a pay-scale of Rs.2200-4000 and Specialists in various categories are given the pay-scale of Rs.3000-5000. They claim that the nature, functions, and the responsibilities of part-time doctors were identical to those regular Medical Officers, and that describing them as part-time medical doctors and giving them a consolidated salary of Rs.2500/- per month, is unconscionable and illegal. Apart from this, they have also called in question the decisions of the respondents to resort to recruitment of fresh doctors from the open market instead of regularising their services.

5. The respondents have stated in their counter-affidavit that the applicants were indicated as part-time Medical Officers de hors the recruitment rules purely as a stopgap arrangement on the specific condition that their engagement was terminable by giving one month's notice on either side. This had to be done because regular candidates selected in accordance with the recruitment regulations, were not available and some delay was apprehended in completing the selection process of regular candidates.

6. During the hearing of the case, the learned counsel for the respondents stated that a good number of part-time Medical Officers who were so appointed, have been selected by the regularly constituted Selection Committee in accordance with the recruitment rules and those who had been left out, are over-aged for appointment. In this context, they produced before us a list of 88 part-time Medical Officers from which it is seen that persons in their fifties and sixties had also been appointed as Medical Officers to tide over the emergent situation.

7. We have gone through the records of the case carefully and have considered the rival contentions. The learned counsel for the respondents drew our attention to the advertisement issued by the respondents inviting applications from eligible candidates for the purpose of filling up the vacancies of Medical Officers on regular basis. The advertisement, which was issued in accordance with the recruitment rules, provided that the upper age limit was relaxable for employees of the E.S.I.C. and Government servants upto five years and upto five years for S.C./S.T. candidates, as per the rules. Non-Practising Allowance was payable to the selected candidates. In the case of part-time Medical Officers, there was no bar on doing private practice. *Q*

8. The learned counsel for the applicants argued that there was no difference between the Selection Board which selected the applicants as part-time Medical Officers and the Selection Board for selecting doctors on regular basis. As against this, the learned counsel for the respondents stated that the advertisement for selecting part-time Medical Officers was issued locally, whereas the advertisement for regular appointment had been widely publicised.

9. In any view of the matter, the applicants had also been interviewed pursuant to the interim orders passed by the Tribunal and a good number of them have already been selected for appointment on regular basis.

10. A batch of cases relating to part-time Specialist Doctors of E.S.I.C., had been disposed of by judgement dated 8.2.1991 to which one of us (P.K. Kartha) was a party (OA-138/91 and connected matters - Dr. (Mrs.) Vijaya Dhar Vs. E.S.I.C. and Another). We are of the opinion that the case of the present applicants is similar to that of Dr. (Mrs.) Vijaya Dhar and others.

11. Following the ratio of the judgement in Dr. (Mrs.) Vijaya Dhar's case, the applications are disposed of with the following orders and directions:-

(i) The respondents are directed to continue the applicants in their present posts of part-time Medical Officers till they are replaced by

regular candidates recommended by the
duly constituted Selection Board.

(ii) In case regular vacancies exist or arise
in future, the respondents may consider
the suitability of the applicants for
appointment if they are otherwise eligible.
As regards age-limit prescribed for the
post, the respondents shall relax the same
to the extent of the service rendered by the
applicants in the E.S.I.C. as part-time
Medical Officers.

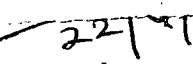
(iii) The interim orders passed in these applications
are hereby vacated.

(iv) The applications are disposed of on the
above lines.

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

Let a copy of this order be placed in all the
three case files.


(I.K. Rasgotra)
Administrative Member


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