

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2068/91
T.A. No.

199

DATE OF DECISION 7.10.91

<u>Dr. N.K. Jha</u>	Petitioner
<u>Shri K.N.R. Pillai</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Ors.</u>	Respondent
<u>Shri P.P. Khurana</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Ram Pal Singh, Vice Chairman (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

I.K. Rasgotra
 (I.K. Rasgotra)
 Member (A) 7/10/91

Ram Pal Singh 7.10.91
 (Ram Pal Singh)
 Vice Chairman (J)

6

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

.....

OA No. 2068/91

DATE OF DECISION: 7-10-1991

DR. N.K. JHA

APPLICANT

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE RAM PAL SINGH, VICE CHAIRMAN (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI K.N.R. PILLAI, COUNSEL

FOR THE RESPONDENTS

SHRI P.P. KHURANA, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY

HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

Dr. N.K. Jha, working as Senior Resident in Lady Hardinge Medical College & Smt. S.K. Hospital, New Delhi has filed this original application under Section 19 of the Administrative Tribunal Act, 1985, apprehending termination of his service on 5.9.1991 after the selection for appointment of regular Senior Resident is finalised. He is further aggrieved as he has not been called to appear before the Selection Board.

The case of the applicant is that in terms of the Residency Scheme introduced in the teaching Hospitals of Delhi, doctors with Post-Graduate qualification in medicine and surgery are appointed as Senior Residents on tenure for three years. The scheme provides that the Senior Residents will be temporary government servants on pay and other emoluments as recommended by the Central Pay Commission. According to the applicant, Senior Residents are accordingly to be treated as temporary government servants and their terms and conditions are regulated under Central Civil Service (Temporary Service) Rules, 1965. He was appointed as Senior Resident against available vacancies after interview by a Selection Board comprising the Principal and 2 Heads of Departments, in 1990 on purely adhoc basis for a period of three months. He, therefore, prays that having been duly

2

7
appointed after selection, he should be regularised as Senior Resident and seeks to fortify his case by relying on **Jacob M. Puthuparambil and Ors. V. Kerala Water Authority and Ors. - JT 1990 (4) SC 27.**

2. The respondents, represented by Shri P.P. Khurana, Counsel have filed a short counter stating that the applicant, Dr. N.K. Jha was appointed as Senior Resident in the Department of General Surgery vide order No. F.7/17/91-Admn.I(B) dated 5.6.1991 for a period of three months, purely on adhoc basis against a short term vacancy as per terms and conditions contained in the said appointment letter. The applicant joined service on 10.6.1991. It is, therefore, their stand that the applicant cannot claim regularisation as his appointment was only for a period of three months in a stop-gap arrangement. They have also prayed that the stay granted restraining the respondents from terminating the services of the applicant be vacated, as a duly selected candidate is awaiting appointment.

3. The learned counsel for the applicant, Shri K.N.R. Pillai, submitted that any harsh terms of appointment, which an employee is to accept to get into government service cannot be legally enforced against him after he joins service. He acquires a status once he joins the service and according to a catena of judicial decisions, the terms of contract are no longer relevant as the employee is to be governed by the conditions of service as provided in the various rules and orders issued by the respondents under Article 309 of the Constitution of India. He has placed his reliance in support of his argument on **AIR 1967 SC 1989 - Roshan Lal Tandon Vs. Union of India & Another and 1986 (2) SLR SC 345 Central Inland Water Transport Corporation V. Brojo Nath Ganguli.**

2

On the other hand, the learned counsel for the respondents Shri P.P. Khurana submitted that the applicant has no right to continue in that post having been appointed purely in a stop-gap arrangement as the Selection Board constituted by the respondents has already selected Dr. Vidhan Chandra, out of the 18 candidates, who were called for interview. On a query from the Bench, whether there are any guidelines or directions for selection of Senior Residents, the learned counsel for the respondents undertook to file the Residency Scheme.

4. We have heard the learned counsel for both the parties and have gone through the record carefully. It will be relevant to reproduce the letter of appointment issued to the applicant on 5.6.1991.

".....

The undersigned hereby offers a Post of Senior Residents/Senior Demonstrator in the Deptt. of Gen. Surgery of this Institution to Dr. N.K. Jha, purely on adhoc basis on the following terms and conditions:-

1. He/She will be paid usual allowances as admissible from time to time to Central Government Employees of similar category stationed in Delhi/New Delhi. The Senior Residents/Senior Demonstrator with post graduate degree will be paid respectively Rs. 3150, Rs. 3250 and Rs. 3350 in first, second and third year of their residency. This will be inclusive of N.P.A. The allowances will be reduced by Rs. 100/- in the case of post graduate diploma holders and Rs. 200/- in cases where no post graduate qualifications are held. They will be eligible for admissible CCA and HRA. They will be sanctioned DA as admissible and as per consolidated remunerations

92

2. Other allowances as admissible from time to time to the central Government employees of the same pay group.

3. He/She will be paid emoluments for Post-graduate degree diploma as given above.

The services can be terminated without any notice and without assigning any reason.

5. The appointment is only for Three months or till the leave vacancy whichever is earlier. (emphasis supplied)

6. No accommodation will be provided in this institution.

7. He/She should report for the duty within 7 days from the date of issue of this letter.

8. The adhoc appointment will not bestow on him/her any claim for regular appointment to the post or seniority in the cadre of Senior Resident/Senior Demonstrator.

....."

It is clear from the said appointment letter that the applicant was appointed purely on adhoc basis for 'three months or till the leave vacancy whichever is earlier'. The applicant was thus appointed not against a regular vacancy of Senior Resident but only in a leave vacancy as a stop-gap arrangement. We also observe from the extract of Residency Scheme filed later by the learned counsel for the respondents that the following guidelines are issued by the Ministry of Health and Family Planning vide letter No. S.11014/27/74-ME(PG) dated 22.4.1974:

"The minimum qualification for selection as Senior Resident in any speciality will be a postgraduate degree or a diploma in the concerned speciality. If such candidates are not available in any particular speciality, those without postgraduate qualification may be considered for selection.

2

2. The tenure of Senior Residency will be three years. The Senior Residents serving in institutions hospitals under the direct control of Government will be treated as temporary Government servants and governed by the Central Civil Services (Temporary Service) Rules, 1965."

Admittedly, therefore, the residency scheme is regulated in accordance with the CCS (Temporary Service) Rules, 1965. Having said so we may examine if the ratio of **Roshan Lal Tandon (supra)** case is applicable to the matter before us. Admittedly, the Hon'ble Supreme Court in paragraph 6 of the above case observed:

"In our opinion, there is no warrant for this argument. It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties."

These observations, however, cannot be read in isolation. The facts of the case in which the observations are made by the Hon'ble Supreme Court have also to be kept in view. Briefly, this was a case where the terms and conditions of promotees were unilaterally altered by the respondents to the detriment of their interest after the promotees and direct recruits

9

were integrated into one class to seek further promotion on the basis of senioritycum-suitability. The respondents, however, unilaterally introduced the process of selection for promotees for promotion to the next grade while direct recruits were allowed to be promoted on seniority-cum-suitability basis. The unilateral alteration in the method of promotion in respect of candidates who had already been recruited in a particular grade for further promotion was infraction of Article 14 and 16 of the Constitution and therefore, the changed conditions were held to be illegal by the apex court. The case, therefore, is distinguishable, and does not help the applicant.

The second case cited by the learned counsel for the applicant, **1986(2) SLR 345 – Central Inland Water Transport Corporation Ltd. and Anr. V. Brojo Nath Ganguli and another** is also not germane as the matter dealt with in this case is the termination of service of a permanent employee by giving him three months notice.

Ordinarily, there would have been no occasion for our interference in the matter as the applicant was appointed in a leave vacancy on a purely stop-gap arrangement and therefore as soon as the vacancy ceases to exist, at the expiry of 3 months or during that period, his service could be terminated in accordance with the CCS (Temporary Service) Rules, 1965. But from the facts of the case, it appears that there was a regular vacancy for which the selection was held on 5.9.1991. Since the applicant has already been selected by a Board, comprising the Principal and the 2 Heads of Departments, it would have been just and proper if the applicant had also been called for interview and considered for appointment against the regular vacancy along with other candidates. This, however, has not been done and thus the applicant has been deprived of an equal opportunity of consideration for appointment against the

d

regular vacancy. The respondents have also not explained as to why he was not called for selection. We are, therefore, of the view that the applicant herein should also be called for selection before the Board which interviewed the 18 candidates on 5.9.1991 for consideration for appointment against the tenure vacancy of the Senior Resident and if he is found to be higher in merit than the selected candidate he should be appointed against the regular vacancy. We order accordingly. The above directions should be implemented within a period of four weeks from the date of communication of this orders.

The original application is disposed of as above with no orders as to costs.

Sukhpal 7/10/91
(I.K. Rasgotra)

Member (A) *7/10/91*

g
/SSM/

Ram Pal Singh 7.10.91
(Ram Pal Singh)

Vice Chairman