

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. CCP No.90/91 inOA No.138/91
T.A. No. 199

DATE OF DECISION 14.8.91

Dr.Vijaya Dhar Petitioner

Shri O.P.Khadaria Advocate for the Petitioner(s)

Versus

Dr.B.Dayal, Director(Medical) & Respondents

Dr.D.K.Kapoor, Director(Medical)

ESIC

ESIC S.D.P. Malhotra Advocate for the Respondent(s)

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The Hon'ble Mr. P.K.KARTHA, VICE CHAIRMAN (J)

The Hon'ble Mr. D.K. CHAKRAVORTY, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *No*
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*

ORDER

(ORDER OF THE BENCH PASSED BY HON'BLE
SHRI P.K.KARTHA, VICE CHAIRMAN)

We have heard the learned counsel of both parties on this CCP. The petitioner and two others had filed OA Nos. 138/91, 2637/90 & 2675/90. Their grievance was that they had not been regularised in the post of Specialist Doctor on which ^{post e} they had been engaged on part time basis. The applications were disposed of by a common judgement dated 8.2.91. The respondents were directed to continue the applicants in their present posts of Specialist till they are replaced by the ...

regular candidates recommended by the Union Public Service Commission. The respondents were also directed to consider the suitability of the applicants for appointment in regular vacancies along with other candidates.

2. The learned counsel for the petitioner stated that though the petitioner is being continued in her present post, salary had not been paid to her from 1.3.91 to 31.7.191 until the present petition was filed in the Tribunal.

3. The learned counsel for the respondents stated that there was some confusion as to the existence of a vacancy against which the petitioner could be accommodated. He, however, stated that the petitioner was also interviewed along with other candidates and two candidates have been selected for appointment in regular vacancies as they were found to be having superior merit. There is one more vacancy earmarked for Scheduled Tribe candidate which has not been filled up and the petitioner is being continued against that vacancy pursuant to the directions given by this Tribunal.

4. As the salary for the aforesaid period has been released to the petitioner, though belatedly, the respondents cannot be hauled up for contempt on this point.

5. The learned counsel for the petitioner stated that the petitioner has not been paid salary at the correct rate. The salary given to her is only a lump sum of Rs. 2500/- per month ^{whereas} she is entitled to a sum of Rs.5000/- in the scale of pay of Rs.2200-4000 applicable to a regular Dental Surgeon. As against this, the learned counsel for the respondents stated that the petitioner was engaged as a part-time Specialist

on certain terms and conditions according to which she is entitled to receive consolidated emoluments of Rs.2500 per month.

6. We have perused the Original Application and the reliefs prayed therein. The petitioner did not pray for the grant of a particular scale of pay for the post held by her. As that was not an issue in the main OA, the question of admissibility of pay scale to a part-time Specialist has not been gone into in the judgement of the Tribunal dated 8.2.91. In case the applicant is aggrieved as regards the salary and allowances, she will have to move a separate application in the Tribunal and the same cannot be agitated in the form of a contempt petition.

7. Another point raised by the learned counsel of the petitioner is that the petitioner was initially selected for appointment in 1989 by a duly constituted Selection Committee and that convening of second Selection Committee with more or less the same composition is not legally in order. During the hearing, the learned counsel of the respondents stated that the selection of the regular candidates will be on the recommendation of a specially constituted Selection Committee and not by the Union Public Service Commission as has been erroneously mentioned in paragraph 12(i) of the judgement. The respondents have discontinued the selection of personnel through the Union Public Service Commission in 1990 and in lieu thereof, they have constituted a special Selection Committee. The reference made to the Union Public Service Commission in the judgement may be taken as a typographical error. What is meant in


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paragraph 12(i) of the judgement is that the services of the applicants should be continued till they are replaced by regular candidates recommended by a duly constituted Selection Committee.

8. The learned counsel for the respondents stated that the Selection Committee which recommended the appointment of the petitioner initially in 1989 was undoubtedly different from the one which held the selection recently and recommended two candidates for regular appointment. While adjudicating upon a CCP, we cannot go into the question of the constitution of the Selection Committees and the validity of the selections made by the committees. Here again if the petitioner is aggrieved, she will have to file a fresh application in the Tribunal in accordance with the rules.

9. Having considered the rival contentions, we dispose of the CCP with the observation that the respondents shall continue the petitioner in her present post on the same terms and conditions until her services are replaced by a regular candidate belonging to the Scheduled Tribe category for which a vacancy is stated to exist. When a Scheduled Tribe candidate has been duly selected for filling up the vacancy, the petitioner will have no right to continue in the said post.

10. The CCP is disposed of on the above lines. Notice of contempt is discharged.


(D.K. CHAKRAVORTY)
MEMBER(A)


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