

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 2853/2004

M.A. No. 1718/2006

with

O.A. No. 1235/2005

MA 1719/2006,

MA 2887/2005

and

MA 834/2006

New Delhi this the 25th day of July, 2008

**HON'BLE MR. JUSTICE M. RAMACHANDRAN, VICE CHAIRMAN (J)
HON'BLE DR. VEENA CHHOTRAY, MEMBER (A)**

O.A. No. 2853/2004

1. Dr. Dipali Verma,
Wife of Dr. Sandip Taneja,
R/o B-3/49, Janakpuri,
New Delhi- 110058
2. Dr. Yogesh Kumar Gupta,
Son of Shri Bharat Lal Gupta,
R/o D-II/142, Kidwai Nagar (West)
Opposite Safdarjung Hospital
(Emergency),
New Delhi-110023 ... Applicants.

(By Advocate Shri Sanjeev Sahay)

Versus

1. Government of NCT of Delhi
through its Chief Secretary,
5, Shamnath Marg, Delhi-110054
2. Government of NCT of Delhi
through its Secretary (Health),
Delhi.
3. Medical Superintendent,
Deen Dayal Upadhyaya Hospital,
Hari Nagar, New Delhi. ... Respondents.

(By Advocate Shri Vijay Pandita)

OA 1235/2005

1. Dr. Vinal Sharma,
Son of Sh. Vinod Kumar Sharma,
R/o E-18/164, Rohini,
Delhi. ... Applicant

(By Advocate Shri Sanjeev Sahay)

Versus



1. Government of NCT of Delhi through its Chief Secretary, 5, Shamnath Marg, Delhi-110054
2. Government of NCT of Delhi through its Secretary (Health), Delhi.
3. Medical Superintendent, Deen Dayal Upadhyaya Hospital, Hari Nagar, New Delhi. ... Respondents.

(By Advocate Shri Vijay Pandita)

O R D E R

Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (J).

There are two applicants in OA 2853/2004 and Dr. Vinal Sharma is the applicant in the connected case (OA 1235/2005). As suggested by the parties, they are being disposed of by a common order since the facts to be dealt are almost identical.

2. As a matter of fact, it may not be necessary for us to go into finer details highlighted in the OA, which perhaps might have been relevant, during 2005, in view of the subsequent developments that had taken place as brought to our attention. This is in spite of the fact that an Original Application (OA 2949/2003) filed by a person in almost identical circumstances had been disposed of by this Tribunal rejecting the reliefs prayed for. Normally, the decision was required to be followed, but it is found that the operation of the order had been stayed by the Hon'ble High Court of Delhi in WPC 156-157 of 2004 even as of now. The essential difference that was placed by the counsel for the applicant is that the above original application had been disposed of in the year 2003, but, however, here by virtue of the interim orders, the applicants had been continuing uninterruptedly in the service of the Govt. of NCT of





New Delhi, as Medical Officer and had completed a post graduate course in the meanwhile. The reliefs as prayed for also requires to be dealt with and moulded so that it does not run counter to anybody's interests, but also is capable of removing any uncertainties.

3. In the peculiar facts presented, we feel that the plea, as above raised requires acceptance and we think it will be justifiable on our part to dispose of the application, adopting an equitable approach.

4. The applicants after graduation had been offered seats for Diplomate National Board (DNB). The course was of duration of three years. They were to be paid Rs.10,000/- per month, as Honorarium and the acceptance of the offer was to be submitted to the Superintendent of concerned hospitals within a stipulated time. The course was to commence in August, 2004. They were expected to pass the final examination, both written and oral for conferment of diploma.

5. The memorandum of offer refers to a condition that those candidates who were already working as Junior/Senior Residents, Medical Officer on ad hoc or contract basis will have to exercise an option whether they wanted to continue working as Medical Officer on ad hoc or contract basis or as a DNB student. A person who was working on contract basis in the hospitals if was to opt for DNB Course, requires to be relieved from contract/ad hoc appointment; the two were not to be undergone simultaneously. As the applicants were not on the date of memorandum engaged on contract basis, they were not obliged to submit an option and straightway started attending the course. A few months thereafter, they had been selected on contract basis and taking notice of the request made by them, they have been accommodated in the very hospitals where they were undergoing course of DNB. There was no

option submitted by them and while undergoing a DNB course, they were also working as ad hoc appointees on contract basis, but were not getting any double payments.

6. Noticing the above, the respondents had taken a stand that in view of the decision of the Government that a person is not to be permitted to work as on ad hoc basis and simultaneously undergo DNB course, they were obliged to relieve themselves from the contract status. The applicants point out that this restriction was not there in respect of personnel who had opportunity to attend the course before the year 2003 and this stipulation was discontinued later on in the year 2006. But, as far as they were concerned, however, there was imminent threat that their contract employment will be terminated and it was in that context that the original applications had been filed. The reliefs prayed for were somewhat unusual, and evidently they were more concerned about securing an interim order.

7. In view of the interim orders, termination orders were not issued and the applicants continued on ad hoc basis. In the meanwhile, they have completed the DNB Course as well.

8. Some of their colleagues who had filed similar original applications referred to earlier, however, were not lucky enough, as the original applications had been rejected by the Tribunal. But in view of the interim orders passed by the High Court, they could also continue as contract employees and simultaneously could attend the DNB Course as well.

9. The later development as referred to at the outset is the proposal for regularization of the contract/ad hoc engagement and orders are being awaited. Therefore, the applicants submit that an interim stay



prohibiting their discontinuance may not be necessary at this point of time since it has been held out that several other contract employees are continuing, and the applicants will not be subjected to any discrimination. This claim as taken by the applicants has not been disputed by the respondents and Mr. Pandita submits that steps for regularization are in progress, but who also submits that in view of the earlier dismissal of similar OA, a different approach may not be regular. It was a decision by the competent authority that employment and a qualifying course were not to be permitted to be undergone simultaneously.

10. However, this restriction was not there, applicants submit, before 2003 and after 2006. The details, however, have not been given. What has transpired cannot now be undone. The DNB seats of the applicants were to go to candidates who got selection in 2004, and by observing now that their presence was irregular, no others can derive any benefits. Likewise, the knowledge gained by them also remains with them, and nothing will be gained by holding that they are disentitled to appear for the final examinations. The applicants will be entitled to take advantage of the benefit of having undergone the DNB course. We are of the opinion that the applicants need not be disrobed of the benefit of the course, material as well as intellectual, especially since they could continue in the above said course without intervention of any orders of this Tribunal. The interim orders were only to facilitate them to continue as contract ad hoc employee. Their skill had been although taken advantage of. It will be, therefore, fair to hold that having undergone the DNB course, the applicants will be entitled to appear for the examinations, as of right, and may be eligible to the award of the degree/diploma if they come out successful. It is so declared. In the background presented, we do not think any further orders are called for.

The original applications are closed. The applicants will be entitled to the same treatment as other ad hoc contract employees similar to them engaged by the respondents receive. The Miscellaneous Applications filed during the course of the proceedings have become irrelevant and stand closed. No costs.

11. Let a copy of this order be placed in OA 1235/2005.

Chhotray
(Dr.Veena Chhotray)
Member (A)

DR
(M. Ramachandran)
Vice Chairman (J)

'SRD'