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Central Administrative Tribunal, Principal Bench

O.A. No. 465/2004

New Delhi this the 29<sup>th</sup> day of November, 2005

**Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)**

Dr. (Mrs.) J.V.K. Taneja (Ex-Reader)  
R/o B-3/380, Paschim Vihar,  
New Delhi-110 063.

...Applicant

By Advocate: Shri S.D. Raturi.

Versus

1. Hon'ble Lt. Governor of Delhi  
Government of NCT of Delhi,  
Rajpur Road, Delhi.
2. Government of NCT of Delhi  
Through its,  
Chief Secretary,  
Government of NCT of Delhi,  
Delhi Secretariat I.P. Estate,  
New Delhi-110002.
3. Government of NCT of Delhi  
Through its:  
Principal Secretary,  
Health and Family Welfare,  
Government of NCT of Delhi,  
Delhi Secretariat I.P. Estate,  
New Delhi-110 002.
4. The Director of (I.S.M&H)  
A&U, Tibbia College Campus,  
Karol Bagh, New Delhi-110005.
5. Executive Officer (I.S.M&H)  
Head of the Office  
A&U, Tibbia College, Karol Bagh,  
New Delhi-110 005.

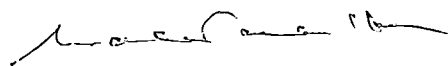
.....Respondents

By Advocate: Smt. Renu George.

**ORDER (ORAL)**

The applicant is aggrieved that her pensionary claims have not been finalized and paid.

2. The factual background is as follows. The applicant joined as Lecturer Grade-I/Lady Doctor In-charge Female and Maternity in A&U Tibbia College in 1969. She was thereafter promoted to the post of Reader in the said organization. Earlier she was member of the Contributory Provident Fund which scheme was modified and she opted for pension scheme which came into force in Tibbia College in 1997. Tibbia college was



established under Tibbia College Act, 1952. It was taken over by the Government of NCT of Delhi under Delhi Tibbia College (Take Over) Act, 1997 (the Act 1997 hereinafter) with effect from 1.5.1998. The applicant retired on attaining the age of superannuation on 31.8.2002. It is alleged that she has become a Government servant by virtue of Section 7 of the Act 1997. She has already refunded a sum of Rs.29,673/- on account of 1/6<sup>th</sup> of the employees share of contribution paid to her though she has been paid leave encashment of Rs. 2,93,350/- and GPF refund but her pension has not been fixed although over a period of 1 1/2 years has passed since her retirement.

3. Contesting the claim of the applicant respondents have stated that with the coming into force of Delhi Tibbia College (Take Over) Act, 1997 w.e.f. 1.5.1998, Tibbia College Act 1952 and the rules and regulations framed thereunder stood repealed. It was further submitted that the applicant has not been cleared by the UPSC being Group 'A' employee and she is yet to be declared as Government servant as per Screening Committee Report submitted under Section 7 of the Act 1997. It was further alleged that release of pension and commutation of pension would be finalized and paid after the applicant is declared Government servant and order for counting her past service is issued by the competent authority and the concurrence of the UPSC is obtained. It was prayed that the OA should be dismissed.

4. In the rejoinder the applicant has reiterated her own case.

5. I have heard the learned counsel for the parties and perused the relevant record.

6. The applicant's service as a Reader in Tibbia College was governed by the extant rules and regulations till 1.5.1998 when under the Tibbia College (Take Over) Act, 1997, the Tibbia College and its allied units were taken over by the Government of NCT of Delhi.

7. After the repeal of Tibbia College Act 1952 under which the college was established and the service rules and regulations framed thereunder applicable to its employees by the Act 1997 the services of the employees of U & A Tibbia College will be governed by the provisions of the Act 1997 which came into force on 1.5.1998. Section 7 of the Act 1997 is crucial for deciding the controversy in this case, which is reproduced below:-

**"Provisions relating to the employees of the college - Where the services of a person, who had been immediately before the appointed day**

*[Handwritten signature]*

employed in the college are in the opinion of the Government necessary having regard to the requirements of the college he shall become from the date of his appointment by the government, an employee of the Government and shall hold office or service in the Government with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if the rights in relation to such college had not been transferred to and vested in the government and continue to do so unless and until his employment in the college is duly terminated or until his remuneration and terms and conditions of employment are duly altered by the Government;

Provided that such employees shall, in themselves, constitute a separate class and group of employees of the government and shall not be equated to or merged with the other employees of the Government."

8. The expression 'appointed day', as defined by clause (a) of Section 2 of the Act 1997 means, the day on which the Act 1997 comes into force, which is 1.5.1998. The special features of this section are as follows. (i) The provision will apply to those persons who were in the employment of the College on 1.5.1998 on which date the Act 1997 came into force and (ii) the State Government was to consider immediately (on 1.5.1998 or soon thereafter) whether the services of all those employees was necessary having regard to the requirement of the College and having formed this opinion it was to give appointment to them. As a result of the appointment made under this rule, the employees (i) will become, from the date of such appointment, Government employees, (ii) such appointees will have right and privileges as to pension, gratuity and other matters as would have been admissible to them before the taking over of the College by the Government and (iii) such employees will be governed by those rules (i.e. which governed their services prior to 1.5.1998) till their employment is terminated or the terms and conditions of their employment are altered. The proviso to Section 7 further stipulated that the employees are appointed under Section 7 will constitute a separate class and group of Government employees and they will not be equated to or merged with other employees of the Government.

9. Admittedly, the Government of NCT of Delhi has not discharged the obligation enjoined on it by Section 7 of the Act 1997 so far as the applicant's case is concerned. It was incumbent on the State Government to have considered immediately on 1.5.1998 or soon thereafter whether the services of the applicant were necessary having regard to the requirement of the college and having formed this opinion to give appointment to the

applicant. The respondent authorities have not discharged this legal obligation and fulfil the mandate of the statutory provision although a period of 7 years has passed.

10. At the hearing, the learned counsel for the respondents has fairly conceded to the lapse of the respondent authorities and requested that the authorities may be given about six months time to carry out the exercise mandated by Section 7 aforesaid. The learned counsel for the applicant agreed with her but wanted the authorities to take a decision at an early date since a period of 7 years have already passed.

11. A Division Bench of this Tribunal in OA 1518/2004 in the case of **Hakim Shanawaz Ali Vs. Government of NCT of Delhi and others** decided on 5.9.2005 had noticed that the provision of Section 7 of Delhi Tibbia College (Take Over) Act, 1997 has not been complied with by the Government of NCT of Delhi and had directed the respondent authorities to carry out the exercise required by Section 7 within a period of 3 months from the date on which copy of the order was received by it. The same direction may be given in the case in hand.

12. Having regard to the above discussion, I dispose of this OA and direct the applicant to carry out the exercise as per requirement of Section 7 of Delhi Tibbia College (Take Over) Act, 1997 within a period of 3 months from the date on which the certified copy of the order is received by the respondents. The respondents, thereafter, if required, shall also give all consequential benefits arising out of its decision made pursuant to the above exercise including the grant of pension, as per law, within next three months from the date of the decision. The decision shall also be conveyed to the applicant. The parties shall bear their own costs.

(M.A. Khan)  
Vice Chairman (J)

Rakesh