

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 1877 of 1992

New Delhi, dated the 11th November 1997

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE Mrs. LAKSHMI SWAMINATHAN, MEMBER (J)

Dr. Chandrakant 'Vir Chakra',
Dept. of Forensic Medicine,
Safdarjang Hospital,
New Delhi. ... APPLICANT

(By Advocate: Shri Jitender Sharma with
Sr. Advocate with
Shri A.P. Dhamija and
Shri T.P.S. Rathore)

VERSUS

1. Union of India through
the Secretary,
Ministry of Health & F.W.,
Nirman Bhawan,
New Delhi.
2. Union of India through
the Secretary,
Dept. of Personnel &
Administrative Reforms,
New Delhi.
3. Union of India through
the Secretary,
Ministry of Finance,
Dept. of Expenditure,
New Delhi.
4. Union Territory of Delhi
(Delhi Admn.) through
Secretary (Helath),
5, Shyam Nath Marg,
Delhi.
5. The Medical Superintendent,
Safdarjang Hospital,
New Delhi. ... RESPONDENTS

(By Advocate: Shri N.S. Mehta)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant seeks absorption as Asst.
Professor/Specialist in Forensic Medicine
(Rs.3500-4500) w.e.f. 25.4.89 with all
consequential benefits.

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2. Applicant was working as Asst. Prof. (Rs.3500-4500) in P.M. Project of AIIMS on purely temporary basis. Upon discontinuance of the said project the services of applicant and other employees attached to the Project were terminated by AIIMS. ^{1 filed} Applicant ~~filed~~ a Writ Petition in Delhi High Court, while the other employees filed WP No. 879/88 in Hon'ble Supreme Court who by their order dated 25.4.89 after hearing the both parties directed as under:

" We accordingly make an order directing the respondents to employ the persons referred to above at Safdarjung Hospital as fresh employees. But we however direct that whatever pay they were getting at the AIIMS shall be protected in their case and the period of service rendered by them at the AIIMS shall be counted for purposes of leave, pension and other retirement benefits. This petition is accordingly disposed of."

On 27.4.89 the Delhi High Court disposed of applicant's WP with the following order:

" Counsel for the Respondents 2, 3 & 6 states that similar question had come up for consideration before the Supreme Court who had directed that staff including the petitioner who were previously working in the Post Mortem Project sponsored by the Delhi Admn. in the Medical Institute should be re-employed, with the protection of their pay, in the Safdarjung Hospital. The question of the petitioner continuing in AIIMS, therefore, does not arise. The petitioner, however, wants time to see the order of the Supreme Court. The interim order dated 12.4.89 is vacated but the petitioner is given two months' time to vacate the premises. In view of the aforesaid order of the

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Supreme Court, no further relief can be granted in this petition except to direct the UOI to give effect to the direction of the Supreme Court for re-employing the erstwhile staff including the petitioner in the Safdarjung Hospital within a period of two months from to-day. Writ Petition stands disposed of." (9)

Thereupon the Respondents issued order dated 19.10.89 (Ann. I/Page 58 of O.A.) creating one post of Medical Officer (Rs.3000-4500) w.e.f. 25.4.89 and by their subsequent order dated 4.12.89 specified the terms and conditions of applicant's appointment as M.O. (Ann. A-7). Applicant joined the said post on 19.1.90 (Annexure A-8) and it is not denied that he has been given pay protection in the aforesaid scale of Rs.3000-4500 by fixing his pay at Rs.3975/- p.m. + N.P.A. and the period of service rendered at AIIMS has been ordered to be counted for leave, pension and other retirement benefits.

3. Applicant filed C.P. No. 122/90 in Hon'ble Supreme Court on 3.5.90 for initiating contempt proceedings against the Respondents and specifically ^{seeking} ~~ignoring~~ absorption in Specialist Grade I in Forensic Medicine in the scale of Rs.4500-5700/- from the date of the order with consequential benefits. Many of the grounds taken in the present O.A. were also taken by the applicant

in the aforesaid C.P.

4. The said C.P. was dismissed by the Hon'ble Supreme Court on 15.2.91 with the following order:

C.P. No. 12/90

" After hearing Shri Sushil Kumar Jain, Advocate we do not find any merit in the petition. The petition is accordingly dismissed. Contempt notices are discharged."

5. We have heard Shri Jitender Sharma, Senior Advocate for the applicant and Shri N.S. Mehta, GSC for Respondents. We have perused the materials on record and given the matter our careful consideration.

6. As per the CHS Rules 1982 the post of Asst. Professor in the Ministry of Health & F.W. is in the scale of Rs.3000-5000 which corresponds with that of Specialist Grade II.

Applicant as Asst. Prof. in Forensic medicine was only in the scale of Rs.3500-4500 but under the Health Ministry the scale of Asst. Prof./Specialist is as we have seen higher, namely Rs.3000-5000. The Hon'ble Supreme Court order dated 25.4.89 nowhere stated that the applicant should be granted a higher pay ¹ granted continuity of service or ² scale or even that his pay scale should be protected. All that Hon'ble Supreme Court's order stated was that ¹ he should be employed in Safdarjang Hospital as a fresh employee; ² his PAY should be protected and his service in AIIMS should be counted for the purpose of leave, pension and other retirement benefits which admittedly the Respondents have done. As mentioned above,

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the post of Asst. Prof./Specialist in different disciplines are part of CHS cadre and there was no direction in the Hon'ble Supreme Court's order dated 25.4.89 that applicant should be absorbed in the CHS cadre. That apart, applicant's counsel himself fairly concedes that at least in so far as absorption as Asst. Prof. in Forensic medicine is concerned the Safdarjung Hospital does not have any teaching faculty in Forensic medicine and under the circumstances the question of absorbing the applicant as Asst. Professor in Forensic medicine in Safdarjung Hospital does not arise. Even his absorption as a Specialist in Forensic Medicine in the Safdarjung Hospital would not arise as we have noticed that the said post carries a higher maximum in the pay scale than the pay scale in which applicant was working in AIIMS.

7. The Hon'ble Supreme Court's order dated 25.4.89 was to employ applicant in Safdarjung Hospital as a FRESH EMPLOYEE, protect the PAY that he was drawing at AIIMS and count his service in AIIMS for the purpose of leave, pension and other retirement benefits. This admittedly the Respondents have done and under the circumstances applicant can have no legitimate grievance.

8. Having regard to the above and in the background of the Hon'ble Supreme Court's

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Order dated 15.2.91 dismissing the C.P. No.122790,
in which much the same grounds were taken as
have been raised in the present O.A., no
judicial interference is warranted and the
O.A. is dismissed. No costs.

Lakshmi Swaminathan

(Mrs. LAKSHMI SWAMINATHAN)
Member (J)

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(S.R. ADIGE)
Vice Chairman (A)

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