

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

(b)

Regn. No. OA-2416/92

Date of decision: 9.2.1993.

Dr. N.K. Khadiya

.... Applicant

Versus

Union of India & Ors.

.... Respondents

For the Applicant

.... Mr. E.X. Joseph, Advocate

For the Respondents

.... Shri P.H. Ramchandani, Sr.
Advocate with Shri J.C. Madan,
Advocate.

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice-Chairman(J).

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member.

1. To be referred to the Reporters or not? *Y*

JUDGEMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

We have gone through the records of the case carefully and have heard the learned counsel for both the parties. This is the second time that the applicant is knocking at the doors of this Tribunal. He had filed OA-1194/91 which was disposed of by judgement dated 17.9.1991. The question which arose for consideration was whether the applicant, a Senior Medical Officer in the C.G.H.S., Delhi, who had been initially appointed on deputation basis in 1984 as Deputy Physician to the President

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of India and confirmed and absorbed in the said post in 1987, could be deconfirmed and reverted to his parent cadre by the impugned orders dated 10.5.1991 and 13.5.1991. The then Secretary to the President of India wrote to the then Secretary, Ministry of Health & Family Welfare on 13th September, 1984 stating, inter alia, that a panel of at least three names of Generalist Physicians be sent to him so that a choice could be made from the said panel for appointing a suitable person as Deputy Physician. On 18th September, 1984, the President's Secretariat again requested the Ministry of Health & F.W. to forward the ACR dossiers of the applicant, who was at one time working in CGHS Dispensary of the President's Secretariat, along with those candidates that may be sponsored by them for consideration. On 7.12.1984, the Secretary to the President wrote to the Secretary, Ministry of Health & F.W. stating that it had been decided to appoint the applicant on deputation as Deputy Physician to the President. He had been selected after considering the panel of names received from the Ministry of Health & Family Welfare. Accordingly, the applicant joined the post of Deputy Physician to the President on 22.12.1984 on an informal basis to work as an under-study of Dr. Banerjee, who was to be relieved on 31.12.1984. On 31.12.1984, the President appointed the applicant as his Deputy Physician until further orders.

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2. On 20.3.1986, the President's Secretariat wrote to the Ministry of Health & F.W. proposing to absorb the applicant in the President's Estate Clinic on permanent basis as Deputy Physician to the President. On 21.4.1987, the said Ministry conveyed the ~~sanction~~ of the President (the Minister concerned) to the permanent absorption of the applicant in the President's Secretariat as Deputy Physician. Consequent upon this, it was added that he had severed his administrative lien in the Central Health Service and as such, he would thereafter ~~cease to~~ be borne on the strength of the Central Health Service. On 7.5.1987, the President's Secretariat issued a notification confirming the applicant in the post of Deputy Physician to the President w.e.f. 5.5.1987. On 12.6.1987, the Ministry of Health & F.W. issued a notification to the effect that the applicant had severed his administrative lien in the post of Senior Medical Officer in the Medical Officers' Grade of the Central Health Service on the afternoon of 21.4.1987.

3. Thus, the applicant had worked in the President's Secretariat from 31.12.1984 to 10.5.1991, when the impugned order was passed by the President's Secretariat purporting to deconfirm him and to revert him to his parent cadre. It was added in the impugned order that if the applicant did not accept the proposed course of action, the President's Sectt. would be constrained to issue him a show-cause notice as to

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why his services should not be terminated.

4. The Tribunal held in its judgement dated 17.9.1991 that it is the privilege and prerogative of the President of India to retain the services of such persons who, in his opinion, are suitable to function in the two key posts of his Physician and Deputy Physician in his Secretariat. In a case of this kind, it was observed that it would not be appropriate for a Court or Tribunal to issue any directions to the President's Secretariat to retain a person as the Deputy Physician to the President of India against the latter's choices and preferences. At the same time, the Tribunal held that it is equally important that the applicant, who has been placed in his present predicament, should be given full protection in respect of his service prospects. The application was disposed of with certain directions to the respondents, including that "the services of the applicant shall be transferred back to the Central Health Service immediately, treating his service in the President's Secretariat as on deputation and enabling him to retain his position in the seniority list as on the date of deputation w.e.f. 31.12.1984".

5. Thereafter, on 18.9.1991, the President's Secretariat issued an Office Order stating that the services of the applicant are replaced at the disposal of the Central Health Scheme, Ministry of Health & Family Welfare, w.e.f. the afternoon of 19.9.1991.

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6. The applicant has stated in the present application that his entire service w.e.f. 1.1.1985 to 19.9.1991 was on deputation to the President's Secretariat. He had been paid Deputation (Duty) Allowance from 1.1.1985 to 31.12.1988. The issue involved in the present application is whether he is entitled to Deputation (Duty) Allowance from 1.1.1989 to 19.9.1991, which has not been paid to him.

7. The applicant made a representation on 24.9.1991. The President's Secretariat informed the applicant by their Office Order dated 28.1.1992 that necessary concurrence of the Department of Personnel for extension of the period of deputation beyond five years had been obtained and that his pay had been refixed on promotion as Chief Medical Officer of the Central Health Service w.e.f. 22.8.1988.

8. On 13.2.1992, the applicant submitted another representation wherein he submitted that the refixation of his pay was erroneous inasmuch as no Deputation (Duty) Allowance has been granted to him in the period from 1.1.1989 to 19.9.1991 and the pay has been fixed without the component of Deputation (Duty) Allowance.

9. On 19.6.1992, the President's Secretariat informed the applicant that his case was referred to the Department of Personnel and Training, who have rules that "There is no provision in the Rules to grant Deputation (Duty) Allowance beyond fourth year of deputation".

10. The respondents have stated in their counter-affidavit that there is no provision in the rules to grant Deputation (Duty) Allowance beyond fourth year of deputation. His four years of deputation ended on 31.12.1988.

11. In normal cases, the period of deputation can be extended upto a maximum of four years beyond which the deputationist will not be entitled to any Deputation (Duty) Allowance. In our opinion, the case of the present applicant is not a normal one. The oddity of the case lies in the fact that one incumbent of the Office of the President of India not only selected him as his Deputy Physician but also absorbed and confirmed him in the President's Secretariat, thereby severing his lien from his parent department, while the successor to the office of the President chose to deconfirm him without giving him any show-cause notice and repatriate him to his parent department for no fault of his. Thus, the circumstances in which the applicant had to be reverted to his parent Department, were peculiar. This is not a case in which the applicant had requested for continuing him on deputation basis in the President's Secretariat for more than four years. The entire period of his service in the President's Secretariat was treated as period of deputation in the above mentioned circumstances. The applicant has stated that in the case of Shri B.K. Pahwa, who held the post of Controller, President's household in the President's Secretariat and who continued

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to be on deputation for five years, the President's Secretariat had decided that for the period beyond four years, he would be paid as honorarium an amount equal to the Deputation (Duty) Allowance which he was drawing. The respondents have not specifically controverted this in their counter-affidavit.

12. In the conspectus of the facts and circumstances of the case, we are of the opinion that in the interest of justice and fairplay, the applicant should either be given Deputation (Duty) Allowance for the period from 1.1.1989 to 19.9.1991 or honorarium equal to the amount of Deputation (Duty) Allowance for the said period. We order and direct accordingly. The respondents shall comply with the above direction expeditiously and preferably within a period of two months from the date of receipt of this order. There will be no order as to costs.

B.N. Dholiyal
(B.N. Dholiyal) 9/2/93
Administrative Member

signed
9/2/93
(P.K. Kartha)
Vice-Chairman (Judl.)