

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(9)

D.A.NO. 1374/93.

DATE OF DECISION 30.8.1993

DR. ANIL KUMAR GUPTA,

Petitioner

SHRI B.S. JAIN,

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & OTHERS

Respondent

Advocate for the Respondent(s)

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The Hon'ble Mr. I.K. RASGOTRA, MEMBER (A)

The Hon'ble Mr. B.S. HEGDE, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

Delivered by Hon'ble Shri B.S. Hegde, Member (Judicial)

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs :-

(1) That the Hon'ble Tribunal be pleased to

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 pass an order directing the Respondents

to appoint the applicant on regular basis

for full tenure of three years and he should

be deemed to be regular with effect from the

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date of ad hoc appointment that is 8.10.1990

with all consequential benefits, such as

regular annual increments, medical leave,

pay for the days of break etc. that are

admissible to regular Senior Residents.

(2) That the Hon'ble Tribunal be pleased to declare that the order of termination likely to be served to the applicant is illegal, inoperative and shall stand quashed and consequently direct the respondents to treat the applicant on duty from 29.5.1993 till he is allowed to join the duty.

2. The case of the petitioner is that he was appointed as Senior Resident (Medicine) on ad hoc basis with effect from 8.10.1990 by order dated 6.11.1990 issued by the Medical Superintendent, LNJP Hospital. The senior Residents are appointed for a period of three years initially. The ad hoc appointment of the applicant was extended for a period of 89 days with one day's artificial break and no pay was given for that day. He continued upto March, 1992. Thereafter, Respondent No. 2 extended for a period of 44 days with 3 days break. The ad hoc appointment was extended upto 28.5.1993 i.e. for a period of more than

2½ years against the total period of three years. (V)

All of a sudden, respondent No. 2 decided to terminate or not to extend his ad hoc appointment after 29.5.1993.

3. The allegation of the applicant is that respondent No. 2 is engaging Senior Residents much junior, that is by 2 to 3 years to the applicant, on ad hoc basis instead of giving extension to the applicant. The application is against these acts of commission which are arbitrary, discriminatory, malafide and are in violation of Article 14 and 16 of the Constitution. In this connection, he has drawn our attention to junior doctors namely Dr. Praveen Roy, Dr. V.S. Negi, Dr. G.S. Lamba and Dr. Pradeep Gupta etc. who were appointed on ad hoc basis in the year 1991-92 after the date on which the applicant had joined on ad hoc basis have been regularised recently. It is further submitted that the applicant was appointed as Senior Resident in accordance with the Senior Residency Scheme laid down by the Ministry of Health and Family Welfare in its letter dated 22.4.1974 which is reproduced below : -

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" (a) The residency scheme is for a period

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of six years comprising junior resident doctors (present house surgeons and post graduate students) and senior resident doctors (present registrars). (Junior residency is for a period of 3 years - one year is spent as House Surgeon and 2 years as Post graduate students).

(b) Senior residency is for a period of 3 years as stated in Para II(b) reproduced below :

(i) The minimum qualification for selection as senior resident in any speciality will be post-graduate degree or diploma in the concerned speciality. If such candidates are not available in any particular speciality, those without post-graduate qualification may be considered for selection.

(ii) The tenure of senior residency will be three years. The senior residents serving in institutions/hospitals under the direct control of Government will be treated as temporary Government servants and governed by the Central Civil Services (Temporary

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Service) Rules, 1966".

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(iii) Emoluments.

(a) Senior Residents:

The senior residents will be temporary Government servants and their emoluments will be in the same as recommended by the Third Pay Commission for Registrars, namely Rs. 650-30-710 plus allowances. In addition, the senior residents possessing post-graduate degree will be paid a post-graduate allowance of Rs. 100/- per month, and those possessing a post-graduate diploma Rs. 50/- per month."

Therefore, in view of this, the period of three years of residency is a must for becoming Assistant Professor. The period of three years has been prescribed to provide the applicant with necessary experience, teaching as well as practical to be a good doctor to go for further super speciality or to be eligible for Assistant Professor assignment. Under the residency scheme, the temporary service rules would be applicable to the Senior Residents and, therefore, the service of the applicant cannot be terminated arbitrarily. In support of his contention, the learned counsel for the applicant has cited various decisions of the Supreme Court as well as of the Tribunal

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and he has also brought to our notice the decision of this Tribunal in Dr. Sunil Agarwal vs. Delhi Administration in O.A. No. 3112/91 when his services were discontinued/terminated before completion of three years. This Tribunal passed interim orders on 30.12.1991 and final orders on 1.10.1992. In that the applicant himself stated to have been resigned from the residency. The Tribunal did not go into the merits of the case. Nevertheless, the Tribunal held that the applicant shall be allowed all privileges including leave admissible to the Senior Residents and the period of breaks shall be ignored in computing the period served as Senior Resident etc.

4. Despite notice to the Respondents, they did not care to appear before the court and sufficient opportunities were given to them to rebut the allegations but they did not choose to do so. Both the respondents had been served with the notice. Keeping in view of the status of the service, the applicant's involved and the manner the senior Residents have been treated by the respondents is far from satisfactory. We are convinced that the applicant has made out

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prima-facie case and in the interest of justice, it is a fit case that the interim order is required to be given so as to enable the applicant to complete his senior residency term for a period of three years within the stipulated period. Otherwise, he would not be eligible to be considered for the post of Assistant Professor which would certainly effect his entire career.

5. In the facts and circumstances of the case, we direct the respondents to reinstate the applicant immediately and in any case within 10 days of receipt of this order and allow him to complete his senior residency for a period of three years as contemplated under the scheme w.e.f. 29.5.93 and regularise him after completion of his senior residency if found fit from the date his juniors have been regularised.

There will be no order as to costs.

(B.S. Hegde)
Member (J)

30/8/93

(I.K. Rasgotra)
Member (A)

30/8/93