

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 22nd day of July 1996.

Original application No. 1845 of 1994.

Hon'ble Dr. R.K. Saxena, JM
Hon'ble Mr. D.S. Baweja, AM

Dr. I.N. Pandey aged about 45 years,
S/o Sri Ram Sunder Pandey, 240-
Sohbatiabagh Allahabad, presently posted
as Civilian Medical Officer, 508 Army
Base Workshop, Fort, Allahabad.

..... Applicant.

C/A Sri Sudhir Agarwal

Versus

1. Union of India through Secretary,
M/o Defence, New Delhi.
2. The Director General, Armed Forces,
Medical Services, Raksha Mantralaya
Karyalaya, DG, AFMS 'M' Block,
New Delhi.

..... Respondents.

C/R Sri N.B. Singh

O R D E R

Hon'ble Mr. D.S. Baweja, AM

This application has been filed under
Section 19 of the Administrative Tribunals Act 1985,
praying for quashing of order dated 30.11.94 and also
issue a direction to the respondents to allow the
applicant to work as Civilian Medical Officer (Assistant
Surgeon Grade I) till regularly selected candiate
is appointed in accordance with the rules and also

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restrain the respondents from substituting the applicant by any other adhoc appointee.

2. The applicant was appointed as a Civilian Medical Officer (Assistant Surgeon Grade I) vide appointment order dated 15.12.92 and he joined duty on 24.12.92 for a period of one year. He was again reappointed on adhoc basis for a period of one year vide order dated 26.11.93 with effect from 27.12.93 and the applicant joined on 27.12.93. In view of the satisfactory working of the applicant his case was recommended vide letter dated 21.11.94 by the controlling officer for further extension of adhoc posting for a period of one year as regularly selected candidate was not available till date. However respondent no. 2 directed vide letter dated 30.11.94 to the Controlling Officer respondent no. 3 Commandant 508 Army Based Workshop Allahabad to recommend another candidate for employment as Civilian Medical Officer on adhoc basis instead of the applicant. Since the applicant was being proposed to be replaced by another adhoc appointee, the applicant has filed this application on 19.12.94 assailing the order dated 30.11.94.

3. The applicant had prayed for an interim stay. The interim stay was granted ^{vide order dated 21.12.94} not to relieve the applicant and this interim stay continued from time to time and the applicant has continued to work on adhoc basis in view of this interim order.

4. The respondents have filed the counter affidavit to which the rejoinder has been filed by the applicant. In the counter, the respondents

at the outset have opposed the application stating that it is not maintainable. The applicant has no right to claim his retention on adhoc basis as the appointment was for a specific period. It is also clearly mentioned in the appointment letter that the services can be terminated at any time. His tenure as per the last extension was upto 26.12.94 and he ceased to be adhoc appointee after that. The applicant has thus no cause of action for challenging the impugned order dated 30.11.94. On the request of the Commandant, 508 Army Based Workshop, one Army doctor has been posted and thereby the post has been filled up by duly selected incumbent. In view of these facts, the grounds taken by the petitioner are not sustainable in the eye of the law and as such the application deserves to be dismissed.

4. Heard the learned counsel for the applicant and respondents. We have also carefully gone through the pleadings in the application, counter and the rejoinder affidavits and the documents brought on record.

5. From the rival pleadings, the issue which emerges for determination is whether an adhoc appointee can be replaced by an other adhoc appointee. The respondents have averred that the impugned letter dated 30.11.94 has merely asked for the proposal and no appointment of another adhoc appointee had been done. Therefore the application is premature. It is also strongly advocated by the respondents that adhoc appointee as per the terms and conditions of appointment has no right to claim retention after the specific period for which the appointment is given, is over until and unless

fresh appointment letter is issued to him. His last extension expires on 26.12.94 and he has no right for continuing further and his claim is baseless. On the other hand, the applicant has averred in the application and counsel of the applicant was at pains to reiterate the same during the hearing that law is well settled that adhoc appointee can not be substituted by another adhoc appointee and if regularly selected candidate is not available, the earlier incumbant appointed on adhoc basis is entitled to continue till the regularly selected candidate is available. Following judgements have been cited in support of this contention:-

- (i) Rattan Lal & Oths. Vs. State of Haryana & Oths. AIR 1987 SC 478
- (ii) Raj Bala Vs. State of Punjab, Civil original Appellate jurisdiction case No. 125/87
- (iii) State of Haryana Vs. Piara Singh 1992 (4) SLR 770 (SC)
- (iv) Dr. Mrs. Sangita Narang & Oths. Vs. Delhi Administration (1998) 6 ATC 405
- (v) Rajni Bala Vs. State of Haryana 1996 (1) SLR 271

We have gone through the above cited judgements. Keeping in view what is held in these judgements, we are in agreement with the contention of the applicant. The arguments of the respondents that the adhoc appointee has no right after the specific period is over is not tenable if the vacancy exists and the regularly selected incumbant to fill up the same is not available. The impugned order dated 30.11.94 calling for proposal for another adhoc appointee in place of the applicant is therefore not sustainable in law and deserves to be quashed.

6. The respondents in the counter in para 16 have averred that in the absence of a regular

incumbant, at the request of the commander, 508 Army Base Workshop, one Army doctor has been posted. There is only one sanctioned post of the doctor and the same has been filled by the regularly selected doctor. However no details of the postings of the army doctor had been furnished in the counter. The applicant in reply to para 16 in the rejoinder has simply stated that it needs no reply as annexure-CA-I to the counter clearly states that no regularly selected doctor is available for posting. During the hearing when this aspect came up, the respondents were asked to place on the record the details of the posting of the army doctor as the averments made in para 16 of the counter are in conflict with letter at CA-I written by the Commandant in charge of the 508 Army Base Workshop. The respondents have brought on record two letters dated 20.7.94 and 1.12.94. The letter dated 20.7.94 indicates the posting of Lieutenant Colonel H.S. Verma as a doctor in 508 Army Base Workshop with the instructions "to move on ascertaining the vacancy". The letter dated 1.12.94 is movement order for Lt. Colonel H.S. Sharma in terms of the transfer order dated 20.7.94 referred to above. As indicated earlier, an interim stay was granted vide order dated 21.12.94 to maintain status quo and this order was extended from time to time during the pendency of the application. It is not clear whether the army doctor as per the movement order had joined. The letter dated 15.12.94 at CA-1 of the counter from the Commandant indicates clearly that no regular doctor is available for posting. This leads to infer that the army doctor had not joined before the grant of the interim stay. The respondents also brought on record letter dated 13.7.95 as per which the revised Peace Establishment

(PE) for the 508 Army Base Workshop has been notified to be effective from 1.4.95 to 31.3.99. As per this there is cadre ^{of} one doctor Assistant Surgeon grade I. In the general notes at para 4, it is stipulated as under:-

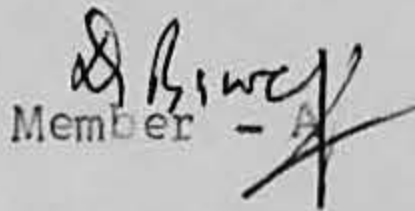
" AMC officer in the rank of Captain may be employed in lieu of Assistant Surgeon Grade I authorised in the establishment of this Workshop when the Assistant Surgeon grade I (CIV) is not available."


During the hearing, the learned counsel of the applicant, Sh. Sudhir Aggarwal contended that the applicant can be replaced only by a regularly selected incumbant when available. Further only a civilian doctor selected by UPSC can be posted to replace the applicant and not by an army doctor. The applicant cannot be dislodged by keeping a vacancy somewhere else and filling the post where the applicant is appointed on adhoc basis. In this connection he sought support ~~from~~ the judgement of Hon'ble Supreme Court in writ petition No. 125/1987 Rajbala and Oths. Vs. State of Punjab. The extract of the order is reproduced in para 10 of the application. In the order it is directed that it would not be permitted to terminate the services of any of the petitioners by transferring a regular recruit from another institution to any other institution where any of the petitioners may be serving. Terminating would be valid only when direct recruits through the Public Service Commission are recruited to such posts. However in the present case, the rules have been laid down as brought on record that in case civilian doctor is not available, then the army doctor in the rank of Captain could be posted. We are therefore

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of the view that Administration is free to fill up the post either by a regularly selected direct recruit from U.P.S.C. or an army doctor. The adhoc appointee can be replaced ^{only} with the availability of either of the regularly selected doctor at the discretion of the Administration.

7. In the result, we find merit in the application and the same is allowed quashing the impugned order dated 30.11.94 with the direction to the respondents not to replace the applicant by another adhoc appointee and the applicant will be continued till he is replaced by a regularly selected doctor as per the rules laid down by the Department. No order as to costs.


Member - A


Member - J

Arvind.