

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK.

Original Application Nos.349/88, 415/88 and 385/88

Date of decision:6th April,1989

In O.A.No.349/88

1. Dr.Prabodh Chandra Samal
S/o Sri Birabhadra Samal
Medical Officer,
Dandakaranya Development Authority
M.V-79,Hospital,P.O.Lachipeta
District Koraput. Applicant

In O.A.No.415/88

1. Dr.Mani Mohan Poddar
S/o Late Maharaj Poddar
Resident of Village,P.V.No.29,
P.O.Pakhanjore,Dist.Bastar(M.P)
At present-Medical Officer,
Zonal Hospital,D.N.K.Project,
P.O.Umorkote,Dist.Koraput
Pin-764073 Applicant

In O.A. No.385/88

1. Dr.Abhaya Charan Misra
S/o Madhusudan Mishra
Medical Officer in charge
Chest Hospital
Dandakarayan Project,
At/P.O.Mathili
Dist.Koraput,Pin-764044 ... Applicant

-Versus-

In all the 3 cases

1. Union of India,
Represented through its
Secretary, Government of India
Ministry of Home Affairs
Department of Internal Security,
Rehabilitation Division,Jaisalmer House
Mansingh Road,
New Delhi-110011
2. Chief Administrator
Dandakaranya Development Authority
At/P.O./Dist.Koraput

...Contd.P.

3. Secretary,
Ministry of Health & Family Welfare
(Department of Health)
Nirman Bhawan,
New Delhi. Respondents

For the Applicants M/s.Prabir Palit
(In O.A.349/88 and B.Mohanty, M.P.Mohapatra
O.A.415/88) & A.Kanungo, Advocates
In O.A.No.385/88 Mr.S.N.Kar, and S.K.Sarma, Advocates

For the Respondents. Mr.A.B.Misra, Senior Standing
Counsel (Central)

1. Whether reporters of local papers may be allowed to see the Judgment ? Yes
2. To be referred to the Reporters or not ? NO.
3. Whether Their Lordships wish to see the fair Copy of the Judgment ? Yes

C O R A M :

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN
A N D
THE HON'BLE MR.K.P.ACHARYA, MEMBER (JUDICIAL)

:- J U D G M E N T :-

K.P.ACHARYA, MEMBER (JUDICIAL) In this application under section 19 of the Administrative Tribunal's Act, 1985 the Petitioners pray for a direction to the Opposite parties to recommend the name of the Petitioners for being considered for absorption in the Central Health Service with effect from 3rd December, 1975, 28.8.82 and 14.10.82 respectively.

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2. Shortly stated the case of the Petitioners ^{is} ~~me~~ that they are Medical Officers under the Dandakaranya Development Authority and have been serving as such since 3rd December, 1975, 28th August, 1982 and 14th October, 1982 respectively. Further the case of the Petitioners ^{is} ~~are~~ that they were not being regularised in Dandakaranya Project and hence they made an application before this Bench forming subject matter of O.A. 358/87 in which the grievance of the Petitioners ^{was} ~~was~~ that the authorities have been appointing the Petitioners at different intervals on ad-hoc basis without regularising their service despite the fact that the Petitioners have served continuously for several years on Adhoc basis. The said case was disposed of on 2nd June, 1988 and in pursuance to the direction contained in judgment the petitioners have been regularised in consultation with the Public service Commissioner after obtaining its approval. The grievance of the petitioners in this case ^{is} ~~are~~ that they are not being considered by the Appropriate Authority for being recruited as member of the Central Health Services. Hence the application with the aforesaid prayer.

3. In their Counter the Opposite Parties maintained that the Petitioners ^{do} ~~does~~ not satisfy the eligibility criteria for being recruited as members of the Central Health Service and therefore, the case being devoid of merit is liable to be dismissed.

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4. We have heard Mr.P.Palit, learned Counsel for the Petitioners and Mr.A.B.Misra, learned Senior Standing Counsel (Central) at some length. The learned Senior Standing Counsel (Central) vehemently contended that the Petitioners not having satisfied the eligibility criteria according to Rules, their cases have not been rightly considered for being absorbed as Members of the Central Health Services. In this connection, Mr.Palit invited our attention to the relevant rules which is styled as Central Health Service Rules, 1982. We have carefully considered the provisions contained in the said Rules especially the matters contained under the heading "Members of the Service". It is stated therein "the following persons shall be members of the service:-

- a) Persons appointed to the posts under Sub-rule-5 of Rule-4.
- b) Persons appointed to the posts under the rule 7.
- c) Persons appointed to be posts under rule-8.

Admittedly the case of the Petitioners does not come within the rules 7 and 8. The case of the Petitioners may come within sub-rule 5 of Rule 4. Mr.P.Palit, contended that the case of the petitioners comes within sub-rule 5 of Rule 4 because from the notification contained in Annexure-A/5 appointing 7 doctors in the Central Health Services, it is stated as follows:-

"In pursuance to Rule 4(5) of the CHS Rule, 1982 the President is pleased to appoint the following officers to the Medical Officers Grade of the

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Central Health Service in a temporary capacity and post them as Medical Officer (Junior Class-I) in the Dandakaranya Development Authority under the Ministry of Labour and Rehabilitation (Department of Rehabilitation) with effect from the forenoon of the 22nd February, 1983"

Those appointed under this notification were serving under the Dandakaranya Development Authority. Present Petitioners are also working under Dandakaranya Development Authority. It was told to us by Mr. Palit that those were appointed by virtue of the notification contained in Annexure-5 are juniors to the present petitioners. Dr. Murlidhar Mohapatra, Dr. Chakradhar Panda and Dr (Smt) Veena Samal were appointed vide notification quoted above and contained in Annexure-5 are juniors to the Petitioners. Of course, the correctness of the position could not be ascertained and therefore we are not in a position to give a positive finding that the above mentioned doctors are juniors to the Petitioner. But the fact remains that certain doctors serving under the Dandakaranya Development Authority having been recruited as Member Central Health Service and there being no bar to such recruitment under the rules, we feel inclined to say that the relevant rules would not create a bar for consideration of the case of the present petitioner to be recruited to the Central

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Health Service. Presumably, the case of the Petitioners was not considered for recruitment to the Central Health Services because ^{they have} ~~have~~ been working since long on an adh-hoc basis and admittedly ^{their} ~~his~~ services have been regularised by virtue of our judgement in O.A.No.358/87, disposed of 22nd June, 1988.

5. However, taking into consideration the aforesaid facts and circumstances and the limited prayer of the Petitioner we direct that the case of the Petitioner be considered for being recruited/appointed to the Central Health Services.

6. Thus the application is accordingly disposed of and leaving the parties to bear their own costs.

[Signature]
6/4/89.
.....
MEMBER (JUDICIAL)

B.R.PATEL, VICE-CHAIRMAN

9 agree.



Central Administrative Tribunal
Cuttack Bench, Cuttack
6th April, 1989/Mohapatra

[Signature]
6/4/89
.....
VICE-CHAIRMAN

All communications should be addressed to the Registrar, Supreme Court, by designation. T by name Telegraphic address :— "SUPREMECO"

D. No. 148/89/XI-A

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SUPREME COURT
INDIA

Dated New Delhi, the 18th April, 1995 19

FROM

Vinod Kumar, B.A., B.G.L.,
Assistant Registrar.

TO

The Registrar,
Central Administrative Tribunal
Cuttack Bench, at Cuttack.

INTERLOCUTORY APPLICATIONS NOS. 1-3

(Applications for condonation of delay in filing special leave petitions)

IN

PETITIONS FOR SPECIAL LEAVE TO APPEAL (CIVIL) NOS. 8213 to 8215
OF 1995.

WITH

INTERLOCUTORY APPLICATION NOS. 4-6

(Applications for stay)

Union of India & Ors.

.... Petitioners

Versus

Dr. Prabodh Chandra Samal & Ors.

.... Respondents

Sir,

I am directed to forward herewith for your information and necessary action a certified copy of the order dated the 27.3.1995, of this Court, passed in the matter above-mentioned.

Please acknowledge receipt.

Yours faithfully

ASSISTANT REGISTRAR

IN THE SUPREME COURT OF INDIA 589197

~~CRIMINAL~~/CIVIL APPELLATE JURISDICTION

INTERLOCUTORY APPLICATION NOS. 1-3

(Applications for condonation of delay in filing special leave petitions)

IN

~~XX~~

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~~100~~

PETITIONS FOR SPECIAL LEAVE TO APPEAL (CIVIL) NOS. 8213 to 8215 OF 1995.

(Petitions under Article 136 of the Constitution of India for Special Leave to Appeal from the judgment dated the 6th April, 1989 of the Central Administrative Tribunal, Cuttack Bench, at Cuttack in Original Application Nos. 349/1988, 415 and 385 of 1988)

WITH

INTERLOCUTORY APPLICATION NOS. 4-6

(Applications for stay with a prayer for an ex-parte Order)

1. Union of India represented through its Secretary, Govt. of India Ministry of Home Affairs, Department of Internal Security Rehabilitation Division, Jaisalmer House, Man Singh Riad, New Delhi. 110011.
2. Chief Administrator, Dandakaranaya Development Authority, At/P.O./ Distt. Koraput.
3. Secretary, Ministry of Health & Family Welfare (Department of Health) Nirman Bhawan, New Delhi.

Certified to be a true copy
V. N. N. N.
 Assistant Registrar (Judl.)
 19-4-1995
 Supreme Court of India

... Petitioners

- Versus -

1. Dr. Prabodh Chandra Samal
S/o Sri Birbhadra Samal
Dandakaranya Development Authority
M.V.-79, Hospital, P.O. Lachipeta
District Koraput.
2. Dr. Mani Mohan Podaar s/o Late Maharaj Poddar
Resident of Village, P.V. No. 28,
P.O. Pakhanjore, Dist. Bastar (M.P.).
At present Medical Officer,
Zonal Hospital D.N.K. Project, P.O. Umorkote,
Dist, Koreput, Pin-764073.
3. Dr. Abhaya Charan Misra S/o Madhusudan Mishra
Medical Officer in charge Chest Hospital,
Dandakaranya Project, At/PO. Mathili,
Dist, Kotaput, Pin- 764044.

... Respondents

27th March, 1995

CORAM:

HON'BLE MR. JUSTICE S.C.AGRAWAL
HON'BLE MR. JUSTICE S.SAGHIR AHMAD

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For the Petitioners : Mr. A.S.Nambiar, Senior Advocate
(Ms. Indra Sawhney and Mr. C.V.S.Rao,
Advocates with him)

For the Respondents
Nos 1 & 2 : Mr. S.B.Upadhayay, Advocate

THE APPLICATIONS FOR CONDONATION OF DELAY IN FILING SPECIAL LEAVE PETITIONS ALONGWITH PETITIONS FOR SPECIAL LEAVE TO APPEALS AND APPLICATIONS FOR STAY above-mentioned being called on for hearing before this Court on the 27th day of March, 1995 UPON perusing the papers and hearing counsel for the appearing parties herein, THIS COURT while directing issue of Notice to the respondents herein to show cause why delay in filing special leave petitions be not condoned and special leave be not granted to the petitioners herein to appeal to this Court against the judgment and order of the Central Administrative Tribunal above-mentioned, DOTH ORDER that pending the hearing and final disposal by this Court of the aforesaid Applications for Stay after Notice, the operation of the judgment dated 6th April, 1989 of the Central Administrative Tribunal, Cuttack Bench, at Cuttack passed in Original Application Nos. 349,415 and 385 of 1988 be and is hereby stayed;

AND THIS COURT DOTH FURTHER ORDER that this ORDER be punctually observed and carried into execution by all concerned.

WITNESS the Hon'ble Shri Aziz Mushabber Ahmadi, Chief Justice of India, at the Supreme Court, New Delhi, dated this the 27th day of March, 1995.

Sd/-
(R.N.VERMA)
DEPUTY REGISTRAR (JUDL.)

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SUPREME COURT

CRIMINAL/CIVIL APPELLATE JURISDICTION

~~xxxxxx~~
INTERLOCUTORY APPLICATION NOS. 1-2

(Applications for condonation of delay in filing special leave petition)

IN

No.

cc

~~xxxxxx~~ of 100

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NOS. 8213 to 8215 OF 1995.

WITH

INTERLOCUTORY APPLICATION NOS. 4-6

(Applications for ex-parte stay)

Appellant
Petitioner
~~xxxxxx~~

Union of India & Ors.

Petitioners

~~xxxxxx~~ Versus

Versus

Dr. Prabodh Chandra & Ors.

Respondent S

ORDER DIRECTING ISSUE OF
SHOW CAUSE NOTICE AND GRANTING
INTERIM STAY.

27th day of March, 1995

Engrossed by

SHRI

C.V.S.Rao,

Examined by

Advocate on Record for

the Petitioners

Compared with

SHRI

S.B.Upadhyay,

No. of folios

Advocate on Record for

the Respondents Nos. 1 & 2

R.P.

03/19/95
IN MY PRESENCE