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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 381 of 1989.

Date of decision : January 31, 1990.

Niranjan Patro, aged about 28 years.
s/o late G.K. Patro, at present working as
Asst. Surgeon(Grade-I) at Naval Armament
Depot, Sunabeda, At/P.O./P.S. Sunabeda-I,
Dist. Koraput, Orissa. ...

Applicant.

Versus

1. Union of India, represented by the Secretary, Ministry of Defence, Central Secretariat, New Delhi.
2. Chief of Naval Staff, Naval Headquarters, New Delhi.
3. Flag Officer Commanding-in-Chief, Headquarters, Eastern Naval Command, Naval Base, Visakhapatnam, Andhra Pradesh.
4. Director General of Armament Supply, Naval Headquarters, R.K. Puram, New Delhi.
5. Deputy General Manager, Naval Armament Depot, At/P.O. Sunabeda-I, Dist. Koraput, Orissa, Pin- 763001. ...

Respondents.

For the applicant ...

M/s. J. Das,

B.S. Tripathy, B.K. Sahoo,
S. Mallik, K.P. Mishra, Advocates.

For the respondents ...

Mr. Tahali Dalai,

Addl. Standing Counsel (Central)

C O R A M:

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

A N D

THE HON'BLE MISS USHA SAVARA, MEMBER (ADMINISTRATIVE)

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.

JUDGMENT

USHA SAVARA, MEMBER (A) The application has been filed by the applicant who is working as an Assistant Surgeon, Grade-I in Naval Armament Depot, Sunabeda. He had completed his Bachelor degree in Medicine and Surgery and was registered with the Berhampur Employment Exchange which sponsored his name for the post of Assistant Surgeon, Grade-I. He was interviewed and appointed on ad hoc basis for a period of one year in Naval Armament Depot Sunabeda, by letter dated 6.10.1987. On or about 10.8.1988 Respondent No.3 extended the applicant's service till 31.3.1989 ^{been} but he ~~was~~ allowed to continue till 29.9.1989 vide order No. SAE-0305 dated 5.6.1989. This order was passed by Respondent No.3 with the stipulation that " the appointment has been approved for extension upto 29.9.89 or till regular incumbents are positioned ". However without assigning any reason and even in the absence of regular recruitment, Respondent No.5 has issued a notice to the applicant denying further extensions of service on the plea that " The Government has not agreed to extend the services of the applicant". It is submitted that a person junior than the applicant is still retained in the aforesaid post while the services of the applicant have been terminated.

2. A prayer for interim order had been made in this case and the Tribunal had granted the interim prayer staying termination of the services of the applicant till the matter is finally decided. Mr. Jayant Das, learned counsel for the applicant submitted that a post of Assistant Surgeon continues to exist. Despite that, the applicant who has been in continuous employment for two years, is being denied continuance in service. Illegal and arbitrary action is being taken to terminate his

services by saying that the appointment is on ad hoc basis. The impugned order, Annexure-3 is violative of Articles 14 and 16 of the Constitution of India. Therefore, a direction be made quashing the same. Mr. Das further submits that another employee also an Assistant Surgeon Grade I who is junior to the applicant is still continuing in service whereas the applicant has been illegally thrown out of his service. He has been subjected to hostile discrimination and no reason has been given in terminating his services while other employees/junior to the applicant are still retained. Therefore, the impugned order suffers from the vice of unfair discrimination and is liable to be quashed.

3. Mr. Das has cited the case of Manager, Government Branch Press and others versus D.B. Balliappa reported in AIR 1970 SC 429 in support of his contentions. He has also relied upon the order passed by the Central Administrative Tribunal, Ernakulam Bench on 30.11.1989 in O.A. No. K-569 of 1988 in the case of Dr. Abraham Varghese v. Director of Armament Supply and others. He ^{contented that} ~~pressed~~ in view of these orders the impugned order be quashed and the respondents be directed to give permanent absorption to the applicant in the post of Assistant Surgeon, Grade I.

4. Mr. Tahali Dalai, learned Additional Standing Counsel (Central) appeared for the respondents and submitted that one post of Medical Officer, Assistant Surgeon Grade I has been sanctioned for the Naval Armament Depot. That post is ^{for} ~~classified~~ as Class I (presently Group A) in the Central Civil Services. The appointing authority for Class I, Central Civil Services is the President of India and accordingly all the appointments are made with the approval of the Union Public Service Commission. When

Naval Headquarters approached the Union Public Service Commission for appointing an Assistant Surgeon, Grade-I they were advised to recruit a Medical Officer on ad hoc basis through local Employment Exchange, as no candidates were available. Accordingly Dr. Patra was appointed as Medical Officer on ad hoc basis for a period of one year with effect from 21.10.1987, or till regular incumbent becomes available which-ever is earlier. He was given extension upto 31.3.1989 and further upto 29.9.1989. However, since his appointment is through the Employment Exchange, on ad hoc basis for a specific period, he is not eligible for regular appointment. It was submitted by Mr. Dalai that action has already been taken by the Government to fill up the vacancies as per the provisions of the latest recruitment Rules and the post will be filled up by transfer on deputation/transfer/re-employment failing which by direct recruitment with the approval of the Union Public Service Commission. The advertisement given by the U.P.S.C. on 30.8.1989 is filed as Annexure-R/4. It was open to the applicant to apply to the Union Public Service Commission for such appointment but unless he is selected by the Union Public Service Commission, he could not be retained in service. It is reiterated that the post of Assistant Surgeon, Grade I in Naval Armament Depot is permanent Central Civil Services post Grade A and appointments to these posts could be made by the appointing authority through the Union Public Service Commission only. The applicant is not eligible for permanent appointment, as he has not been appointed through the Union Public Service Commission or with the approval of the Union Public Service Commission. It is denied that any junior Doctor is being retained in service.

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Notice for termination of service has been served on all ad hoc doctors excepting where the appointees have obtained stay orders from the Court.

5. We have heard learned counsel for both applicants and respondents. We have gone through the copies of annexures filed by them. The respondents have conceded in the counter affidavit that the applicant is fully qualified to hold the post of Assistant Surgeon Grade I. It is, therefore, not understood why action to regularise his services by approaching the Union Public Service Commission has not been taken till now. The Hon'ble Supreme Court, have, on a number of occasions, deprecated the practice of keeping employees on ad hoc basis by giving short term extensions with the sword of Damocles hanging over their heads, threatening insecurity and termination of service. It is more poignant in the case of Medical Officers who have to look after the life, health and bodies of other employees. It was held by the Hon'ble Supreme Court in the case of Central Inland Water Transport Corporation Limited and another v. Brojo Nath Ganguly and another reported in 1986 (3) SCC 156 that short term contract of service of the petitioners is wholly unjust, unsustainable and is against the very letter and spirit of our Constitution which aims at securing social, and economic justice; it violates the mandates of the great equality clause in Article 14. The Hon'ble Supreme Court deprecated this approach on the ground that it violated the salutary principle of equality. Hence, orders of termination of the services of ad hoc employees were held to be illegal and violative of the

Articles 14 and 16 of the Constitution of India.

6. In similar circumstances, the Principal Bench of this Tribunal in the case of Dr. (Mrs.) Sangita Narang and others v. Delhi Administration etc reported in (1988) 6 ATC 405 has held that ad hoc Medical Officers should be considered for regularisation.

7. It has been mentioned by the respondents that they have already initiated action to fill up the vacancies as per the provisions of the latest Recruitment Rules. Since the applicant is fully qualified for the post, we direct the respondents to consider the applicant for such appointment. The respondents are directed to initiate action to fill up the post held by the applicant through the Union Public Service Commission. If the Union Public Service Commission approves his case, he should be appointed on regular basis. Action on the above lines should be completed within a period of six months from the date of communication of this order. The applicant should be retained in his present post till the regular appointment is made.

8. The application is disposed of on the above lines without any order as to costs.

Mr. Deep Singh
Member (Judicial)

Mr. J. Narang
Member (Administrative)

