

I/7
OA 330/02
I

के.प.अ. (प्राप्ति) दर्शावनी के विषय 22 के अन्तर्गत निः शुल्क प्रिय

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR**

Date of Order : 18-9-2003.

Original Application No.s 329/2002, 330/2002 & 334/2002.

1. P. S. Shekawat S/o Late Shri Chhog Singh Ji, aged about 41 years, R/o Plot No. 171, Z.S.A., B.J.S. Colony, Jodhpur, Ex. X-ray Assistant in Military Hospital, Jodhpur.

(Applicant in OA No. 329/2002)

2. G. P. Chouhan S/o Shri Bhanwar Lal ji, aged about 37 years, r/o c/o Saran Photo Studio, Saran Nagar, Ajmer Road, Jodhpur (Rajasthan), Ex-Lab, Assistant in Military Hospital, Jodhpur.

(Applicant in OA No. 330/2002)

3. B. S. Jhala S/o Shri Balu Singhji aged about 50 years, R/o 996, BJS Colony, Gandhipura, Jodhpur Rajasthan, Ex. Ambulance Asistant in Military Hospital, Jodhpur.

(Applicant in OA No. 334/2002)

versus

1. Union of India through the Secretary Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commandant, Military Hospital, Jodhpur (Rajasthan).

*COMPARED &
CHECKED* 3. Senior Registrar and OC TPS, Military Hospital, Jodhpur.

(Respondents in all three OAs)

2. Mr. S. K. Malik counsel for the applicant in all three OAs.
Mr. Vinit Mathur counsel for the respondents in all three OAs.

CORAM

Hon'ble Mr. G. C. Srivastava, Administrative Member.
Hon'ble Mr. J. K. Kaushik, Judicial Member.

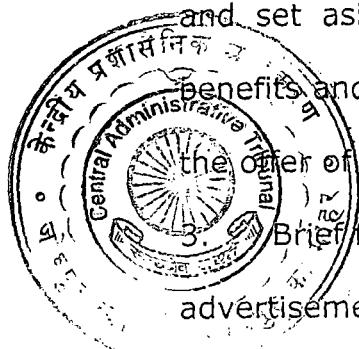
ORDER

(per Hon'ble Mr. G. C. Srivastava)

The three OAs involve common question of facts and law and are therefore, being disposed of by a common order.

2. The applicants who worked as X-Ray Assistant/Laboratory Assistant/ambulance Assistant under the respondents have challenged the notices dated 14.12.2002 (Annexure A-1) terminating their service w.e.f. 17.12.2002 (F.N.) and have prayed that the same be quashed and set aside, they be reinstated in service with all consequential benefits and the condition of appointment for a period of 11 months in the offer of appointment (annexure A-4) be declared illegal.

3. Brief facts as narrated by the applicants are - In pursuance of an advertisement dated 24.8.2000 of three posts one each of X-Ray Assistant, Laboratory Assistant and Ambulance Assistant (Annexure A-2), they had applied and were selected and offered appointment as X-Ray Assistant, Laboratory Assistant and Ambulance Assistant respectively vide letter dated 14.2.2001 for a period of 11 months subject to the condition that their services are liable to be terminated with one month notice on either side or pay in lieu. They joined their posts immediately thereafter. Though notices were issued for



termination of their services with effect from expiry of 11 months they were continued in service and extension was given to them vide letters dated 21.6.2002 (Annexure A-8) & dated 28.04.2002 (annexureA-3).

Finally the impugned notice dated 14.2.2002 was issued terminating their services. Aggrieved by this, they have filed these OAs.

4. The respondents have opposed the OAs and have filed a detailed reply.

5. We have heard Mr. S. K. Malik and Mr. Vinit Mathur, the learned counsel for the applicants and the respondents respectively and with their consent we are disposing of the OAs at the admission stage.

6. The main grounds advanced by Mr. Mathur for the applicants are

(i) No notice or in lieu pay has been given to the applicants (ii) The terms of appointment are ex facie illegal being contrary to law and principles of natural justice. (iii) While appointment has been issued by one authority the notice for terminating is issued by another authority. (iv) No reason has been given for termination. (v) In other places employees are continuing and hence it is a case of hostile discrimination. Mr. Malik has relied on the judgement reported in 2000 (s) SLR 124.

7. On the other hand, Mr. Vinit Mathur for the respondents has contended that the engagement of the applicants was only on ad hoc basis for a fixed period of 11 months on a fixed remuneration. According to him, the order of appointment clearly stated the terms

and conditions of engagement which were accepted by them. He has contended that since it was an engagement for a specific period the moment that period is over the engagement automatically comes to an end. According to him, some extension had been given due to an emergent situation on the border and operation Parakram being in progress. He has, therefore, argued that the applicants have no right to continue in the engagement as period of contract is only for a period of 11 months on expiry of which the engagement automatically comes to an end. He has however, stated that if in future need arises their candidatures would be considered along with others if they apply and are found fit. He has also stated that since the engagement has come to an end automatically on expiry of the stipulated period there is no need for a notice or in lieu pay or a formal order. Mr. Mathur has relied on several judgements as also the common order passed by this Tribunal in OA No. 172/2001 and 56/2002.

8. We have considered the rival contentions. It is not in dispute that the applicants were given offer of appointment as X-Ray Assistant, Laboratory Assistant and Ambulance Assistant for a temporary period of 11 months on a fixed remuneration amount of Rs.4000 pm. It is also not in dispute that after the expiry of 11 months period though notices for termination were given they were continued in service for some more period due to emergency situation. The only question is whether termination of their services can be asailed on any

of the grounds taken in the OA. Admittedly since their engagement was on ad hoc basis for a specific period of 11 months there is no requirement of any notice or in lieu pay. Similarly the engagement was only for a specific period the same would automatically come to an end on expiry of the same period there is no need for a formal order. Therefore, it is immaterial whether the order has been issued by the appointing authority or not. There is nothing to show that in other places such employees are continuing and hence the charge of hostile discrimination is untenable. The terms and conditions of engagement were accepted by the applicants and hence it does not lie in their mouth now to say that the same were illegal or arbitrary.

9. We have examined the judgement in the case of Prabhudayal Birari vs. M. P. Rajya N. Aapurti Nigam (2000 (5) SLR 124) relied upon by Mr. Malik. The case pertains to termination of service of an Assistant District Manager in M.P. State Commodities Trading Corporation Limited, Indore, without issuing one months notice while the present case is one of ad hoc engagement for a period of 11 months and hence the same is not applicable here.

10. We have also perused the judgements relied upon by Mr. Vinit Mathur. We have seen the common order of this Tribunal in OA No. 172/2001 and OA No. 56/2002 decided on 6.8.2003. The applicants in OA No. 172/2001 were appointed initially for 89 days on contract basis from different dates on fixed wages and their period of

engagement was extended from time to time and when the OA was filed they had completed 2 years service. In OA 56/2001, the applicant was engaged on contract basis for 90 days on daily wages from 9.4.2000 to 8.8.2001. The claim in both the OA was for regularisation. Relying on the judgement of the Hon'ble Supreme Court in the case of Director Institute of Management Development vs. Pushpa Srivastava (AIR 1992 SC 2070) and CSIR & Ors. Vs. Dr. Ajay Kumar Jain (2000 SCC (L&S) 466), the Tribunal had held that the engagement of the applicants for more than two years on contract basis did not confer a right for regularisation on them. The present case is also a case of engagement of the applicants for a period of 11 months on a fixed remuneration of Rs.4000 pm and therefore, in view of the ratio of the above OAs he has also no right either to be continued or re-engaged merely because he was engaged once on an ad hoc basis for 11 months and given extension for some time in public interest. We have also examined the case of Dr. Chanchall Goyal (Mrs) vs. State of Rajasthan (2003) 3 SCC 485 and find that the applicant therein had been appointed on a temporary basis for a period of 6 months or till the availability of the candidate selected by PSC. Subsequently the PSC made selection and drew up a select list but thereafter the services of the applicant were terminated. The Hon'ble Supreme Court upheld the termination and held that in such circumstances non joining of the candidate selected by PSC to replace

the applicant would not confer a right on the applicant to hold the post.

11. The other case of Smt. Pushpa relied upon by Mr. Mathur has already been discussed by this Tribunal in OA No. 172/2001 and OA No. 56/2002 and we have already referred to at earlier in Para 10 (supra). The ratio of the judgement clearly covers the present case.

12. In the light of the foregoing discussions, we do not find any merit in the OAs and are of the considered view that the same deserve to be dismissed.

13. In the result, the OAs are dismissed. However in view of the categorical reply of the respondents that if in future need arises their candidature would be considered along with others provided they apply and are found fit we expect that the respondents would do so and the order passed herein would not be a bar for doing so.

14. Parties would bear their own costs.

SK
(J. K. KAUSHIK)

MEMBER (J)

SL
(G. C. SRIVASTAVA)

MEMBER (A)

प्रापित सही प्रतिलिपि
Madan Lal 24/9/03
 अधिकारी (स्थानिक)
 न्याय प्रशासनिक अधिकारी
 लोकमुद्रा

R/C
on 29/9/03
Date
DMS/AM
Date

Part II & Part III
26/9/03

Part II and III destroyed
in my presence on 26/9/03
under the supervision of
section officer () as per
order dated 13/12/09

Section officer (Record) ✓