

01
CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA 935 OF 1997

Present : Hon'ble Mr. B.P.Singh, Administrative Member
Hon'ble Mr. M.L.Chauhan, Judicial Member

Dr. Gautam Ghosh,
S/o Sri Chandralal Ghosh,
Ex- Medical Officer(STMO),
Rifle Factory, Ishapore,
R/o 307/1A, Roy Bahadur Road,
Calcutta-53

VS

1. Union of India through the
Secretary, M/o Defence,
South Block, Central Secretariat
Building, New Delhi
2. Chairman, Ordnance Factory Board,
10A, Auckland Road, Calcutta
3. General Manager, Rifle Factory,
Ishapore, 24 Parganas (N)
4. Dr. Pradip Chakraborty,
Medical Officer (STMO),
Ordnance Factory Hospital,
M.S.Factory, Ishapore.

..... Respondents

For the applicant : Mr. P.K.Biswas, Counsel

For the respondents : Mr. M.S.Banerjee, Counsel

Heard on : 8.3.2002 : Order on : 15.3.2002

O R D E R

M.L.Chauhan, J.M.:

The applicant was appointed as Medical officer purely on short term basis at the Metal & Steel Factory, Ishapore by its General Manager vide appointment letter dt. 30.11.91 for a period upto 30.12.91 on a fixed pay of Rs. 2200/- with admissible allowances in the pay scale of Rs. 2200-4000/-. As per terms and conditions of the appointment letter, the services of the applicant were liable to be terminated without any notice and without assigning any reason at the discretion of the Director General of Ordnance Factories. It was also mentioned therein that the applicant would have no claim to any preferential treatment or right for any selection to a regular post whatsoever on account of the ad hoc appointment (annexure-C).

2. The short-term appointment of the applicant at the Metal &

Steel Factory, Ishapore was extended from time to time after interval of six months with intermittent break of one or two days and he worked as such w.e.f. 2.12.91 to 31.10.93. Subsequently, the applicant was appointed as Short-Term Medical Officer in the Rifle Factory, Ishapore where he worked w.e.f. 15.3.94 to 4.4.97 with certain breaks and eventually his services were terminated w.e.f. 4.4.97 on account of joining of regular AMO at Rifle Factory. Copy of the termination letter dt. 6.4.97 has been annexed at annexure-B to the application. It is against this order of termination and non-regularisation of the services of the applicant that the present OA has been filed before this Tribunal. It is alleged by the applicant that even though he was senior to respondent No. 4, his services have been terminated while the respondent No. 4 has been retained in service as Short Term Medical Officer which is discriminatory.

3. In filing this OA, the applicant has prayed for issuing a direction to the official respondents to reinstate him in service in replacement of respondent No. 4, who is ~~junior~~ junior to him w.e.f. 4.4.97 with all financial benefits and also for regularisation of his service as Asst. Medical Officer with effect from the date of his initial appointment with consequential service and other benefits.

4. The application has been ^{opposed} ~~opposed~~ by the official respondents by filing a reply affidavit thereby alleging that the applicant was appointed purely on short term basis from time to time with occasional breaks. His services were terminated w.e.f. 4.4.97 (AN) consequent on joining of the regular Asst. Medical Officer at the Rifle Factory, Ishapore. It is contended that since the applicant's initial appointment was short term and ad hoc basis, he has no right to hold the post and he has to give way to the regular candidate selected through the Union Public Service Commission.

5. We have heard the learned counsel for the parties and perused the documents placed on record.

6. The points which require our consideration in this case are :-
rely (i) Whether the services of the applicant could have been

terminated without giving him any notice or without payment of one month's salary in lieu thereof ?

(ii) In case the services were required to be terminated on account of joining of regular AMO, whether the applicant had been discriminated by retaining the services of his junior i.e. respondent No. 4 ?

(iii) What is the effect of termination of service of the applicant with retrospective effect ?

(iv) Whether the applicant is entitled to regularisation of his services as AMO, especially when the matter was under active consideration of the respondent authorities at the time of termination of his services ?

7. Point No. 1 :

In order to decide the first point, it is necessary to ascertain as to what was the nature of appointment of the applicant. On our observation on the last date of hearing, as to how the period of work of the applicant could be curtailed when he was appointed upto 30.6.97 (vide appointment order dt. 17.2.97 as mentioned in para 8 of the reply affidavit), even if the person selected for the post of AMO on regular basis had joined, the learned counsel for the respondents produced before us a copy of the appointment letter dt. 17.2.97. It has been ordered to be placed on record and marked as Annexure-X. The relevant portion of the said appointment letter is reproduced hereinbelow :-

" You are hereby appointed as Short Term Medical officer purely on short term basis w.e.f. 2.1.1997 at Rifle Factory, Ishapore.

Subject to production of a Medical Certificate of fitness by you from civil surgeon or commissioned Medical Officer.

02. The terms and conditions of appointment are as follows :

i) Your remuneration will be Rs. 2200/- (fixed) per month plus allowance viz. HRA, CCA, DA/ADA and NPA as admissible to AMOs drawing basic pay of Rs. 2200/-. You will not be entitled to any increment.

leel

ii) Your appointment is purely on ad-hoc/short term basis for a period not exceeding upto 30.6.1997. Your services are liable to termination without any notice and without assigning any reason at the discretion of Director General, Ordnance Factories....."

8. From a reading of the terms and conditions envisaged in the appointment letter as reproduced above, it is clear that the nature of the appointment of the applicant was contractual and not temporary and his services were liable to be terminated even prior to the maximum period of 30.6.97 as is apparent from the words "not exceeding upto 30.6.1997" incorporated in clause (ii) thereof. Thus, in our view, the applicant was not entitled to any notice or one month's salary in lieu thereof. Moreover, the appointment of the applicant was of fortuitous in nature as his appointment was made de-hors the rules against a post of Asst. Medical Officer which post could not be filled in because the appointment was required to be made through the Union Public Service Commission (UPSC). The fact remains that the initial appointment of the applicant was de hors the rules and as such it cannot be treated as an appointment on temporary basis. Thus, we are of the view that the services of the applicant could have been terminated in terms of conditions stipulated in his appointment order. There was, therefore, no necessity of either giving him any notice or paying him one month's salary in lieu thereof before terminating his services.

9. Point No. (ii) :-

The learned counsel for the applicant has contended that at the relevant time, the applicant had put in about 5 years 4 months service whereas the respondent No. 4 was junior to him and as such in the eventuality of joining the regular AMO, the services of respondent No. 4 ought to have been terminated. The learned counsel for the respondents, on the other hand, has drawn our attention to the reply. We have also gone through the reply affidavit. It has been specifically stated therein that both the applicant and Dr. Pradip Chakraborty (respondent No. 4) were appointed on ad hoc short term basis for a specific period in two different factories and their

services were not interchangeable according to their terms of appointments and as such the applicant cannot claim to be retained in service at Rifle Factory although regular appointee through UPSC joined as AMO in the Rifle Factory. It is further contended that the termination of services of the applicant without terminating the service of respondent No. 4 was not in infringement of Articles 14 and 16 of the Constitution of India. Thus, the contention of the learned counsel for the applicant that the termination of the applicant was mala fide and violative of Articles 14, 16 and 311 of the Constitution of India, cannot be sustained.

10. Point No. (iii) :-

The services of the applicant were terminated w.e.f. 4.4.97 pursuant to the Rifle Factory Order PT. II No. 194 dated 6.4.97 (annexure-B). It was served on the applicant on 11.4.97 (vide endorsement on the said order). Admittedly, the services of the applicant could not have been terminated with retrospective effect especially when he had worked during that period. In view of this, we are of the view that the applicant is entitled to his wages w.e.f. 5.4.97 to 11.4.97, the date when the order of termination was served upon him.

11. Point No. (iv) :-

Regarding the question of regularisation of the services of the applicant, it is, however, submitted by the respondent authorities in the reply affidavit that the question of regularisation of services of Short Term Medical Officer in different Factories under the OFB was under consideration and for the purpose of referring the matter to the appointing authority, Govt. of India, different Factories were asked to furnish details relating to Short-Term Medical Officers held by them on their strength and whether such Short Term Medical Officers were willing to be considered for regularisation. It is further stated that no decision regarding regularisation of services of the Short Term Medical Officers serving in different Factories under the OFB has yet been taken and as such the applicant cannot claim to

continue in service till such decision is taken although he was appointed on ad hoc and short term basis for a particular period till regular candidate through UPSC joined as AMO and that his services cannot be continued after joining of regular AMO at Rifle Factory, Ishapore.

12. During the course of hearing on 16.2.2002, attention of the learned counsel for the respondents was drawn to the letter annexed at Annexure-F dt. 17.3.97 whereby option was called for from the applicant in writing for his willingness for regularisation of his services as Asst. Medical Officer in the IOFS and also to the letter at annexure-G dt. 17.3.97 whereby the applicant had given his option for regularisation. The case was adjourned to 8.3.2002 in order to enable the ld. counsel to seek further instruction in the matter.

13. Pursuant to the aforesaid order, the ld. counsel for the respondents produced before us copies of letters dt. 4.3.2002 and 5.3.3002 from the DG, OFB to the General Manager, Rifle Factory, Ishapore as also the copy of the letter dt. 5.7.2000 from the Dy. Secretary, UPSC to the Secretary, M/o Defence, New Delhi. These letters are directed to be placed on record and marked as annexure-Y collectively. From a perusal of the letters, it is evident that the case of regularisation of the services of Short Term Medical Officers in different Factories under the OFB was taken up with the Govt. of India pursuant to the direction given by the Jabalpur Bench in OA No. 499/88 (Dr. Arun Kumar Rahangadale & Ors -vs- UOI & Ors) and Mumbai Bench of this Tribunal. The UPSC decided to consider the question of regularisation of such Short Term Medical Officers by conducting written examination as well as interview and consequently, the UPSC recommended the names of 24 Short Term Medicical Officers for regularisation of their services.

14. In ordinary course, the case of the applicant, who had put in about 5 years and 4 months service as Short Term Medical Officer before his services were terminated on account of joining of the regular AMO at Rifle Factory, Ishapore, w.e.f. 4.4.97, should have

been considered for regularisation along with other persons similarly situated when the matter was taken up by the OFB with the Govt. of India. Admittedly, the name of the applicant was not sent by the Rifle Factory, Ishapore to the Govt. of India for such consideration especially when the applicant had signified his willingness to be considered for regularisation vide his letter dt. 17.3.97 (annexure-G). Resultantly, the applicant could not appear in the written test conducted by the UPSC on 22.3.2000. Thus, we are of the view that prejudice has been caused to the applicant by not sending his name to the Govt. as a result of which he could not appear in the written test held by the UPSC. As such the applicant cannot be allowed to suffer for the inaction or fault on the part of the respondent authorities.

15. In view of what has been discussed above, we dispose of this OA with the following directions :

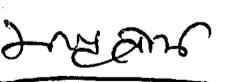
I) The case of the applicant for regularisation on the post of AMO should be processed and sent to the Govt. of India by the Rifle Factory, Ishapore, within one month from the date of communication of this order. The Govt. of India shall, thereafter, take up the matter with the UPSC for conducting appropriate written examination as also interview for the purpose of regularisation of the service of the applicant on the post of AMO within four months thereafter. In case the applicant is declared successful, the competent authority shall give him appointment accordingly.

II) The applicant shall also be entitled to the wages for the period from 5.4.97 to 11.4.97 when he had admittedly worked as Short Term Medical Officer, which shall be paid to him within one month from the date of communication of this order.

III) There shall be no order as to costs.


(M.L. CHAUHAN)

MEMBERE(J)


(B.P. SINGH) 1503 02

MEMBER(A)