

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH

Registration O.A.No. 186 of 1987

Dr. Hari Narain Misra

Applicant

Vs.

Union of India & Others

Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.G.

Hon'ble Mr. A.B. Gorthi, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.G.)

In pursuance of the advertisement inviting the applications for the appointment to the post of Assistant Surgeons Grade-I in the Ordnance Equipment Factory under the Ministry of Defence, Government of India, the applicant who apart from ^{being a} Medical Graduate, possesses additional qualifications also applied for the same and he was selected. The appointment letter was given to the applicant on 31st December, 1972/1st January 1973 stating therein that he was being appointed by the President of India on the temporary post of Assistant Surgeon Grade-I for a period of one year or till U.P.S.C. nominates a suitable candidate whichever is earlier. In the factory order dated 12.1.73 it was mentioned that the applicant was being appointed as temporary Assistant Surgeon Grade. The applicant continued to hold the said post since then. On 12.1.77 he was intimated that his case for grant of revised scale of Rs.700-1300/- and also declaration of permanancy is in progress. In the meantime several other Assistant Surgeons Grade-I who were also working like the applicant were re-designated as Assistant Medical Officer in the revised pay scale of Rs.700-1300/-. Though the applicant was not designated as such along with them. But subsequent to their designation in the month May, 1977 the

applicant was designated as Junior Medical Officer and was placed in a lower pay scale of Rs.650-1200/- . In the meantime Government of India vide his circular dated 18.8.75 emphasised that the existing Assistant Surgeons Grade-I should be screened by a Departmental Promotion Committee and the Class I scale of Rs.700-1300/- will be given to those doctors only who are in possession of M.B.B.S. degree and are found fit after screening. The applicant's grievance is that notwithstanding the said circular of the Government of India no screening was done. Though the applicant continued to work on the said post till the year 1980 when his services were terminated by the termination order dated 26.6.80 issued by the Director General Ordnance Factory Board, Calcutta. The said order contemplated that the service of the applicant shall stand terminated after the expiry of one month from the date of the receipt of the said order. Against the said termination order the applicant filed a suit in the Court of Munsif Kanpur. The suit was decreed and the termination order was held to be illegal and ultravires and the respondents were directed to treat the applicant to be continuous in service. The first appeal against the same by the respondent also failed. The respondents thereafter filed second appeal in the High Court which too was dismissed summarily by the High Court on 25.10.83. After the dismissal of the second appeal the applicant filed an execution petition in the Trial Court. The applicant was reinstated in service on 15.1.85. In the reinstatement order the respondents have mentioned that the applicant was being reinstated in service as Ad-hoc Junior Medical Officer even though earlier he was designated as Temporary Junior Medical Officer. Another order soon thereafter ~~on 22.4.85~~ the respondents again issued the factory order dated 29.1.85 stating that whenever the 'Adhoc' word is used the same shall be read as 'temporary' and not

'ad hoc'. The applicant filed a representation for being declared to be in the quasi permanent/permanent service. The first representation was filed by the applicant earlier on 1.1.74. The execution application filed by the applicant is said to be pending. Again ~~wide~~ order dated 18.9.86 was issued by the President of India the applicant's services were terminated. Few days thereafter on 27.9.86 an advertisement was published inviting the application for short term Medical Officer in the Ordnance Factory Kanpur where the applicant was working.

2. The applicant's grievance is that his services have been terminated but the several Short Term Medical Officers who were appointed subsequent to the appointment of the applicant are being allowed to continue in service despite the circular dated 30.1.79 which laid down that the services of the Short Term Medical Officers shall be terminated first and thereafter the services of the Adhoc Junior Medical Officer shall be terminated. Feeling aggrieved against the said termination order the applicant approached the Tribunal. The applicant states that 40 posts of S.M.O.s were sanctioned by the Government and the applicant being the seniormost amongst the Junior Medical Officers he became eligible for the same and yet his services were terminated. The applicant approached this Tribunal challenging the said termination order.

3. The respondents have resisted the claim of the applicant stating that the provision of clause (xii) of the appointment letter contained stipulation that the appointee will respond to Union Public Service Commission advertisement for the post of Assistant Surgeon Grade I, which was the regular mode of filling up vacancies in the Director

General of Ordnance Factories' Organisation and the applicant could not qualify himself to get his services regularised through Union Public Service Commission. Vide a Letter dated 12th January, 1977 the applicant was informed that screening of the existing Assistant ~~Sugge~~on Grade.I to determine their suitability for entitlement to the revised scale of Rs.700-1300 and also for declaration of permanency is in progress. Those who were ^{found} fit by the Departmental Promotion Committee for placement in the revised Class I Junior scale of Rs.700-1300/- were re-designated as Assistant Medical Officer. As the applicant belongs to the group of ad-hoc appointees employed solely on temporary basis and his services were extended on six monthly basis. The applicant was informed from time to time that his services would be terminated either on one month's notice or pay in lieu thereof as soon as Union Public Commission selected candidates were in actual position. Regarding the arrears of the salary ^{or} of the reinstatement it has been said that the applicant did not acquire the requisites of Article 193 of the Central Service Rules, and the payment of arrears of pay for the intervening period has been held up. The respondents have given explanation regarding continuance of his service that the applicant was appointed for a period of 1 year and according to them since the Union Public Service Commission could not sponsor the Medical Officers, the services of the applicant was extended every six months with the approval of the Union Public Service Commission. As the applicant could not qualify himself to get his services regularised through U.P.S.C. there was no alternative but to terminate his services in terms of his appointment letter, and there was no question to grant him any permanent status in view of the nature of the

appointment which was given to him.

4. On behalf of the applicant it was contended that there was a failure on the part of the Government and Union Public Service Commission to make a selection and the applicant was found fit for doing the work and he performed his duty for years together. There was no question of offering himself to appear in test before U.P.S.C. for permanency. There being the failure on the part of the Government of India as well as Union Public Service Commission to do the duty cast upon them within a reasonable time. The applicant should have been deemed to have been regularised and it is the duty of the Union Public Service Commission to regularise the applicant and it is not necessary for the applicant after working for several years and after gaining experience that he should be offered to compete with the freshers before the Union Public Service Commission. Reference has also been made to the case decided by this Bench of Tribunal in Dr(Mrs) Madhuri Singh Vs. Union of India & Others, Registration J.A.No. 25 of 1987 decided on 14th March, 1991. In that case the applicant was also similarly appointed doctor and was appointed by the Ordnance Board. After taking into consideration the various decisions in that case we observed that :

"The applicant has continued to remain in service for years together because of the failure of the Department and the U.P.S.C. who were sitting tight over the situation. There is no such case that the post has ceased to exist or any new incumbent better in all respects has been appointed. In view of the above, the application deserves to be allowed and the termination order is quashed. The applicant shall be deemed to be

continuing in service with all consequential benefits. The U.P.S.C. shall consider the case of the applicant for regularisation in accordance with law in the light of the observations made in this judgment within a period of two months from the date of communication of this order."

On behalf of the applicant it has been contended that in that case although the direction was given regarding the regularisation but here in this case so far as the question of regularisation is concerned the matter stands finally disposed of in view of the decision of the Delhi High Court against which the S.L.P. was dismissed. Learned counsel produced before us the judgment given in Civil Misc. Petition No.5 of 1981 Dr. G.P.Sarabhai Vs. Union of India decided on 13th August, 1982 against which the S.L.P. was dismissed (Special Writ Petition No.1243-33 of 1982 which was dismissed on 25th January, 1983). The Delhi High Court in similar circumstances after taking into consideration the provisions of Article 320 of the Constitution of India allowed the Applications and held that even if the Union Public Service Commission has not been consulted for extending the period for one year the appointment will be in conformity with the provisions. It is not for the person concerned to find out if the consultation is properly done or not. Once appointment is made it is deemed to have been done in a proper form after consultation. Also the nature of consultation is not specified in the sub section.-----

On the expiry of one year from the date of initial appointment the services of the petitioner would only be continued after consultation with the Union Public Service Commission, and such consultation being made whatever be

the form of the consultation, the petitioner will be deemed to be regularly appointed in the post held by them. In the end the Delhi High Court directed that as the petitioner has served for one year under the order of appointment in consultation with U.P.S.C. and therefore those petitioner who were not selected afresh will be deemed to be regularly appointed in service from the date of their initial appointment. However, if any of the petitioners were not continued beyond one year they have served one year as a result of the stay order passed by the Court, ~~those who~~ ^{would be} deemed to have been appointed under Section 17(iii) of the S.I. Rules.

5. The situation here in this case is little different as in this case although the termination order is quashed and the Union Public Service Commission has given the approval for extending the period of the temporary appointment after every six months. It could be accepted that the U.P.S.C. approved their appointment everytime as no selection was made. The U.P.S.C. having approved the appointment of the applicant for years together, hardly there appears to be any reason for requiring these applicants to appear before the U.P.S.C. again for interview etc. Obviously because it is within the domain of U.P.S.C. the question of the regularisation of these applicants can be decided by the U.P.S.C. after perusing the A.C.R.s in view of the fact that they were in service for more than 10 years. Thus in view of what has been said above the application deserves to be allowed and the termination order dated 8.9.86 is quashed, and the respondents are directed to consider the case of the

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applicant for regularisation without requirin them
to appear for interview, ^{but} _{This may be done} But after perusing the
A.C.R.A. within a period of 4 months from the date of
communication of this order. There will be no order
as to costs.

Anand Singh
Member (A)

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Vice-Chairman.

29th January, 1992, Lucknow.

(sph)