

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH : PATNA

Date of Order:- 15.12.06.

Registration No. OA-127 of 2006

CORAM

Hon'ble Km Sadhna Srivastava, Member (J)

Madan Mohan Mishra

...Applicant

-By Shri J.K.Karn, Advocate

Versus

The Union of India & Others

....Respondents

-By Shri Rajesh Kumar, Additional Standing Counsel

ORDER

Km Sadhna Srivastava, Member (J):- The applicant appointed as Medical Officer, P & T Dispensary, Chapra, Bihar, purely on contract and as daily wager on consolidated pay and terminable without notice has filed this application claiming wages in the minimum pay scale of Chief Medical Officer.

2. The facts are that on account of death of one Dr. J.N.Prasad, a vacancy occurred of Medical Officer, P&T Dispensary, Chapra. The applicant offered himself for the post. The offer was accepted on certain terms and conditions vide letters dated 11.9.2002 and 10.12.2002 (Annexures A/2 & A-5) laying down the conditions of appointment of the applicant. These letters clearly provide that the applicant's engagement was purely on temporary basis terminable at any time without notice. His

remuneration was fixed initially at Rs. 3000/- per month but enhanced to Rs. 5000/- per month shortly thereafter. The other conditions laid down in the letter dated 10th December, 2002 (Annexure-A-5) were to the effect that the applicant will not be entitled to allowances such as non-practicing allowance, contingency allowance, post graduate allowance or any other allowance. The private practice for P&T employees or pensioners was also prohibited.

3. The applicant joined on 12.9.2002 but soon after began to claim higher wages and better status. He began to claim that he was Chief Medical Officer-in-Charge of Chapra dispensary while the fact is that he took over charge as Medical Officer on 12.9.2002.

4. The respondents have pleaded that the appointment of the applicant is purely temporary, on contract basis, he was to be paid consolidated fixed amount per month, he was not entitled to any other allowance. They have denied the claim of applicant for payment at the minimum scale of Chief Medical Officer. They alleged that the applicant was working only as Medical Officer. Thus, they have refuted the claim of applicant in entirety.

5. I have perused the pleadings. I am of the considered opinion that the nature of appointment is contractual, on temporary basis on payment of consolidated pay per month. The parties are to be governed by the terms & conditions of the letter of appointments duly acknowledged by the applicant. The Tribunal while adjudicating the claim cannot travel beyond what is laid down in the letters referred to above. The applicant had himself volunteered to accept the job. He was duly communicated the terms & conditions of appointment. There is no basis whatsoever for the applicant to claim any thing beyond those terms & conditions. The only option available to the applicant is to quit the post if the conditions of appointment do not

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suit him. There is no legal basis for him to claim higher wages and better benefits.

6. The applicant places reliance on the case of Ghaziabad Development Authority Vs. Vikram Chowdhary & Others, 1995 SCC (L&S) 1226. It was a case of persons employed on daily wages in a project. They were claiming pay at par with regular employee. While denying the claim of petitioners, Hon'ble Supreme Court held that the employer should pay minimum wages prescribed under the statute. Thus, the facts are different. In any case the applicant is being paid more than minimum wages. Reference has also been made by Shri J.K.Karn, Advocate for the applicant to FRs 39 & 40, F.R. 40 does not apply in this case. FR 39 is also not applicable, reason being that no post has been created. The post was vacant and therefore, temporary arrangements have been made by providing the applicant a chance to serve on consolidated pay. Further the applicant has been engaged to work for 6 hours in a day. Therefore, he is not entitled to be paid @ 1/30th of the pay at the minimum of pay scale with D.A.

7. Resultantly the OA is dismissed. No cost.

Sadhna Srivastava
(Sadhna Srivastava)
Member (J)