

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 ^{being a} apart from the 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-I. 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 permanency 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 ~~menatime~~ 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 ⁱⁿ 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~~ ^{was} ~~factory order dated 29.1.85~~ ^{the} 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 vide 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 Ad hoc 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 senior most 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 Surgeon 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 ^{on} of the reinstatement it has been paid that the applicant did not acquired 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 sponsored 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 offer 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 the 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 after consultation with the Union Public Service Commission, and such consultation being made whatever be

the form of the consulation, 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 serve one year as a result of the stay order passed by the Court, those ^{would be} ~~who~~ 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

applicant for regularisation without requirin them
to appear ~~for~~ interview, ^{but} ~~But~~ after perusing the
A.C.R. ^{This may be done} 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)

Lee
Vice-Chairman.

29th January, 1992, Lucknow.

(sph)

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

INDEX SHEET

Cause Title O.A. 186 of 1987 {13/32} T.L.

Name of the parties Dr. Hari Narain Shrivastava

Applicant.

Versus

The Union of India,
Department of Defence, New Delhi & others.

Respondents.

Part, A, B, C.

Description of documents

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2. Order
3. Judgment
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12/3/87 7-1
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

Registration No. of 1987

APPLICANT (s) Dr. Hari Narayan Mishra

RESPONDENT(s) Union of India through Secy, Deptt of Defence (Production)

Ministry of Defence, New Delhi & 2 others

Particulars to be examined	Endorsement as to result of Examination
1. Is the appeal competent ?	Ys
2. (a) Is the application in the prescribed form ?	Ys
(b) Is the application in paper book form ?	Ys
(c) Have six complete sets of the application been filed ?	Ys, 5 sets filed
3. (a) Is the appeal in time ?	Ys
(b) If not, by how many days it is beyond time ?	-
(c) Has sufficient case for not making the application in time, been filed ?	-
4. Has the document of authorisation, Vakalat-nama been filed ?	Ys
5. Is the application accompanied by B D /Postal-Order for Rs. 50/-	Ys
6. Has the certified copy/copies of the order (s) against which the application is made been filed ?	Ys
7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?	Ys
(b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?	Ys

31-3

Order Sheet

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH ALLAHABAD

CA No 181 of 1987

Dr. Hari Narain Singh

Date	Note of progress of proceedings and routine orders	Date to which case is adjourned
1	2	3
10/4/87	<p>Hon. S. Taher Hussain, Jc.</p> <p>Hon. Vijay Jethoi, Jc. (A)</p> <p>Sri Vijay Bahadur Singh.</p> <p>1. Some notes about</p> <p>report and notes to Shri Narain Singh about</p> <p>report with permission to meet with him</p> <p>and interview him about his work.</p> <p>31-3-87.</p> <p>OK</p> <p>Notice from 31-3-87</p> <p>to show cause as to the question</p> <p>of admission has been accepted by</p> <p>in M. V. Singh from court for registration.</p> <p>He has not filed any reply</p> <p>to the</p> <p>(Case is to be taken up for</p> <p>admission as directed by</p> <p>court).</p> <p><i>one</i></p> <p><i>25/3</i></p>	

Order Sheet

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH ALLAHABAD

No. 186 of 198 @ 7

VS

Date	Note of progress of proceedings and routine orders	Date to which case is adjourned
1	2	3
1-5-87	<p>Attn D.S. Misra - AM Hon G.S. Sharma - JN</p> <p>None is present for the applicant's written affidavit has been filed on basis of the respondent's reference affidavit, if any may be filed within fifteen days. List for final hearing on 31/7/87.</p> <p>AM ✓ JN ✓</p>	<p>OR R.D. Sharma JN 29/7/87</p>
31/7/87	<p>Attn D.S. Misra - AM Hon G.S. Sharma - JN</p> <p>None is present for the applicant. On the respondent's counsel, the case is adjourned to 21/8/87.</p> <p>AM ✓ JN ✓</p>	

Ord & Sheet

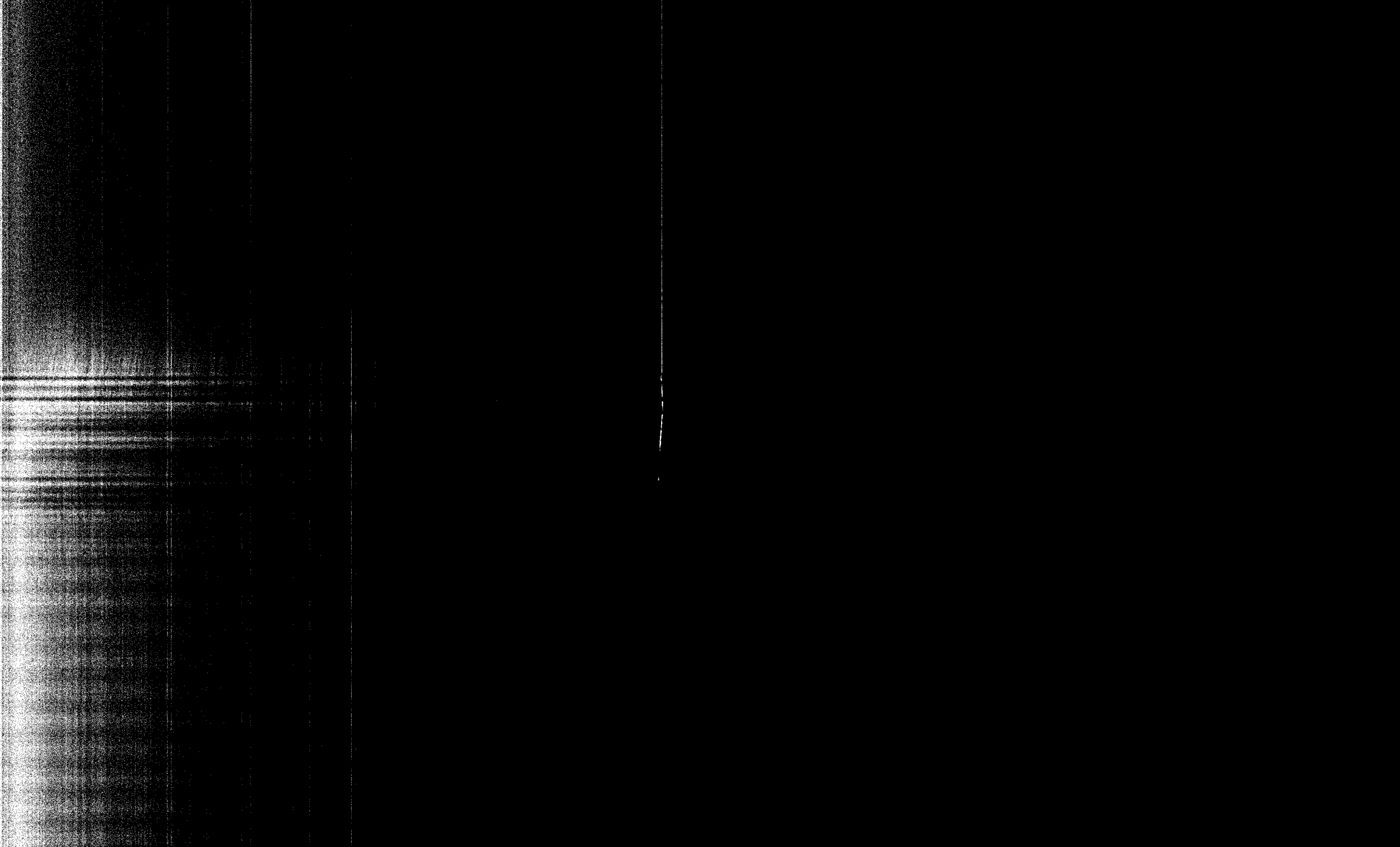
04. 106/87

A-87

10/3/88

Hon. D.S. Misra - Am.
Hon. G.S. Sharma - JM

on the request—
of learned Counsel for
the applicant, he is allowed
two weeks time to file
regards. PC - up an
15/88 for hearing.



10/3/88

H-87

Hon. D.S. Misra - Am.
Hon. G.S. Sharma - Jm

on the request—
of learned Counsel for
the applicant, he is allowed
two weeks time to file
regards. PC - up an
17/5/88 for hearing.

Sy.
Am.

87

17.5.88 Am

on the request of applicant's
counsel, 2nd time court for
hearing on 26.7.88

26.7.88. No. Sitting adj to 21.9.88

Am

21-9-88

Hon A.S. Singh Am
Hon G.S. Sharma Jm

On the request of applicant's
Counsel, the court is adjourned
to 17-11-88 for hearing.

Sy

Am

आदेश पत्रक
ORDER SHEET

12-10-87

अपील
निर्देश आवेदन रजिस्टर में सं०

No. in Reference Application Appeal Register

अपील अधिकरण
Appellate Tribunal

अपीलार्थी
आवेदक

Appellant
Applicant

अपीलार्थी
आवेदक द्वारा

बनाम

प्रत्यर्थी

CA 108/1987.

Appellant
Applicant

प्रत्यर्थी द्वारा
Respondent

Dr. H. N. Mishra - Respondent

100 - 100/1987 Sec.

आदेश की क्रम संख्या
और तारीख
Serial number of
order and date

संक्षिप्त आदेश (निर्देश देते हुए, यदि आवश्यक हो)
Brief order, mentioning reference, if necessary

पालन कैसे हुआ और पालन
करने की तारीख
How complied with and
date of compliance

2-12-88

Hon A. Jay Sahni - A.M.
Hon G.S. Sharma - S.M.

Shri K.C. Sinha learned
Counsel for the Respondents is present.
In the request of learned
Counsel for the Applicant
the case is adjourned
to 12-12-88. No further
adjournment will be
allowed in this case.

S.M.

A.M.

12-12-88

100 Sitting order 100-100/1987

20/2/89

No sitting order to 9.5.89.

Order Sheet

C 9 136 of 1987

Dr H N Mishra

LS

20.9.87

A-71

25-6-90 DR

The case is adjourned to
8-10-90 before DR(?) for fixing a
date for hearing.

DR(?)

~~8-10-90~~
~~The case is adjourned to~~
~~8-10-90 for fixing a~~
~~date for hearing.~~

20.9.87

A-813

ORDER SHEET

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD.

207 NO. 186 OF 19 87
Vs. _____

Sl.No.	Date	Office Report	Orders
	8-10-78		<p><u>DK</u> The case is ripe for hearing list the case before court for final hearing on 21-1-91 as prayed by applicant's counsel</p> <p><u>DK</u> (S)</p> <p><u>21.1.91</u> no sitting of the court is advised to 20.5.91 for hearing</p> <p><u>21.5.91</u> Hon. K. Chatterjee Hon. S. N. Pandey Being - holding 20.5.91, Taluk Adm. Order to 13-9-91 for</p>

CA 106/87

A-95

22-1-92

Hon U.C. Sinister Va - VC
Hon A.B. Gantim AM

On the Joint request of Counsel
for both the parties, list for

O.R.

M.P. 822/92
has been filed

by O.P.

S.F.O.

AM

VC

16/1/92
18-9-92

Case and reached adjourn to 2-11-92

Page

OR

The filed
has been read.

from CAT Ad.

On 27-1-92
S.F.H

No sitting of D.M. adj
to 21-11-92

27/1/92 21-11-92

Hon Mr. Justice U.C. Sinister
Hon Mr. K. Chatterjee, A.M.

This application has been moved
by the respondents for granting
four months' time to comply
with our order. There appears
no justification in granting
4 months' further time as
4 months' time for complying
with our judgment have
already been granted.
However, 4 months' time is again
granted for complying our
judgment and no further
time shall be granted. List
this case on 15-1-93 for adj.


TA 13/92 to
GA 186/03

3.2.93

stated in Justice V.C. order re
Mr. K. Obayya AM

Post up on 3.2.93


A.M.

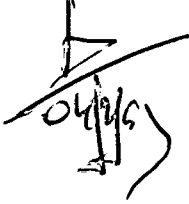

V.C.

2

3.2.93

6A

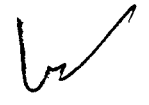
SFO


04/4/93

Hon Mr Justice V.C. Inverness, V.C.
Hon. Mr. K. Obayya, AM

In the application, time proposed for has
already expired as such the application
has become infructuous


A.M.


V.C.



18 9-92

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~ALLAHABAD~~ ^{Lucknow} ~~ALLAHABAD~~ ^{Lucknow}
ADDITIONAL BENCH : ~~ALLAHABAD~~

OA | TA NO. 186 OF 1987

...~~Dr.~~...H.N. Mishra

.Applicant

Versus

.....U.O.I. & Others

.Respondents.

(96)
Take notice that the Court will be moved by the undersigned on _____ the day of _____ 1989 at 10.30 O' Clock in the forenoon or as soon thereafter and the parties as their counsels can be heard.

The object of the motion is briefly indicated by counsel

A copy of application is enclosed herewith.

Take further notice that meanwhile this court has been pleased to pass the following order, (here quote ~~the~~ the interim order of the Court)

Dated this the 16 day of 9, 1992.

(Signed) K.C. Singh Advocate

Advocate for the ~~petitioner/~~
Respondent/Appellant

or

Petitioner/Respondent in person.

Advocate on record for the Address:
opposite party/respondent/defendant.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
~~ALLAHABAD~~ ^{Lucknow} BENCH ~~ALLAHABAD~~ ^{Lucknow}

CIVIL MISC. APPLICATION NO. ⁸²² OF 1992
on behalf of respondents

IN
REGISTRATION O.A.NO. 186/87

Dr. H.N.MishraPetitioner
Versus
Union of India & othersRespondents

To

The Hon'ble The Chairman and his other
companion Members of the aforesaid Tribunal.

The humble application of the abovenamed
applicants most respectfully sheweth as under:

1. That while disposing of the aforesaid case on
29.1.1992 copy of which was received on 1.4.92. The
termination order of the petitioner was quashed and
a direction was given to regularise the services of the
petitioner by forwarding the ACR Dossiers and the
petitioner is not required to be ^{interviewed} ~~interviewed~~ by the
Union Public Services Commission within a period of
4 months.

Place this
with file
before the
Hon'ble Bench
on 18.9.92

21/9
16.9.92

2. That since the old records from the date of appointment of the petitioner has to be verified for regularisation by the Union Public Service Commission which entails lot of formalities and the proposal for the same has been ~~noted~~ by the Ordinance Factory Board ~~through~~ through Ministry of Defence which will take some more time.

3. That the action on the direction of this Tribunal is under process but it could ~~not~~ be done in spite of the best efforts of the respondents within a stipulated period.

4. That in the interest of justice 4 (four) months further time may kindly be granted for compliance the judgment of this Tribunal dt. 29.1.1992.

P R A Y E R

It is, therefore, most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to grant 4 months further time for compliance of the judgment dt. 29.1.1992 passed by this Hon'ble



Tribunal, otherwise the respondents/applicants shall suffer great irreparable loss.



(K.C. SINHA)
ADDITIONAL STANDING COUNSEL
CENTRAL GOVERNMENT

DATED: 16.9, 1992

ALLAHABAD.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Lucknow *Lucknow*
~~ALLAHABAD~~ BENCH ~~ALLAHABAD~~

AFFIDAVIT

IN

CIVIL MISC. APPLICATION NO. _____ OF 1992

IN

REGISTRATION O.A.NO. 186/87

14/11/87
Dr. H.N.Mishra

... ..Petitioner

Versus

Union of India & others

... ..Respondents

Affidavit of *Shri Gagan Chandra*
aged about 28 years
son of *Sri S.C. Chaturvedi*
AT Present posted as *Amit Kumar*
Deputy Secretary

DEPONENT

I, the deponent named above do hereby
solemnly affirm and state on oath as under:

1. That the deponent is at present posted *to work*
at the post office and has been authorised to file
this affidavit on behalf of the respondents

and as such he is well acquainted with the facts of the case deposed to below. *q*

2. That while disposing of the aforesaid case on 29.1.1992 copy of which was received on 1.4.92. The termination order of the petitioner was quashed and a direction was given to regularise the services of the petitioner by forwarding the ACR Dossiers and the petitioner is not required to be ^{interviewed} ~~interfered~~ by the Union Public Service Commission within a period of 4 months. *q*

3. That since the old records from the date of appointment of the petitioner has to be verified for ~~regularisation~~ ^{regularisation} by the Union public Service Commission which entails lot of formalities and proposal for the same has been ^{initiated} ~~noted~~ by the Ordnance Factory Board through Ministry of Defence ~~which~~ ^{which} will take some more time. *q*

4. That the action ~~of~~ ^{under} the direction of this Hon'ble Tribunal is ~~not~~ ^{not} process but it could not be done in spite of the best efforts of the respondents within a stipulated period. *q*

5. That in the interest of justice 4 months further

~~not~~ ^{not} *TAR*

time may kindly be granted for compliance of the judgment of this Hon'ble Tribunal dt. 29.1.1992

That the contents of paragraphs nos. 1,

of this affidavit are true to my personal knowledge that the contents of paragraphs nos. 2 to 5

of this affidavit are based on perusal of records that the contents of paragraphs nos.

of this affidavit are based on legal advice which all I believe to be true that no part of it is false and nothing material has been concealed.

So help me God.

(DEPONENT)

Room before me
by Shree
is only for

Notary
Notary

I, D.S. Chaubey, Clerk to Sri K.C. Sinha,

Additional Standing Counsel, Central Government,

16
10/3/87
NOTED for 10/3/87
10/3/87
H-24

In the Central Administrative Tribunal, Division Bench

Manuscript

Reg. No. of 1907

Administrative Tribunal

Division Bench at Allahabad

Date of Filing 3/3/87

Signature

for

Civil Misc. Application No.

of 1907.

District Judge.

Dr. Hari Narain Misra.

..... Applicant.

Versus

The Union of India, Department of
Science, New Delhi and others.

..... Respondents.

Sl. No.	Particulars.	Page Nos.
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3.	Annexure No. '2' True copy of Factory Order No. 74 dt. 12.1.73.	27
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5.	Annexure No. '4' True copy of Factory Order No. 96 dt. 20.5.1977	29
6.	Annexure No. '5' True copy of Factory order No. 1039 dt. 30.5.1977.	30
7.	Annexure No. '6' True copy of letter dt. 10.1.1975.	31.
8.	Annexure No. '7' True copy of letter dt. 26.6.1980.	32.
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Hari Narain MPA.

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(2)

- | | | |
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| 12. | Annexure No. '11' True Copy of
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representation moved by the
applicant dt. 17.8.85. | 37-38 |
| 14. | Annexure No. '13' True copy of
Order dt. 8.9.1986. | 39 |
| 15. | Annexure No. '14' Photo copy of
Advertisement dt. 27.9.1986. | 40 |
| 16. | Annexure No. '15' True copy of
circular dt. 30.1.1979. | 41 |
| 17. | Postal Order. | |
| 18. | Vakalatnama . | |

Vijay Bahadur
(Vijay Bahadur)
Advocate,

Dt: 28/2/ 1987

Counsel for the applicant.

Hari Narayan H B 2

A-20

In the Central Administrative Tribunal

Additional Bench Allahabad

between

Dr. Hari Narain Misra

37/35 Gilis Bazar, Kanpur

- - - - - Applicant.

and

1. Union of India through Secretary

Department of Defence (Production)

Ministry of Defence, Government of India

New Delhi.

2. Director General (Member Personnel ,

Ordnance Factory Board, Government

of India, Ministry of Defence,

Ordnance Factory, 10-A, Auckland Road,

Calcutta.

3. General Manager,

Ordnance Equipment Factory

Kanpur - - - - - Respondents.

Details of Application

1. Particulars of the applicant:

(i) Name of the Applicant- Dr. Hari Narain Misra

Hari Narain 7/1/82

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(2)

(ii) Name of Father/Husband-Sri V.K. Misra

(iii) Designation and office - Junior Medical Officer,
in which employed Combind Ordnance Factory
Hospital Ordnance Equip-
ment Factory, Kanpur.

(iv) Office address - Ordnance Equipment
Factory Kanpur.

(v) Address for service - 37/35 Gils Bazar,
of all notices Kanpur-208001.

2. Particulars of the respondents:

(i) Name and/or designation of-1. Union of India through
the respondent. Secretary
Department of Defence
(Production), Ministry
of Defence Government
of India, New Delhi.

2. Director General (Mem-
ber personnel), Ordnance
Factory Board, Governm-
ent of India, Ministry
of Defence, Ordnance
Factory, 10-A, Auckland
Road, Calcutta-1.

3. General Manager,
Ordnance Equipment
Factory Kanpur.

3. Particulars of the order against which
application is made

The application is against the following order:

(i) Order No. -No.254/HML/AL

(ii) Date -8th September 1986.

(iii) Passed by -President of India

(iv) Subject in brief -Services-Termination of the
services of the applicant.

4. Jurisdiction of the Tribunal:

6
The applicant declares that the subject.
Hare Narayan Misra

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(3)

matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

5. Limitation:

The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunal Act, 1985.

6. Facts of the case:

The facts of the case are given below:-

- (i) That the applicant possesses qualifications of B.Sc., M.B.B.S., D.A.
- (ii) That an advertisement appeared in the Dainik Jagaran newspaper (Hindi Edition) Kanpur on 2.7.1972 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,
- (iii) That since the applicant was fully qualified for the appointment on the said post as such the applicant applied for the appointment to one of the advertised posts.
- (iv) That the applicant along with others was interviewed by a Selection Board which constituted

Hari Narayan P.B.

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(4)

of Medical experts and Administrative Experts etc. In the aforesaid selection the petitioner was duly selected.

(v) That the applicant was thereafter appointed on the post of Assistant Surgeons Grade I in the Ordnance Equipment Factory at Kanpur by an order dated 31st December 1972/1st January 1973. The said order stated that the petitioner was being appointed by the President of India on the recommendations of the Selection Board, on a temporary post of Assistant Surgeon Grade I (male) on certain terms and condition enumerated in the aforesaid appointment letter.

(vi) That the aforesaid appointment letter also stated that the post is temporary and appointment was for one year or till U.P.S. nominates a suitable candidate whichever is earlier. A true copy of the appointment letter mentioned above is being filed as Annex-1 to the petition.

(vii) That the applicant joined on the said post on 10.1.73.

Hori Nandan X132

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(5)

(viii) That a factory order part II No.75 dated 12.1.73 was thereafter issued stating therein that the applicant was appointed as temporary Assistant Surgeon Grade I (1st). A true copy of the said factory Order is being filed as Annexure-2 to the petition.

(ix) That the applicant was communicated an order dated 12.1.77 intimating that his case for grant of revised scale of Rs. 700-1300 and also declaration of permanency is in active progress and necessary expediting action is being taken. A true copy of the order dated 12.1.77 is being filed as Annexure-3 to the petition.

(x) That the several others Assistant Surgeon Grade I who were working with the similar responsibilities and duties, with the applicant, were re-designated as Assistant Medical Officer in the revised pay scale of Rs. 700-1300 vide Factory Order Part II No. 989 dated 20.5.77 but the petitioner was denied the said advantage. A true copy of the said Factory Order Part II is being filed as Annexure-4 to the petition.

Haru Nandan Mishra

Haru Nandan Mishra

A-3

(6)

(xi)

That by another Factory Order Part II No. 1039 dated 30.5.77 the applicant was redesignated as Junior Medical Officer and placed in a lower pay scale of Rs. 650/- -1200/-. A true copy of the said Factory Part II Order is being filed as Annexure-5 to the petition.

(xii)

That the Gov. Minister of India issued a circular letter No. 574/52/1.1/55-1/3(P.I.), dated 18.3.75 in which it was emphasised that the existing Assistant Surgeons Grade I should be screened by a Departmental Promotion Committee and the Class I scale of Rs. 700-1500 will be given to those doctors only who are in possession of M.B.B.S. degree and are found fit after screening. The respondents completely ignored this circular letter and did not screen the case of the applicant and also did not grant the benefits and advantage to the applicant as provided in the said circular letter. A true copy of the said letter is being filed as Annexure no.-6 to the petition.

(xiii)

That the applicant however, continued to work on the said post satisfactorily till
Haram Narayan 1/5/80

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(7)

1980. The services of the petitioner were terminated by an order dated 26.6.80 issued by the Director General Ordnance Factory Board, Calcutta. The said order contemplated that the service of the petitioner shall stand terminated after the expiry of one month from the date of the receipt of the order dated 26.6.80. A true copy of the said order is being filed as enclosure-7 to the petition.

(xiv)

That since the aforesaid order was null, illegal and without jurisdiction for the reasons inter alia that it was passed by an authority which was not in the case of the applicant, the appointing authority. As such the applicant filed a suit in the Court of Munsif City Nagpur being suit no. 772 of 1980 Dr. H.N. Misra versus Union of India and others for declaration that the aforesaid order terminating the services of the applicant was illegal and ultra vires and that the applicant should be treated to be in continuous service. The applicant also sought certain other ancillary reliefs.

(xv)

That the respondents contested the aforesaid suit.

(xvi)

That the respondents filed an appeal against the said judgment which was registered as Appeal No. 557 of

Harin Narayan N/B

(8)

1981 Union of India and others versus Dr. H.N. Mishra.

(xvii)

That the aforesaid appeal was however, dismissed by the 1st Additional District Judge Kanpur on 16.4.1983.

(xviii)

That against the said judgment and decree the respondents filed an appeal in the Hon'ble High Court which too was dismissed summarily by the Hon'ble High Court under order 41 Rules 11 C.P.C. on 25.10.83.

(xix)

That the applicant thereafter filed an execution case in the trial court.

(xx)

That the aforesaid reinstatement order however described the applicant to be an ad-hoc Junior Medical Officer.

(xxi)

That the applicant was thereafter reinstated by an order dated 15.1.85. A true copy of the said order dated 15.1.85 is being filed as annexure-8 to the petition.

(xxii)

That the applicant thereafter joined his duties on 18.1.85. The applicant while joining his duties made it clear in the joining report that the assertions of the respondents in the letter dated 15.1.85 to the effect that the applicant was being reinstated in service as Ad-hoc Junior Medical Officer was incorrect

Hari Mishra 2/1/85

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(9)

and he was rather a temporary Junior Medical Officer. A true copy of the said joining report is being filed as annexure-9 to the petition.

(xxiii) That the reinstatement order was published vide Factory Order Part II No. 210 dated 29.1.85 which also described the applicant as ad-hoc Junior Medical Officer. A true copy of the said Factory Order Part II is being filed as Annexure No-10 to the petition.

(xxiv) That the applicant thereafter received another Factory Order No. 806 dated 22.4.85 stating that the word "Adhoc" wherever it appears in the abovenoted Factory Order Part II No. 210 dated 29.1.85 shall be treated to be deleted and the word 'temporary' may be inserted in place of the word "Adhoc". A true copy of the said order is being filed herewith as Annexure-11 to the petition.

(xxv) That the applicant thereafter filed a representation praying that the applicant be declared to be in the quasi permanent/permanent service. The applicant also prayed through the said representation that the applicant was also entitled to fixation of pay in the revised pay scale.

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of A.M.C. of Rs. 700-1300 from 1.1.74. A true copy of the said representation is being filed as Annexure-12 to the petition.

(xxvi)

That it is pertinent to mention here that the aforesaid execution proceedings with regard to other reliefs granted by the Civil Court is still pending.

(xxvii)

That surprisingly another order dated 8.9.06 purporting to have been passed by Respondent No.2 was communicated to the applicant by the Respondent No.2 vide covering letter dated 10.9.06 by which the services of the applicant are stated to have been terminated with effect from 10.9.06 (A.M.) by the President of India. The order also stated that the applicant was being paid one month's pay in lieu of the notice. A true copy of the said order is being filed herewith and marked as Annexure-13 to the petition.

(xxviii)

That an advertisement appeared in the paper Dainik Jagran (Hindi Edition), dated 27.9.06 inviting the application for the post of a medical officer in the Granite Factory, Haryana. A photo copy of the said advertisement is being filed as Annexure-14 to the petition.

(xlix)

That the aforesaid facts establish that the

For Nelson MRB

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(11)

vacancies of doctors do exist in the department and the services of the applicant have been terminated with the malafide intentions.

(xxx)

That it is pertinent to mention here that several short term medical officers who were appointed subsequent to the appointment of the applicant are being allowed to continue in service though the services of the applicant has been terminated. The most of the said short term medical officers are less qualified than the applicant and they are certainly possess less experience than that of the applicant.

(xxxi)

That in spite of the fact that the services of the short term medical officer have not been terminated and the services of the applicant have been terminated shows the arbitrariness of the respondents.

(xxxii)

That a circular letter was issued on 30.1.79 which laid down that the services of the short term medical officers shall be terminated if at any time thereafter the services of junior junior medical officer shall be terminated. That copy of the

said circular letter no. 95/12-1/79/11

Handwritten: Hari Narayan AIR 2

(12)

Dated 30.1.79 is being filed as number-15 to the petition.

(xxxiii) That the applicant is not a short term Medical Officer nor he is an A & N Officer and as such they illegally did not grant the certificate of declaration of quasi permanency to the applicant.

(xxxiv) That the services of the applicant have been terminated within a short span of the period after he was re-instated under the Civil Court decree. This establishes that the services of the applicant have been terminated arbitrarily and maliciously.

(xxxv) That the applicant has become over-age and can not find job at any other place thus the impugned order is wholly illegal and arbitrary, and also contrary to equity and natural justice.

(xxxvi) That since the appointment of the one year was allowed to expire and the applicant was allowed to continue in the service and also given regular increments during the continuance of the applicant in service, the applicant became entitled for a declaration of quasi permanency, more so when the applicant was found suitable and fit in every respect.

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(13)

the termination of the service of the applicant is wholly illegal.

(xxxvii)

That in order to defeat the right of the petitioner and other Assistant Surgeons Grade I in the Ordnance Equipment Factory the respondents have evolved a new method under which they make short term appointment to the said posts and thereafter terminate their services for a very short period of a couple of days and then again re-appoint those persons under that scheme. It goes to show that vacancies are still subsisting and the termination of the services of the applicant is wholly malafide.

(xxxviii)

That the services of the applicant have in fact been terminated to nullify the decree passed by the Civil Court and as such the same is wholly illegal and malafide.

(xxxix)

That the applicant has not yet been handed over the charge and he is still continue on the said post.

Hari Narain Mishra

(14)

(xxxx)

That it is learnt & reliably that about 40 posts of S.M.O.s have been sanctioned by the Government and since the petitioner is a very senior amongst the Junior Medical Officers/A.M.O.s as such he becomes eligible for promotion to one of the aforesaid posts of S.M.Os. The impugned order has been passed to shut ^{out} the lawful claim of the applicant to hold the said post.

(xxxxi)

That the applicant has been reinstated with all benefits by the decree of the civil court, the respondents have yet not implemented the directions contained in the said decree in as much as the applicant has not been given the arrears and all the increments in accordance with the said decree and instead of complying with the said decree, the respondents have illegally terminated the services of the applicant by the impugned order.

(xxxxii)

That the impugned order is hit by Article 14 and 16 of the Constitution

11/02/2018 N. B.

(15)

(xxxiii)

That the amount tendered by the respondents in lieu of one month's notice does not represent the correct amount of the current salary to which the applicant is entitled and as such also the termination order is in-contravention of the provisions of the Rules.

(xxxiv)

That the services of the applicant are said to have been terminated under the provisions of Rule 5(i) of the Central Civil Service (Temporary Service) Rules 1965 here-inafter referred to as "Rules".

(xxxv)

That Rule 3 of the Rules lays down the conditions in which a temporary employee may granted a certificate of declaration with effect that he is in quasi permanent service.

(xxxvi)

That the applicant had become eligible for the declaration with effect that he was in quasi permanent service after 10.1.76 in as much he fulfilled all the conditions laid down rule 3. It is reiterated that the work and conduct of the applicant had all through been satisfactory and no adverse remarks were given.

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(16)

communicated to the applicant.

(xxxxvii)

That the Government of India issued an order (MHA G.M. No.78/152/57-IS dated 30.12.57) in which it has been emphasised that the cases of all persons who become eligible for quasi permanency certificate should be considered as soon as after the crucial date in that year as far as possible and without any avoidable delay. Inspite of this order the applicant was not considered for quasi permanency.

(xxxxviii)

That another memorandum was issued by Government of India being memorandum No MHA OM No. 7/136/58-IS dated 3.10. 58 laying down that if a temporary government servant is found unsuitable for quasi permanency, the fact should be communicated to him officially so that he may improve his work and conduct before his case comes next for consideration.

(xxxxix)

That it is pertinent to mention here that during the aforesaid long period of service of more than 14 years no adverse entry or remark was ever

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(17)

communicated to the applicant.

(xxxxx)

That the applicant had crossed the efficiency bar and had also been receiving the regular increments in his pay during the period he served continuously.

(xxxxxi)

That the applicant is duly qualified for continuing on the post of Junior Medical Officer/ Assistant Medical Officer.

7. Reliefs:- In view of the facts mentioned in para above, the applicant prays for the following reliefs:-

- (i) to issue an order or direction setting aside the impugned order dated 6.9.1986.
- (ii) to issue an order or direction directing the respondents to treat the applicant in continuous service as if the services of the petitioner were never terminated and give all the benefits attached to the post, as has been holding.

Heard Mr. ...

(18)

- (iii) to issue an order or direction to consider the applicant for quasi permanent.
- (iv) to issue an order or direction to redesignate the applicant as A.M.O. in pay-scale of Rs. 700-1300 w.e.f. 1.1.1974 and pay the arrears.
- (v) to issue an order to the respondent to include the name of the applicant in the recent A.M.O.'s seniority list at proper place.
- (vi) any other relief which this Hon'ble Tribunal may think deem fit and proper in the circumstances of the case.

Grounds.

- (a) Because, the respondents were wrongly threatening the applicant as adhoc and not considered him in D.P.O. for A.M.O. in pay-scale of Rs. 700-1300.
- (b) Because, the short term Medical officers are still functioning whereas the services of

Harri Narayan Nigam

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(19)

the applicant have been terminated as such the order is malafide, arbitrary and hit by Article 14 and 16 of the Constitution of India.

(c) Because, the applicant having served the department for more than 14 years and now at a stage when the applicant has become overage for being appointed in any other government service, the termination of his service is contrary to law and also contrary to equity and natural justice.

(d) Because, the applicant has become eligible for declaration of quasi permanent service within the meaning of Central Services (Temporary Service) Rules, 1965 inasmuch as he has put in more than 3 years continuous service and there had never been any complaint against him with regard to his work, conduct.

Harinandan Mishra

(20)

- 7) The fact, the application was not made
certificates being issued pursuant to the
in contravention of various orders issued
issued in this application.
- 8) In view of the above, the applicant has been ordered
nullify the decision of the Civil Court, dated 19-10-61
as such the same is wholly illegal and voidable.
- 8) Interim order, dated 19-10-61:
- Pending final decision of this application, the applicant
is directed to follow the following interim order:-
- (1) The execution of the order dated 8.5.1958 may
remain stayed.
- (2) During the pendency of this petition, no part of B.L.D.,
to which the applicant is entitled, may be distributed
interim.
- 9) Details of the expenditure incurred : Nil.
- 10) Petition not pending with any other court, etc.
- The applicant further states that he
has not received any notice from the
Government or any other authority or any other bench of the

Hori Masamichi M.B.

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(21)

Tribunal .

- 11) Particulars of Bank Draft/Postal order in respect of the application fee:-

1. Name of the Bank on which drawn, .

2. Demand Draft No.

Or

1. Number of Indian Postal Order: 3

2. Name of the issuing Post Office, H.P.O. Kanpur

3. Date of issue of Postal Order:- 6-12-86

4. Post Office at which payable:-

- 12) Details of Index:-

An Index in duplicate containing the details of the documents to be relied upon is enclosed.

- 13) List of Enclosures:-

(a) Annexure '1':- True copy of appointment letter dated 31.12.1972/1.1.1973.

(b) Annexure '2' :- True copy of factory order dated 12.1.1973.

(c) Annexure '3' :- True copy of order dated 12.1.1977.

(d) Annexure '4' :- True copy of factory order dated 20.5.1977.

(e) Annexure '5' :- True copy of factory order

Atari Nandan. H.P.O.

(22)

Part II dated 30.5.77.

- (f) Annexure '6' :- True copy of letter dated 18.8.75.
- (g) Annexure '7' :- True copy of order dated 26.6.1980.
- (h) Annexure '8' :- True copy of order dated 15.1.85.
- (i) Annexure '9' :- True copy of joining report dated
18.1.85.
- (j) Annexure '10' :- True copy of factory order Part II
dated 29.1.1985.
- (k) Annexure '11' :- True copy of factory order part II
dated 22.4.85.
- (l) Annexure '12' :- True copy of representation moved
by the applicant dt. 17.8.85.
- (m) Annexure '13' :- True copy of order dated 8.9.1986.
- (n) Annexure '14' :- Photocopy of advertisement dated
27.9.1986.
- (o) Annexure '15' :- True copy of circular dated 30.1.1979.
- (p) Postal order :- ~~True~~ for Rs. 50/-.
- (q) Envelope :- Three (with postage stamps).

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(23)

Verification:-

I, Dr. H.N. Misra, son of Sri V.L. Misra
aged about 39 years, worked as Junior Medical
Officer in Ordnance Equipment Factory, Kanpur,
resident of 37/35, Gitis Bazar, Kanpur do hereby
verify that the contents from 1 to 13 are true
to my personal knowledge and belief and that I
have not suppressed any material facts.

Place:- Kanpur

Hari Narain Misra.

Date :- 28-2-87

Signature of the applicant.

10,

Vijai Bahadur
Advocate
Counsel for the Applicant

The Registrar,

General Administrative Department,

Addl. Bench at Lucknow.

Hari Narain Misra

(24)

ANNOUNCEMENT

REGISTERED

MOST IMMEDIATE

N.O. 89/1/101. 5/72.

Government of India,
Ministry of Defence,

Directorate General, Ordnance Factories,
6, Bala Sagar,
Calcutta-1, the 31st Dec, 1972.

10,

1st Dec, 1972

Dr. H. M. Misk,
37/3, Gili Sagar,
Kolkata (C.B.).

Sub: Appointment as an Assistant Surgeon (Male) in Ordnance Factories Organisation.
.....

Sir,

I am directed to state that on the recommendation of the Selection Board convened by the Government of India, it is proposed to offer you a temporary post of Asst. Surgeon (Male), in the Ordnance Factories Organisation.

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

- (i) You will be required to undergo a medical examination by a Medical Board at a place to be determined by the Director of Medical Services, Govt. of Uttar Pradesh, Lucknow. The standard of physical fitness shall be as prescribed in the attached copy of the Medical Regulations. The results of the medical examination shall be sent by you to the Medical Board, at the time of medical examination. No travelling allowance will be allowed in respect of journey performed by you in connection with the medical examination. The results of the medical examination will be communicated to you by the Director of Medical Services, Govt. of Uttar Pradesh, Lucknow. Your appointment is subject to your being declared medically fit as above.
- (ii) Your initial pay will be Rs. 550/- p.m. in the scale of pay of Rs. 350-450-500-550-600-650-700-750-800-850-900/- according to rules in addition to which and other usual allowances admissible under the rules and orders governing the grant of such allowances in force from time to time. Non-practising allowance at the rate of 1/5 of pay subject to a minimum of Rs. 150/- per mensem is also admissible. Private practice will not be allowed at all.
- (iii) The post is temporary. Your appointment will be for one year or till the Government nominates a suitable candidate whichever is earlier.
- (iv) Your will be on probation for a period of 3 months and this period is extendable at the discretion of the Government.

Hase Nawaz Khan
(P.O.)

(25)

- (v) Your service will be terminable on one month's notice given in writing by either side without assigning any reasons, The President, however, reserves the right of terminating your services forthwith on or before the expiry of the stipulated period of notice by making payment to you of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.
- (vi) You will be subject to conditions of service as applicable to temporary Civilian Government servants paid from Defence Services Estimates in accordance with the orders issued by the Government of India from time to time.
- (vii) You are liable to serve anywhere in India.
- (viii) You will not be eligible for the grant of travelling allowance for the journey undertaken, the joining time pay and the joining time for the purpose of joining duty..
- (ix) You will be required to take oath/affirm in the following form :-
 " I do swear/solemnly affirm that I will be faithful and bear true allegiance to India and to the Constitution of India as by Law established and that I will uphold the Sovereignty and integrity of India and that I will carry out the duties of my office loyally, honestly and with impartiality (so help me God)*.
- (x) In accordance with Central Civil Services (Conduct) Rules, 1964 you are not eligible for appointment under the Govt. of India, if you have more than one wife/husband living. You are, therefore, required to complete the declaration in attached form and forward it to this HQ. along with your acceptance of appointment.
- (xi) If any declaration given or information furnished by you proves to be false or if you are found to have wilfully suppressed any material information, you will be liable to removal from service and/or such other action as Government may deem necessary.
- (xii) In your own interest, you should respond to the U.P.S. C. advertisements for the posts of Asstt. Surgeons Gr.I in the Ordnance and Equipment factories.

3. If you accept the offer on the terms and conditions detailed above, you may intimate your acceptance to this Hq. by 31.1.73 at the latest and report for duty direct to the General Manager, Ordnance Equipment Factory, Kanpur immediately. Your appointment is subject to your being declared medically fit by the Board as at para 2(i) above within 2 months from the date of joining.

Encl : 11 sheets;

Yours faithfully,

(R.M. MAZUMDAR)

DIRECTOR GENERAL ORDNANCE FACTORIES.

P.O.

*True copy
Vijay Singh
28/2*

Hari Narain Mittal

A-951

(26)

Copy to:

1. The M. of D. (D/Fy)
New Delhi

- with reference to their U.C.
No. 12(2)/72/US-1/D(Fy-II)
dated 10.11.72.

2. The General Manager,
Ordnance Equipment
Factory,
Kanpur.

-with reference to this confidential No. 1/D-I dated 23.8.72 and 6.9.72. Please initiate action regarding verification of character and antecedents of the candidate and forward the police verification Report to this Hq. in due course. On appointment, the candidate should not be allowed to handle any classified documents pending satisfactory completion of verification of his character and antecedents. He may be allowed to join without prior medical examination.

3. The Controller of Defence Accounts(F.s),
9, Chitranjan Avenue,
Calcutta-13

4. Personal file.

Hari Narayan P. R.

Signature
10/12/72

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ANNEXURE NO. '2'

F.O. Pt. II No. 75 dt. 12.1.73.

No.75

Sub: Appointment Asstt. Surgeon Gr.I.

Dr.H.N.Misra is appointed as temporary Asstt. Surgeon Gr.I(Male) (a gazetted Class II post) by the D.G.O.F. Calcutta on the gazetted medical Asstt. of Ord. Equipment Factory, Kanpur u.e.f. 10.1.1973 at an initial salary of Rs. 350/- P.M. in the scale of pay of Rs. 350-25-500-30-530-EB-30-800-30-830-35-800 in addition to dearness and other usual allowances admissible under rules and orders governing the grant of such allowances in force from time to time.

Dr. Misra is also entitled for nonpracticing allowance at the rate of ~~33 1/2~~ 33-¹/₃ pay subject to a minimum of Rs. 150/- per mensem. No private practice will be allowed to him.

He will remain on probation for a period of 3 months from the date of his appointment and this period is extendable at the discretion of the government.

The above appointment will be for one year or till the U.P.S.C. nominates a suitable candidate whichever is earlier.

The continued appointment of the said officer to the post in question will be subject to his being declared medically fit by the Director of Medical Services Government of U.P. Lucknow.

Authority D.G.O.F. letter No. 093/1/1/Vol. 5/72
dt. 31.12.72/1.1.73.

Dr. Misra is posted at Comb. C.G. & P. Factories Hospital ,
Kanpur.

(Signature)
Vijay Kumar
28/1/73

(Case No. 1/5-1)

Hari Narayan Nigam

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ANNEXURE NO. '3'

No. GM/60

Dated: 12th Jan. 77.

Dr. H.N.Misra M.C. L/C 17.1.77
Assistant Surgeon Gr. I,
C.A.F.C.

Sub: Screening & Confirmation of Medical
Officers.

The D.C.F. has intimated that screening of the existing Assistant Surgeons Grade I to determine their suitability for entitlement to the revised scale of Rs. 700-1300 as also for declaration of permanency is in active progress and necessary expediting action is being taken. The D.C.F. has further intimated that as soon as the decision of the competent authority is received, all concerned will be suitably informed.

This is for your information.

34/

(20)

Sanctioned by the D.C.F.

*True - My
Vijay Prasad
28/2*

Harinadani MISR

A-1057

(29)

RESTRICTED

ANNEXURE NO. '4'

CRIMINAL EQUIPMENT FACTORY, CALCUTTA

FACTORY ORDER PART II

BY

MR. V.R. SHIV KUMAR, OFFICER-IN-CHARGE, CALCUTTA.

Dated 20th May '77

No. 909

SUB: CIVILIAN IN SERVICE (CRS) (REVISION 1973)
AS ON 1973 & CIVILIAN EQUIPMENT IN EQUIPMENT.

The following Assistant Surgeons Grade I have been redesignated as Assistant Medical Officers and have been placed in the revised Class I Junior Scale of Rs. 700-40-900-33-40-1100-50-1300 with effect from the date indicated against each:-

	<u>Date of placement.</u>
1. Dr. A.N. Chattopadhyay	1-1-1973.
2. Dr. Viswa Vir.	1-1-1973.
3. Dr. D.N. Saxena.	1-1-1974.
4. Dr. Harihar Padni	1-1-1975.

Authority :- DGO/Calcutta letter No. 574/GE/1/1
dt. 30th April /3rd May, 1977.

*True copy
Vijay Prakash
28/2*

Hari Narain K. 1/80

A-108
55

(30)

ANNEXURE NO. '5'

Restricted

ORDNANCE EQUIPMENT FACTORY, RAIPUR.

FACTORY ORDER PART II
BY

SHRI V.R. SHIV KUMAR, I.C.F.S., OFFICER-IN-TEMP. CHARGE.

Dated 30-5-1977

No. 1039

Sub: CIVILIANS IN D.O.C. SERVICES (REVISED PAY)
RULES 1973 - CIVILIAN DOCTORS IN DGOE ORGN.

The following Ad-hoc Assistant Surgeons Grade I are redesignated as Junior Medical Officers and are placed in the Class II revised scale of pay as. 650-30-740-35-810-EB-35-880-40-1000-EB-40-1200 with effect from the date indicated against each:-

1. Dr. A.K. Srivastava -1.1.1973.
2. Dr. H.N. Misra -10.1.1973.
3. Dr. (Mrs) L. Singh -20.1.1983.
4. Dr. D.N. Dewan - 5.1.76.
5. Dr. (Miss) P. Verma -18.6.1976.

(Atty: DGOE Calcutta letter No. 074/02/A/M dt. 30.4./3-5-1977.)

(V.R. SHIV KUMAR)

OFFICER-IN-TEMPORARY CHARGE.

Hari Mohan 4/13

*Tommy
Vijay
28/2*

A-50

(31)

ANNEXURE NO. '6'

To,
The Director General,
Ordnance Factories,
6, Esplanade East,
Calcutta-700001.

No. 074/CP/1/L/US.I/D(Fy.II)
Government of India
Ministry of Defence
(DEPARTMENT OF DEFENCE PRODUCTION)
NEW DELHI, the 18th August, 75.

Subject: REORGANISATION OF MEDICAL SET-UP IN THE
ORDNANCE FACTORIES ORGANISATION.

Sir,

I am directed to say that the question of Re-organisation of the Medical set-up in the Ordnance Factories Organisation has been under consideration of Government for some time. Considering the various aspects of this question and taking into account the recommendations made by the Third Pay Commissioner, it has been decided to completely civilianise the existing set-up. The revised structure indicating the revised designation and the scales of pay applicable to each post, is indicated in Annexure 'A' to this letter. Separate orders will be issued in regard to the number of posts in each category and their allocation.

2. The replacement of service officers by Civilians will be done in gradual phases, over a period of 5 to 10 years, depending upon the availability of suitable departmental candidates.

3. It has been further decided that the existing Assistant Surgeons Grade I (Class II) will be screened by a Departmental Promotion Committee and the Class I Scales of Rs. 700-1300 will be given to these Doctors only who are in possession of MBBS Degree and are found fit after screening. Those who are not found fit, will be entitled to the pay scale of Rs. 650-1200, as recommended by the Pay Commission. These scales will have effect from 1-1-1973.

4. Action is being taken to notify the revised pay scale for each category in the Gazettee separately.

5. It has also been decided that the Directorate General, Armed Forces Medical Services, will continue to provide, as hitherto, the specialist cover for the entitled employees at present. Similarly, the existing arrangements for the issue of Medical Stores by the D.G.A.F.M.S., will also continue.

6. This issues with the concurrence of Ministry of Finance (Defence) vide their U.C. No. 2686-P.1 of 1975.

Yours faithfully,
sd/

(D.N. SARAI)

DEPUTY SECRETARY TO THE GOVT. OF INDIA.

Hari Narain (B)

Handwritten signatures and initials:
Rajar Poddar
28/2

44-38861-100

No. 254/211/1.
Government of India,
Ministry of Defence,
Office of Secretary, Home,
6, Esplanade East,
Calcutta-700006, the 21 Jan 1966.

U U U U U

In pursuance of Sub-rule (i) of Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965, I hereby give notice to Dr. N.N. Misra, Junior Medical Officer that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or, as the case may be, tendered to him.

Station : Calcutta

(Dr. S. Dhanasekaran)

De Ruyck, G. 1878. *De Ruyck, G. 1878.*

Date : 26 June, 1980

To

Dr. N.N. Misra,
Junior Medical Officer,
Ordnance Equipment Factory,
Allahpur.

Hari Nazari HBR.

Time of day
Vignettes

(34)

MEMORANDUM No. 191

General Manager,
Ordnance Equipment Factory,
Rampur.

10th January 1965.

Sir,

Re: Your letter No. 110/3-34/HM Govt. of India,
Ministry of Defence, Ordnance Equipment Factory,
Rampur, dated 15.1.1965.

I received Govt. of India, Ministry of Defence, Ordnance Equipment Factory, Rampur, letter dated 15.1.1965.

I am joining my duties today as Junior Medical Officer temporary and not as "Janoc" Junior Medical Officer as mentioned in your letter No. 110/3-34/HM Govt. of India, Ministry of Defence, Ordnance Equipment Factory, Rampur, dated 15.1.1965.

In the suit I had challenged that my appointment was "temporary" and not "Janoc" which was also admitted by you in your written statement. This point was considered by the learned courts and in their judgments have clearly held that my appointment was "temporary" and not "Janoc".

Kindly review your letter mentioned above No- 110/3-34/HM dated 15.1.65 and delete the word "Janoc" at two places and substitute with the word "temporary."

It is requested that immediate action in the matter may kindly be taken by issuing another order mentioning my joining the services as "Junior Medical Officer - temporary."

The payment of my all the arrears of pay, wages, allowances, annual increments and decretal amount etc. may kindly be made at an early date.

Yours faithfully,

Yours faithfully,

Sd/- M. S. Kishore /
5/35, Dillu Bazar, Rampur.

Copy to:

1. The Union of India, through the Secretary, Department of Defence (Production), Ministry of Defence, New Delhi.

2. The Director General Ordnance Factories, 6, Esplanade East, Calcutta-700 069.

Hari Mahalan 4/1/65

(35)

MEMORANDUM No. 1101

Restricted

ORIGINAL EQUIPMENT SECTION, ...

FACTORY ORDER No. II

LY

... 29.1.85.

No. 210

Sub: Re-instatement in Service since Junior Medical Officer.

Ref: F.C.Pt. II No. 1447 dt. 4.7.80.

.....

In compliance with the Order dated 30.5.81 of the IInd Addl. Munsif, Kanpur in Suit No. 772 of 1980 and the Order dated 16.4.83 of the first Addl. Distt. Judge, Kanpur in S.A. No. 537 of 1981 and the Order of the Hon'ble High Court in S.A. No. 1628 of 1983 Dr. H.N. Misra Junior Medical Officer, C.S. & D.Pys. Hospital is hereby re-instated in service. Accordingly the termination Order bearing No. 204/H.N./A/M dt. 26.6.80 and F.C. under reference are hereby cancelled.

(Authority :- Of Board Telex No. 20/A/M/CEP,
dated. 1.1.85.

(A.C. Bhatnagar)

GENERAL MANAGER

Copy to:-

1. All concerned

2. vig. Section (ten copies)

Handwritten signature: Hari Narayan

Handwritten signature: H.N. Misra

Handwritten notes:
Time copy
Bhatnagar
20/2

(36)

ANNEXURE NO. '11'

RESTRICTED

ORDNANCE EQUIPMENT FACTORY, KANPUR
FACTORY ORDER PART II
BY

SHRI MUNNOO LAL, IOFS, OFFICER-IN-TEMP. CHARGE.

DATED 22nd APRIL 85.

No. 806

SUB: REINSTATEMENT IN SERVICE ADHOC JUNIOR
MEDICAL OFFICER-AMENDMENT OF.

Ref: F.O. Part II Nos. 210 dated 29-1-85 and
345 dated 19-2-85.

The word "Adhoc" wherever it appears in the Factory
Order referred to above is hereby deleted and the word "Temporary"
may be inserted in place of the word "Adhoc".

(Authority: CF Board letter No. 254/HML/A/L dt. 26-3-85)

Copy to:-

No VIG/C-34/HML.
Government of India,
Ministry of Defence,
ORDNANCE EQUIPMENT FACTORY,
KANPUR APRIL, 1985.

All concerned.

(MUNNOO LAL)

OFFICER-IN-TEMP. CHARGE.

Hari Nandan M.B.

Time Any
Vijai Padi
J.W.
2872

A-862

(37)

ANNEXURE NO. '12'

To,

The Secretary,
Department of Defence Production,
Ministry of Defence,
Government of India,
New Delhi-110011

The Director General Ordnance Factories,
Ordnance Factory Board,
10-A Auckland Road,
C A L C U T T A - I

The General Manager,
Ordnance Equipment Factory,
K A N P U R.

Through Proper Channel.

1. Ministry of Defence (Department of Defence Production)
Letter No. 074/C)/A/M/US-I/D(FY-II) dated 10.8.1975.
2. Ministry of Defence Corrigendum No. 074/CP/A/M/2158/US-I
D(FY-II) dated 18-10-1975.
3. D.G.O.F. letter No. 074/CP/A/M dated 30.4.1977.
4. D.G.O.F. letter No. 074/CP/A/M dated 26-5-1977.
5. Factory Order No. 806 part II CEF Kanpur dated 22-4-1985.

Revered Sir,

Most respectfully I bring to your kind notice that I was appointed initially as a Asstt. Surgeon Grade I (Male) in Ord Equipment Factory, Kanpur in pay scale of Rs. 350-25-500-590-15-30-800-30-830-35-900/- subsequently under the reorganization of Medical set up in the Ordnance Factories organization vide M of D letter No. 074/CP/A/M/US. I/D (FY.-II) Deptt of Defence production dated 18.8.1975 it was directed that existing Asstt. Surgeons Gr. I(Class II) will be screened by a Departmental promotion Committed and Class I Scale of Rs. 700-1300 will be given to those Doctors only who are in possession of MBBS Degree. This scheme of reorganization was further modified by M of D Corrigendum letter No. 074/CP/A/M-2158/US-1/D (FY-II) dated 10 Oct 1975.

Subsequent there too, and letter was received by me emanating from G.M.O.F.C. that steps were being taken for entitlement to the revised pay scale of Rs. 700-1300. This letter was immediately succeeded by D.G.O.F. letter No. 074/CP/A/M dated 30.4.1977 where in, a scale was fixed 700-40-900 15-20-1100-30-1300.

(38)

That reference is further craved to the D.O. letter dated 30.4.1977 where in the relevant date for fixation of pay was made out;

As per these directions, I am entitled to fixation of pay as per scales from 1.1.74 in the revised pay scale of P.M.C. Rs. 700-1300.

My service was wrongfully terminated under sub-rule (i) of Rule 5 of the Central Civil Service (Temporary Service) Rules. The Union of India filed an appeal and the appeal was dismissed. Now I am re-instated and status of being "Adhoc" Doctor has also been removed with effect from 22.4.1965. The arrears of salary and allowances has not yet been paid.

I am entitled to the arrears of salary as per D.O. letters under reference after fixing my pay in the revised pay scale of Rs. 700-1300 as from 1.1.1974. The orders are solicited to be issued in un-equivocal term in that regard.

My name does not find place in the seniority list. It is most humbly requested that necessary directions may kindly be issued for proper inclusion of my name in the seniority list.

I am in continuous service with unblemished record since 10.1.1975. It is requested that I may kindly be declared quasi permanent / permanent. The person who joined the assignment much after my appointment may be declared to be quasi permanent/permanent.

It is prayed that under the above circumstances the aforesaid request may be considered favorably.

Dated: 17.6.05

Encl : (1)

(Sd/-) Dr. H. Narain,
Joint C.M.O. & Dy. C.M.O., Hospital, ...

True copy
Vijai Prakash
25/2

Hari Narain 4/8/05

(39)

ANNEXURE '13'

no. 254/H.A./A
Government of India,
Ministry of Defence,
Ordnance Factory Board,
10-A, Lucknow Road,
Calcutta-1, the 6th Sept. 64.

In pursuance of the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Rules), Rule 1965, the President hereby terminates for him the services of Dr. H.N. Misra, Dy. J.M.O. and directs that he shall be entitled to a claim a sum equivalent to the amount of his pay and allowances for the period of one month notice at the same rates at which he was working immediately before the termination of his services.

by order and in the name
of President.

Station :- Calcutta-1

Dated : 6th Sept. 1964.

(Sd/-) H.N. Misra,
Secretary/Per.

to,

Dr. H.N. Misra,
J.M.O.
Ordnance Equipment Factory,
Amrapur.

Hari Narain HBS

For copy
Vijai Das
28/2

(40)

ANNEXURE - C. '14'

APPOINTMENT	मेतायोजन	APPOINT
<p>आईनेन्स फैक्ट्री कानपुर- २०८००९-</p> <p>निम्नलिखित पदों हेतु भारतीय नागरिकों से आवेदन-पत्र आमंत्रित किये जाते हैं। पदों के लिए विशिष्टीकरण निम्नवत है:- (१) अल्पकालिक मेसिकल ऑफीसर: ०३ पद (२ अनारक्षित एवं अ. पा. हतु १- आरक्षित) (अर्थात् जोकि ६ माह से अधिक नहीं है, के लिए) वेतनमान: रु. ७००- १३००+ अन्य भत्ता। (कुल परिलब्धियाँ = २५३१.५० लगभग) योग्यता: एम बी बी एस अथवा समकक्ष कम्पलसरी इनटर्मीशप सहित। वे जिनके पास निम्न डिप्लोमा में पोस्ट ग्रेजुएट डिग्री अथवा डिप्लोमा है, को वरीयता दी जायेगी। डिप्लोमा: एनेस्थेसिया (Anaesthesia) गाइनेकोलॉजी एवं आब्स्टेट्रिक्स रेडियोलॉजी आयुसीमा: किसी भी दशा में ४५ वर्ष से अधिक न हो। (२) अंशकालिक डेन्टल सर्जन: ०१ पद (पूर्णतया) अस्थाई आधार पर) वेतन: रु. ३००/- (रु. तीन सौ मात्र) चिकित्सा शुल्क के रूप में। योग्यता: बी. डी. एस. अथवा समकक्ष। अन्य नियम एवं शर्तें:- डेन्टल सर्जन को एक सप्ताह में दो बार फैक्ट्री में उपस्थित होना होगा और प्रत्येक उपस्थित की अवधि ०४ घंटे होगी। २- पूर्ण बायो-डाटा देते हुए आवेदन-पत्र महाप्रबन्धक आईनेन्स फैक्ट्री, कालपी रोड, कानपुर- २०८००९ (यू. पी.) के पास विज्ञापन के प्रकाशन की तिथि से १५ दिन के अन्दर भेजे। अभ्यर्थी द्वारा पूर्णतया हस्ताक्षरित एक नवीनतम पासपोर्ट साइज फोटोग्राफ, आवेदन पत्र के दायाँ ओर शीर्ष पर पेस्ट होना चाहिए। ३- निर्धारित योग्यता न्यूनतम है और समान अर्हता रखने से ही अभ्यर्थी साक्षात्कार हेतु बुलाये जाने के लिए अधिकृत नहीं हैं। यदि विज्ञापन के संदर्भ में प्राप्त आवेदन पत्रों की सं. बहुत अधिक हो जाती है और तब इस फैक्ट्री के लिए यह सुविधायुक्त अथवा संभव नहीं होगा कि वह साक्षात्कार हेतु सभी योग्य अभ्यर्थियों को बुलाये, यह फैक्ट्री विज्ञापन में निर्धारित योग्यता के स्थान पर उच्च योग्यता एवं अनुभव के आधार पर एक उपयुक्त सीमा तक साक्षात्कार हेतु अभ्यर्थियों की संख्या प्रतिबंधित कर सकती है। ४- बाहरी केवल अनुसूचित जाति के अभ्यर्थी, यदि साक्षात्कार हेतु बुलाये गये तो उन्हें द्वितीय श्रेणी (आईनरी) रेलवे किराया का रेलवे टिकट/एम. आर. प्रस्तुत करने पर सामान्य नियमानुसार भुगतान किया जायेगा। ५- महाप्रबन्धक के पास बिना कोई कारण बताये किसी अथवा सभी आवेदन प्रपत्रों को निरस्त करने का पूर्ण अधिकार सुरक्षित है। डी ए बी पी ६८५ (४४५) ८६</p>		
<p>आवश्यकता है</p> <p>एक महीने की जिसको दिन्ती में लकी मारना</p>		
<p>राजकीय</p> <p>राजकीय बालिका इंटर व</p>		

Hari Narain NIS

(4)

MEMORANDUM '15'

Joint Memorandum

No. 93/na-noc/70/1/1,
Government of India,
Ministry of Defence,

Air to the General Manager, Ordnance Factories,
Calcutta, 700009, the 20th May 1979.

To, The General Manager,
Ordnance Factories,

Subj:- Ad-hoc JMO-Continuation of Service of

Function of the JMO for continued ad-hoc appointment of 32 ad-hoc doctors in service in our Ordnance Factories for a further period of 6 months upto 30-6-79 or till the expiry of the last nominees whichever is earlier has since been conveyed by Ministry of Defence to this Hq. and G.O./No., Calcutta.

2. U.P.C. select list of candidates for appointment to the post of JMO has just been received. Out of our ad-hoc JMOs only two i.e., Dr. (Mrs.) Jagdish and Dr. (Mrs.) Jagdish Kumar Dey, have found a place in the select list. In pursuance of the appointment and continuance of service of ad-hoc appointment, they will have to vacate the position as soon as one selected candidate's report is out. The services of short-term appointees are also to be terminated.

3. Pre-requisite formalities are being done before issue of appointment letters to the U.P.C. nominees and it is expected that by end of February the 32 selected candidates will start reporting to factories. The General Manager will ensure that on their joining, the total authorized strength of JMO should not exceed by physical strength of JMO, JMO and short-term medical officers counting together. The order of retrenchment will be as follows:-

- i) The services of short-term appointees will be terminated first.
- ii) Next the services of ad-hoc appointment in order of Juniority will be terminated first with on joining by an U.P.C. nominee. They will be given one month's pay in lieu of notice.

Copy to:-

(1) The Addl. Dir./Genl, Kanpur.

(2) Regional Directors,

all Regions,

(3) The P.O./G.O/
JMO/C, All Factories.

Lt. Col.

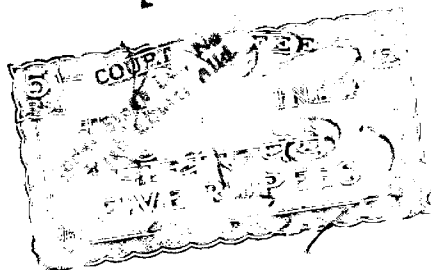
(4) 9/93/na-noc/70/1/1.

(Sd/-)

For Director General: Ordnance Factories.

Hari Narain Mishra

For Director General: Ordnance Factories.
Vijay Kumar Mishra
27/5



वकालतनामा

In the Central Administration Tribunal Held at
 न्यायालय का नाम Allahabad
 नं० मु० सन् 1958
 नाम फरीकेंत Dr HN Mehta Vs Union of India & others

किसम दावा
 Dr HN Harn
 उक्त मुकद्दमे में पंरवी करने के लिए मैं / हम
 7/35 Girls Bazar kesh
 आतमज जाति निवासी
 विद्युत Adv. H. K.

को अपना वकील नियुक्त करता हूँ/करते हैं। आपको अधिकार है कि आप इस मुकद्दमे में हमारी ओर से पैरवी व सवाल जबाब बहस करें व दस्तावेज व अन्य कागज उपस्थित करें व वापस लें। पंच नियुक्त करें व पंचनामा व पंच निर्णय के विरोध में कारण उपस्थित करें मुलहनामा व स्वीकृत पत्र उपस्थित कर दावा स्वीकार करें या उठा लें। डिग्री हो जाने पर उसे कार्य रूप में परिणित करावें, डिग्री का रुपया तत्सम्बन्धी व्यय या अन्य कोई धन जो हमें प्राप्त होना को हो प्राप्त करें, कोर्ट फीस स्टाम्प व अन्य खर्चें दाखिल करें व वापसी लें व नकल लें। मिसिल निरीक्षण करें व मुकद्दमा स्थगित करावें व अर्जी दावा व लिखित बयान उपस्थित करें व अपील या अन्य कोई प्रार्थना पत्र उपस्थित करें या गपथ पत्र उपस्थित करें या हमारी ओर से मौखिक बयान दें। मुकद्दमे में गवाह तलब करावें या अपनी ओर से अन्य वकील नियुक्त करके मुकद्दमे का सब कार्यवाही करावें या अन्य उक्त मुकद्दमा सम्बन्धी जो आवश्यक कार्य हो करें।

मैं/हम उक्त वकील साहब को उनकी फीस निश्चित करने के बाद उपरोक्त अधिकार देते हुए अपना वकील नियुक्त करता हूँ/करते हैं, और इकरार करता हूँ कि जो कुछ कार्य वकील साहब इस मुकदमे के सम्बन्ध में करेंगे वह हमारा किया हुआ समझा जायगा, और हमें स्वीकार होगा।

हस्ताक्षर प्रार्थी ... Harsh Nigam ...

साक्षी साक्षी

स्वीकृत वकील

तारीख

A 6-2

Constitution of

by

Registration No. 186

Dr. Hare Narayan

is

Union of ...

A-68

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH: ALLAHABAD.

CIVIL MISC. APPLICATION NO. _____ OF 1987

ON BEHALF OF

The Union of India, Department of
Defence, New Delhi & others.

.Applicant/
Respondents.

in

REGISTRATION NO. 126 of 1987

Dr. Hari Narain Misra,
37/35, Gilis Bazar, Kanpur.

.Applicant

Versus

1. Union of India through Secretary,
Department of Defence (Production)
Ministry of Defence, Government of India,
New Delhi.

2. Director General (Member Personnel)
Ordnance Factory Board, Government
of India, Ministry of Defence,
Ordnance Factory, 10-A Auckland Road,
Calcutta.

3. General Manager,
Ordnance Equipment Factory,
Kanpur.

.Respondents.

To

The Hon'ble the Vice Chairman and His Companions
Members of the aforesaid Tribunal.

The humble application of the abovesaid
Most Respectfully States as Under :-

1- That full facts have been narrated in the accompanying counter affidavit.

2- That it is therefore, in the interest of justice that this Hon'ble Tribunal may kindly be pleased to reject the stay application and no relief is/ishle to be granted in favour of the applicant.

P _ _ R _ _ A _ _ Y _ _ E _ _ R

It is, therefore, Most Respectfully prayed that this Hon'ble Tribunal may kindly be pleased to reject the stay application, as no interim relief can be granted in favour of the applicant, otherwise the respondents shall suffer irreparable loss.

DT::APRIL 28, 1987.

(K.C. SINHA)
ADDL. STANDING COUNSEL
CENTRAL GOVT.
COUNSEL FOR THE RESPONDENTS.

1987
AFFIDAVIT
74
H.O.H COURT
ALLAHABAD

A-685-10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH : ALLAHABAD.

COUNTER AFFIDAVIT

ON BEHALF OF
THE UNION OF INDIA, DEPARTMENT OF
DEFENCE, NEW DELHI & OTHERS. .RESPONDENTS.

IN

REGISTRATION NO. 186 of 1987

(District - Kanpur)

Dr. Hari Narain Misra,
37/35, Gills Bazar, Kanpur. .Applicant

Versus

Union of India & others. .Respondents.

Affidavit of Munnoo Lal aged about 49
years, s/o Shri Babu Lal, posted as
Joint General Manager, Ordnance
Equipment Factory, Kanpur.

(Deponent).

I, the deponent abovenamed do hereby
solemnly affirm and state on oath as under :-

1- That the deponent is posted as Joint General
Manager, Ordnance Equipment Factory, Kanpur and has
been deputed to file this counter affidavit on behalf
of the respondents and as such is well acquainted with

A.C.B.

2.

the facts deposed to below.

2- That the deponent has read the ~~written statement~~^{application} application filed by the applicant and has understood the contents therein and is in a position to reply the same.

3- That the contents of paragraphs 1, 2, 3, 4 and 5 of the application need no comments being matters of records.

4- That the contents of paragraphs 6(i), 6(ii), 6(iii), 6(iv), 6(v), 6(vi), 6(vii) and 6(viii) of the application are substantially correct. It is however, submitted that the applicant was offered an appointment incorporating the terms and conditions of employment vide letter No. 099/A/M/VCL/I/73, dated 31st December, 1972. The post was temporary and the appointment was made for one year or till the Union Public Service Commission nominates a suitable candidate, whichever is earlier. It was also stipulated that the applicant's service will be terminable on one month's notice given in writing by either side without assigning any reason. It was further stipulated that the President reserves the right of terminating the applicant's services forthwith on or before expiry of the stipulated period of notice by making payment to him of a sum equivalent to the pay and allowances

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for the period of notice or the expired portion thereof. The applicant has deliberately omitted to mention the provision of clause (xii) of the appointment letter wherein the applicant was advised to respond to Union Public Service Commission advertisement for the post of Assistant Surgeon Gr.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. A true copy of the appointment letter dated 31st December, 1972/1st January 1973 is being filed herewith and marked as Annexure-I to this counter affidavit.

Ann-I.

5. That the contents of paragraphs 6(ix), 6(x), 6(xi) and 6(xii) of the application are not correct and as such are denied. In this connection, it is submitted that the applicant was informed vide letter dated 12th January 1977 that screening of the existing Assistant Surgeon Gr.I to determine their suitability for entitlement to the revised scale of Rs. 700-1300 and also for declaration of permanency is in active progress. It was also informed that as

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soon as a decision of the competent authority is received, all concerned will be suitably informed. The fact of the matter is that in accordance with the instruction contained in para 3 of Ministry of Defence letter No. 074/CP/A/M/USI/D(FY-II), dated 18th August 1975, the cases of regular Assistant Surgeon Gr.I who have/had been on the strength of Director General of Ordnance Factories' Organisation, as on 1st January 1973, 1st January 1974, 1st January 1975 and 1st January 1976, were screened by the relevant Departmental Promotion Committee. The officers 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. Those officers who were not found fit by the Departmental Promotion Committee were re-designated as Junior Medical Officer. All other ad-hoc Assistant Surgeon Gr.I like the applicant, were also placed in Class II revised scale of Rs. 650-1200/-.

6-- That in reply to the contents of paragraph 6(xiii) of the application, it is submitted that the applicant belongs to the group of ad-hoc appointees employed solely on temporary basis and his services were extended on six monthly basis. In terms of his appointment letter, the applicant was advised from

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time to time to respond to Union Public Service Commission's advertisement for the post of Assistant Surgeon Gr.I which was the regular mode of filling up of vacancies in Director General of Ordnance Factories Organisation, but the applicant could not qualify himself to get his service regularised through Union Public Service Commission. He was also informed from time to time that his services would be terminated either on one months notice or pay in lieu thereof as soon as Union Public Service Commission selected candidates were in actual position. One such notice No. GM/60, dated 26th July 1979 is enclosed herewith

Ann-II.

~~annexed~~ and marked as Annexure II to this counter affidavit. It is further submitted that since the applicant could not qualify himself to get his services regularised through Union Public Service Commission as per terms and condition of his appointment, his services were terminated w.e.f. 2nd August 1980 under sub-Rule (i) of Rule 5 of the Central Civil Services(TS) Rules, 1965.

7- That in reply to the contents of paragraphs 6(xiv), 6(xv), 6(xvi), 6(xvii) and 6(xviii) of the application, it is submitted that the order of termination was not illegal and the same was not passed without jurisdiction. The impugned order was passed with due authority and jurisdiction and

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statutory period of one month's notice was also given. It is however, not disputed that the Suit No. 772 of 1980 - Dr. H.N. Mishra vs. Union of India was decreed on the ground that the plaintiff's appointing authority was the President of India and not the Director General of Ordnance Factories. The first appellate Court has upheld the judgment and decree of the Trial Court on another ground which rejecting the grounds given by the Lower Court for decreeing the suit. The ~~appellate~~ ^{appellate} count has held that the appointment of the applicant was by the President and therefore, he alone was competent to terminate the services of the applicant. ~~Respondent~~ The second appeal was dismissed by the Hon'ble High Court on the ground that the initial ~~appointment of the applicant having been made by the~~ appointment of the applicant having been made by the President, the respondent no. 2 can not be said to have been the appointing authority despite the fact that the term initially laid in the order of appointment was extended by him.

8- That the contents of paragraph 6(xix) of the application need no comments. It is further submitted that the Execution Case is still progressing in the Trial Court.

9..

That in reply to the contents of paragraphs

A-26

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6(xx), 6(xxi), 6(xxii), 6(xxiii) and 6(xxiv) of the application, it is submitted that in the re-instatement order, the word "AD HOC" was incorporated. However, it was amended to read as "TEMPORARY" by a subsequent order dated 22nd April 1985.

10- That ~~in paragraph~~ the contents of paragraph 6(xxv) of the application need no reply.

11- That in reply to the contents of paragraph 6(xxvi) of the application, it is not disputed that the Execution Case No. 262/82 is still pending/progressing in the Trial Court. It is further submitted that the decree holder had been re-instated in service in compliance of the judgment and order passed by the Trial Court. Since the decree holder has failed to comply with the requisites of Article 193 of the Central Service Rules, payment of arrears of pay for the intervening period has been held up.

12- That the contents of paragraph 6 (xxvii) of the application need no comments. Since the appointing authority of the applicant was the President of India, hence the termination order ^{was} also issued by him.

13- That the contents of paragraph 6(xxviii) of the application need no comments. However, it is submitted that to tide over immediate service

requirement in absence of Union Public Service Commission's sponsored Medical Officers, the Ordnance Factory, Kanpur with the approval of higher authorities, advertised for recruitment of four short term Medical Officer in specific discipline for a period of six months only. The terms and conditions in respect of the short term Medical Officer are entirely different than Assistant Medical Officers. The applicant was appointed for a period of one year or till the Union Public Service Commission nominated suitable candidates. The services of the applicant was extended every six months with the approval of Union Public Service Commission. The applicant's service was ~~with~~ terminated due to the fact that the Union Public Service Commission had not agreed for further continuance of the services of Ad-hoc appointee beyond one year. A copy of the letter dated 21st May 1986 sent by the Union Public Service Commission is enclosed herewith and marked as

Ann-III. Annexure-III to this counter affidavit. The terms and condition of services of Doctors, who were appointed as STMO as referred to by the petitioner are quite different. Their services get automatically terminated after six months. Therefore, the averments made by the applicant in paragraph under reply is wrong and denied.

14- That the contents of paragraphs 6(xxix), 6(xxx) and 6(xxxi) of the application are not correct and as such are denied. It is further submitted that the applicant was appointed for a period of one year or till the Union Public Service Commission nominates suitable candidates. The services of the applicant was extended every six months with the approval of the Union Public Service Commission. The applicant's services were terminated due to the fact that the UPSC had dis-approved further continuance of the services of adhoc appointee beyond one year. Moreover, the applicant could not qualify himself to get his services regularised through UPSC. The services of Doctors who were appointed as short-term Medical Officers (STMO) are quite different and do not attract the terms and conditions as laid down in the case of the applicant. Their services get automatically terminated after six months.

15- That the contents of paragraph 6(xxxii) of the application are not correct and as such are denied. The applicant has deliberately mis-interpreted the contents of the letter in this paragraph. This letter was issued to all the General Managers of the Factories for guidance in connection with absorption of UPSC selected candidates and retrenchment of Adhoc Junior Medical Officers and Short Term Medical Officers

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on joining UPSC selected candidates.

16- That in reply to the contents of paragraph 6(xxxiii) of the application, it is submitted that the applicant was recruited on adhoc basis for a terms of oneyear. His tenure was extended six monthhly to give him chance to qualify through UPSC for regular appointment which the applicant failed. This clearly indicates ad-hoc nature of his appointment. The question of declaring an employee quasi-permanent or permanent arose only when the said employee is employed on regular basis for more than 3 years, and approval by the competent authority is made declaring the employ- ce quasi-permanent/permanent. In the instant case, the applicant was employed ohly for a period of one year or till replaced by an candidate selected by UPSC. After the end of the one year period, the applicant 's services stood terminated unless extended by the compctent authority for a further period. No order declaring the applicant quasi-permanent in the grade was made. Hence the contention of the applicant that he was illegally not granted the certificate of declaration of quasi-permanency is baseless.

17- That the contents of paragraph 6(xxxiv) of the application are not correct and as such are denied.

The applicant was re-instated in service on the


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verdict of judgment of the Court due to the fact that the Department lost the case on technical ground that the applicant's appointing authority was President of India but his services were terminated under the order of Director General of Ordnance Factories. The termination order had to be given as UPSC have decided not to give any further extension to ad-hoc Medical Officers vide the letter dated 21.5.1986 (Annexure-III to this ~~petition~~ counter affidavit). Therefore, there was no other alternative, but to terminate the services of the applicant by the order issued by the President of India, who is the competent authority to do so.

18- That the contents of paragraph 6(xxxv) of the application are not correct and as such are denied. It is further submitted that the impugned order is legally valid and the same is not arbitrary. The applicant was advised from time to time to qualify himself from UPSC to regularise his appointment in his own interest, but he could not qualify himself. Hence the applicant is not a suitable person to be retained in service and his services were rightly terminated, as per the terms of appointment.

19- That the contents of paragraph 6(xxxvi) of the application are not correct and as such are denied.

 It is submitted that the applicant cannot claim any right whatsoever for declaration of quasi - permanent

status on the ground that he was allowed to continue in service beyond one year and was given regular increments. Since the UPSC couldnot sponsore suitable Doctors to this Organisation, the services of the applicant was extended every six months with the prior approval of UPSC. As the applicant could not qualffy himself from UPSC, there was no alternative but to terminate his services in terms of his appointment letter. Declaration of quasi-permanency which is governed by statutory rules, can not be claimed, as a matter of right only on the ground of continuance in service and getting increments. Moreover, the fact that the applicant wasnot found fit by theUPSC, bolies the contentions of this paragraph under reply.

20- That the contents of paragraph 6(xxxvii) of the application are not correct and as such are denied. It is further submitted that due to shortage of the Medical Officer in the Director General of Ordnance Factory Organisation, and due to non-availability of sufficient number of UPSC sponsored doctors, Ministry of Defence started employment of Short Term Medical Officer. They are appointed for a period of six months only and thereafter their services are terminated. Thus Short Term Medical Officers are being

appointed to tide over immediate service requirement in absence of UPSC sponsored medical officer and that


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13.

does not given any claim to the applicant, who was not found fit by the UPSC.

21- That the contents of paragraph 5(xxxviii) of the application are not correct and as such are denied. It is submitted that in compliance with the order of the IInd Addl. Munsif, Kanpur, the applicant was re-instated in service w.e.f. 18th January 1985. The case was decreed on technical ground that the applicant's appointing authority was the President of India but he was terminated under order of Director General of Ordnance Factories. The termination order had to be given as UPSC have declined to give any further extension to adhoc medical officer. But now the termination order was issued by the President of India, . Hence the impugned order is legally valid and there is no malafide intention behind it. Moreover, the applicant has not been discriminated against and singled out for such treatment as the services of all similarly placed doctors have been terminated.

22- That the contents of paragraph 6(xxxix) of the application are not correct and as such are denied. The services of the applicant have already been terminated w.e.f. 18th September, 1986 and he is no more in the strength of this Organisation.



23- That the contents of paragraph 6(xxxx) of the application are matter of record. However, it is submitted that the feeder grade for promotion to the post of S.M.O.'s is form A.M.O.s . Since the applicant was not even an AMO, but only a temporary Junior Medical Officer, ~~therefore~~. He couldnot have been considered in the post of SMO, even if he would have been in service. Therefore, the averments made in para under reply are immaterial to the point of dispute.

24- That in reply to the contents of paragraph 6(xxxxi) of the application, it is submitted that in compliance of Court's order, the applicant had been re-instated in service with full benefits. As regards payment of arrears of pay and other allowances for the intervening period, it is submitted that the decree holder has failed to comply with the requisites of Article 193 of the Central Service Rules. Hence the decree holder is not entitled to any payment under the decree until or unless he strictly complies with the Article 193 of the Central Service Rules. However, the decree holder has filed an Execution Case, which is progressing in the ~~the~~ Trial Court. However, it is admitted by the applicant in paragraph 6(xxvi) of the application that a suit regarding his claim for arrears is still pending in a different court. The applicant can not be allowed to raise the disputed matter

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before another Court of Law before the Hon'ble Tribunal. On this ground alone the application is liable to be dismissed. It is reiterated that the termination of the applicant w.c.f. 18th September 1986 (Afternoon) under Sub-rule (i) of Rule 5 of the CCS(TS) Rules, 1965 is legally valid.

25- That the contents of paragraph 6(xxxxii) of the application are not correct and as such are denied. The impugned order is not hit by Article 14 and 16 of the Constitution of India.

26- That the contents of paragraph 6(xxxxiii) of the application are not correct and as such are denied. The applicant has been paid a sum equivalent to the amount of his pay plus allowances for the period of one month notice at the same rate at which he was drawing them immediately before the termination of his service. The termination order is not in contravention of the provision of any Rules.

27- That the contents of paragraph 6(xxxxiv) of the application are not correct and as such are denied. The services of the applicant was rightly and legally terminated under the terms and condition as laid down in his appointment and in accordance with Central Civil Service(Temporary Service)Rules, 1965, which regulated his appointment.

28- That in reply to the contents of paragraphs 6(xxxxv), 6(xxxxvi), 6(xxxxvii), 6(xxxxviii), 6(xxxxix) and 6(xxxxx) of the application, it is submitted that the applicant was recruited on adhoc basis for a term of one year. His tenure was extended six monthly to give him chance to qualify through UPSC for regular appointment. The post of Assistant Surgeon Gr.I now re-designated as Junior Medical Officer are gazetted posts and it is obligatory under Article 320 of the Constitution of India that all gazetted appointment under Government of India be filled through UPSC, and the applicant failed to qualify for selection in the said manner and he thus remained temporary and the question of declaring him quasi permanent did not and could not arise. The applicant was an adhoc temporary appointee and as such he could not be declared quasi permanent or permanent. An extract from Rule 3 of the Temporary Service

Ann-IV. Rules is being filed and marked as Annexure-IV to this counter affidavit. The permission to the applicant to cross the efficiency bar or to allow him increments did not amount to considering the applicant as a regular employee. Continuance in service for 3 years continuously is not the sole criteria for declaration of quasi permanent. The other criteria is that the competent authority, after considering all relevant factors must make a declaration to that effect. The applicant was not in continuous regular employment as his services were being extended

every six months. He was not found suitable by the UPSC. Mere fact that the administrative authorities did not give any adverse entries in his Annual Character Roll does not prove his professional competence.. The fact that he failed to qualify through UPSC, in spite of repeated instruction from the Department, shows that professionally his claim is not tenable.

29- That the contents of paragraph 6 (xxxxxx) of the application are not correct and as such are denied. It is further submitted that the applicant was appointed on ad hoc basis purely in a temporary capacity and the services of the applicant have been terminated under sub-rule (i) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, as per terms and conditions of his appointment letter. The applicant is not entitled to continue on the post from which he has already been terminated w.e.f. 18th September, 1986 (A/N) by the President of India. The fact that he was not found suitable by the UPSC for regular appointments belies all the claims of the applicant.

30- That in reply to the contents of paragraph 7 of the application, it is submitted that as the applicant has failed to make out any prima facie case for interference by this Hon'ble Tribunal, no relief is liable to be granted in the applicant's

18.

favour.

31- That in reply to the contents of paragraph 8 of the application, it is submitted that the applicant has failed to make out a prima facie case for interference by this Hon'ble Tribunal, as such no interim relief can be granted in his favour.

32- That the contents of paragraphs 9, 10, 11, 12 and 13 of the application need no comments.

That the contents of paras 1 and 2

32 of this affidavit are true to my personal knowledge; those of paras 3, 4, 5, 7 partly, 8, 17, 19 & 23, 24 partly, 26, 28, 29 are based on records and those of paras are based on informations and those of paras 6, 7 partly, 18, 24 partly, 25, 27, 30, and 31 are based on legal advice, which all I believe to be true. No part of it is false and nothing material has been concealed in it.

SO HELP ME GOD.

DEPONENT.

I, D.S. Chaubey, clerk to Shri K.C. Sinha, Advocate, High Court, Allahabad declare that the person making this affidavit and alleging himself to be the deponent is known to me personally and I identify him

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19.

to be the same person.

By

Shawley
Identifier.

Solemnly affirmed before me on this 24th day
of April 1987 at 9:00 am/pm by the deponent, who is
identified as aforesaid.

I have satisfied myself by examining the
deponent that he understands the contents of this
affidavit, which has been read over and explained to
him.

By

Shawley
24/4/87
24/4/87

OATH COMMISSIONER.

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ANNEXURE I

REGISTERED WITH A/D

MOST IMMEDIATE

NO.093/A/M/Vol.5/72
Government of India,
Ministry of Defence,
Directorate General, Ordnance Factories,
6, Esplanade East,
Calcutta-1, the 31st Dec.1972/1st Jan.
1973

To

Dr. H.N. Misra,
37/35, Gitis Bazar,
Kanpur (U.P.)

Sub:- Appointment as an Assistant Surgeon Gr.I (Male)
in Ordnance & Equipment Factories.

Sir,

I am directed to state that on the recommendation
of the Selection Board convened by the DGOE the President
is pleased to offer you a temporary post of Asstt. Surgeon
Gr.I (Male) in the Ordnance Factories Organisation.

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

- (i) You will be required to undergo a medical
examination by a Medical Board at a place to be
determined by the Director of Medical Services,
Govt. of Uttar Pradesh, Lucknow. The standard of
physical fitness shall be as prescribed in the
attached copy of the medical regulations. The
prescribed fees for the Medical Examination
shall be paid by you to the Medical Board at the
time of medical examination. No travelling
allowance will be allowed in respect of
journeys performed by you in connection with the
medical examination. Date and time of medical
examination will be communicated to you direct
by the Director of Medical Services, Govt. of
Uttar Pradesh, Lucknow. Your appointment is
subject to your being declared medically fit
as above.

(ii) Your initial pay will be fixed at Rs.350/-p.m.

in sale of pay of 350-25-500-30-590-EB-30-800-30-830-35-900/-according to rules in addition to dearness and other usual allowances admissible under the rules and orders governing the grant of such allowances in force from time to time. Non-practising allowance at the rate of 33 1/3% of pay subject to a minimum of Rs.150/- per mensem is also admissible. Private practice will not be allowed at all.

(iii)The post is temporary. Your appointment will be for one year or till the U.P.S.C. nominates a suitable candidate whichever is earlier.

iv) You will be on probation for a period of 3 months and this period is extendable at the discretion of the Government.

v) Your service will be terminable on one month's notice given in writing by either side without assigning any reasons. The President, however, reserves the right of terminating your service forthwith on or before the ~~the~~ expiry of the stipulated period of notice by making payment to you of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.

vi) You will be subject to conditions of service as applicable to temporary Civilian Government Servants paid from Defence Services Estimates in accordance with the orders issued by the Government of India from time to time.

vii) You are liable to serve anywhere in India.

viii) You will not be eligible for the grant of Travelling Allowance for the journey undertaken the joining ~~the~~ time pay and the joining time for the purpose of joining duty.

ix) You will be required to take oath/affirm in the following form :-

"I do swear/solemnly affirm that I will be faithful and bear true allegiance to India and to the Constitution of India as by Law established and that I will uphold the Sovereignty and integrity of India and that I will carry out the duties of my office loyally, honestly and

with impartiality (so help me GOD!).

x) In accordance with Central Civil Services (Conduct) Rules, 1960, you are not eligible for appointment under the Govt. of India, if you have more than one wife/husband living. You are, therefore, required to complete the declaration in attached form and forward it to this HQ, along with your acceptance of appointment.

xi) If any declaration given or information furnished by you proves to be false or if you are found to have wilfully suppressed any material information, you will be liable to removal from service and/or with such other action as Govt. may deem necessary.

xii) In your own interest, you should respond to the U.P.S.C. advertisements for the posts of Asstt. Surgeons Gr. I in the Ordnance and Equipment Factories.

3. If you accept the offer on the terms and conditions detailed above, you may intimate your acceptance to this Hqrs. by 31-1-73 at the latest and report for duty directly to the General Manager, Ordnance Equipment Factory, Kanpur immediately. Your appointment is subject to your being declared medically fit by the Board as at para 2(i) above within 2 months from the date of joining.

Encls:-11 sheets

Yours faithfully,
Sd/ R.M. Hazumdar
D.G.O.F.

TRUE COPY.

24/74/408

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ANNEXURE II

NO. GM/80
ORDNANCE EQUIPMENT FACTORY
KANPUR: DATED 26th JULY '79.

1. Dr. AK Srivastava, JMO.
2. Dr. HN Mishra, JMO
3. Dr. (Mrs) M. Singh JMO.
4. Dr. (Miss) P. Verma, JMO.

Through: Principal Medical Officer.

SUB: CONTINUED ADHOC APPOINTMENT OF JMOs--
SANCTION OF U.P.S.C.

Intimation has been received from DGOF, Calcutta that sanction has been accorded by the UPSC to the continuance of adhoc Junior Medical Officers upto 31st December, 1978 or till they are replaced by UPSC candidates, whichever is earlier. The DGOF has further intimated that these Junior Medical Officers are, however, eligible to resign to leave earlier if they so desire.

Sd/-
(NK PADMANABHAN)
GENERAL MANAGER.

TRUE COPY.



24/74/468

24/74/468

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ANNEXURE III(A)

Confidential

Ministry of Defence
D(Fy-I)

Subject:-Termination of service of Dr.H.N.Mishra, JMO, OEFC
Reference OFBu.o.No.254/HNM/A/M dt.17-3-1986.

2. The continuance of ad-hoc appointment of Dr.Mishra beyond the period of one year was taken up with the UPSC. A copy of UPSC's letter No.F.2/1(15)/72-A.III/A.U.5, dated 21-5-1986 received in the regard, is forwarded herewith, OFB may please send the proposal for issue of termination order urgently.

(Rajinder Mohan)
Desk Officer

Dr.R.K. Shah,
DDHS
Ordnance Factory Board,
Calcutta.

MOD ID No.1(7)/84/D(Fy-I), dt.16-6-1986.

24/7/85
24/7/85

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ANNEXURE III(B)

(COPY)

Confidential

No.F.2/1(15)/72-A.III/A U.5
New Delhi, 21-5-1986

To

The Secretary to the Govt. of India,
Ministry of Defence,
Department of Defence Production,
Sena Bhavan, New Delhi


(By name to Shri Rajinder Mohan, Desk Officer)

Subject:-Ad-hoc appointment to the post of Asstt. Medical
Officer in the Ordnance and Ordnance Equipment
Factory Department of Defence Production, Ministry
of Defence-Continuation of Ad-hoc appointment of
Dr.H.N. Mishra regarding -

Sir,

I am directed to refer to your letter No.F1(7)/84
D(Fy-I), dated 5-5-1986 on the subject mentioned above and
to say as follows :-

2. The UPSC (Exemption from Consultation) Regulations,
1958, to not contemplate obtaining concurrence of the
Commission for continuance of ad-hoc arrangements beyond
one year and the Regulations only indicate that the cases of
ad-hoc appointments should be reported to the UPSC who,
in their turn, could include in their Annual Report to be
placed before the Parliament instances of such continued
ad-hoc appointments beyond one year limit prescribed in
the Regulations. The Commission have accordingly decided
that they will not entertain any such reference and
neither agree nor give any advice regarding the continuance
-e of any ad-hoc appointment beyond a period of one year.



3. In the circumstances it is regretted that the proposal of the Ministry for the continuation of the ad-hoc appointment under reference cannot be processed further. The Commission advise that necessary proposal for filling up the post on regular basis may be sent to the Commission as early as possible.

Yours faithfully,

Sd(Smt.P. Kautia)
Desk Officer

Union Public Service Commission

(AKG/10240)

TRUE COPY.

24/4/87
24/5/408

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ANNEXURE IV

(EXTRACT)

WHEN A GOVERNMENT SERVANT SHALL BE DEEMED TO BE
QUASI-PERMANENT

3. A Government servant shall be deemed to be in quasi-
permanent service -

(i) If he has been in continuous temporary service
for more than three years; and

(ii) if the appointing authority, being satisfied
having regard to the quality of his work,
conduct and character as to his suitability for
employment in a quasi-permanent capacity under
the Government of India, has made a declaration
to that effect.

TRUE COPY



23/11/11
24/11/11
24/11/11

B-92

**Before Central Administrative Tribunal
Additional Bench Allahabad**

Registration No. 186 of 1987

District. Kanpur

Dr. Mahe Narain Mishra Applicant

VERSUS

Union of India & others Respondents

I/We Munoo Lal & Shri Babu Lal

Joint General Manager, Ordnance Equipment
Factory, Kanpur in the above matter hereby appoint and retain

SHRI KRISHNA CHANDRA SINHA, Advocate High Court

to appear, act and plead for me/us in the above matter and to conduct/prosecute and defend the same in all interlocutory or miscellaneous proceedings connected with the same or with any decree or orders passed therein, appeals and or other proceedings therefrom and also in proceedings for review of judgment and for leave to appeal to Supreme Court and to obtain return of any documents filed therein, or receive any money which may be payable to me/us.


2. I/We further authorise him to appoint and instruct any other legal practitioner authorising him to exercise the powers and authorities hereby conferred upon the Advocate whenever he may think fit to do so.

3. I/We hereby authorise him/them on my/our behalf to enter into a compromise in the above matter, to execute any decree/order therein, to appeal from any decree/order therein and to appeal, to act, and to plead in such appeal or in any appeal preferred by any other party from any decree/order therein.

4. I/we agree that if/we fail to pay the fees agreed upon or to give due instruction at all stages he/they is/are at liberty to retire from the case and recover all amounts due to him/them and retain all my/our monies till such dues are paid.

5. And I/We, the undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my own acts, as if done by me/us to all intents and purposes.

Executed by me/us this 24 day of 4 1987 at


Signature/s

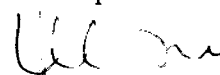
Executant/s are personally known to me he has/they have signed before me

Satisfied as to the identity of executant/s signature's.

(where the executant/s is/are illiterate blind or unacquainted with the language of vakalat)

Certified that the contents were explained to the executant/s in my presence in.....the language known to him/them who appear/s perfectly to understand the same and has/have signed in my presence.

Accepted



K.C. SINHA

Advocate

Additional Standing Counsel

Central Government

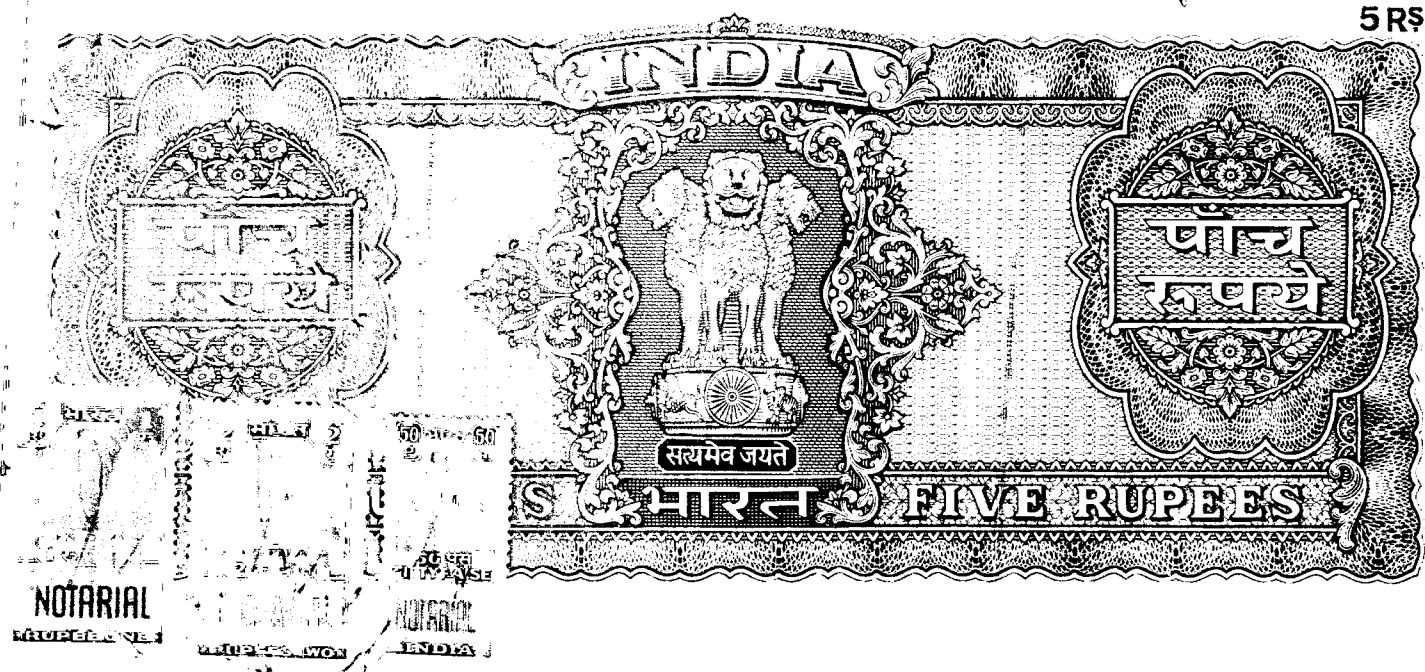
High Court-Allahabad

Counsel for Applicant/Respondents

No,.....

4-58

5RS



To the Central Administrative Tribunal at
Allahabad Bench

Registration no 186 of 1987

Dr. Hari Mazari Misra ——— Applicant
versus

Union of India & others ——— Respondents

Reprodes Affidavit of
the Applicant.

Hari Mazari M.R.

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Chd — IC-C-CH
for
24/11/88

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH.

Registration No. 186 of 1987.

Dr. Hari Narain Misra Applicant.

Versus

Union of India and Others Respondents.

I N D E X

Sl. No.	Description of the document relied upon	Date of Document	Annexure No.	Pages Nos.
1.	Rejoinder Affidavit of the Applicant.			1-26
2.	True copy of the advertise- ment at page 2, column 3 of the DAINIK JAGARAN dated 2.7.1972.	2.7.72	RA-1	27
3.	True Copy of the Factory Order No. 1013 (Pt. II)	19.7.73	RA-2	28

Hari Narain Misra

APPLICANT.

(N.K. NAIR)
Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH.

REJOINDER AFFIDAVIT
ON BEHALF OF DR. HARI NARAIN MISRA

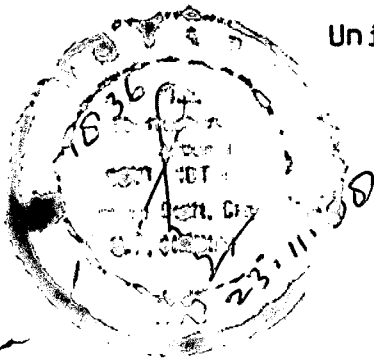
IN

Registration No. 186 of 1987.

Dr. Hari Narain Misra Applicant.

V E R S U S

Union of India & Others Respondents.



AFFIDAVIT OF DR. HARI NARAIN MISRA,
AGED ABOUT 41 YEARS, SON OF SHRI
V.N. MISRA, RESIDENT OF 37/35, GILIS BAZAR
KANPUR. (DEPONENT) ✓


I, the deponent abovenamed, do hereby
solemnly affirm and state on oath as under:


(1) That the deponent is the applicant in the
above case and as such is fully acquainted with
the facts of the case deposed to below. The deponent
has read and understood the contents of the Counter
Affidavit, filed on behalf of the respondents and
the deponent is in a position to reply the same. ✓

(2) That the contents of paragraphs 1, 2 & 3
need no comments. ✓

Hari Narain Misra (contd.....2)

(2)

(3) That regarding the contents of paragraph 4 of the Counter Affidavit, it is submitted that the deponent had annexed with the Application under Section 19 of the Administrative Tribunals Act, 1985, the true copy of the Appointment Letter dated 31.12.1972/1.1.1973, as Annexure No. 1. It is not disputed that in the said Appointment Letter it was mentioned that the post was temporary and that the appointment would be for one year, or till the U.P.S.C. nominated a suitable candidate, whichever was earlier. It is also not ^{disputed} ~~admitted~~ that there was a stipulation in the Appointment Letter that the services would be terminable by either side on one month's notice, or pay in lieu thereof, and that the deponent would be subjected to conditions of services as applicable to temporary Government Servants (Civilians). The deponent having annexed the true copy of the Appointment Letter, as such, there was no question of deliberately omitting to mention the provision of Clause (xii) of the Appointment Letter, as alleged. It is, however, submitted that within the period of one year₂ stipulated in Clause (iii) of the Appointment Letter, no U.P.S.C. advertisements for the post of Assistant Surgeons Grade I in the Ordnance and Equipment Factories came to the notice of the deponent, nor was any such advertisement brought to the notice of the deponent. In the advertisement for the post, made in the Dainik Jagaran, Kanpur, dated 2nd July, 1972, at page 2, column no. 3, in response to which the deponent had applied for 



Hari Narain Mishra

(contd.30

(3)

appointment and was selected by a Selection Board, constituted by the D.G.O.F. and on the recommendation of the ^{Said} Selection Board, the deponent was offered a temporary post of Assistant Surgeon, Grade I (Male) in the Ordnance Factories Organisation, ^{there} was no stipulation that the appointment was to be for one year, or till the U.P.S.C. nominates a suitable candidate, whichever is earlier, or that the candidates who would be selected for appointment in terms of the said advertisement, would be required to respond to the U.P.S.C. Advertisements for the post. The true copy of the Advertisement in question, dated 2.7.1972, is annexed herewith as

ANNEXURE RA-1 Annexure RA 1. The Selection Board, which selected



and recommended the deponent from among a large number of applicants, consisting of Medical Experts and experts of Administration. In the appointment letter by which the deponent was appointed, it was stipulated that the deponent would be on probation for a period of three months, which could be extended at the discretion of Government. The deponent had completed the period of probation successfully and the period of probation was not extended. By a Factory Order Part II No. 1013, dated 19.7.1973, it was stated that the deponent had completed the probationary period of three months satisfactorily and that the D.G.O.F., Calcutta had agreed to the retention of the deponent as Temporary Assistant Surgeon, Grade I in the appointment beyond 9.4.1973, the date by which the deponent had completed his three months' probation. In the said Factory Order

Hari Narain X178u.

(contd....4)

(4)

ANNEXURE A-2

also, it was mentioned that such continuation was, however, subject to the period of one year, or on availability of regular nominees of the U.P.S.C. etc., whichever was earlier. The true copy of the said Factory Order, Part II, dated 19.7.1973 is annexed herewith as Annexure A-2. The services of the deponent were, however, not terminated on the expiry of one year and the deponent was allowed to continue for several years. The deponent was granted all ~~was~~ due increments and was also allowed to cross efficiency bar, in due course. The deponent remained in continuous employment for more than seven years. There was no justification for treating the appointment as temporary, after the initially stipulated period of one year and it had to be regularised by the Union Public Service Commission in due course. There was no question of making fresh selection by the U.P.S.C. and the deponent being subjected to selection and abinitio recruitment of the deponent, ^{as it} since the deponent had never been in service of the Ordnance Factory Organisation. There was no necessity for the deponent to reapply for the post which was already being held by him, after due selection by the Selection Board. In fact, the respondents were required to regularise, in consultation with the Union Public Service Commission, on the basis of service record, if at all such consultation was deemed necessary. There was no question of the deponent being required to be subjected to apply afresh for selection by the U.P.S.C. for the post,

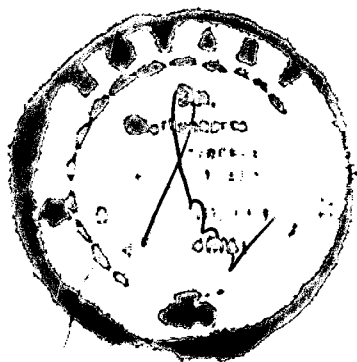
Hari Narain & P. S.

(contd.....5)

A 198

(5)

which the deponent was already holding continuously, after the initially stipulated period of one year. The deponent was kept in the pay scale of Junior Medical Officer, that is, Rs. 650-1200. The U.P.S.C. used to advertise for the post of Assistant Medical Officers in the scale of Rs. 700-1300. After one year's period was completed from the initial date of appointment ^{and} ~~when~~ the deponent continued to serve, the appointment is to be deemed to have ceased to be a temporary or officiating ^{one} ~~and~~ and has to be considered on a permanent or regular basis. Since the respondents allowed the appointment to continue beyond the maximum period of one year, it was tantamount to making the appointment permanent and the respondents ought to have taken necessary consultation with the U.P.S.C. in the matter of continuation of the services of the deponent. The appointment of the deponent was made after due selection by a very competent Selection Board after considering a number of candidates. It was nowhere stipulated in the initial appointment letter that the appointment was on adhoc basis. The requirement that every appointment to the posts corresponding to Class I or Class II in the Central Government shall be made in consultation with the Union Public Service Commission, only means that the U.P.S.C. has to be consulted and when the period of one year initially fixed by the appointment expired, the proviso regarding consultation



Haripada Mishra

(contd.)

(6)

the U.P.S.C. also ceased to have any operation and there was no question of fresh selection by the U.P.S.C. or the deponent being required to reapply for the same post for selection by the U.P.S.C. After the services of the deponent were extended ^{beyond it} by the initially stipulated period of one year, the appointment became a proper appointment, which could no longer be termed as temporary or officiating or adhoc and it ought to be deemed to be a permanent appointment. Even if the Union Public Service Commission had not been consulted for extending the period of one year, the appointment would become permanent, since the services continued ^{for several years} ~~to be extended~~ beyond one year. The consultation with the U.P.S.C. is something to be done between the appointing authority and the U.P.S.C. and once the appointment had been extended beyond one year, it is deemed to have been done in a proper form and after due consultation. Once the appointment had been extended beyond the period of one year, it has to be deemed that the service had to be regularised and the deponent could not again be asked to apply for being considered for the appointment. The deponent had been appointed by a method of selection and had also served the Ordnance Factory Board Organisation for several years and there was no question of the deponent being required to reapply for selection to the same post by the U.P.S.C. The respondents could not have shut their eyes to the Experience gained by the deponent by working as Doctor under the Ordnance Factory Board and they could not ^{eliminate} from consideration the past record of the



Har Narain Mittal

(contd...7)

(7)

deponent and to force him to submit to fresh selection along with freshers, adversely affecting the chances of selection of the deponent and discriminating against the deponent. Such a course of action would be violative of Articles 14 and 16 of the Constitution. The deponent's qualifications and experience had to be considered and the very fact that he had served in the O.F. Board Organisation for several years and had held the very post for which it is contended that fresh selection was to be made, had to be taken into consideration. In any case, even if it is considered that the appointment was temporary, under the C.C.S. (Temporary Service) Rules, 1965 also, it was incumbent upon the respondents to have declared the deponent quasi permanent on completion of three years' satisfactory services and the omission on the part of the respondents in the matter, could not be made to operate to the detriment of the deponent.

(4) That the contents of paragraph 5 of the Counter Affidavit are not admitted, as alleged. By the letter dated 12th January, 1977, the deponent was intimated that screening of the Assistant Surgeons Grade I, including the deponent, to determine their suitability for entitlement to the revised scale of Rs. 700-1300 as also for declaration of permanency was in active progress and that necessary expediting action was being taken. It was further informed that as soon as the decision of the competent authority was received, the deponent would be suitably informed. This meant that the deponent was being screened and considered for being granted

Harin Narain H.B.

(8)

the higher pay scale and for declaration of permanency. Hence, there was no question of treating the deponent's service as a purely temporary service, liable to be terminated on one month's notice under Rule 5 of the C.C.S. (Temporary Service) Rules, 1965. The deponent was never informed that he was not found fit by the D.P.C. for placement in the revised Class I Junior Scale of Rs. 700-1300 and in fact, there was no cause or occasion for the deponent being found unfit for the purpose, especially, since the deponent was allowed to cross efficiency bar also. It is not correct to say that the deponent was at all an Adhoc Assistant Surgeon Grade I. No where it was mentioned in the Appointment Letter that the deponent was being appointed on adhoc basis. At the time of reinstatement of the deponent, as a result of the deponent's Civil Suit, the word "Adhoc" was used in the reinstatement order, illegally and wrongfully and on the representation made by the deponent, the word "Adhoc" was deleted from the Reinstatement Order, published in the Factory Order Part II No. 210 dated 29.1.1985 by the Factory Order Part II No. 806 dated 22.4.1985. The deponent was appointed on probation and was enrolled for benefits of Provident Fund etc., and hence too, his appointment could not have been deemed as Adhoc. The contents of paragraphs 6(ix), 6(x), 6(xi) and 6(xii) of the Application are correct and are reiterated.

(5) That the contents of paragraph 6 of the Counter Affidavit are not admitted and are denied. The contents of paragraph 6(xiii) of the Application

(cntd.....9)

Har. Narain Gera.

(9)

are correct and are reiterated. It is not admitted that the deponent belongs to the Group of Adhoc Appointees, employed solely on temporary basis, or that his services should be extended on six monthly basis, as alleged. There was no question of the deponent being required to respond to Union Public Service Commission's advertisements for the post of Assistant Surgeon, Grade I, for being selected as a fresh candidate, after the deponent had put in several years of service in the post, for which he was duly selected by a ~~temporary~~ duly constituted Selection Board. There was no question of the deponent seeking to qualify himself to get his services regularised through U.P.S.C., as alleged. The letter, Annexure II, of the Counter Affidavit referred to the continuance of Adhoc Junior Medical Officers, ^{and} ~~while~~ the deponent being not an adhoc Junior Medical Officer, the said letter was not applicable to him. The termination of the services of the deponent, with effect from 2.8.1980 under Sub Rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, was illegal and mala fide. In any case, since by the very admission of the respondents, the deponent was appointed on a temporary basis, the respondents were bound to have declared the deponent Quasi Permanent, after three years satisfactory service and there was no justification for the omission on the part of the respondents in this regard. The respondents could not have taken recourse to Rule 5(1) of the C.C.S. (T.S.) Rules, 1965, after they had failed to declare

(contd...10)

Hari Narain

the deponent quasi permanent, in due course. *[Signature]*

(6) That the contents of paragraph 7 of the Counter Affidavit are not admitted. The contents of paragraphs 6(xiv) to 6(xviii) of the Application are correct and are reiterated. The Order of termination of the services of the deponent was illegal and without jurisdiction. The Civil Courts have duly held that the termination order was illegal and without jurisdiction. The D.G.O.F. had no authority to terminate the services of the deponent, who had been appointed by the President of India. There was no extension of the initially stipulated period of service of the deponent, as alleged by the respondent No. 2, by any letter. *[Signature]*



(7) That the contents of paragraph 8 of the Counter Affidavit need no reply. *[Signature]*

(8) That the contents of paragraph 9 of the Counter Affidavit need no comments. *[Signature]*

(9) That the contents of paragraph 10 of the Counter Affidavit need no reply. *[Signature]*

(10) That regarding the contents of paragraph 11 of the Counter Affidavit, it is submitted that there was no failure on the part of the deponent to comply with the requisites of Article 193 of the C.S.R. Payment of arrears of pay and allowances for the entire ~~period~~ intervening period has been illegally and wrongfully withheld by the respondents. *[Signature]*

(11) That regarding the contents of paragraph 12 *[Signature]*

From Narasimha & Co. (contd...11)

A-100/11

(11)

of the Counter Affidavit, it is submitted that the Termination Order in question, alleged to have been issued on behalf of the President of India, was illegal, arbitrary, mala fide and untenable. *✓*

(12) That regarding the contents of para 13 of the Counter Affidavit, it is submitted that it is not correct to say that the services of the deponent were extended every six months, with the approval of the U.P.S.C., beyond one year. There was no question or justification for U.P.S.C. or anyone else not agreeing for further continuance of the services of the deponent beyond one year. In fact, the deponent had continued to work for more than seven years, before his services were terminated in 1980, illegally and wrongfully. *AA✓* Even during the period of about two years, when the deponent was working after his reinstatement, pursuant to the Civil Courts' decree, there was no letter of extension of services of the deponent. The respondents have themselves deleted the word "Adhoc" from the letter of reinstatement and hence, *they* ~~are~~ cannot again and again contend that the services of the deponent were adhoc and were extended beyond one year, as such. The so called letter of the U.P.S.C. dated 21.5.1985, relates to adhoc employees and it cannot apply to the case of the deponent. There was no justification for appointing Short Term Medical Officers to man the vacancy occasioned as a result of the illegal and wrongful termination of the services of the deponent. *✓*

(contd.....12)

Har. Murari Pr.

(12)

(13) That the contents of paragraph 14 of the Counter affidavit are not admitted. The contents of paragraphs 6(xxix) to 6(xxxi) of the Application are correct and are reiterated. It is not admitted that the services of the deponent were extended every six months, as alleged. There was no question of the U.P.S.C. disapproving the continuance of the services of the deponent. It is reiterated that the deponent was not given an adhoc appointment, as alleged. The respondents have themselves admitted this fact. The deponent was not required to get his services regularised through U.P.S.C., as alleged. The initial appointment of the deponent was for one year, but he was allowed to be in continuous service for several years, beyond the period of one year and this was only possible after consultation with the U.P.S.C. and since the appointment continued for several years, the appointment ought to have been treated to have become permanent. The U.P.S.C. ^{could} disapproved continuance of services of those Doctors before completion of one year of service and the question of ^{dis-} ~~its~~ approval by the U.P.S.C. did not ^{Ar} arise in the case of the deponent as the deponent was in continuous service for about 13½ years, from 10th January, 1973 and the U.P.S.C. could not disapprove the services of the deponent, at this stage.

(14) That the contents of paragraph 15 of the Counter Affidavit are not admitted. The contents of paragraph 6(xxxii) of the Application are correct and are reiterated.


(contd.....13)

Hari Narain P.S.

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(13)

There is no question of any misinterpretation of the contents of the letter No. 093/Regular/79/A/M dated 30.1.1999, issued on behalf of the Director General, Ordnance Factories. (Annexure No. 15 of the Application), deliberately or otherwise. Admittedly, the deponent was not an adhoc Junior Medical Officer, nor short term Medical Officer and hence, there was no question of termination of the services of the deponent, in terms of the said letter. Even in terms of the said letter, ^{the} services of the Short Term Medical Officers were liable to be terminated first and the question of termination of ^{the} services of even Adhoc Junior Medical Officers arose only thereafter and that too in the order of ^{the} seniority. Since the deponent was not on adhoc appointment, the deponent's services could not have been terminated under the authority of the said letter~~and~~ and in any case, there was no question of dispensing with the services of the deponent, while several Short ^{term} Medical Officers, appointed much after the appointment of the deponent, were allowed to continue in the Ordnance Factory Organisation at Kanpur itself, such as, Dr. D. K. Sinha, Dr. N K Bhagat, Dr. A. K. Dwivedi and several other Short Term Medical Officers have been continuing in various other factories under the Ordnance Factory Board. ^{the}



(15) That the contents of paragraph 16 of the Counter Affidavit are not admitted and are

Hari Narain Singh (contd.14)

A-199

(14)

denied. The deponent was not appointed on adhoc basis, as alleged, nor was his tenure extended six monthly, as alleged. The fact that the deponent was not an adhoc employee is evident from the admission of the respondents themselves, as contained in the letter of the respondents, dated 22.4.1985, Annexure No. 11 of the Application, which was issued in reply to the Representation of the deponent, dated 18.1.1985 (Annexure No. 9 of the Application). The alleged letters of extension related to Adhoc Appointees only and could not have been applicable to the deponent, whose services were not adhoc. After the initial period of one year, the deponent was allowed to continue in service for about six years more and the services of the deponent were covered under the C.C.S. (Temporary Services) Rules, 1965. Even after the termination Order of 1980 was quashed by the Court, the deponent was reinstated and allowed to continue for more than $1\frac{1}{2}$ years. Hence, the ~~temporary~~ service of the deponent will be deemed to have continued as such, for about 14 years, before the deponent's services were illegally and wrongfully terminated under Rule 5(1) of the C.C.S. (Temporary Service) Rules, 1965. By the very impugned Termination Order in question the respondents have acknowledged the fact that the deponent's services were covered under the C.C.S. (Temporary Service) Rules, 1965. The failure on the part of the respondents to have declared the deponent quasi permanent in

Har Mohan H.B. (contd....14)

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(15)

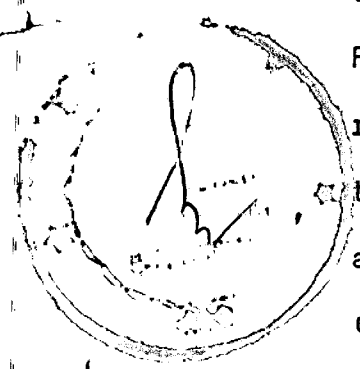
due course, after completion of satisfactory service for 3 years, could not be taken advantage of by the respondents in terminating the services of the deponent in the manner in which it was done. It is emphatically denied that after the end of the initial one year, the deponent's services stood terminated, as alleged. The respondents are estopped from taking such pleas, after they had allowed the services of the deponent ^{to} continue ^{uninterruptedly} for more than seven years initially, up to the date of the earlier illegal and wrongful termination Order, passed in 1980. In view of the letter of the respondents, dated 12.1.1977, addressed to the deponent (Annexure No. 3 of the Application) also, the respondents are estopped from contending that the deponent's services remained purely temporary, or adhoc. In fact, the matter regarding declaration of permanency in the case of the deponent was stated to be in active progress and that necessary expediting action was being taken by the appropriate authorities in the year 1977, as intimated by the D.G.O.F. to the General Manager, Ordnance Equipment Factory, Kanour, who had written that letter to the deponent and the deponent was further informed that the D.G.O.F. had further intimated the General Manager, D.E. Fy, Kanour, that as soon as the decision of the Competent Authority in the matter of adjudging the deponent's suitability for entitlement to the

Har Mohan 9/1/80 (contd.....16)

P-116

(16)

higher scale of Rs. 700-1300 and also for declaration of permanency was received, the deponent would be suitably informed. The entire averments contained in paragraph 16 of the Counter Affidavit are rendered nugatory in the light of the said letter of the respondents. Since the deponent was being considered for permanency in the year 1977, the respondents could not contend that the deponent was not entitled to the benefits of quasi permanency, which ought to have been declared under the C.C.S. (Temporary Service) Rules, 1965. The lapses on the part of the respondents to pass appropriate orders at the appropriate time, cannot be taken advantage of by the respondents, to the detriment of the deponent.



(16) That the contents of paragraph 17 of the Counter Affidavit are not admitted. The contents of paragraph 6(xxxiv) of the Application are correct and are re-iterated. Since the deponent was not an adhoc Medical Officer, there was no question of terminating the services of the deponent, in terms of the Union Public Service Commission's Confidential Letter No. F.2/1(15)/72-A.III/MS dated 21.5.86, a copy of which is annexed as Annexure III-B of the Counter Affidavit. The said letter related to the Assistant Medical Officers, appointed on adhoc basis. The deponent was neither Assistant Medical Officer, nor was he appointed on

Harin Narain MS

(contd....17)

(17)

^{basis.}
ad hoc. The deponent was Junior Medical Officer and hence the said letter did not at all apply to the case of the deponent. The shelter taken by the respondents on the said letter of the U.P.S.C. for terminating the services of the deponent, is misconceived. The impugned Termination Order, alleged to have been issued on behalf of the President of India, is also illegal, mala fide, arbitrary, uncalled for, untenable and null and void.

(17) That the contents of paragraph 18 of the Counter Affidavit are not admitted. The contents of paragraph 6(xxxv) of the Application are correct and are re-iterated. It is denied that the deponent is not a suitable person to be retained in the service, or that the deponent's services were rightly terminated. In the initial Appointment Order, it was mentioned that the appointment of the deponent was for one year, or till a U.P.S.C. selected nominee takes charge, whichever was earlier. No U.P.S.C. nominee took charge of the post during the period of one year, nor was the deponent directed to approach the U.P.S.C. for his selection during the said period. The U.P.S.C. did not advertise the post of Junior Medical Officer and hence, there was no question of the deponent approaching the U.P.S.C. for selection to the post, which the deponent was holding. After the expiry of the period of one year, the deponent's services were not terminated and, to the contrary, the deponent was allowed

Har Mohan M.B.

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to continue for several years, with normal increments, enrolment in Provident Fund and other benefits, including crossing of efficiency bar. The respondents ought to have sought approval of the U.P.S.C. in time and there was no question of the deponent being required to appear for selection by the U.P.S.C., along with fresh candidates. In fact, the U.P.S.C. did not advertise the post of Junior Medical Officer at any time and there was no question of the deponent appearing before the U.P.S.C. for the post which the deponent was holding. The posts advertised by the U.P.S.C., from time to time, was the post of Assistant Medical Officer, carrying the pay-scale of Rs. 700-1300, while the deponent was holding the post of Junior Medical Officer, carrying the pay-scale of Rs. 650-1200. Hence, there was no question of the deponent being required to regularise his appointment from U.P.S.C., in terms of the appointment, as alleged. The services of the deponent ought to have been deemed as regular after the deponent continued in the post on the expiry of the initial period of one year. Even otherwise, the deponent could not be equated with new entrants who had recently passed the M.B.B.S. Examination, disregarding his past record and experience, as the deponent was appointed on the recommendation of a duly constituted Selection Board through the method of selection and had served the Department for more than 13 years, the deponent formed a separate class by himself

Harin Narain HRS

(contd...19)

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(19)


and could not have been equated with freshers and forced to appear in the U.P.S.C. Examination with new aspirants for the post of Assistant Medical Officer. There was no U.P.S.C. Examination conducted or ^{advertisement made for} ~~advertised~~ ^{made} by the U.P.S.C. for the post of Junior Medical Officer, at any time, during the entire period of service of the deponent. As per the letter of the Deputy Secretary to the Government of India, No. 074/CP/A/M/US.1/D(Fy.II) dated 18.8.1975, regarding reorganisation of the Medical Set-Up in the Ordnance Factory Organisation (Annexure No. ¹ of the Application), it has been held that the Government had decided that the existing Assistant Surgeons, Grade-I (Class II, redesignated as Junior Medical Officers), were to be screened by a Departmental Promotion Committee and the Class I scale of Rs. 700-1300 was to be given to those Doctors only, who were in possession of M.B.B.S. Degree, like the deponent and the were found fit after such screening. It was further mentioned that those who were not found fit, will be entitled to continue in the pay scale of Rs. 650-1200, as recommended by the Third Pay Commission, effective from 1.1.1973. Hence the deponent, who came under the category of existing Assistant Surgeons, Grade-I (Class II) was to be screened by a D.P.C. and if found fit by the D.P.C., the higher pay-scale of Rs. 700-1300 ought to have been given to the deponent, since the deponent was already in possession of M.B.B.S.


Hari Narain HTS

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Degree. There was nothing adverse against the deponent, whereby the deponent could be found unfit after such screening. If at all the deponent was found unfit, he remained entitled to continue in the lower pay-scale of Rs. 650-1200 till such time his entitlement to the higher scale was recommended by the D.P.E. after further screening, subsequently. Hence, there was no question of the deponent having been liable to approach the U.P.S.C. for his absorption in the higher pay-scale of Rs. 700-1300, or in the then existing lower scale of Rs. 650-1200. The respondents had, in fact, admitted vide Annexure No. III of the Application, that is, the letter of the General Manager, D.E. Ry., Kanpur, dated 12th January, 1977, conveying the decision of the D.G.O.F., that the screening of the deponent to determine his suitability for entitlement of the revised scale of Rs. 700-1300 and also for declaration of permanency was in active progress and necessary expediting action was being taken and accordingly, the D.G.O.F. had directed the General Manager, D.E. Ry., Kanpur, to communicate to the deponent that as soon as the decision of the Competent Authority was received, the deponent would be suitably informed. Hence, there was no question of the services of the deponent being terminated in the manner in which the respondents have done. 

(18) That the contents of paragraph 19 of the Counter Affidavit are not admitted. The 

Hari Narain P.T.S. (contd..21)

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contents of paragraph 6(xxxvi) of the Application are correct and are re-iterated. Suitable reply to the untenable averments contained in the said paragraph of the Counter Affidavit have already been given hereinabove. All those averments contained in the Counter Affidavit, which have not been specifically admitted herein, are not admitted and are denied. There was no question of terminating the services of the deponent, under the ~~alleged~~ facts and the circumstances. There was no question of the deponent having ^{been} not found fit by the U.P.S.C. The U.P.S.C. had never held that the deponent was not found fit. The U.P.S.C. had referred to the cases of adhoc appointees only and not the cases of persons like the deponent, who stood on different footing and were not employed on adhoc basis. The correct position has already been explained hereinabove.

(19) That the contents of paragraph 20 of the Counter Affidavit are not admitted. The contents of paragraph 6(xxxvii) of the Application are correct and are re-iterated. The averments contained in paragraph 20 of the Counter Affidavit are irrelevant for the purpose of the present case. It is not admitted that the deponent was not found fit by the U.P.S.C. There was no cause or occasion for the U.P.S.C. finding the deponent unfit, at any time.

Hari Narain Hibin

(contd....22)

and are reiterated. The deponent was denied the post of A.M.O., illegally and wrongfully. The deponent's services could not have been terminated in the manner in which it was done, treating the deponent ^{as} Temporary Junior Medical Officer. As a matter of fact, the deponent ~~on~~ ought to have been screened and given the higher pay-scale of Rs. 700-1300, as promised by the respondents themselves and considered for promotion to the post of S.M.O. in due course. *h*

(23) That regarding the contents of paragraph 24 of the Counter Affidavit, it is submitted that the deponent has not been given the full benefits, as alleged. The deponent had to file an Execution Case in the Civil Court in the matter and the same is pending. There was no question of the deponent having failed to comply with the requisites of Article 193 of the C.S.R. The deponent had given the declaration, as required and the contention of the respondents that the deponent is not entitled to any payment under the decree, is misconceived. There is ~~not~~ suit pending regarding the claim for arrears. *h* Only an Execution is pending. The present application is not barred on the ground of pendency of the Execution Case, arising out of the earlier decree of the Civil Court. It is denied that the termination of the deponent, with effect from 18.9.1986 (A/N) is valid or legal. *h*

(24) That the contents of paragraph 25 of the Counter Affidavit are not admitted. The contents of paragraph 6(xxxxii) of the Application are correct and are re-iterated. *h*

Hari Narain H.R.

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(24)

(25) That the contents of paragraph 26 of the Counter Affidavit are not admitted. The contents of paragraph 6(xxxxiii) of the Application are correct and are re-iterated. The amount paid towards one month's salary was short of the actual salary due and payable, since the annual increments due to the deponent after the earlier Termination Order of 1980, were not taken into consideration.

(26) That the contents of paragraph 27 of the Counter Affidavit are not admitted. The contents of paragraph 6(xxxxiv) of the Application are correct and are re-iterated. The Termination Order was illegal and untenable.

(27) That regarding the contents of paragraph 28 of the Counter Affidavit, it is submitted that the deponent was not recruited on adhoc basis, as alleged. No such six monthly extensions were made, as alleged. There was no advertisement for the post of Junior Medical Officer (previously Assistant Surgeon Grade-I). There was no question of any failure on the part of the deponent to qualify for selection by the U.P.S.C. The post of Junior Medical Officer was never advertised by the U.P.S.C. It is not admitted that the deponent was an adhoc temporary appointee, or that the deponent could not be declared quasi-permanent, or permanent. It is denied that the deponent's services were being extended every six months, as alleged. It is also denied that the deponent was not found suitable by the U.P.S.C. There was nothing lacking in the

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E. S. 

(32) That the contents of paras 1, 2, partly 3, partly 4, partly 5, partly 6, 7, 8, 9, partly 10 &

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(26)

par. 12, par. 13, par. 14, par. 15, par. 16, par. 17,
par. 18, 19, par. 20, 21, par. 22, par. 23, 24, 25, 26, 27,
28, 29, 30 and 31 -

of this Affidavit are true to my personal knowledge;

those of paras par. 3, par. 4, par. 11, par. 15,
par. 16, par. 17, &

are based

on records and those of paras par. 3, par. 4,
par. 5, par. 6, par. 10, 11, par. 12, par. 13,
par. 14, par. 15, par. 16, par. 17, par. 18, par. 19,
par. 22, par. 23, 24, &
information and those of paras.

are based on

are based on

legal advice which I believe to be true. No part of
it is false and nothing material has been concealed,
so help me God.

Hari Narain H.P.N.
DEPONENT.

I, N.K. Nair, Advocate, declare that the
person making this affidavit and alleging himself
to be the deponent, is known to me personally and
I identify him to be the same person.

IDENTIFIER

Solemnly affirmed before me on this 23rd day
of November, 1988, at 4 A.M./P.M. by the deponent
who is identified as aforesaid.

I have satisfied myself by examining the deponent
that he understands the contents of this affidavit which
have been read over and explained to him.

Hari Narain H.P.N. 23.11.88
ADVOCATE

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH.

186
Registration No. ~~1986~~ of 1988.

Dr. Hari Narain Misra Applicant.

Versus

Union of India and Others Respondents.

ANNEXURE RA-1.

दैनिक जागरण कानपुर २ जुलाई १९७२ - पेज नं० २, कानून नं० ३

आर्हिनेन्स उपकरण फौजदारी कानपुर

प्रधान प्रबन्धक आर्हिनेन्स उपकरण फौजदारी, कानपुर सहायक सर्जन ग्रह-। (पुरुष और महिला) के पद के लिए तारीख १५-७-७२ तक आवेदन मांगते हैं। सभी पद आरक्षित हैं और किसी तगफ से हम महीने की नोटिस देकर समाप्त किया जा सकता है। बदली भारत के किसी भी आर्हिनेन्स फौजदारी में हो सकती है। कार्य भार सम्भालने के लिए यात्रा मिला नहीं मिलेगा। योग्यता अनिवार्य (१) भारतीय मेडिकल परिषद अधिनियम १९५६ की पल्ली यह दूसरी अनुसूची (आर्हिनेन्स-सिस्ट योग्यता होइ कर) में सम्मिलित डाक्टरों योग्यता हो जिनके पास तीसरी अनुसूची के खंड २ में लिखी योग्यता हो उन्हें भारतीय मेडिकल परिषद अधिनियम १९५६ की धारा १३(३) के अन्तर्गत लिखी शर्तें पूरी करनी होंगी (२) २ साल का प्राइवेट प्रैक्टिस या मान्यता प्राप्त अस्पताल। लोक स्वास्थ्य सेवा में एक साल का हाउस सर्जन का अनुभव हो मेडिकल लाइसेन्सिट का अगर मूल डाक्टरों योग्यता प्राप्त करने के पहले २ वर्ष की सेवा। (३) प्राइवेट प्रैक्टिस का अनुभव हो तो उनके लिए मान लिया जावेगा कि योग्यता पूरी है। अन्य प्रकार से अधिक योग्य होने पर योग्यता में छूट दी जावेगी लेकिन मूल डाक्टरों योग्यता अनिवार्य है। बांछनिय - औद्योगिक स्वास्थ्य में डिप्लोमा हो। (२) मेडिकल विज्ञान की किसी शाखा में स्नातकोत्तर योग्यता वेतन ३५०-२५-५००-३०-५६० दोगो-३०-८००-३०-८३०-३५-६००. साथ में वेतन का ३३ $\frac{1}{3}$ प्रतिशत जो कम से कम १५०) रुपये प्रति महीने होगा। प्रैक्टिस करने की अनुमति नहीं दी जायेगी। आयु ३० वर्ष और इससे कम हो (सरकारी कर्मचारियों को आयु में छूट दी जायेगी)

डी ए वी पी ६८५ (१७८) ७२

Attested

Hari Narain Misra

(28)

4-123

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH.

Registration No. 186 of 1987.

Dr. Hari Narain Misra Applicant.

Versus

Union of India and Others Respondents.

ANNEXURE RA-2.

Pt. II Dt. 19/7/73
No. 1013

Sub: Asstt. Surgeon Gr. I Completion
of Probationary Period.

.....

Having completed their probationary period of 3 months, satisfactorily, the DGOF, Calcutta has agreed to the retention of Dr. D.K. Saxena, Dr. H.N. Mishra and Dr. D.D. Arora, Temp. Asstt. Surgeons Gr. I in their present appointment beyond 8.4.73, 9.4.73 and 4.5.73 respectively, the dates by which the officers concerned have completed their 3 month's probation.

The above continuation is, however, subject to the period of one year on the date of availability of regular nominees of UPSC etc., whichever is earlier.

Authority: DGOF's Letter No.254/D.K.Saxena/A/M dated 9/10th July '73.

TRUE COPY. /

Attested

Hari Narain Misra

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Luxenova
~~ALLAHABAD~~ ~~DENICH~~ ~~ALLAHABAD~~ *Luxenova*

CIVIL MISC. APPLICATION NO. 822 OF 1992

on behalf of respondents

IN

REGISTRATION O.A.NO. 186/87

Dr. H.N. Mishra

... ..Petitioner

Versus

Union of India & others

... ..Respondents

TO

The Hon'ble The Chairman and his other
companion Members of the aforesaid Tribunal.

The humble application of the abovenamed
applicants most respectfully sheweth as under:

1. That while disposing of the aforesaid case on
29.1.1992 copy of which was received on 1.4.92. The
termination order of the petitioner was quashed and
a direction was given to regularise the services of the
petitioner by forwarding the PCR Dossiers and the
petitioner is not required to be ^{interviewed} ~~interfered~~ by the
Union Public Services Commission within a period of
4 months.

2. That since the old records from the date of appointment of the petitioner has to be verified for regularisation by the Union Public Service Commission which entails lot of formalities and the proposal for the same has been noted by the Ordnance Factory Board ~~through~~ through Ministry of Defence which will take some more time.

3. That the action on the direction of this Tribunal is under process but it could not be done in spite of the best efforts of the respondents within a stipulated period.

4. That in the interest of justice 4 (four) months further time may kindly be granted for compliance the judgment of this Tribunal dt. 29.1.1992.

P R A Y E R

It is, therefore, most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to grant 4 months further time for compliance of the judgment dt. 29.1.1992 passed by this Hon'ble



Tribunal, otherwise the respondents/applicants shall suffer great irreparable loss.



(K.C. SINHA)
ADDITIONAL STANDING COUNSEL
CENTRAL GOVERNMENT

DAT. D: 16-9-1992

ALLAHABAD.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Lucknow
~~ALLAHABAD BENCH ALLAHABAD~~ *Lucknow*

AFFIDAVIT

IN

CIVIL MISC. APPLICATION NO. OF 1992

IN

REGISTRATION C.A.NO. 186/87

Dr. H.N. Mishra

... ..Petitioner

Versus

Union of India & others

... ..Respondents

Affidavit of *an eye witness*

aged about 29 years

son of *Sri S. C. Chaturvedi*

At Present posted as *Asst. Secy.*
Manv. Dept. O.E. P. Dept.

[Signature]
DEPONENT

I, the deponent named above do hereby
solemnly affirm and state on oath as under:

1. That the deponent is at present posted
Asst. Secy. Manv. Dept. and has been authorised to file
this affidavit on behalf of the respondents

and as such he is well acquainted with the facts of the case deposed to below.

2. That while disposing of the aforesaid case on 29.1.1992 copy of which was received on 1.4.92. The termination order of the petitioner was quashed and a direction was given to regularise the services of the petitioner by forwarding the ACR Dossiers and the petitioner is not required to be ^{interfered} ~~interfered~~ by the Union Public Service Commission within a period of 4 months.

3. That since the old records from the date of appointment of the petitioner has to be verified for ~~regularisation~~ ~~regularisation~~ regularisation by the Union public service Commission which entails lot of formalities and proposal for the same has been noted by the Ordinance Factory Board through Ministry of Defence ~~which~~ in which will take some more time .

4. That the action ~~is~~ on the direction of this Hon'ble Tribunal ^{under} ~~is not~~ ~~proc~~ ~~ss~~ but it could not be done in spite of the best efforts of the respondents within a stipulated period.

5. That in the interest of justice 4 months further ~~time~~

time may kindly be granted for compliance of the judgment of this Hon'ble Tribunal dt. 29.1.1992

That the contents of paragraphs nos. 1,

of this affidavit

are true to my personal knowledge that the contents of paragraphs nos. 2 to 5 _____

of this affidavit are based on


perusal of records that the contents of paragraphs
nos. _____

of this affidavit are based on legal advice which

all I believe to be true that no part of it is

false and nothing material has been concealed.

So help me God.


(DEPONENT)

I, ~~D.S. Chaudhary~~, Clerk to Sr. K.C. Sinha,

Additional Standing Counsel, Central Government.

In the Central Administrative Tribunal, Additional Bench

Allahabad.

Reg. No.

41907

3/3/87

I E D E

Civil Misc. Application No.

of 1987.

District Judge.

Dr. Hari Narain Mishra.

.....

Foras

The Union of India, Department of
Defence, New Delhi and others.

.....

Sl. No. Particulars. Page Nos.

1. Application 1-23

2. Annexure No. '1' and copy of
Appointment letter dt. 31.12.72/
1.1.73. 24-26

3. Annexure No. '2' and copy of
Factory Order No. 74 dt. 1.1.73. 27

4. Annexure No. '3' and copy of
order dt. 1.1.1977. 28

5. Annexure No. '4' and copy of
Factory Order No. 74 dt. 26.5.1977 29

6. Annexure No. '5' and copy of
order No. 109 dt. 30.5.1977. 30

7. Annexure No. '6' and copy of
dt. 10.1.1975. 31.

8. Annexure No. '7' and copy of
dt. 26.5.1977. 32.

9. Annexure No. '8' and copy of order
dt. 10.1.1975. 33

10. Annexure No. '9' and copy of joining
report dt. 10.1.1975. 34

Hari Narain Mishra

(2)

11. [unclear] no. '10' [unclear] of
[unclear] order no. 210 dt. 22.1.1957 20
12. [unclear] no. '11' [unclear] of
[unclear] order no. 106 dt. 22.1.1957 26
13. [unclear] no. '11' [unclear] of
[unclear] order no. 106 dt. 22.1.1957 31-32
14. [unclear] no. '13' [unclear] of
[unclear] order no. 106 dt. 22.1.1957 37
15. [unclear] no. '14' [unclear] of
[unclear] order no. 106 dt. 22.1.1957 40
16. [unclear] no. '15' [unclear] of
[unclear] order no. 106 dt. 22.1.1957 44
17. [unclear] order.
18. [unclear] order.

Vijai Bahadur
(Signature)
[unclear]

dt: 28/4/1957

[unclear]

Hari Narain HIR

B-3

In the Central Administrative Tribunal

Additional Bench Allahabad

between

Dr. Hari Narain Misra

37/35 Gili Bazar, Kanpur

- - - - - Applicant.

and

1. Union of India through Secretary

Department of Defence (Production)

Ministry of Defence, Government of India

New Delhi.

2. Director General (Member Personnel)

Ordnance Factory Board, Government

of India, Ministry of Defence,

Ordnance Factory, 10-A, Auckland Road,

Calcutta.

3. General Manager,

Ordnance Equipment Factory

Kanpur - - - - - Respondents.

Details of Application

1. Particulars of the applicant:

(i) Name of the applicant- Dr. Hari Narain Misra

Hari Narain Misra

(2)

(ii) Name of Father/Husband-Sri V.K. Misra

(iii) Designation and office - Junior Medical Officer,
in which employed Combined Ordnance Factory
Hospital Ordnance Equip-
ment Factory, Kanpur.

(iv) Office address - Ordnance equipment
Factory Kanpur.

(v) Address for service - 37/35 Gitis Nagar,
of all notices Kanpur-208001.

2. Particulars of the respondents:

(i) Name and/or designation of-1. Union of India through
the respondent. Secretary
Department of Defence
(Production), Ministry
of Defence Government
of India, New Delhi.

2. Director General (Mem-
ber personnel), Ordnance
Factory Board, Governm-
ent of India, Ministry
of Defence, Ordnance
Factory, 10-A, Auckland
Road, Calcutta-1.

3. General Manager,
Ordnance Equipment
Factory Kanpur.

3. Particulars of the order against which
application is made

The application is against the following order:

(i) Order No. -No.254/HNM/AM

(ii) Date -6th September 1986.

(iii) Passed by -President of India

(iv) Subject in brief -Services-termination of the
services of the applicant.

4. Jurisdiction of the Tribunal:

Harin Moran HBS and applicant declares that the subject

(3)

matter of the order against which no appeal is within the jurisdiction of the Tribunal.

5. Limitation:

The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunal Act, 1985.

6. Facts of the case:

The facts of the case are given below:-

- (i) That the applicant possesses qualifications of B.Sc., M.B.B.S., D.A.
- (ii) That an advertisement appeared in the Dainik Jagaran newspaper (Hindi edition) dated on 2.7.1972 inviting the applications for the appointment to the post of Assistant Surgeon Grade I in the Ordnance Equipment Factory, under the Ministry of Defence, Government of India,
- (iii) That since the applicant was fully qualified for the appointment on the said advertisement the applicant applied for the appointment to one of the advertised posts.
- (iv) That the applicant along with others was interviewed by a Selection Board which consisted of
Hari Madan Mishra.

(4)

of Medical experts and Administrative experts etc. In the aforesaid selection the petitioner was duly selected.

(v)

that the applicant was thereafter appointed on the post of Assistant Surgeons Grade I in the Ordnance Equipment Factory at Kanpur by an order dated 31st December 1972/1st January 1973. The said order stated that the petitioner was being appointed by the President of India on the recommendations of the Selection Board, on a temporary post of Assistant Surgeon Grade I (male) on certain terms and conditions enumerated in the aforesaid appointment letter.

(vi)

That the aforesaid appointment letter also stated that the post is temporary and appointment was for one year or till U.P.S.C. nominates a suitable candidate whichever is earlier. A true copy of the appointment letter mentioned above is being filed as Annex-1 to the petition.

(vii)

That the applicant joined on the said post on 10.1.73.

Hari Narayan Kishore

(5)

(viii) That a factory order part II No.75 dated 12.1.73 was thereafter issued stating therein that the applicant was appointed as temporary Assistant Surgeon Grade I (Male). A true copy of the said factory Order is being filed as Annexure-2 to the petition.

(ix) That the applicant was communicated an order dated 12.1.77 intimating that his case for grant of revised scale of Rs. 700-1300 and also declaration of permanency is in active progress and necessary expediting action is being taken. A true copy of the order dated 12.1.77 is being filed as Annexure-3 to the petition.

(x) That the several others Assistant Surgeon Grade I who were working with the similar responsibilities and duties, with the applicant, were re-designated as Assistant Medical Officer in the revised pay scale of Rs. 700-1300 vide a Factory Order Part II No. 989 dated 20.5.77 but the petitioner was denied the said advantage. A true copy of the said Factory Order Part II is being filed as Annexure-4 to the petition.

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Hare Nandan Mishra

(6)

(xi)

That by another Factory order Part II No. 1039 dated 30.5.77 the applicant was redesignated as Junior Medical Officer and was placed in a lower pay scale of Rs. 650/- -1200/-. A true copy of the said Factory Part II Order is being filed as Annexure-5 to the petition.

(xii)

That the Government of India issued a circular letter No. 074/OP/1/1/02-1/D(F).II dated 18.8.75 in which it was emphasized 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 respondents completely ignored this circular letter and did not screen the case of the applicant and also did not grant the benefits and advantage to the applicant available in the said circular letter. A true copy of the said letter is being filed as Annexure no.-6 to the petition.

(xiii)

That the applicant however, continued

Hari Madan to work on the said post satisfactorily till

b-3

(7)

1980. The services of the petitioner were terminated by an order dated 26.6.80 issued by the Director General Ordnance Factory Board, Calcutta. The said order contemplated that the service of the petitioner shall stand terminated after the expiry of one month from the date of the receipt of the order dated 26.6.80. A true copy of the said order is being filed as annexure-7 to the petition.

(xiv)

That since the aforesaid order was wholly illegal and without jurisdiction for the reasons inter alia that it was passed by an authority which was not in the case of the applicant, the appointing authority. As such the applicant filed a suit in the Court of Munsif City Kanpur being suit No. 772 of 1980 Dr. H.M. Misra versus Union of India and others for declaration that the aforesaid order terminating the services of the applicant was illegal and ultra vires and that the applicant should be treated to be in continuous service. The applicant also sought certain other ancillary reliefs.

(xv)

That the respondents contested the aforesaid suit.

(xvi)

That the respondents filed an appeal against the

said judgment which was registered as appeal No. 537 of
Haji Nazim H.T.S.

(8)

1981 Union of India and others versus Dr. H.N. Misra.

(xvii) That the aforesaid appeal was however, dismissed by the 1st Additional District Judge Nagpur on 16.4.1983.

(xviii) That against the said judgment and decree the respondents filed an appeal in the Hon'ble High Court which too was dismissed summarily by the Hon'ble High Court under order 41 Rules 11 C.P.C. on 25.10.83.

(xix) That the applicant thereafter filed an execution case in the trial court.

(xx) That the aforesaid reinstatement order however described the applicant to be an ad-hoc Junior Medical Officer.

(xxi) That the applicant was thereafter reinstated by an order dated 15.1.85. A true copy of the said order dated 15.1.85 is being filed as Annexure-3 to the petition.

(xxii) That the applicant thereafter joined his duties on 18.1.85. The applicant while joining his duties made it clear in the joining report that the assertions of the respondents in the letter dated 15.1.85 to the effect that the applicant was being reinstated in service as ad-hoc Junior Medical Officer was incorrect

Hari Nandan Misra

(9)

and he was rather a temporary Junior Medical Officer. A true copy of the said joining report is being filed as Annexure-9 to the petition.

(xxiii) That the reinstatement order was published vide Factory Order Part II No. 210 dated 29.1.65 which also described the applicant as ad-hoc Junior Medical Officer. A true copy of the said Factory Order Part II is being filed as Annexure No-10 to the petition.

(xxiv) That the applicant thereafter received another Factory Order No. 806 dated 22.4.65 stating that the word "adhoc" wherever it appears in the aforesaid Factory Order Part II No. 210 dated 29.1.65 shall be treated to be deleted and the word "temporary" may be inserted in place of the word "adhoc". A true copy of the said order is being filed herewith as Annexure- to the petition.

(xv) That the applicant thereafter filed a representation praying that the applicant be declared to be in the quasi permanent/ permanent service. The applicant also prayed through the said representation that the applicant was also

entitled to fixation of pay in the revised pay scale

Hari Narain 14/82

8-2

(10)

of A.L.O. of No. 700-1300 from 1.1.74. A true copy of the said representation is being filed as Annexure-12 to the petition.

(xvi)

That it is pertinent to mention here that the aforesaid execution proceedings with regard to other reliefs granted by the Civil Court is still pending.

(xvii)

That surprisingly another order dated 8.9.86 purporting to have been passed by Respondent No.2 was communicated to the applicant by the Respondent No.3 vide covering letter dated 18.9.86 by which the services of the applicant are stated to have been terminated with effect from 18.9.86 (A.M.) by the President of India. The order also stated that the applicant was being paid one month's pay in lieu of the notice. A true copy of the said order is being filed herewith and marked as Annexure-13 to the petition.

(xviii)

That an advertisement appeared in the paper Dainik Jagran (Hindi Edition) Jaipur dated 27.9.86 inviting the application for further appointment of short term medical officer in the Ordnance Factory Jaipur. A photo copy of the said advertisement is being filed as Annexure-14 to the petition.

(xix)

That the aforesaid fully establishes that the
Harin Narain Hinder

(11)

vacancies of doctors do exist in the department
and the services of the applicant have been
terminated with the malafide intention.

(xxx)

that it is pertinent to mention here that
several short term medical officers who were
appointed subsequent to the appointment of the
applicant are being allowed to continue in service
though the services of the applicant have been
terminated. The most of the short term medical
officers are less qualified than the
applicant and they are certainly possessing less
experience than that of the applicant.

(xiii)

that in spite of the fact that the services
of the short term medical officer have not been
terminated and the services of the applicant have
been terminated shows the arbitrariness of the
respondents.

(xviii)

That a circular letter was issued on 30.1.79
which laid down that the services of the short
term medical officers shall be terminated first
and thereafter the services of junior medical
officers shall be terminated. One copy of the

4

and circular letter No. 995/Re dated 7/1/79
A/01 Madan NIS

E-20

(12)

dated 30.1.79 is being filed as Annexure-15 to the
petition.

- (xxiii) That the applicant is neither the Joint
Medical Officer nor he is an adhoc officer and as such
they illegally did not grant the certificate of declara-
tion of quasi permanency to the applicant.
- (xxiv) That the services of the applicant have been
terminated within a short span of the period after
he was re-instated under the Civil Court decree.
This establishes that the services of the applicant
have been terminated arbitrarily, with malafide.
- (xxv) That the applicant has become over-age and can
not find job at any other place thus the impugned
order is wholly illegal and arbitrary. and also
contrary to equity and Natural Justice.
- (xxvi) That since the appointment of the one year was
allowed to expire and the applicant was allowed to con-
tinue in the service and also given regular increments
during the continuance of the applicant in service, the
applicant became entitled for a declaration of
quasi permanency, more so when the applicant was

found suitable and fit in every respect. As such

Hari Nandan NBS

B-15

(13)

the termination of the service of the applicant is wholly illegal.

(xxvii)

That in order to defeat the right of the petitioner and other persons employed in the Ordnance Equipment Factory, a conference was evolved a new method under which to provide for their appointment to the said posts and thereafter terminate their services for a very short period of a couple of days and then again re-appoint those persons under that cover. It is to be noted that vacancies are still existing on the termination of the services of these persons and still unfilled.

(xxviii)

That the services of the said persons in fact been terminated to nullify the decree passed by the Civil Court and as such the same is wholly illegal and void.

(xxix)

That the applicant has been put back in charge of the said posts and is still continuing on the said posts.

y
Hori Narain H.B.

(14)

(xxv)

that it is known & beliedly that about 40 posts of B. A. have been established by the Government and since the petitioner was very senior amongst the Union officers as such as having all the for promotion to one of the officer in grade of B. A. The impugned order has been issued ^{out} the lawful claim of the applicant to hold the said post.

(xxvi)

that the applicant has been promoted with all benefits by the decree of the civil court, the respondents have yet not implemented the directions contained in the said decree in as much as the applicant has not been given the arrears and all the increments in accordance with the said decree and instead of complying with the said decree, the respondents have illegally terminated the service of the applicant by the impugned order.

(xxvii)

that the impugned order is void by Article 14 and 15 of the Constitution of India.

y Hari Madan H B n

(15)

(xxxiii)

that the amount of the
residence in lieu of one month's notice
does not represent the correct amount of the
current salary to which the applicant is
entitled and as such also the termination
order is in contravention of the provisions
of the Rules.

(xxxiv)

that the services of the applicant are
said to have been terminated under the
provisions of rule 5(i) of the Central
Civil Service (Temporary Service) Rules
1965 hereinafter referred to as "Rules".

(xxv)

that rule 3 of the Rules lays down
the conditions in which a temporary employee
may grant a certificate of declaration with
effect that he is in good permanent service.

(xxvi)

that the applicant has become eligible
for the declaration of permanent service
in good permanent service after 10.1.74 in
as much as fulfilled all the conditions laid
down rule 3. It is pointed out that the work and
conduct of the applicant are well known and

Hadi Masai NTR

Assistant, ...

(16)

communicate to the applicant.

(xxviii)

That the Government of India issued a order (No. 7/12/57- 30.12.57) in which it has been decided that the cases of all persons who are eligible for quasi permanent status should be considered as soon as possible and that in that regard it is possible to avoid any avoidable delay. In view of the fact that the applicant has not been considered for quasi permanent status.

(xxix)

That another memorandum was issued by Government of India (No. 7/12/57- 30.12.57) in which it is stated that if a temporary government servant is found unsuitable for quasi permanent status, the fact should be communicated to him so that he may improve his work and conduct and be considered for consideration.

(xxx)

That it is pertinent to mention that during the absence of the applicant from service of more

than 12 years no service can be considered for

Hasir Masani R/B

B-19

(17)

communicated to the applicant.

(xxviii)

That the applicant received the efficiency bonus and also received the regular increments in his pay during the period he served continuously.

(xxix)

That the applicant is duly qualified for continuing on the post of Junior Medical Officer/Assistant Medical Officer.

7. Reliefs:- In view of the facts mentioned in para 6 above, the applicant is entitled for the following reliefs:-

- (i) to issue an order of direction setting aside the impugned order dated 3.9.1984.
- (ii) to issue an order of direction directing the authorities to treat the applicant in regular service as if the services of the petitioner were not discontinued and give all the benefits of seniority to

The Joint, A. P. Govt. Medical Officer.
H. N. N. N. H. N. N.

(18)

(iii) to issue an order or direction to
confine the respondent at the local
prison etc.

(iv) to issue an order or direction to
reassign the respondent as I.O.
in paragraph 700-1000 etc.
1.1.1974 and pay the amount.

(v) to issue an order or direction to
include the respondent in the
in the recent A.I. 1000 etc. list
at the prison etc.

(vi) any other order which this Hon'ble
tribunal may think fit to make in the
in the circumstances of the case.

Grounds.

(a) Accused, has been
threatening the respondent
considered him in I.O. for I.O. in paragraph
700-1000.

(b) Accused, the above mentioned officer

has been found guilty of
Harassment NIS

(19)

the applicant have been terminated as such the order is unlawful, arbitrary and hit by Article 14 and 16 of the Constitution of India.

(c)

Because, the applicant having served the department for more than 14 years and now at a stage when the applicant has become overage for being appointed in any other government service, the termination of his service is contrary to law and also contrary to equity and natural justice.

(d)

Because, the applicant has become eligible for declaration of quasi permanent service within the meaning of Central Services (Temporary Service) Rules, 1960 inasmuch as he has put in more than 5 years continuous service and there has been no any complaint against him with regard to his work, conduct.

4 Hari Narain Mishra

(20)

- o) Because, the applicant was not granted certificate of being quasi permanent illegally and in contravention of various circular letters referred earlier in this application.
- 2) Because, the impugned order has been passed to nullify the decree of the Civil Court, Kanpur and as such the same is wholly illegal and malafide.
- 6) Interim order, if proved for:-

Pending final decision of this application the applicant seeks issue the following interim order:-

(a) The Operation of the order dated 8.9.1986 may remain stayed.

(b) During the pendency of the petition one post of S.M.O., to which the applicant is entitled may remain kept vacant.
- 9) Details of the remedies exhausted : NIL.
- 10) Matter not pending with any other court, etc.

The applicant further declares that the matter regarding which this application has been made is not pending before any court of Law or any other authority or any other bench of the

y Hari Madan Mishra

B-23

(21)

Tribunal .

11) Particulars of Bank Draft/Postal order in respect of the application fee:-

1. Name of the Bank on which drawn, .

2. Demand Draft No.

Or

1. Number of Indian Postal Order: 3

2. Name of the issuing Post Office, H.P.O. Kanpur.

3. Date of issue of Postal Order:- 6-12-86.

4. Post office at which payable:-

12) Details of Index:-

An Index in duplicate containing the details of the documents to be relied upon is enclosed.

13) List of Enclosures:-

(a) Annexure '1':- True copy of appointment letter dated 31.12.1972/1.1.1973.

(b) Annexure '2' :- True copy of factory order dated 12.1.1973.

(c) Annexure '3' :- True copy of order dated 12.1.1973.

(d) Annexure '4' :- True copy of factory order dated 20.5.1977.

(e) Annexure '5' :- True copy of factory order
Hari Madan Mittal

(22)

Part II dated 30.5.77.

- (f) Annexure '6' :- True copy of letter dated 10.5.75.
- (g) Annexure '7' :- True copy of order dated 26.5.1980.
- (h) Annexure '8' :- True copy of order dated 15.1.85.
- (i) Annexure '9' :- True copy of joining report dated 15.1.85.
- (j) Annexure '10' :- True copy of factory order Part II dated 29.1.1985.
- (k) Annexure '11' :- True copy of factory order part II dated 22.2.85.
- (l) Annexure '12' :- True copy of representation moved by the applicant dt. 17.8.85.
- (m) Annexure '13' :- True copy of order dated 8.9.1986.
- (n) Annexure '14' :- Photograph of advertisement dated 27.9.1986.
- (o) Annexure '15' :- True copy of circular dated 30.1.1979.
- (p) Postal order :- ^{True} bill for Rs. 50/-.
- (q) Envelope :- Address with postage stamps.

Hari Narain HTS

(23)

Verification:-

I, Dr. H.M. Misra, son of Sri V.M. Misra
aged about 39 years, worked as Junior Medical
Officer in Ordnance Equipment Factory, Kanpur,
resident of 37/35, Gitis Bazar, Kanpur do hereby
verify that the contents from 1 to 13 are true
to my personal knowledge and belief and that I
have not suppressed any material facts.

Place:- Kanpur

Date :- 28-2-87

To,

Hari Narain M.B.S.

Signature of the applicant.

Vijai Bachechan
Adv.
Counsel for the applicant

The Registrar,
Central Administrative Tribunal,
Addl. Bench at Allahabad.

Hari Narain M.B.S.

(24)

ANILAL NO. 11

REGISTERED MAIL NO.

POST I. 1001

No. 93/A./Vol. 5/72.

Government of India,

Ministry of Defence,

Directorate General, Ordnance Factories,

6, Asplanade East,

Calcutta-1, the 31 December, 1972.

To,

1 Jan, 1973

Dr. H. K. Misra,
37/35 (Vilas Nagar,
Lanpur (U.P.).

Sub: Appointment as an Assistant Surgeon Gr. I
(Male) in Ordnance & Equipment Factories.

.....

Sir,

I am directed to state to you that recommendation of the Selectional Board convened by the DGO of the President is pleased to offer you a temporary post of Asst. Surgeon G. I (male) in the Ordnance Factories Organisation.

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

- (i) You will be required to under-go a medical examination by a Medical Board at a place to be determined by the Director of Medical Services, Govt. of Uttar Pradesh, Lucknow. The standard of physical fitness shall be as prescribed in the attached copy of the medical regulations. The prescribed fees for the Medical Examination shall be paid by you to the Medical Board, at the time of medical examination. No travelling allowance will be allowed in respect of journeys performed by you in connection with the medical examination. All be communicated to you direct by the Director of Medical Services, Govt. of Uttar Pradesh, Lucknow. Your appointment is subject to your being declared medically fit as above.
- (ii) Your initial pay will be fixed at Rs. 350/- p.m. in the scale of pay of Rs. 350-20-500-30-590-20-30- 800-30-830-35-900/- according to rules in addition to dearness and other usual allowances admissible under the rules and orders governing the grant of such allowances in force from time to time. Non-practising allowance at the rate of Rs. 1/50 of pay subject to a minimum of Rs. 150/- per annum is also admissible. Private practice will not be allowed at all.
- (iii) The post is temporary. Your appointment will be for one year or till the U. P. Govt. nominates a suitable candidate whichever is earlier.
- (iv) You will be on probation for a period of 3 months and this period is extendable at the discretion of the Government.

For and on behalf of the

(P.T.O.)

- (v) Your service will be terminable on one month's notice given in writing by either side without assigning any reason, and Government, not for, reserves the right of terminating your services forthwith on or before the expiry of the stipulated period of notice by sending report to you or a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.
- (vi) You will be subject to discipline as hereafter applicable to troops and civilians employed in the service of the Government and shall be liable to be punished with the orders issued by the Government from time to time.
- (vii) You are liable to serve anywhere in India.
- (viii) You will not be eligible for the grant of leave without allowance for the joining and disjoining, and joining duty, and the joining time for the purpose of joining duty.
- (ix) You will be required to take oath/affirmation in the following form:-
- "I do solemnly affirm that I will be faithful and bear true allegiance to the Government of India and that I will uphold the Sovereignty and integrity of India and that I will carry out the duties of my office honestly, faithfully and with integrity. (as help me God)".
- (x) In accordance with Central Civil Services (Conduct) Rules, 1964 you are not eligible for appointment under the Government of India, if you have more than one wife/husband living. You are, therefore, required to complete the declaration in attached Form and forward it to this Hq. along with your acceptance of appointment.
- (xi) If any declaration given or information furnished by you proves to be false or if you are found to have wilfully suppressed any material information, you will be liable to removal from service and/or any other action as may be deemed appropriate.
- (xii) In your own interest, you should request to the Government to pay for the cost of post. The Government will consider the request on merits.

3. If you accept the terms and conditions detailed above, you may initiate your acceptance of appointment by 31.1.73 at the latest and report for duty, direct to the (name of the authority, Government of India, Ministry of Defence, immediately). Your appointment is subject to your being declared medically fit by the Board as at para 2(i) above within 2 months from the date of joining.

Encl : 11 enclosures

Yours faithfully,

Major General H. B. Narain

Hari Narain H.B.N.

True - Jy
Kajri
28/2

(23)

Copy to:

1. Mr. K. of D. (D/My)
37 Delhi

- With reference to their U.O.
No. 12(2)/72/US-I/D(MY-II)
dated 18.11.72.

2. The General Manager,
Ordnance Equipment
Factory,
Amnagar.

-with reference to this confi-
dential No. 2/1-1 dated 23.8.72
and 4.9.72. Please initiate
action regarding verification
of character and antecedents of
the candidate and forward the
Police verification Report to
this Hq. in due course. On
appointment, the candidate
should not be allowed to handle
any classified documents pend-
ing satisfactory completion of
verification of his character
and antecedents. He may be
allowed to join without prior
medical examination.

3. The Controller of Defence Accounts(I.S.),
9, Chitranjan Avenue,
Calcutta-12

4. Personal File.

Harin Narain HTB

*True copy
Vijai Bhatia
28/11/72*

(27)

1-12-72

P.O. Pt. II No. 75 Dt. 12.1.72.

No. 75

Sub: Appointment Lett. . Sur. Gen. P. I.

Dr. M. N. M. is appointed as a Surgeon (P. I.) (a gazetted class II post) by the D.C.C. Selection in the gazetted Medical Lett. of Ord. 10.1.1973 at an initial salary of Rs. 350/- P.M. in the scale of pay of Rs. 350-25-500-30-530-18-30-200-30-330-35-90 in addition to dearness and other usual allowances admissible under rules and orders governing the grant of such allowances in these matters from time to time.

Dr. M. N. M. is also entitled for house rent allowance at the rate of 3 1/2% of his gross salary of Rs. 150/- per month. No private practice will be allowed to him.

He will remain on probation for a period of 3 months from the date of his appointment and this period is extendable at the discretion of the Government.

The above appointment will be in force till the U.P.S.C. nominates a suitable permanent replacement or earlier.

The continued appointment of the said officer to the post in question will be subject to his being deemed medically fit by the Director of Medical Services, Govt. of U.P. Lucknow.

Authority: D.C.C. Letter No. 982/ / Vol. 5/72
dt. 31.12.72/1.1.73.

Dr. M. N. M. is posted at Govt. P. I. Hospital, Lucknow.

*File copy
1/12/72
28/2*
(Class No. 1-1)
Hari Narain Mittal

(20)

Amendment No. 13

No. G./60

Order: 122 No. 77

Dr. H. N. Misra

D.O.

1/6

1.1.61

Assistant Surgeon Gr. I,

D.G.

Sub: Screening of Commissioned Officers.

The Hon. Secy. to Govt. screening of the existing Assistant Surgeons Grade I to determine their suitability for entitlement to the revised scale of Rs. 700-1300 as also for facilitation of advancement in active progress and necessary amending action to be taken. The D.G.O.I. has instructed that as soon as the decision of the competent authority is received, all concerned will be suitably informed.

This is for your information.

Sc/

(122/11/61)

General Manager

Handwritten signature: Hari Madani H.B.

Handwritten notes:
Recd by
Vijay-Pokhara
A.W.
28/2

(29)

RESTRICTED

MEMORANDUM NO. '4'

ORGANIC EQUIPMENT FACTORY, DAVANAGERE

FACTORY ORDER P.11 II

BY

SHRI V.R. SHIV MURARI, OFFICER IN-CHARGE C.E.G.

Dated 20th May '77

No. 989

SUB: CEILING IN C.E.G. (REVISION 1973)
NO. 15 1973 2 CEILING SCHEME IN DGOI ORGA.

The following Assistant Surgeons Grade 1 have been redesignated as Assistant Medical officers and have been placed in the revised Class I Junior Scale of Rs. 700-40-900-10-40-1100-50-1300 with effect from the date indicated against each:-

	<u>Date of placement.</u>
1. Dr. A.R. Chattopadhyay	1-1-1973.
2. Dr. Viswan Vir.	1-1-1973.
3. Dr. D.N. Saxena.	1-1-1974.
4. Dr. Harihar Padhi	1-1-1975.

Authority :- DGOI/Gaipur letter No. 074/OP/A/1

dt. 30th April / 3rd May, 1977.

*True copy
Vijai Padhi
28/2*

(V.R. SHIV MURARI)

OFFICER IN-CHARGE.

Harisharan & B.S.

B-22

(30)

ANNEXURE NO. 15

Restricted

ORDINANCE NO. 15

OF THE GOVERNMENT OF INDIA
MINISTRY OF HEALTH AND FAMILY WELFARE

SRI V.K. SHARMA, I.C.S., (P), (M), (A), (S), (D), (C), (E), (F), (G), (H), (I), (J), (K), (L), (M), (N), (O), (P), (Q), (R), (S), (T), (U), (V), (W), (X), (Y), (Z), (AA), (AB), (AC), (AD), (AE), (AF), (AG), (AH), (AI), (AJ), (AK), (AL), (AM), (AN), (AO), (AP), (AQ), (AR), (AS), (AT), (AU), (AV), (AW), (AX), (AY), (AZ), (BA), (BB), (BC), (BD), (BE), (BF), (BG), (BH), (BI), (BJ), (BK), (BL), (BM), (BN), (BO), (BP), (BQ), (BR), (BS), (BT), (BU), (BV), (BW), (BX), (BY), (BZ), (CA), (CB), (CC), (CD), (CE), (CF), (CG), (CH), (CI), (CJ), (CK), (CL), (CM), (CN), (CO), (CP), (CQ), (CR), (CS), (CT), (CU), (CV), (CW), (CX), (CY), (CZ), (DA), (DB), (DC), (DD), (DE), (DF), (DG), (DH), (DI), (DJ), (DK), (DL), (DM), (DN), (DO), (DP), (DQ), (DR), (DS), (DT), (DU), (DV), (DW), (DX), (DY), (DZ), (EA), (EB), (EC), (ED), (EE), (EF), (EG), (EH), (EI), (EJ), (EK), (EL), (EM), (EN), (EO), (EP), (EQ), (ER), (ES), (ET), (EU), (EV), (EW), (EX), (EY), (EZ), (FA), (FB), (FC), (FD), (FE), (FF), (FG), (FH), (FI), (FJ), (FK), (FL), (FM), (FN), (FO), (FP), (FQ), (FR), (FS), (FT), (FU), (FV), (FW), (FX), (FY), (FZ), (GA), (GB), (GC), (GD), (GE), (GF), (GG), (GH), (GI), (GJ), (GK), (GL), (GM), (GN), (GO), (GP), (GQ), (GR), (GS), (GT), (GU), (GV), (GW), (GX), (GY), (GZ), (HA), (HB), (HC), (HD), (HE), (HF), (HG), (HH), (HI), (HJ), (HK), (HL), (HM), (HN), (HO), (HP), (HQ), (HR), (HS), (HT), (HU), (HV), (HW), (HX), (HY), (HZ), (IA), (IB), (IC), (ID), (IE), (IF), (IG), (IH), (II), (IJ), (IK), (IL), (IM), (IN), (IO), (IP), (IQ), (IR), (IS), (IT), (IU), (IV), (IW), (IX), (IY), (IZ), (JA), (JB), (JC), (JD), (JE), (JF), (JG), (JH), (JI), (JJ), (JK), (JL), (JM), (JN), (JO), (JP), (JQ), (JR), (JS), (JT), (JU), (JV), (JW), (JX), (JY), (JZ), (KA), (KB), (KC), (KD), (KE), (KF), (KG), (KH), (KI), (KJ), (KK), (KL), (KM), (KN), (KO), (KP), (KQ), (KR), (KS), (KT), (KU), (KV), (KW), (KX), (KY), (KZ), (LA), (LB), (LC), (LD), (LE), (LF), (LG), (LH), (LI), (LJ), (LK), (LL), (LM), (LN), (LO), (LP), (LQ), (LR), (LS), (LT), (LU), (LV), (LW), (LX), (LY), (LZ), (MA), (MB), (MC), (MD), (ME), (MF), (MG), (MH), (MI), (MJ), (MK), (ML), (MM), (MN), (MO), (MP), (MQ), (MR), (MS), (MT), (MU), (MV), (MW), (MX), (MY), (MZ), (NA), (NB), (NC), (ND), (NE), (NF), (NG), (NH), (NI), (NJ), (NK), (NL), (NM), (NN), (NO), (NP), (NQ), (NR), (NS), (NT), (NU), (NV), (NW), (NX), (NY), (NZ), (OA), (OB), (OC), (OD), (OE), (OF), (OG), (OH), (OI), (OJ), (OK), (OL), (OM), (ON), (OO), (OP), (OQ), (OR), (OS), (OT), (OU), (OV), (OW), (OX), (OY), (OZ), (PA), (PB), (PC), (PD), (PE), (PF), (PG), (PH), (PI), (PJ), (PK), (PL), (PM), (PN), (PO), (PP), (PQ), (PR), (PS), (PT), (PU), (PV), (PW), (PX), (PY), (PZ), (QA), (QB), (QC), (QD), (QE), (QF), (QG), (QH), (QI), (QJ), (QK), (QL), (QM), (QN), (QO), (QP), (QQ), (QR), (QS), (QT), (QU), (QV), (QW), (QX), (QY), (QZ), (RA), (RB), (RC), (RD), (RE), (RF), (RG), (RH), (RI), (RJ), (RK), (RL), (RM), (RN), (RO), (RP), (RQ), (RR), (RS), (RT), (RU), (RV), (RW), (RX), (RY), (RZ), (SA), (SB), (SC), (SD), (SE), (SF), (SG), (SH), (SI), (SJ), (SK), (SL), (SM), (SN), (SO), (SP), (SQ), (SR), (SS), (ST), (SU), (SV), (SW), (SX), (SY), (SZ), (TA), (TB), (TC), (TD), (TE), (TF), (TG), (TH), (TI), (TJ), (TK), (TL), (TM), (TN), (TO), (TP), (TQ), (TR), (TS), (TT), (TU), (TV), (TW), (TX), (TY), (TZ), (UA), (UB), (UC), (UD), (UE), (UF), (UG), (UH), (UI), (UJ), (UK), (UL), (UM), (UN), (UO), (UP), (UQ), (UR), (US), (UT), (UU), (UV), (UW), (UX), (UY), (UZ), (VA), (VB), (VC), (VD), (VE), (VF), (VG), (VH), (VI), (VJ), (VK), (VL), (VM), (VN), (VO), (VP), (VQ), (VR), (VS), (VT), (VU), (VV), (VW), (VX), (VY), (VZ), (WA), (WB), (WC), (WD), (WE), (WF), (WG), (WH), (WI), (WJ), (WK), (WL), (WM), (WN), (WO), (WP), (WQ), (WR), (WS), (WT), (WU), (WV), (WW), (WX), (WY), (WZ), (XA), (XB), (XC), (XD), (XE), (XF), (XG), (XH), (XI), (XJ), (XK), (XL), (XM), (XN), (XO), (XP), (XQ), (XR), (XS), (XT), (XU), (XV), (XW), (XX), (XY), (XZ), (YA), (YB), (YC), (YD), (YE), (YF), (YG), (YH), (YI), (YJ), (YK), (YL), (YM), (YN), (YO), (YP), (YQ), (YR), (YS), (YT), (YU), (YV), (YW), (YX), (YY), (YZ), (ZA), (ZB), (ZC), (ZD), (ZE), (ZF), (ZG), (ZH), (ZI), (ZJ), (ZK), (ZL), (ZM), (ZN), (ZO), (ZP), (ZQ), (ZR), (ZS), (ZT), (ZU), (ZV), (ZW), (ZX), (ZY), (ZZ).

Dated 30.5.1977

No. 1039

Sub: GRANTING OF ADVANCE (R.A.S.P.W.)
R.O. 1973-31/11/73

The following ad-hoc Assistant Surgeon Grade I are redesignated as Junior Medical Officers on/are placed in the Class II revised scale of pay Rs. 650-3-740-35-810-5-35-800-40-1000-EE-40-1200 with effect from the date indicated against each:-

1. Dr. A.A. Srivastava -1.1.1973.
2. Dr. H.H. Misra -1.1.1973.
3. Dr. (Mrs) A. Singh -1.1.1973.
4. Dr. D.A. Datta -1.1.73.
5. Dr. (Miss) P. V. Singh -1.6.1973.

(Copy: DGO, Calcutta to S.O. 574/12/1/1 dt. 30.4./3-5-1977.)

(Sd/-)

(Sd/-)

*True copy
Vijay Singh
20.7.2*

Hari Madan H.T.

(31)

ANNEXURE NO. '6'

10,
The Director General,
Ordnance Factories,
6, Esplanade East,
Calcutta-700001.

No. 674/CE/1/1/US.I/D(Py.II)
Government of India
Ministry of Defence
(DEPARTMENT OF DEFENCE PRODUCTION)
New Delhi, the 13th August, 75.

Subject: REORGANISATION OF MEDICAL SET-UP IN THE
ORDNANCE FACTORIES ORGANISATION.

Sir,

I am directed to say that the question of Re-organisation of the Medical set-up in the Ordnance Factories Organisation has been under consideration of Government for some time. Considering the various aspects of this question and taking into account the recommendations made by the Third Pay Commission, it has been decided to completely civilianise the existing set-up. The revised structure indicating the revised designation and the scales of pay applicable to each post, is indicated in Annexure 'A' to this letter. Separate orders will be issued in regard to the number of posts in each category and their allocation.

2. The replacement of service officers by civilians will be done in gradual phases, over a period of 5 to 10 years, depending upon the availability of suitable departmental candidates.

3. It has been further decided that the existing Assistant Surgeons Grade I (Class II) will be screened by a Departmental Promotion Committee and the Class I Scales of Rs. 700-1300 will be given to those Doctors only who are in possession of MBBS Degree and are found fit after screening. Those who are not found fit, will be entitled to the pay scale of Rs. 550-1200, as recommended by the Pay Commission. These scales will have effect from 1-1-1973.

4. Action is being taken to notify the revised pay scale for each category in the Gazette separately.

5. It has also been decided that the Directorate General, Armed Forces Medical Services, will continue to provide, as hitherto, the specialist cover for the civilian employees at present. Similarly, the existing arrangements for the issue of Medical Stores by the D.G.A.F.M.S., will also continue.

6. This issues with the concurrence of Ministry of Finance (Defence) vide their L.O. No. 2684-P of 1975.

Yours faithfully,

sd/

(Sd/-)

DEPUTY SEC. ARMY & AIR CORP. OF INDIA.

Hari Narayan H.B.

*True copy
Haji Baid
28/8*

(32)

AMISADMI NO. 171

No. 254/III// .
Government of India,
Ministry of Defence,
Ordnance Factory Board,
C, Esplanade East,
Calcutta-700069, the 26 June 1980.

MEMORANDUM

In pursuance of Sub-Rule (i) of Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965, I hereby give notice to Dr. H.M. Mishra, Junior Medical Officer that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or, as the case may be, tendered to him.

Station : Calcutta

(Mr. S. BHATTACHARYA)

DIRECTOR GENERAL OFFICE FACTORIES .

Date : 26 June, 1980

To

Dr. H.M. Mishra,
Junior Medical Officer,
Ordnance Equipment Factory,
Ranpur.

Hari Narayan H B

*True copy
Vijay Bhatnagar
27/2*

(33)

AMMUNITION NO. '8'

REC'D/AD
BY H/AD

No. JIG/C-34/HML.
Government of India,
Ministry of Defence,
GRAND POONCHERY,
KANCHI, 15th Jan, 1985.

Dr. H.A. Misra,
37/35, Gilis Bazar,
AMMUNITION

SUB: RE-INDUCTION IN SERVICE- ADHOC JUNIOR
MEDICAL OFFICER.

In compliance with the Order dated 30.5.81 of the
Hind Adl. Mansif, Kanchi in suit No. 772 of 1980 and the Order
dated 15-4-83 of the 1st Adl. Distt. Judge, Kanchi in CA
No. 537 of 1981 and the Order of the Hon'ble High Court in SA
No. 1628 of 1983, you are hereby re-instated in service as
Adhoc Junior Medical Officer. The termination Order bearing
Memo No. 254/HML/A/1, dated 26.6.1980 is hereby cancelled.

You are, therefore, directed to report for duty
immediately on receipt of this letter.

(S.S. DEBACHARYA)

Copy to:-

GENERAL MANAGER,
FOR C.B. BOARD OF C.B. BOARD, OFB.

1. The Secretary,
Grand Poona Board,
6, Esplanade West,
CALCUTTA-69.

(Sec-A/1)

For information with reference to OF Board
Telex No. 254/HML/A/1, dated 11.1.85.

2. The Addl. Director General,
Grand Poona Board,
C.B. Group, 1st Division,
Sarvodaya Nagar,
KANCHI.

For information with reference to Addl. DGOF's
Telex No. 20/A/1/85 dated 1.1.85 to Munitions, Calcutta and
copy to this Factory.

Handwritten: Hari Nandan N (182)

(34)

10th Jan. 1955

The General Manager,
Ordnance Equipment Factory,
Kanpur.

10th January 1955.

Sir,

Ref: your letter no. W/O/S-34/Gen Govt of India,
Ministry of Defence, Ordnance Equipment Factory,
Kanpur, dated 15.1.1955.

I received Govt. of India, Ministry of Defence, Ordnance
Equipment Factory, Kanpur, letter dated 15.1.1955.

I am joining my services today as Junior Medical Officer
Temporary and not as Adhoc Junior Medical Officer as mentioned
in your letter no. W/O/S-34/Gen Govt of India, Ministry of Defence,
Ordnance Equipment Factory, Kanpur, dated 15.1.1955.

In the suit I had challenged that your statement was "ad-hoc" and not "adhoc" which was also admitted by you in your written
statement. This point was considered by the learned courts who
in their judgments have clearly held that your statement was
"Temporary" and not "adhoc".

Kindly review your letter mentioned above no- W/O/S-34/Gen.
dated 15.1.55 and delete the word "adhoc" at two places and substi-
tute with the word "Temporary".

It is requested that immediate action in the matter may
kindly be taken by issuing another order mentioning as joining
the services as "Junior Medical Officer - Temporary."

The payment of all the arrears of pay, wages, allowances,
annual increments and dearness amount etc. may kindly be made at
an early date.

Thanks,

Yours faithfully,

(Mr. G. N. Misra)
37/35, Bili Bazar, Kanpur.

Copy to:

1. The Union of India, through the Secretary, Department of Defence
(Production), Ministry of Defence, New Delhi.

2. The Director General Ordnance Factories, 6, Esplanade East,
Calcutta-700 069.

Harin Narayan HBS

ADAM SMITH 10. '10'

Rest ricted

JOHN L. GILBERT & SONS, INC.

PACIENTE DE 72 ANOS

CONFIDENTIAL, 100-3-1, DATED 29.1.55.

42. 21

Suo: Re-instatement in Army at Monroe Junior
Medical Clinic.

Ref: U.S. Pt. II No. 1447 Ch. 4.7.0.

• • • • •

In compliance with the Order dated 3.5.61 of the
 IInd Addl. Commr, Amritsar in Smt. No. 772 of 1960 and the
 Order dated 16.4.63 of the Hon'ble Distt. Judge, Amritsar
 in G.A. No. 537 of 1961 and the Order of the Hon'ble High Court
 in S.A. No. 1620 of 1963 Dr. H.L. Prasad, Senior Medical
 Officer, C.S. & D. 192. Hospital is hereby re-instated in service.
 Accordingly the termination Order bearing No. 204/L.A./A.A. dt.
 26.6.80 and F.O. under reference are hereby cancelled.

(Attachment :- 5) Dated 24/11/2013

1001. 1.1. 20

(4.13.014)

Charles L. ...

Copy to:-

1.011 conc. 1.0

2.vij. Section (ten copies)

Hari Naran H/B.

One copy
Vign. Books for
Museum

(36)

ANNEXURE NO. '11'

RESTRICTED

ORDNANCE EQUIPMENT FACTORY, ALPORA
FACTORY ORDER PART II
BY

SRI LUNHOO LAL, IOFS, OFFICE-IN-CHARGE, CHARGES.

DATED 22nd APRIL 85.

No. 806

SUB: RE-ILLUSTRATION OF FACTORY ORDER PART II
MEDICAL OFFICER-ALPORA.

Ref: F.O. Part II Nos. 210 dated 29-1-85 and
345 dated 17-2-85.

The word "Medical" appearing in the Factory
Order referred to above is hereby deleted and the word "Temporary"
may be inserted in place of the word "Medical".

(Authority : CP Board Letter No. 254/H 1/1/1 dt. 26-5-85)

Copy to:-

CP Board/CP Board/1/1/1.
Government of India,
Ministry of Defence,
ORDNANCE EQUIPMENT FACTORY,
ALPORA, APRIL, 1985.

All concerned.

(SIGNATURE)

OFFICE-IN-CHARGE, CHARGES.

Har Naran HBS-

True copy
Liza Bhatia
2872

(37)

ANNEXURE NO. '12'

To,

The Secretary,
Department of Defence Production,
Ministry of Defence,
Government of India,
New Delhi-110011

The Director General Ordnance Factories,
Ordnance Factory Board,
10-1 Auckland Road,
C A L C U T T A - I

The General Manager,
Ordnance Equipment Factory,
A A R P U R.

Through Proper Channel.

1. Ministry of Defence (Department of Defence Production)
Letter No. 574/CP/4/US-1/D (FY-II) dated 18.3.1975.
2. Ministry of Defence Corrigan No. 574/CP/4/2153/US-1
D (FY-II) dated 18-10-1975.
3. D.G.O.F. letter no. 574/CP/4/1 dated 30.4.1977.
4. D.G.O.F. letter no. 574/CP/4/1 dated 25.5.1977.
5. Factory Order No. 803 part II OMF India dated 12-4-1985.

Revered Sir,

Most respectfully I bring to your kind notice that I was appointed initially as a Asstt. Surgeon Grade I (Class I) in Ordnance Equipment Factory, Jaipur in pay scale of Rs. 550-2,500-590-AB-30-800-30-830-35-900/- subsequently under the reorganization of Medical set up in the Ordnance Factories organization vide D.O. of D letter No. 574/CP/4/US-1/D (FY-II) Deptt. of Defence Production dated 18.3.1975 it was directed that existing Asstt. Surgeons Gr. I (Class II) will be screened by a departmental promotion Committee and Class I Scale of Rs. 700-1500 will be given to those Doctors only who are in possession of MBBS Degree. This scheme of reorganization was further modified by D.O. of D Corrigan letter No. 574/CP/4/2153/US-1/D (FY-II) dated 18 Oct 1975.

Subsequent to this, a letter was received by me emanating from G.O.F. that steps were being taken for entitlement to the revised pay scale of Rs. 700-1500. This letter was immediately succeeded by D.G.O.F. letter no. 574/CP/4/1 dated 30.4.1977 where in, a scale was fixed 700-400-900 AB-40-1100-50-1300.

(33)

that reference is further craved to the ... letter dated 30.4.1977 where in the ... date for fixation of pay was made out;

As per the ... to fixation of pay is ... 1.4.77 in the ... pay scale of ... 700-1300.

... (i) of rule 5 of the ... (ii) of rule 5 of the ... which were ... 22.4.1977. ... not yet been ...

... as per ... of ... under ... the revised pay scale of ... 700-1300 ... 1.4.1977. ... are solicited to be issued ... in this regard.

... It is most humbly ... mainly be issued for ... in the ... list.

... record since 10.1.1975. It is ... be declared ... the assignment ... declared to be ...

It is ... be also ...

Dated: 17.8.85

Encl : (2)

... Hospital, ...

Hari Narayan H B...

... ...

(39)

ARTICLE '13'

No. 251/111/V
Government of India,
Ministry of Defence,
 Ordnance Factory Board,
 15-1, Connaught Place,
 Calcutta-1, the 31st Sept. 1966.

In pursuance of the proviso to sub-rule (i) of Rule 5 of the Central Civil Services (Conduct) Rules, 1954, the President hereby directs that the services of Dr. H.N. Misra, J.S.O. be terminated and he shall be entitled to a claim equivalent to the amount of his pay and allowances for the period of one month notice at the time when he is required to leave immediately before the termination of his services.

Witness my hand in the name of the President.

Station :- Calcutta-1

Dated : 31st Sept. 1966.

(Signature)
Secretary/Secy

To,

Dr. H.N. Misra,
J.S.O.
Ordnance Equipment Section,
Kanpur.

Harish Chandra + (P)

*True copy
Vijay Prakash
28/2*

(40)

ANNEXURE NO. '14'

APPOINTMENT	सेवायोजना	APPOINT
<p>आईनेन्स फैक्ट्री कानपुर- २०८००९</p> <p>निम्नलिखित पदों हेतु भारतीय नागरिकों से आवेदन-पत्र आमंत्रित किये जाते हैं। पदों के लिए विशिष्टीकरण: निम्नवत है:-</p> <p>(१) अल्पकालिक मोडकला आफोसर: ०३ पद (२ अनारक्षित एवं अ. जा. हेतु १- आरक्षित) (अवधि जोकि ६ माह से अधिक नहीं है, के लिए) वेतनमान: रु. ७००- १३००+ अन्य भत्ते। (कुल परिवारध्या= २५३१.५० लगभग) योग्यता: एम बी बी एस अथवा समकक्ष कम्पलसरी इनटर्नशिप सहित। वे जिनके पास निम्न डिप्लोमा में पोस्ट ग्रेजुएट डिग्री अथवा डिप्लोमा है, को वरीयता दी जायेगी। डिप्लोमा: एनेस्थेसिया (Anaesthesia) गाइनेकोलॉजी एवं आब्स्टेट्रिक्स रेडियोलॉजी आयुसीमा: किसी भी दशा में ४५ वर्ष से अधिक न हो। (२) अंशकालिक डेंटल सर्जन: ०१ पद (पूर्णतया) अस्थाई आधार पर) वेतन: रु. ३००/- (रु. तीन सौ मात्र) चिकित्सा शुल्क के रूप में। योग्यता: बी. डी. एस. अथवा समकक्ष।</p> <p>अन्य नियम एवं शर्तें:- डेंटल सर्जन को एक सप्ताह में दो बार फैक्ट्री में उपस्थित होना होगा और प्रत्येक उपस्थित की अवधि ०४ घंटे होगी। २- पूर्ण बायो-डाटा देते हुए आवेदन-पत्र महाप्रबंधक आईनेन्स फैक्ट्री, कालपी रोड, कानपुर- २०८००९ (यू. पी.) के पास विज्ञापन के प्रकाशन की तिथि से १५ दिन के अन्दर भर्जें। अभ्यर्थी द्वारा पूर्णतया हस्ताक्षरित एक नवीनतम पासपोर्ट साइज फोटोग्राफ, आवेदन पत्र के दायीं ओर शीर्ष पर पेस्ट होना चाहिए। ३- निर्धारित योग्यता न्यूनतम है और समान अर्हता रखने से ही अभ्यर्थी साक्षात्कार हेतु बुलाये जाने के लिए अधिकृत नहीं हैं। यदि विज्ञापन के संदर्भ में प्राप्त आवेदन पत्रों की सं. बहुत अधिक हो जाती है और तब इस फैक्ट्री के लिए यह सुविधायुक्त अथवा संभव नहीं होगा कि यह साक्षात्कार हेतु सभी योग्य अभ्यर्थियों को बुलायें, यह फैक्ट्री विज्ञापन में निर्धारित योग्यता के स्थान पर उच्च योग्यता एवं अनुभव के आधार पर एक उपयुक्त सीमा तक साक्षात्कार हेतु अभ्यर्थियों की संख्या प्रतिबंधित कर सकती है। ४- बाहरी कथन अनुसूचित जाति के अभ्यर्थी, यदि साक्षात्कार हेतु बुलाये गये तो उन्हें द्वितीय श्रेणी (आईनेनरी) रेलवे किराया का रत्न टिकट/एम. आर. प्रस्तुत करने पर सामान्य नियमानुसार भुगतान किया जायगा। ५- महाप्रबंधक के पास बिना कोई कारण बताये किसी अथवा सभी आवेदन पत्रों को निरस्त करने का पूर्ण अधिकार सुरक्षित है।</p> <p>डी ए बी पी ६८५ (४४५) ८६</p>		

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Time 11/11/11
Vijay Kumar
Jain

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एक मजदूर की जिसको दिल्ली में लकी मारना

राजकीय

राजकीय बालिका हस्तर व

Hari Madan H/Bu

AMERICAN NO. 1151

no. 65/Regular/76/11.,
Government of India,
Ministry of Defence,

Colcutta, 700039, the 30 January 1979.

To,
The General Manager,
All Factories,

Subj:- Ad-hoc 5.6-55 formation in series of .

Sanction of the CP for continuation of appointment of ad-hoc doctors in service in case of illness upto a period of 6 months upto 30-6-79 or till the date of final nominees whichever is earlier. The above has been conveyed by Ministry of Defence to this H. and C. / M. S. Division.

2. U.P.N.C. select list of candidates for election to the post of J.C.M. at Glenmalur. One of the candidates is only the i.c., Dr. (Mrs.) Chelvi S. Chelvi, who is a member of the Govt. Board's panel in the select list. I am sure that the U.P.N.C. and the influence of some of its members, who will have to vacate the position as soon as the election candidate is appointed. The committee of U.P.N.C. members are also to be terminated.

[illegible]

- i) the services of short-term employees will be terminated first.
- ii) For the services of casuals employed in order of Juniority will be terminated. The casuals will be given 15 days notice or 15 days pay in lieu of notice.

Con. to:-

- (1) The Addl. Secy/Gen. Insp.
(2) Regional Directors,
All Regions,
(3) The Secy/Gen. Insp./
Addl. Secy, All factories.

(4) 6/93/Ad-hoc/78/1/1.

NOT RECORDED - 10

Hari Nazar NTB

Done - 10/12/2012

Common School
for

Regulation No. 1857

the New Mexico
is
under the same

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH: ALLAHABAD.

CIVIL MISC. APPLICATION NO. _____ OF 1987

CL. B HALF OF

The Union of India, Department of
Defence, New Delhi & others.

.Applicant/
Respondents.

In

REGISTRATION NO. 186 of 1987

Dr. Harj Harain Misra,
37/35, Gills Bazar, Kanpur.

.Applicant

Versus

1. Union of India through Secretary,
Department of Defence (Production)
Ministry of Defence, Government of India,
New Delhi.

2. Director General (Member Personnel)
Ordnance Factory Board, Government
of India, Ministry of Defence,
Ordnance Factory, 10-Annuland Road,
Calcutta.

3. General Manager,
Ordnance Equipment Factory,
Kanpur.

.Respondents.

DO

The Hon'ble the Vice Chairman and His Companion
Members of the aforesaid Tribunal.

The humble application of the abovenamed
Petitioner respectfully states as under :-

10

1- That full facts have been narrated in the accompanying counter affidavit.

2- That it is therefore, in the interest of justice that this Hon'ble Tribunal may kindly be pleased to reject the stay application and no relief is liable to be granted in favour of the applicant.

P R A Y E R

It is, therefore, most Respectfully prayed that this Hon'ble Tribunal may kindly be pleased to reject the stay application, as no interim relief can be granted in favour of the applicant, otherwise the respondents shall suffer irreparable loss.

DE: APRIL 28, 1987.

(K.C. SINHA)
ADVL. GENERAL COUNSEL
CENTRAL GOVT.
COUNSEL FOR THE RESPONDENTS.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH : ALLAHABAD.

VS.

COUNTER AFFIDAVIT

ON BEHALF OF

THE UNION OF INDIA, DEPARTMENT OF
DEFENCE, NEW DELHI & OTHERS.

.RESPONDENTS.

IN

REGISTRATION NO. 106 of 1987

(District - Kanpur)

Dr. Hari Kishan Misra,
37/35, Gills Bazar, Kanpur.

.Applicant

Versus

Union of India & others.

.Respondents.

Affidavit of Munnoo Lal aged about 49
years, s/o Shri Babu Lal, posted as
Joint General Manager, Ordnance
Equipment Factory, Kanpur.

(Deponent).

I, the deponent abovesaid do hereby
solemnly affirm and state on oath as under :-

1- That the deponent is posted as Joint General
Manager, Ordnance Equipment Factory, Kanpur and has
been deputed to file this counter affidavit on behalf
of the respondents and as such is well acquainted with

2.

the facts deposed to below.

2- That the deponent has read the ~~xxxxxxx~~ application filed by the applicant and has understood the contents therein and is in a position to reply the same.

3- That the contents of paragraphs 1,2,3,4 and 5 of the application need no comments being matters of records.

4- That the contents of paragraphs 6(i), 6(ii), 6(iii), 6(iv), 6(v), 6(vi), 6(vii) and 6(viii) of the application are substantially correct. It is however, submitted that the applicant was offered an appointment incorporating the terms and conditions of employment vide letter No. 099/A/L/VOL/I/73, dated 31st December, 1972. The post was temporary and the appointment was made for one year or till the Union Public Service Commission nominates a suitable candidate, whichever is earlier. It was also stipulated that the applicant's service will be terminable on one month's notice given in writing by either side without assigning any reason. It was further stipulated that the President reserves the right of terminating the applicant's services forthwith on or before expiry of the stipulated period of notice by making payment to him of a sum equivalent to the pay and allowances

3.

for the period of notice or the expired portion thereof. The applicant has deliberately omitted to mention the provision of clause (xii) of the appointment letter wherein the applicant was advised to respond to Union Public Service Commission advertisement for the post of Assistant Surgeon Gr.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. A true copy of the appointment letter dated 31st December, 1972/1st January 1973 is being filed herewith and marked as Annexure-I to this counter affidavit.

Ann-I.

5- That the contents of paragraphs 6(ix), 6(x), 6(xi) and 6(xii) of the application are not correct and as such are denied. In this connection, it is submitted that the applicant was informed vide letter dated 12th January 1977 that screening of the existing Assistant Surgeon Gr.I to determine their suitability for entitlement to the revised scale of Rs. 700-1300 and also for declaration of permanency is in active progress. It was also informed that as

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soon as a decision of the competent authority is received, all concerned will be suitably informed. The fact of the matter is that in accordance with the instruction contained in para 3 of Ministry of Defence letter No. 074/CP/A/M/USI/D(PY-II), dated 18th August 1975, the cases of regular Assistant Surgeon Gr.I who have/had been on the strength of Director General of Ordnance Factories' Organisation, as on 1st January 1973, 1st January 1974, 1st January 1975 and 1st January 1976, were screened by the relevant Departmental Promotion Committee. The officers 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. These officers who were not found fit by the Departmental Promotion Committee were re-designated as Junior Medical Officer. All other ad-hoc Assistant Surgeon Gr.I like the applicant, were also placed in Class II revised scale of Rs. 650-1200/-.

6- That in reply to the contents of paragraph 6(xiii) of the application, it is submitted that the applicant belongs to the group of ad-hoc appointees employed solely on temporary basis and his services were extended on six monthly basis. In terms of his appointment letter, the applicant was advised from

5.

time to time to respond to Union Public Service Commission's advertisement for the post of Assistant Surgeon Gr.I which was the regular mode of filling up of vacancies in Director General of Ordnance Factories Organisation, but the applicant could not qualify himself to get his service regularised through Union Public Service Commission. He was also informed from time to time that his services would be terminated either on one months notice or pay in lieu thereof as soon as Union Public Service Commission selected candidates were in actual position. One such notice No. OM/60, dated 26th July 1979 is enclosed herewith

Ann-II.

~~annexure~~ and marked as Annexure II to this counter affidavit. It is further submitted that since the applicant could not qualify himself to get his services regularised through Union Public Service Commission as per terms and condition of his appointment, his services were terminated w.e.f. 2nd August 1980 under sub-Rule (1) of Rule 5 of the Central Civil Services (TS) Rules, 1965.

7. That in reply to the contents of paragraphs 6(xiv), 6(xv), 6(xvi), 6(xvii) and 6(xviii) of the application, it is submitted that the order of termination was not illegal and the same was not passed without jurisdiction. The impugned order was passed with due authority and jurisdiction and

6.

statutory period of one month's notice was also given. It is however, not disputed that the Suit No. 772 of 1980 - Dr. H.N. Mishra vs. Union of India was decreed on the ground that the plaintiff's appointing authority was the President of India and not the Director General of Ordnance Factories. The first appellate Court has upheld the judgment and decree of the Trial Court on another ground which rejecting the grounds given by the Lower Court for decreeing the suit. The appellate court has held that the appointment of the applicant was by the President and therefore, he alone was competent to terminate the services of the applicant. ~~Respondent/~~ The second appeal was dismissed by the Hon'ble High Court on the ground that the initial ~~appointment of the respondent no.2 was made by the~~ appointment of the applicant having been made by the President, the respondent no.2 can not be said to have been the appointing authority despite the fact that the term initially laid in the order of appointment was extended by him.

8- That the contents of paragraph 6(xix) of the application need no comments. It is further submitted that the Execution Case is still progressing in the Trial Court.

9- That in reply to the contents of paragraph

7.

6(xix), 6(xxi), 6(xxii), 6(xxiii) and 6(xxiv) of the application, it is submitted that in the re-instatement order, the word "AD HOC" was^A incorporated. However, it was amended to read as "TEMPORARY" by an subsequent ~~order~~ order dated 22nd April 1985.

10- That ~~xxxxxxx~~ the contents of paragraph 6(xxv) of the application need no reply.

11- That in reply to the contents of paragraph 6(xxvi) of the application, it is not disputed that the Execution Case No. 262/82 is still pending/progressing in the Trial Court. It is further submitted that the decree holder had been re-instated in service in compliance of the judgment and order passed by the Trial Court. Since the decree holder has failed to comply with the requisites of Article 193 of the Central Service Rules, payment of arrears of pay for the intervening period has been held up.

12- That the contents of paragraph 6 (xxvii) of the application need no comments. Since the appointing authority of the applicant was the President of India, hence the termination order/^{was}also issued by him.

13- That the contents of paragraph 6(xxviii) of the application need no comments. However, it is submitted that to tide over immediate service

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requirement in absence of Union Public Service Commission's sponsored Medical Officers, the Ordnance Factory, Kanpur with the approval of higher authorities, advertised for recruitment of four short term Medical Officer in specific discipline for a period of six months only. The terms and conditions in respect of the short term Medical Officer are entirely different than Assistant Medical Officers. The applicant was appointed for a period of one year or till the Union Public Service Commission nominated suitable candidates. The services of the applicant was extended every six months with the approval of Union Public Service Commission. The applicant's service was ~~with~~ terminated due to the fact that the Union Public Service Commission had not agreed for further continuance of the services of Ad-hoc appointee beyond one year. A copy of the letter dated 21st May 1986 sent by the Union Public Service Commission is enclosed herewith and marked as

Ann-III. Annexure-III to this counter affidavit. The terms and condition of services of Doctors, who were appointed as SMO as referred to by the petitioner are quite different. Their services get automatically terminated after six months. Therefore, the averments made by the applicant in paragraph under reply is wrong and denied.

14- That the contents of paragraphs 6(xxix), 6(xxx) and 6(xxxi) of the application are not correct and as such are denied. It is further submitted that the applicant was appointed for a period of one year or till the Union Public Service Commission nominates suitable candidates. The services of the applicant was extended every six months with the approval of the Union Public Service Commission. The applicant's services were terminated due to the fact that the UPSC had dis-approved further continuance of the services of adhoc appointee beyond one year. Moreover, the applicant could not qualify himself to get his services regularised through UPSC. The services of Doctors who were appointed as short-term Medical Officers (SMO) are quite different and do not attract the terms and conditions as laid down in the case of the applicant. Their services get automatically terminated after six months.

15- That the contents of paragraph 6(xxxii) of the application are not correct and as such are denied. The applicant has deliberately mis-interpreted the contents of the letter in this paragraph. This letter was issued to all the General Managers of the Factories for guidance in connection with absorption of UPSC selected candidates and retrenchment of Adhoc Junior Medical Officers and Short Term Medical Officers

on joining UPSC selected candidates.

16- That in reply to the contents of paragraph 6(xxxiii) of the application, it is submitted that the applicant was recruited on adhoc basis for a terms of one year. His tenure was extended six monthly to give him chance to qualify through UPSC for regular appointment which the applicant failed. This clearly indicates ad-hoc nature of his appointment. The question of declaring an employee quasi-permanent or permanent arose only when the said employee is employed on regular basis for more than 3 years, and approval by the competent authority is made declaring the employee quasi-permanent/permanent. In the instant case, the applicant was employed only for a period of one year or till replaced by a candidate selected by UPSC. After the end of the one year period, the applicant's services stood terminated unless extended by the competent authority for a further period. No order declaring the applicant quasi-permanent in the grade was made. Hence the contention of the applicant that he was illegally not granted the certificate of declaration of quasi-permanency is baseless.

17- That the contents of paragraph 6(xxxiv) of the application are not correct and as such are denied.

The applicant was re-instated in service on the

11.

verdict of judgment of the Court due to the fact that the Department lost the case on technical ground that the applicant's appointing authority was President of India but his services were terminated under the order of Director General of Ordnance Factories. The termination order had to be given as UPSC have decided not to give any further extension to ad-hoc Medical Officers vide the letter dated 21.5.1986 (Annexure-III to this ~~petition~~ counter affidavit). Therefore, there was no other alternative, but to terminate the services of the applicant by the order issued by the President of India, who is the competent authority to do so.

18- That the contents of paragraph 6(xxxv) of the application are not correct and as such are denied. It is further submitted that the impugned order is legally valid and the same is not arbitrary. The applicant was advised from time to time to qualify himself from UPSC to regularise his appointment in his own interest, but he could not qualify himself. Hence the applicant is not a suitable person to be retained in service and his services were rightly terminated, as per the terms of appointment.

19- That the contents of paragraph 6(xxxvi) of the application are not correct and as such are denied. It is submitted that the applicant cannot claim any right whatsoever for declaration of quasi - permanent

12.

status on the ground that he was allowed to continue in service beyond one year and was given regular increments. Since the UPSC couldnot sponsore suitable Doctors to this Organisation, the services of the applicant was extended every six months with the prior approval of UPSC. As the applicant could not qualify himself from UPSC, there was no alternative but to terminate his services in terms of his appointment letter. Declaration of quasi-permanency which is governed by statutory rules, can not be claimed, as a matter of right only on the ground of continuance in service and getting increments. Moreover, the fact that the applicant wasnot found fit by theUPSC, belies the contentions of this paragraph under reply.

20-- That the contents of paragraph 6(xxxvii) of the application are not correct and as such are denied. It is further submitted that due to shortage of the Medical Officer in the Director General of Ordnance Factory Organisation, and due to non-availability of sufficient number of UPSC sponsored doctors, Ministry of Defence started employment of Short Term Medical Officer. They are appointed for a period of six months only and thereafter their services are terminated. Thus Short Term Medical Officers are being appointed to tide over immediate service requirement

in absence of UPSC sponsored medical officer and that

13.

does not given any claim to the applicant, who was not found fit by the UPSC.

21- That the contents of paragraph 6(xxxviii) of the application are not correct and as such are denied. It is submitted that in compliance with the order of the IIInd Addl. Munsif, Kanpur, the applicant was re-instated in service w.e.f. 18th January 1985. The case was decreed on technical ground that the applicant's appointing authority was the President of India but he was terminated under order of Director General of Ordnance Factories. The termination order had to be given as UPSC have declined to give any further extension to adhoc medical officer. But now the termination order was issued by the President of India. . Hence the impugned order is legally valid and there is no malafide intention behind it. Moreover, the applicant has not been discriminated against and singled out for such treatment as the services of all similarly placed doctors have been terminated.

22- That the contents of paragraph 6(xxxix) of the application are not correct and as such are denied. The services of the applicant have already been terminated w.e.f. 18th September, 1986 and he is no more in the strength of this Organisation.



23- That the contents of paragraph 6(xxxx) of the application are matter of record. However, it is submitted that the feeder grade for promotion to the post of S.M.O.'s is form A.M.O.s . Since the applicant was not even an AMO, but only a temporary Junior Medical Officer, ~~xxxxxx~~. He couldnot have been considered in the post of SMO, even if he would have been in service. Therefore, the averments made in para under reply are immaterial to the point of dispute.

24- That in reply to the contents of paragraph 6(xxxx) of the application, it is submitted that in compliance of Court's order, the applicant had been re-instated in service with full benefits. As regards payment of arrears of pay and other allowances for the intervening period, it is submitted that the decree holder has failed to comply with the requisites of Article 193 of the Central Service Rules. Hence the decree holder is not entitled to any payment under the decree until or unless he strictly complies with the Article 193 of the Central Service Rules. However, the decree holder has filed an Execution Case, which is progressing in the ~~xxx~~ Trial Court. However, it is admitted by the applicant in paragraph 6(xvii) of the application that a suit regarding his claim for arrears is still pending in a different court. The applicant

⑥ can not be allowed to raise the disputed matter

15.

before another Court of Law before the Hon'ble Tribunal. On this ground alone the application is liable to be dismissed. It is reiterated that the termination of the applicant w.e.f. 18th September 1986 (Afternoon) under Sub-rule (i) of Rule 5 of the CCS(TS) Rules, 1965 is legally valid.

25- That the contents of paragraph 6(xxxxi) of the application are not correct and as such are denied. The impugned order is not hit by Article 14 and 16 of the Constitution of India.

26- That the contents of paragraph 6(xxxxi) of the application are not correct and as such are denied. The applicant has been paid a sum equivalent to the amount of his pay plus allowances for the period of one month notice at the same rate at which he was drawing them immediately before the termination of his service. The termination order is not in contravention of the provision of any Rules.

27- That the contents of paragraph 6(xxxxi) of the application are not correct and as such are denied. The services of the applicant was rightly and legally terminated under the terms and condition as laid down in his appointment and in accordance with Central Civil Service(Temporary Service)Rules, 1965, which regulated his appointment.

28. What in reply to the contents of paragraphs 6(xxxv), 6(xxxvi), 6(xxxvii), 6(xxxviii), 6(xxxix) and 6(xxxx) of the application, it is submitted that the applicant was recruited on adhoc basis for a term of one year. His tenure was extended six monthly to give him chance to qualify through UPSC for regular appointment. The post of Assistant Surgeon Gr.I now re-designated as Junior Medical Officer are gazetted posts and it is obligatory under Article 320 of the Constitution of India that all gazetted appointment under Government of India be filled through UPSC, and the applicant failed to qualify for selection in the said manner and he thus remained temporary and the question of declaring him quasi permanent did not and could not arise. The applicant was an adhoc temporary appointee and as such he could not be declared quasi permanent or permanent. An extract from Rule 3 of the Temporary Service

Ann-IV. Rules is being filed and marked as Annexure-IV to this counter affidavit. The permission to the applicant to cross the efficiency bar or to allow him increments did not amount to considering the applicant as a regular employee. Continuance in service for 3 years continuously is not the sole criteria for declaration of quasi permanent. The other criteria is that the competent authority, after considering all relevant factors must make a declaration to that effect. The applicant was not in continuous regular employment as his services were being extended

every six months. He was not found suitable by the UPSC. Mere fact that the administrative authorities did not give any adverse entries in his Annual Character Roll does not prove his professional competence.. The fact that he failed to qualify through UPSC, in spite of repeated instruction from the Department, shows that professionally his claim is not tenable.

29.. That the contents of paragraph 6 (xxxxxi) of the application are not correct and as such are denied. It is further submitted that the applicant was appointed on ad hoc basis purely in a temporary capacity and the services of the applicant have been terminated under sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, as per terms and conditions of his appointment letter. The applicant is not entitled to continue on the post from which he has already been terminated w.e.f. 18th September, 1986 (A/L) by the President of India. The fact that he was not found suitable by the UPSC for regular appointments belies all the claims of the applicant.

30- That in reply to the contents of paragraph 7 of the application, it is submitted that as the applicant has failed to make out any prima facie case for interference by this Hon'ble Tribunal, no relief is liable to be granted in the applicant's

18.

favour.

32- That in reply to the contents of paragraph 8 of the application, it is submitted that the applicant has failed to make out a prima facie case for interference by this Hon'ble Tribunal, as such no interim relief can be granted in his favour.

32- That the contents of paragraphs 9, 10, 11, 12 and 13 of the application need no comments.

That the contents of paras 1 and 2, 32 —

_____ of this affidavit are true to my personal knowledge; those of paras 3, 4, 5, 7 partly, 8 to 17, 19 to 23, 24 partly, 26, 28, 29 are

based on records and those of paras _____

_____ are based on informations and those of paras 6, 7, partly, 18, 24 partly

25, 27, 30 and 31 are based on legal advice, which all I believe to be true. No part of it is

false and nothing material has been concealed in it.

NO HELP OF GOD.


DEPONENT.

I, D.S. Chaubey, clerk to Shri K.C. Sinha, Advocate, High Court, Allahabad declare that the person making this affidavit and alleging himself to be the deponent is known to me personally and I identify him


19.

to be the same person.


Identifier.

Solemnly affirmed before me on this 24th day
of April 1987 at 9:00 am/pm by the deponent, who is
identified as aforesaid.

I have satisfied myself by examining the
deponent that he understands the contents of this
affidavit, which has been read over and explained to
him.


JAMES COMMISSIONER.

ANNEXURE I

REGISTERED WITH A/D

NOTE IMMEDIATE

NO. 093/A/M/Vol.5/72
Government of India,
Ministry of Defence,
Directorate General, Ordnance Factories,
6, Esplanade East,
Calcutta-1, the 31st Dec. 1972/1st Jan.
1973

To

DR. H.K. MISRA,
37/35, Gills Bazar,
Kolkata (U.P.).

Sub:- Appointment as an Assistant Surgeon Gr.I (Male)
in Ordnance & Equipment Factories.

Sir,

I am directed to state that on the recommendation
of the Selection Board convened by the DGOF the President
is pleased to offer you a temporary post of Asstt. Surgeon
Gr.I (Male) in the Ordnance Factories Organisation.

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

- (1) You will be required to undergo a medical
examination by a Medical Board at a place to be
determined by the Director of Medical Services
Govt. of Uttar Pradesh, Lucknow. The standard of
physical fitness shall be as prescribed in the
attached copy of the medical regulations. The
prescribed fees for the Medical Examination
shall be paid by you to the Medical Board at
time of medical examination. No travelling
allowance will be allowed in respect of
journeys performed by you in connection with
medical examination. Date and time of medical
examination will be communicated to you
by the Director of Medical Services, Govt.
Uttar Pradesh, Lucknow. Your appointment
subject to your being declared medically fit
as above.

(ii) Your initial pay will be fixed at Rs

In scale of pay of 350-25-500-30-590-EB-30-800-30-830-35-900/-according to rules in addition to dearness and other usual allowances admissible under the rules and orders governing the grant of such allowances in force from time to time. Non-practising allowance at the rate of 33 1/3% of pay subject to a minimum of Rs.150/- per mensem is also admissible. Private practice will not be allowed at all.

(iii) The post is temporary. Your appointment will be for one year or till the U.P.S.C. nominates a suitable candidate whichever is earlier.

iv) You will be on probation for a period of 3 months and this period is extendable at the discretion of the Government.

v) Your service will be terminable on one month's notice given in writing by either side without assigning any reasons. The President, however, reserves the right of terminating your service forthwith on or before the expiry of the stipulated period of notice by making payment to you of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.

vi) You will be subject to conditions of service as applicable to temporary Civilian Government Servants paid from Defence Services Estimates in accordance with the orders issued by the Government of India from time to time.

vii) You are liable to serve anywhere in India.

viii) You will not be eligible for the grant of Travelling Allowance for the journey undertaken the joining time pay and the joining time for the purpose of joining duty.

ix) You will be required to take oath/affirm in the following form :-

"I do swear/solemnly affirm that I will be faithful and bear true allegiance to India and to the Constitution of India as by law established and that I will uphold the Sovereignty and integrity of India and that I will carry out the duties of my office loyally, honestly and

with impartiality (so help me GOD").

ii)In accordance with Central Civil Services(Conduct) Rules,1962, you are not eligible for appointment under the Govt.of India,if you have more than one wife/husband living. You are,therefore,required to complete the declaration in attached form and forward it to this HQ, alongwith your acceptance of appointment.

iii)If any declaration given or information furnished by you proves to be false or if you are found to have wilfully suppressed any material information,you will be liable to removal from service and/or ~~with~~ such other action as Govt. may deem necessary.

iv)In your own interest, you should respond to the U.P.S.C. advertisements for the posts of Asstt.Surgeons Gr.II in the Ordnance and Equipment Factories.

3. If you accept the offer on the terms and conditions detailed above,you may intimate your acceptance to this Hqre.by 31-1-73 at the latest and report for duty direct to the General Manager, Ordnance Equipment Factory, Kanpur immediately. Your appointment is subject to your being declared medically fit by the Board as at para2(i) above within 2 months from the date of joining.

Encls:-11 sheets

Yours faithfully,
Ed/ R.M. Mazumdar
D.G.O.F.

TRUE COPY.



ANNEXURE II

NO. GM/80
CUMMANCE EQUIPMENT FACTORY
KANNUR: DATED 26th JULY '79.

1. Dr. AK Srivastava, JMO.
2. Dr. IL Mishra, JMO
3. Dr. (Mrs) N. Singh JMO.
4. Dr. (Mrs) P. Venna, JMO.

Through: Principal Medical Officer.

SUB: CONTINUED ADHOC APPOINTMENT OF JMOs-
FACILITY OF U.P.S.C.

Intimation has been received from DGOF, Calcutta that sanction has been accorded by the UPSC to the continuance of adhoc Junior Medical Officers upto 31st December, 1978 or till they are replaced by UPSC candidates, whichever is earlier. The DGOF has further intimated that these Junior Medical Officers are, however, eligible to resign to leave earlier if they so desire.

Sd/-
(NK PADMANABHAN)
GENERAL MANAGER.

TRUE COPY.



ANNEXURE III(A)

Confidential

Ministry of Defence
D(Py-I)

Subject: Continuation of service of Dr. M. L. Mishra, JMO, OEF
Reference OESu.o.No.256/III/A/K dt.17-3-1986.

2. The continuance of ad-hoc appointment of Dr. Mishra beyond the period of one year was taken up with the UPSC. A copy of UPSC's letter No.W.2/1(15)/72-A.III/A.U.5, dated 21-5-1986 received in the regard, is forwarded herewith, OED may please send the proposal for issue of termination order urgently.

(Rajinder Mohan)
Deputy Officer

Dr. M. L. Shah,
JMO
Ordnance Factory Board,
Calcutta.

HOD ID No.1(7)/84/D(Py-I), dt.16-6-1986.



ANNEXURE III(B)

(COPY)

Confidential

No.F.2/1(15)/72-A.III/A U.5
New Delhi, 21-5-1986

To

The Secretary to the Govt. of India,
Ministry of Defence,
Department of Defence Production,
Barrack Road, New Delhi

(By name to Shri Rajinder Bohan, Desk Officer)

Subject: Ad-hoc appointment to the post of Asstt. Medical
Officer in the Ordnance and Ordnance Equipment
Factory Department of Defence Production, Ministry
of Defence - Continuation of Ad-hoc appointment of
Dr. S. L. Mishra regarding -

Sir,

I am directed to refer to your letter No.F1(7)/84,
D(Wy-I), dated 5-5-1986 on the subject mentioned above and
to say as follows :-

2. The UPSC (Exemption from Consultation) Regulations,
1953, do not contemplate obtaining concurrence of the
Commission for continuance of ad-hoc arrangements beyond
one year and the Regulations only indicate that the cases of
ad-hoc appointments should be reported to the UPSC who,
in their turn, could include in their Annual Report to be
placed before the Parliament instances of such continued
ad-hoc appointments beyond one year limit prescribed in
the Regulations. The Commission have accordingly decided

that they will not entertain any such reference and
neither agree nor give any advice regarding the continuance
of any ad-hoc appointment beyond a period of one year.

3. In the circumstances it is regretted that the proposal of the Ministry for the continuation of the ad-hoc appointment under reference cannot be processed further. The Commission advise that necessary proposal for filling up the post on regular basis may be sent to the Commission as early as possible.

Yours faithfully,

Sd(Smt.P. Kautia)
Desk Officer

Union Public Service Commission

(MCE/10240)

TRUE COPY.



ANNEXURE IV

(EXTRACT)


WHEN A GOVERNMENT SERVANT SHALL BE DEEMED TO BE
QUASI-PERMANENT

3. A Government servant shall be deemed to be in quasi-
permanent service -

(i) if he has been in continuous temporary service
for more than three years; and

(ii) if the appointing authority, being satisfied
having regard to the quality of his work,
conduct and character as to his suitability for
employment in a quasi-permanent capacity under
the Government of India, has made a declaration
to that effect.

TRUE COPY



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH.

Registration No. 126 of 1987.

Dr. Hari Narain Mishra Applicant.

Versus

Union of India and Others Respondents.

I N D E X

Sl. No.	Description of the document relied upon	Date of Document	Innexeure No.	Pages Nos.
1.	Rejoinder Affidavit of the Applicant.			1-26
2.	True copy of the advertisement at page 2, column 3 of the DAINIK JAGARAN dated 2.7.1972.	2.7.72	RA-1	27
3.	True Copy of the Factory Order No. 1013 (Pt. II)	19.7.73	RA-2	28

Hari Narain Mishra
APPLICANT.

(N.K. NAIR)
Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL.
ALLAHABAD BENCH.

REJOINDER AFFIDAVIT
ON BEHALF OF DR. HARI NARAIN MISRA

IN

Registration No. 186 of 1987.

Dr. Hari Narain Misra Applicant.

V E R S U S

Union of India & Others Respondents.

AFFIDAVIT OF Dr. HARI NARAIN MISRA,
AGED ABOUT 41 YEARS, SON OF SHRI
V.S. MISRA, RESIDENT OF 37/35, GILIS BAZAR
K.M.PUR. (DEPENDENT)

I, the deponent abovenamed, do hereby
solemnly affirm and state on oath as under:

(1) That the deponent is the applicant in the
above case and as such is fully acquainted with
the facts of the case deposed to below. The deponent
has read and understood the contents of the Counter
Affidavit, filed on behalf of the respondents and
the deponent is in a position to reply the same.

(2) That the contents of paragraphs 1, 2 & 3
need no comments.

Hari Narain Misra

(contd.....2)

(2)

(3) That regarding the contents of paragraph 4 of the Counter Affidavit, it is submitted that the deponent had annexed with the Application under Section 19 of the Administrative Tribunals Act, 1985, the true copy of the Appointment Letter dated 31.12.1972/1.1.1973, as Annexure No. 1. It is not disputed that in the said Appointment Letter it was mentioned that the post was temporary and that the appointment would be for one year, or till the U.P.S.C. nominated a suitable candidate, whichever was earlier. It is also not ~~admitted~~ ^{disputed} that there was a stipulation in the Appointment Letter that the services would be terminable by either side on one month's notice, or pay in lieu thereof, and that the deponent would be subjected to conditions of services as applicable to temporary Government Servants (Civilian). The deponent having annexed the true copy of the Appointment Letter, as such, there was no question of deliberately omitting to mention the provision of Clause (xii) of the Appointment Letter, as alleged. It is, however, submitted that within the period of one year, stipulated in Clause (iii) of the Appointment Letter, no U.P.S.C. advertisements for the post of Assistant Surgeons Grade I in the Ordnance and Equipment Factories came to the notice of the deponent, nor was any such advertisement brought to the notice of the deponent. In the advertisement for the post, made in the Dainik Jagaran, Kanpur, dated 2nd July, 1972, at page 2, column no. 3, in response to which the deponent had applied for

Hari Narain H.B.

(contd.....30

(3)

appointment and was selected by a Selection Board, constituted by the D.G.D.F. and on the recommendation of the ^{said} Selection Board, the deponent was offered a temporary post of Assistant Surgeon, Grade I (Male) in the Ordnance Factories Organisation. There was no stipulation that the appointment was to be for one year, or till the U.P.S.C. nominates a suitable candidate, whichever is earlier, or that the candidates who would be selected for appointment in terms of the said advertisement, would be required to respond to the U.P.S.C. advertisements for the post. The true copy of the Advertisement in question, dated 2.7.1972, is annexed herewith as

ANNEXURE 9A-1 Annexure 9A 1. The Selection Board, which selected and recommended the deponent from among a large number of applicants, consisting of Medical Experts and experts of Administration. In the appointment letter by which the deponent was appointed, it was stipulated that the deponent would be on probation for a period of three months, which could be extended at the discretion of Government. The deponent had completed the period of probation successfully and the period of probation was not extended. By a Factory Order Part II No. 1013, dated 19.7.1973, it was stated that the deponent had completed the probationary period of three months satisfactorily and that the D.G.D.F., Calcutta had agreed to the retention of the deponent as Temporary Assistant Surgeon, Grade I in the appointment beyond 9.4.1973, the date by which the deponent had completed his three months' probation. In the said Factory Order

Hari Narain HBS

(contd....4)

(4)

✓
ANNEXURE RA-2

also, it was mentioned that such continuation was, however, subject to the period of one year, or on availability of regular nominees of the U.P.S.C. etc., whichever was earlier. The true copy of the said Factory Order, Part II, dated 19.7.1973 is annexed herewith as Annexure RA-2. The services of the deponent were, however, not terminated on the expiry of one year and the deponent was allowed to continue for several years. The deponent was granted all ~~due~~ due increments and was also allowed to cross efficiency bar, in due course. The deponent remained in continuous employment for more than seven years. There was no justification for treating the appointment as temporary, after the initially stipulated period of one year and it had to be regularised by ^{the respondent in consultation with} the Union Public Service Commission in due course. There was no question of making fresh selection by the U.P.S.C. and the deponent being subject ^{to} selection and abinitio recruitment ^{as if} of the deponent, since the deponent had never been in service of the Ordnance Factory Organisation. There was no necessity for the deponent to reapply for the post which was already being held by him, after due selection by the Selection Board. In fact, the respondents were required to regularise, in consultation with the Union Public Service Commission, on the basis of service record, if at all such consultation was deemed necessary. There was no question of the deponent being required to be subjected to apply afresh for selection by the U.P.S.C. for the post,

Hari Narain HISO

(contd.....5)

(5)

which the deponent was already holding continuously, after the initially stipulated period of one year. The deponent was kept in the pay scale of Junior Medical Officer, that is, Rs. 650-1200. The U.P.S.C. used to advertise for the post of Assistant Medical Officers in the scale of Rs. 700-1300. After one year's period was completed from the initial date of appointment ^{and he} ~~when~~ the deponent continued to serve, the appointment is to be deemed to have ceased to be a temporary or officiating ^{one} and has to be considered on a permanent or regular basis. Since the respondents allowed the appointment to continue beyond the maximum period of one year, it was tantamount to making the appointment permanent and the respondents ought to have taken necessary consultation with the U.P.S.C. in the matter of continuation of the services of the deponent. The appointment of the deponent was made after due selection by a very competent Selection Board after considering a number of candidates. It was nowhere stipulated in the initial appointment letter that the appointment was on adhoc basis. The requirement that every appointment to the posts corresponding to Class I or Class II in the Central Government shall be made in consultation with the Union Public Service Commission, only means that the U.P.S.C. has to be consulted and when the period of one year initially fixed by the appointment order ^{is} expired, the proviso regarding consultation with

Hari Narain Mittal.

(contd....6)

(5)

the U.P.S.C. also ceased to have any operation and there was no question of fresh selection by the U.P.S.C. or the deponent being required to reapply for the same post for selection by the U.P.S.C. After the services of the deponent were extended ^{beyond} the initially stipulated period of one year, the appointment became a proper appointment, which could no longer be termed as temporary or officiating or adhoc and it ought to be deemed to be a permanent appointment. Even if the Union Public Service Commission had not been consulted for extending the period of one year, the appointment would become permanent, since the services continued ^{for several years} ~~to be extended~~ beyond one year. The consultation with the U.P.S.C. is something to be done between the appointing authority and the U.P.S.C. and once the appointment had been extended beyond one year, it is deemed to have been done in a proper form and after due consultation. Once the appointment had been extended beyond the period of one year, it has to be deemed that the service had to be regularised and the deponent could not again be asked to apply for being considered for the appointment. The deponent had been appointed by a method of selection and had also served the Ordnance Factory Board Organisation for several years and there was no question of the deponent being required to reapply for selection to the same post by the U.P.S.C. The respondents could not have shut their eyes to the Experience gained by the deponent by working as Doctor under the Ordnance Factory Board and they could not ^{eliminate} from consideration the past record of the

Hari Narain MBS

(contd...7)

deponent and to force him to submit to fresh selection along with freshers, adversely affecting the chances of selection of the deponent and discriminating against the deponent. Such a course of action would be violative of Articles 14 and 16 of the Constitution. The deponent's qualifications and experience had to be considered and the very fact that he had served in the O.F. Board Organisation for several years and had held the very post for which it is contended that fresh selection was to be made, had to be taken into consideration. In any case, even if it is considered that the appointment was temporary, under the C.C.S. (Temporary Service) Rules, 1965 also, it was incumbent upon the respondents to have declared the deponent quasi permanent on completion of three years' satisfactory service and the omission on the part of the respondents in the matter, could not be made to operate to the detriment of the deponent.

(4) That the contents of paragraph 5 of the Counter Affidavit are not admitted, as alleged. By the letter dated 12th January, 1977, the deponent was intimated that screening of the Assistant Surgeons Grade I, including the deponent, to determine their suitability for entitlement to the revised scale of Rs. 700-1300 as also for declaration of permanency was in active progress and that necessary expediting action was being taken. It was further informed that as soon as the decision of the competent authority was received, the deponent would be suitably informed. This meant that the deponent was being screened and considered for being granted

Hari Narain H.P.S.

(6)

the higher pay scale and for declaration of permanency. Hence, there was no question of treating the deponent's service as a purely temporary service, liable to be terminated on one month's notice under Rule 5 of the C.C.S. (Temporary Service) Rules, 1965. The deponent was never informed that he was not found fit by the D.P.C. for placement in the revised Class I Junior Scale of Rs. 700-1300 and in fact, there was no cause or occasion for the deponent being found unfit for this purpose, especially, since the deponent was allowed to cross efficiency bar also. It is not correct to say that the deponent was at all an Adhoc Assistant Surgeon ^U Grade I. No where it was mentioned in the Appointment Letter that the deponent was being appointed on adhoc basis. At the time of reinstatement of the deponent, as a result of the deponent's Civil Suit, the word "Adhoc" was used in the reinstatement order, illegally and wrongfully and on the representation made by the deponent, the word "Adhoc" was deleted from the Reinstatement Order, published in the Factory Order Part II No. 210 dated 20.1.1985 by the Factory Order Part II No. 806 dated 22.4.1985. The deponent was appointed on probation and was enrolled for benefits of Provident Fund etc., and hence too, his appointment could not have been deemed as Adhoc. The contents of paragraphs 6(ix), 6(x), 6(xi) and 6(xii) of the Application are correct and are reiterated.

(5) That the contents of paragraph 6 of the Counter Affidavit are not admitted and are denied. The contents of paragraph 6(xiii) of the Application

Hari Narayan Mishra (cntd.....9)

(9)

are correct and are reiterated. It is not admitted that the deponent belongs to the Group of Adhoc Appointees, employed solely on temporary basis, or that his services should be extended on six monthly basis, as alleged. There was no question of the deponent being required to respond to Union Public Service Commission's advertisements for the post of Assistant Surgeon, Grade I, for being selected as a fresh candidate, after the deponent had put in several years of service in the post, for which he was duly selected by a ~~Temporary~~^{proper} duly constituted Selection Board. There was no question of the deponent seeking to qualify himself to get his services regularised through U.P.S.C., as alleged. The letter, Annexure II, of the Counter Affidavit referred to the continuance of Adhoc Junior Medical Officers, ^{and 92} ~~while~~ the deponent being not an adhoc Junior Medical Officer, the said letter was not applicable to him. The termination of the services of the deponent, with effect from 2.8.1980 under Sub Rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, was illegal and mala fide. In any case, since by the very admission of the respondents, the deponent was appointed on a temporary basis, the respondents were bound to have declared the deponent Quasi Permanent, after three years satisfactory service and there was no justification for the omission on the part of the respondents in this regard. The respondents could not have taken recourse to Rule 5(1) of the C.C.S. (T.S.) Rules, 1965, after they had failed to declare

Hari Narain 4/8/81

(contd...10)

the deponent quasi permanent, in due course.

(6) That the contents of paragraph 7 of the Counter Affidavit are not admitted. The contents of paragraphs 6(xiv) to 6(xviii) of the Application are correct and are reiterated. The Order of termination of the services of the deponent was illegal and without jurisdiction. The Civil Courts have duly held that the termination order was illegal and without jurisdiction. The D.G.O.F. had not⁹ authority to terminate the services of the deponent, who had been appointed by the President of India. There was no extension of the initially stipulated period of service of the deponent, as alleged by the respondent No. 2, by any letter.

(7) That the contents of paragraph 8 of the Counter Affidavit need no reply.

(8) That the contents of paragraph 9 of the Counter Affidavit need no comments.

(9) That the contents of paragraph 10 of the Counter Affidavit need no reply.

(10) That regarding the contents of paragraph 11 of the Counter Affidavit, it is submitted that there² was no failure on the part of the deponent to comply with the requisites of Article 193 of the C.S.R. Payment of arrears of pay and allowances for the entire² period intervening period has been illegally and wrongfully withheld by the respondents.

(11) That regarding the contents of paragraph 12

Hari Narain MTR. (contd...11)

(11)

of the Counter Affidavit, it is submitted that the Termination Order in question, alleged to have been issued on behalf of the President of India, was illegal, arbitrary, mala fide and untenable.

(12) That regarding the contents of para 13 of the Counter Affidavit, it is submitted that it is not correct to say that the services of the deponent were extended every six months, with the approval of the U.P.S.C., beyond one year. There was no question or justification for U.P.S.C. or anyone else not agreeing for further continuance of the services of the deponent beyond one year. In fact, the deponent had continued to work for more than seven years, before his services were terminated in 1980, illegally and wrongfully. Even during the period of about two years, when the deponent was working after his reinstatement, pursuant to the Civil Courts' decree, there was no letter of extension of services of the deponent. The respondents have themselves deleted the word "Adhoc" from the letter of reinstatement and hence, ~~they~~ ^{they} cannot again and again contend that the services of the deponent were adhoc and were extended beyond one year, as such. The so called letter of the U.P.S.C. dated 21.5.1985, relates to adhoc employees and it cannot apply to the case of the deponent. There was no justification for appointing Short Term Medical Officers to man the vacancy occasioned as a result of the illegal and wrongful termination of the services of the deponent.

Hari Narain (contd.....12)

(12)

(13) That the contents of paragraph 14 of the Counter affidavit are not admitted. The contents of paragraphs 6(xxix) to 6(xxxi) of the Application are correct and are reiterated. It is not admitted that the services of the deponent were extended every six months, as alleged. There was no question of the U.P.S.C. disapproving the continuance of the services of the deponent. It is reiterated that the deponent was not given an adhoc appointment, as alleged. The respondents have themselves admitted this fact. The deponent was not required to get his services regularised through U.P.S.C., as alleged. The initial appointment of the deponent was for one year, but he was allowed to be in continuous service for several years, beyond the period of one year and this was only possible after consultation with the U.P.S.C. and since the appointment continued for several years, the appointment ought to have been treated to have become permanent. The U.P.S.C. ^{could} ~~disapproved~~ continuance of services of those Doctors before completion of one year of service, ^{and} the question of ^{dis} ~~the~~ approval by the U.P.S.C. did not ^{arise} in the case of the deponent as the deponent was in continuous service for about 13½ years, from 10th January, 1973 and the U.P.S.C. could not disapprove the services of the deponent, at this stage.

(14) That the contents of paragraph 15 of the Counter Affidavit are not admitted. The contents of paragraph 6(xxxii) of the Application are correct and are reiterated.

Hari Narain MB

(contd.....13)

(13)

There is no question of any misinterpretation of the contents of the letter No. 093/Regular/78/A/M dated 30.1.1999, issued on behalf of the Director General, Ordnance Factories. (Annexure No. 15 of the Application), deliberately or otherwise. Admittedly, the deponent was not an adhoc Junior Medical Officer, nor short term Medical Officer and hence, there was no question of termination of the services of the deponent, in terms of the said letter. Even in terms of the said letter, *the* ~~the~~ services of the Short Term Medical Officers were liable to be terminated first and the question of termination of ^{*The*} services of even Adhoc Junior Medical Officers arose only thereafter and that too in the order of ^{*seniority*} ~~seniority~~. Since the deponent was not on adhoc appointment, the deponent's services could not have been terminated under the authority of the said letter and in any case, there was no question of dispensing with the services of the deponent, while several Short Term Medical Officers, appointed much after the appointment of the deponent, were allowed to continue in the Ordnance Factory Organisation at Kanpur itself, such as, Dr. D. K. Sinha, Dr. N. K. Bhagat, Dr. A. K. Dwivedi and several other Short Term Medical Officers have been continuing in various other factories under the Ordnance Factory Board.

(15)

That the contents of paragraph 16 of the Counter Affidavit are not admitted and are

Hari Narain Mishra

(contd.14)

denied. The deponent was not appointed on adhoc basis, as alleged, nor was his tenure extended six monthly, as alleged. The fact that the deponent was not an adhoc employee is evident from the admission of the respondents themselves, as contained in the letter of the respondents, dated 22.4.1985, Annexure No. 11 of the Application, which was issued in reply to the Representation of the deponent, dated 18.1.1985 (Annexure No. 9 of the Application). The alleged letters of extension related to adhoc appointees only and could not have been applicable to the deponent, whose services were not adhoc. After the initial period of one year, the deponent was allowed to continue in service for about six years more and the services of the deponent were covered under the C.C.S. (Temporary Services) Rules, 1965. Even after the termination Order of 1980 was quashed by the Court, the deponent was reinstated and allowed to continue for more than $1\frac{1}{2}$ years. Hence, the ~~temporary~~^{for} service of the deponent will be deemed to have continued as such, for about 14 years, before the deponent's services were illegally and wrongfully terminated under Rule 5(1) of the C.C.S. (Temporary Service) Rules, 1965. By the very impugned Termination Order in question the respondents have acknowledged the fact that the deponent's services were covered under the C.C.S. (Temporary Service) Rules, 1965. The failure on the part of the respondents to have declared the deponent quasi permanent in

Hari Narain Mittal

One course, after completion of satisfactory
 service for 3 years, could not be taken advantage
 of by the respondents in terminating the services
 of the deponent in the manner in which it was
 done. It is emphatically denied that after the
 end of the initial one year, the deponent's
 services stood terminated, as alleged. The
 respondents are estopped from taking such plea,
 after they had allowed the services of the
 deponent ^{to} continue uninterruptedly for more
 than seven years initially, up to the date of
 the earlier illegal and wrongful termination
 Order, passed in 1977. In view of the letter
 of the respondents, dated 12.1.1977, addressed
 to the deponent (Annexure No. 3 of the
 Application) also, the respondents are estopped
 from contending that the deponent's services
 remained purely temporary, or adhoc. In fact,
 the matter regarding declaration of permanency
 in the case of the deponent was stated to be
 in active progress and that necessary expediting
 action was being taken by the appropriate autho-
 rities in the year 1977, as intimated by the
 D.G.O.F. to the General Manager, Ordnance
 Equipment Factory, Kanpur, who had written that
 letter to the deponent and the deponent was
 further informed that the D.G.O.F. had further
 intimated the General Manager, O.E. Fy, Kanpur,
 that as soon as the decision of the Competent
 Authority in the matter of adjudging the
 deponent's suitability for entitlement to the

Hari Narain Mittal

(16)

higher scale of Rs. 700-1300 and also for declaration of permanency was received, the deponent would be suitably informed. The entire averments contained in paragraph 16 of the Counter Affidavit are rendered negatory in the light of the said letter of the respondents. Since the deponent was being considered for permanency in the year 1977, the respondents could not contend that the deponent was not entitled to the benefits of quasi permanency, which ought to have been declared under the C.C.S. (Temporary Service) Rules, 1965. The lapses on the part of the respondents to pass appropriate orders at the appropriate time, cannot be taken advantage of by the respondents, to the detriment of the deponent.

(16) That the contents of paragraph 17 of the Counter Affidavit are not admitted. The contents of paragraph 6(xxxiv) of the Application are correct and are re-iterated. Since the deponent was not an adhoc Medical Officer, there was no question of terminating the services of the deponent, in terms of the Union Public Service Commission's Confidential Letter No. F.2/1(15)/72-A.III/MS dated 21.5.86, a copy of which is annexed as Annexure III-B of the Counter Affidavit. The said letter related to the Assistant Medical Officers, appointed on adhoc basis. The deponent was neither Assistant Medical Officer, nor was he appointed

Hari Narain H.T.S.

(contd....17)

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ad hoc. The deponent was Junior Medical Officer and hence, the said letter did not at all apply to the case of the deponent. The shelter taken by the respondents on the said letter of the U.P.S.C. for terminating the services of the deponent, is misconceived. The impugned Termination Order, alleged to have been issued on behalf of the President of India, is also illegal, mala fide, arbitrary, uncalled for, untenable and null and void.

(17) That the contents of paragraph 18 of the Counter Affidavit are not admitted. The contents of paragraph 6(xxxv) of the Application are correct and are re-iterated. It is denied that the deponent is not a suitable person to be retained in the service, or that the deponent's services were rightly terminated. In the initial Appointment Order, it was mentioned that the appointment of the deponent was for one year, or till a U.P.S.C. selected nominee takes charge, whichever was earlier. No U.P.S.C. nominee took charge of the post during the period of one year, nor was the deponent directed to approach the U.P.S.C. for his selection during the said period. The U.P.S.C. did not advertise the post of Junior Medical Officer and hence, there was no question of the deponent approaching the U.P.S.C. for selection to the post, which the deponent was holding. After the expiry of the period of one year, the deponent's services were not terminated and, as on the contrary, the deponent was allowed

Hari Narain Hizon

(contd....18)

to continue for several years, with normal increments, enrolment in Provident Fund and other benefits, including crossing of efficiency bar. The respondents ought to have sought approval of the U.P.S.C. in time and there was no question of the deponent being required to appear for selection by the U.P.S.C., along with fresh candidates. In fact, the U.P.S.C. did not advertise the post of Junior Medical Officer at any time and there was no question of the deponent appearing before the U.P.S.C. for the post which the deponent was holding. The posts advertised by the U.P.S.C., from time to time, was the post of Assistant Medical Officer, carrying the pay-scale of Rs. 700-1300, while the deponent was holding the post of Junior Medical Officer, carrying the pay-scale of Rs. 650-1200. Hence, there was no question of the deponent being required to regularise his appointment from U.P.S.C., in terms of the appointment, as alleged. The services of the deponent ought to have been deemed as regular after the deponent continued in the post on the expiry of the initial period of one year. Even otherwise, the deponent could not be equated with new entrants who had recently passed the M.B.B.S. Examination, disregarding his past record and experience, as the deponent was appointed on the recommendation of a duly constituted Selection Board through the method of selection and had served the Department for more than 13 years, the deponent formed a separate class by himself

Hari Narain MTR (contd...19)

(19)

and could not have been equated with freshers and forced to appear in the U.P.S.C. Examination with new aspirants for the post of Assistant Medical Officer. There was no U.P.S.C. Examination conducted or ^{advertisement} ~~advertisement~~ made by the U.P.S.C. for the post of Junior Medical Officer, at any time, during the entire period of service of the deponent. As per the letter of the Deputy Secretary to the Government of India, No. 074/CP/A/W/US.1/D(Fy.II) dated 18.8.1975, regarding reorganisation of the Medical Set-Up in the Ordnance Factory Organisation (Annexure No. ⁹² 6 of the Application), it has been held that the Government had decided that the existing Assistant Surgeons, Grade-I (Class II, redesignated as Junior Medical Officers), were to be screened by a Departmental Promotion Committee and the Class I scale of Rs. 700-1300 was to be given to those Doctors only, who were in possession of M.B.B.S. Degree, like the deponent and the were found fit after such screening. It was further mentioned that those who were not found fit, will be entitled to continue in the pay scale of Rs. 650-1200, as recommended by the Third Pay Commission, effective from 1.1.1973. Hence the deponent, who came under the category of existing Assistant Surgeons, Grade-I (Class II) was to be screened by a D.P.C. and if found fit by the D.P.C., the higher pay-scale of Rs. 700-1300 ought to have been given to the deponent, since the deponent was already in possession of M.B.B.S.

Hari Narain MB

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Degree. There was nothing adverse against the deponent, whereby the deponent could be found unfit after such screening. If at all the deponent was found unfit, he remained entitled to continue in the lower pay-scale of Rs. 650-1200 till such time his entitlement to the higher scale was recommended by the D.P.E. after further screening, subsequently. Hence, there was no question of the deponent having been liable to approach the A.P.J.C. for his absorption in the higher pay-scale of Rs. 700-1300, or in the then existing lower scale of Rs. 650-1200. The respondents had, in fact, admitted vide Annexure No. III of the Application, that is, the letter of the General Manager, D.E. Ry., Kanpur, dated 12th January, 1977, conveying the decision of the D.G.D.F., that the screening of the deponent to determine his suitability for entitlement of the revised scale of Rs. 700-1300 and also for declaration of permanency was in active progress and necessary, expediting action was being taken and accordingly, the D.G.D.F. had directed the General Manager, D.E. Ry., Kanpur, to communicate to the deponent that as soon as the decision of the Competent Authority was received, the deponent would be suitably informed. Hence, there was no question of the services of the deponent being terminated in the manner in which the respondents have done.

(16) That the contents of paragraph 19 of the Counter Affidavit are not admitted. The

Hari Narain H.B.N. (contd..21)

(21)

contents of paragraph 6(xxxvi) of the Application are correct and are re-iterated. Suitable reply to the untenable averments contained in the said paragraph of the Counter Affidavit have already been given hereinabove. All those averments contained in the Counter Affidavit, which have not been specifically admitted herein, are not admitted and are denied. There was no question of terminating the services of the deponent, under the ~~stated~~^{stated} facts and the circumstances ^{of the case}. There was no question of the deponent having ^{been} not found fit by the U.P.S.C. The U.P.S.C. had never held that the deponent was not found fit. The U.P.S.C. had referred to the cases of adhoc appointments only and not the cases of persons, like the deponent, who stood on different footing and were not employed on adhoc basis. The correct position has already been explained hereinabove.

(19) That the contents of paragraph 20 of the Counter Affidavit are not admitted. The contents of paragraph 6(xxxvii) of the Application are correct and are re-iterated. The averments contained in paragraph 20 of the Counter Affidavit are irrelevant for the purpose of the present case. It is not admitted that the deponent was not found fit by the U.P.S.C. There was no cause or occasion for the U.P.S.C. finding the deponent unfit, at any time.

Hari Narain Mittal

(contd....22)

(22)

(20) That the contents of paragraph 21 of the Counter Affidavit are not admitted. The contents of paragraph 6(xxxviii) of the Application are correct and are re-iterated. The mere fact that the subsequent termination order was issued on behalf of the President of India, does not, in any way, validate the illegal, arbitrary and mala fide termination. Even the Short Term Medical Officers appointed after the appointment of the deponent, were allowed to continue, while the services of the deponent were illegally and wrongfully terminated. This was against the very directives of the respondents themselves. The correct facts ~~of~~ have already been mentioned hereinabove ⁴⁻ by the ~~action of the respondents in terminating the services~~ ~~respondents themselves.~~ ¹⁵ It was also in violation of the D.G.O.P. Letter dated 30th January, 1979 (Annexure No. ~~14~~ ¹⁵ of the Application). The deponent has been discriminated against and the provisions of ~~the~~ Articles 14 and 16 of the Constitution have been violated.

(21) That the contents of paragraph 22 of the Counter Affidavit are not admitted. Averments contained in paragraph 6(xxxix) of the Application are correct and are re-iterated.

(22) That regarding the contents of paragraph 23 of the Counter Affidavit, it is submitted that the averments contained in paragraph 6(xxxx) of the Application are correct

Hari Narain Mittal

(contd.....23)

(23)

and are reiterated. The deponent was denied the post of S.M.D., illegally and wrongfully. The deponent's services could not have been terminated in the manner in which it was done, treating the deponent ^{as} Temporary or ^{ad-hoc} Junior Medical Officer. As a matter of fact, the deponent ~~sk~~ ought to have been screened and given the higher pay-scale of Rs. 700-1300, as promised by the respondents themselves and considered for promotion to the post of S.M.D. in due course.

(23) That regarding the contents of paragraph 24 of the Counter Affidavit, it is submitted that the deponent has not been given the full benefits, as alleged. The deponent had to file an Execution Case in the Civil Court in the matter and the same is pending. There was no question of the deponent having failed to comply with the requisites of Article 193 of the U.S.R. The deponent had given due declaration, as required and the contention of the respondents that the deponent is not entitled to any payment under the decree, is misconceived. There is no suit pending regarding the claim for arrears. Only an Execution is pending. The present application is not barred on the ground of pendency of the Execution Case, arising out of the earlier decree of the Civil Court. It is denied that the termination of the deponent, with effect from 13.9.1966 (A/N) is valid or legal.

(24) That the contents of paragraph 25 of the Counter Affidavit are not admitted. The contents of paragraph 6 (xxxxii) of the Application are correct and are re-iterated.

Hari Narain MTS

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(24)

(25) That the contents of paragraph 26 of the Counter Affidavit are not admitted. The contents of paragraph 6(xxxxiif) of the Application are correct and are re-iterated. The amount paid towards one month salary was short of the actual salary due and payable, since the annual increments due to the deponent after the earlier Termination Order of 1980, were not taken into consideration.

(26) That the contents of paragraph 27 of the Counter Affidavit are not admitted. The contents of paragraph 6(xxxxiv) of the Application are correct and are re-iterated. The Termination Order was illegal and untenable.

(27) That regarding the contents of paragraph 28 of the Counter Affidavit, it is submitted that the deponent was not recruited on adhoc basis, as alleged. No such six monthly extensions were made, as alleged. There was no advertisement for the post of Junior Medical Officer (previously Assistant Surgeon Grade-I). There was no question of any failure on the part of the deponent to qualify for selection by the U.P.S.C. The post of Junior Medical Officer was never advertised by the U.P.S.C. It is not admitted that the deponent was an adhoc temporary appointee, or that the deponent could not be declared quasi-permanent, or permanent. It is denied that the deponent's services were being extended every six months, as alleged. It is also denied that the deponent was not found suitable by the U.P.S.C. There was nothing lacking in the

Hari Narain Mehta

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(25)

professional competence, qualifications or experience of the deponent. There was nothing untenable in the claim of the deponent, as alleged.

(20) That the contents of paragraph 29 of the Counter Affidavit are not admitted. The contents of paragraph 6 (xxxxxi) of the Application are correct and are re-iterated. It is not correct to say that the deponent was appointed on adhoc basis, purely in a temporary capacity. There was no question of termination of the services of the deponent under Sub-Rule (1) of Rule 5 of the C.C.S. (Temporary Service) Rules, 1965, as per terms and conditions of the appointment letter. There is no basis in the allegation that the deponent was not found suitable by the R.P.S.C. to man the post.

(21) That the contents of paragraph 30 of the Counter Affidavit are not admitted. The deponent has made out a very strong prima-facie case for interference by this Honourable Tribunal and the reliefs claimed are liable to be granted to the deponent.

(30) That the contents of paragraph 31 of the Counter Affidavit are not admitted. There is a very strong case for interference by this Hon'ble Tribunal.

(31) That the contents of paragraph 32 of the Counter Affidavit need no comments.

(32) That the contents of paras 1, 2, partly 3, partly 4, partly 5, partly 6, 7, 8, 9, partly 10,

Hari Narain HTR

(contd....26)

(25)

partly 12, partly 13, partly 14, partly 15, partly 16, partly 17
partly 18, 19, partly 20, 21, partly 22, partly 23, 24, 25, 26, 27
28, 29, 30 and 31

of this Affidavit are true to my personal knowledge;

those parts partly 3, partly 4, partly 14, partly 15
partly 16, partly 17,

are based

on records and those of parts partly 3, partly 4, partly 5,
partly 6, partly 10, 11, partly 12, partly 13, partly 14,
partly 15, partly 16, partly 17, partly 18, partly 20,
partly 22, partly 23, 24

are based on

information and those of parts

are based on

legal advice which I believe to be true. No part of
it is false and nothing material has been concealed,
so help me God.

Harin Narain N.T.Sr.

DEPONENT.

I, N.K. Meir, Advocate, declare that the
person making this affidavit and alleging himself
to be the deponent, is known to me personally, and
I identify him to be the same person.

IDENTIFIER

Solemnly affirmed before me on this 23rd day
of November, 1938, at 4 P.M. by the deponent
who is identified as aforesaid.

I have satisfied myself by examining the deponent
that he understands the contents of this affidavit which
have been read over and explained to him.

Harin Narain N.T.Sr.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH.

Registration No. ¹⁸⁶~~1895~~ of 1988.

Dr. Mari Harsin Miera Applicant.

VERBOD

Union of India and Others Respondents.

ANNEXURE RA-1.

पंक्ति पानाण कानपुर २ जुलाई १९७२ - पैल नं० २, कागज नं० ७

डा. जैन्त उपाध्याय फौरी बानपुर

[illegible]

ਜੀ ਸ ਜੀ ਜੀ ੬੫੪ (੧੯੭੨) 192

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Hari Narain HTen

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH.

Registration No. 186 of 1987.

Dr. Hari Narain Misra Applicant.

Versus

Union of India and Others Respondents.

ANNEXURE RA-2.

Pt. II Dt. 19/7/73

No. 1013

Sub: Asstt. Surgeon Gr. I Completion
of Probationary Period.

.....

Having completed their probationary period of 3 months, satisfactorily, the DGOF, Calcutta has agreed to the retention of Dr. D.K. Saxena, Dr. H.N. Mishra and Dr. D.D. Prora, Temp. Asstt. Surgeons Gr. I in their present appointment beyond 8.4.73, 9.4.73 and 4.5.73 respectively, the dates by which the officers concerned have completed their 3 month's probation.

The above continuation is, however, subject to the period of one year on the date of availability of regular nominees of UPSC etc., whichever is earlier.

Authority: DGOF's Letter No.254/D.K.Saxena/A/M dated 9/10th July '73.

TRUE COPY.

Attested

Hari Narain H.T.Sr.

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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration C.A. No.25 of 1987

Dr.(Mrs)Madhuri Singh Applicant

Versus

Union of India & Others Respondents

Hon.Mr.Justice U.C.Brivastava, V.C.

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

(By Hon.Mr.Justice U.C.Brivastava, VC)

The applicant is a M.B.B.S. doctor and has come before this Tribunal with a prayer for quashing the termination order which she had to face after 13 years of service and that too she has become overage in Government service. The applicant in pursuance of the advertisement dated 2.7.72 inviting applications for appointment to the post of Asstt. Surgeon, Grade I in the Ordnance Equipment Factory under the Ministry of Defence, Govt. of India, ^{I applied for the said post.} The applicant was duly selected vide order dated 26.2.73. The appointment order inter alia contains such conditions that, ^{the} the post is temporary. Your appointment will be for a period of one year or till the Union Public Service Commission nominates suitable candidates, whichever is earlier. You will be on probation for a period of three months this period is extendable at the discretion of the Government. Vide order dated 26.5.80 i.e. after 7 years, her services were terminated by the Director General, Ordnance Factory Board, Calcutta. Against this order the applicant filed a Suit before the Court of Munsif City Kanpur for a declaration that her termination from the post was illegal and ultravires.

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The Suit was decreed vide order dated 23.9.85 declaring the order of the authority to be illegal and ineffective. It was also observed by the Trial Court that the applicant was entitled to all the benefits. In pursuance of the order passed by the Munsif Court the applicant was reinstated vide order dated 9.6.86. But three months thereafter vide ^{order} dated 8.9.86 passed by the Director General (Member Personnel), Ordnance Factory Board, Calcutta, Govt. of India which was communicated to her by a letter dated 18.9.86 that her services have been terminated under the proviso to Rule 5(1) of the Central Services (Temporary Services) Rules, 1965. The fact that the applicant was appointed on adhoc basis, was substituted by the word temporary. The applicant then filed a Writ Petition before the High Court at Allahabad challenging the said order. It was admitted by the High Court and an interim order staying the operation of the termination order was granted. After the enforcement of the Act, the Writ Petition was transferred to this Tribunal for adjudication.

2. We have heard the learned counsel for the parties. The learned counsel for the applicant contended that the order of termination is wholly illegal, void and inoperative and the applicant after putting 13 years of service could not be terminated. It was the duty of the Department and the U.P.S.C. to get the services of the applicant regularised. She should not be penalised for their fault. For respondents mistake she should not be made to suffer. The ~~opposite~~ opposite parties in their Counter Affidavit have said the the post was for



one year but as the case of the applicant was not processed through the U.F.S.C. there was no question of regularising her. That post is still continuing. As the U.F.S.C. could not sponsor suitable Doctors, to tide over the situation, the services of the applicant were extended every six months with the prior approval of U.F.S.C. This clearly indicates adhoc nature of her appointment and she has been rightly terminated from her post. May be that so, but for that the applicant is not responsible. It is strange that the Departmental authorities tied over the matter for years together and ultimately terminated the services of the applicant on the pretext that the U.P.S.C. did not regularise her. An adhoc employee who continues for years together can be deemed to be a regular employee. In this case a reference has been made ~~by~~ to the Supreme Court in the case of Narender Chadha Versus Union of India and Others 1986 SCC(L&S) 226 in which the Supreme Court also observed that if adhoc promotees or appointees are allowed to continue as such for long years without being reverted or challenged, they would be deemed to have been regularised. Observation made by the Supreme Court are binding on all the Courts of Tribunal under Article 141 of the Constitution of India. The learned counsel made a reference of 1987 SC 2342, 1988 SC 517 and 1990 SC 371 in support of the contentions made by him for a casual employee working for years together is entitled to be regularised and they are also equally entitled to the same pay which regular employee gets. The applicant has claimed her regularisation

for continuous service. A reference has been made in the case of Dr.A.K.Jain and Others Versus Union of India and Others 1988 SCC(L&S) 222 which was also a case of adhoc appointment. In the said case Adhoc Assistant Medical Officers were originally appointed for six months and later they were allowed to continue for four years. In this case the services of some were terminated for failure to avail of three chances for selection through U.P.S.C. and the rest facing termination on joining of Asstt. Divisional Medical Officers selected by the U.P.S.C. The Supreme Court observed that the services of those appointed on adhoc basis upto October 1, 1984 to be regularised and for relaxation of age enabling regular appointment to rest and salary adjustment. More precisely a direction was given to the opposite parties that if the adhoc doctors appointed after October 1, 1984 apply for selection by the Union Public Service Commission the Union of India and the Railways Department shall grant relaxation in age, to the extent of the period of service rendered by them as adhoc doctors in the Railways. In the instant case, we are of the view that the applicant has continued to remain in service for years together because of the failure 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

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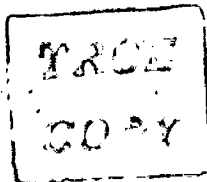
termination order dated 8.9.86 is quashed. The applicant shall be deemed to be continuing in service with all consequential benefits. The U.F.S.C. shall consider the case of the applicant for regularisation in accordance with law in the light of the observations made in this judgement within a period of two months from the date of communication of this order. The Original Application stands disposed of finally in these terms. There will be no order as to costs.

— S. A.
Member (A)

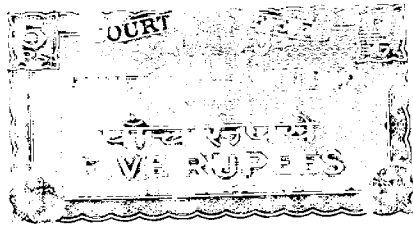
S. A.
Vice Chairman

Dated the 14th March, 1991

RKM



SHARAD KUMAR)
SECTION OFFICER
General Administrative Tribunal
Allahabad



अभिभाषक पत्र (वकालतनामा)

समक्ष न्यायलय : केन्द्रीय प्रशासनिक अधिकरणा
अतिरिक्त बेंच इलाहाबाद

रजिस्ट्रेशन/वाद संख्या

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सन् १९८७

Dr. Hari Narayan Misra

वादी/प्रतिवादी
अपीलान्त

बनाम

Union of Sharda Prasad Kesari

वादी/प्रतिवादी
रेस्पान्डेंट

मैं/हम

Dr. Hari Narayan Misra

S/o Sri V. N. Misra, s/o 32/35 G. B. Sagar

उपरोक्त प्रकरण में हम अपनी ओर के पक्ष समर्थन हेतु

N. K. Nair, Advocate

112/274A Swaroop Nagar, Kanpur

&

Sharda Prasad Kesariwani, Advocate

25, Sammelan Marg, Allahabad.

को निश्चित शुल्क (मेहनताना) नियत करके अपना अभिभाषक एवं (वकील) नियुक्त करते हैं और यह स्वीकार करने हैं कि उक्त सज्जन हमारी ओर से वाद-पत्र (अर्जीदावा), प्रतिवाद-पत्र (बयान तहरीरी), वाद स्वीकार पत्र, विवाद पत्र, पुनरीक्षण एवं परिशोधन प्रार्थना-पत्र (रिव्यू/रिवीजन) शपथ्यक कथन (हलफनामा), प्रवर्तन पत्र (दरखास्त इजराय), मूजवात अपील निगरानी इत्यादि हर प्रकार के अन्य प्रार्थना पत्रादि, लेखादि की प्रतिलिपियां अपने हस्ताक्षर करके न्यायालय में प्रस्तुत करें अथवा किसी पत्र पर आवश्यकतानुसार शपथ्यक पृष्ठिकरण करें और आवश्यक सवाल जवाब करें और लेखादि की प्रतिलिपियां एवं हमारे प्राप्य धन को अपनी हस्ताक्षरी पावती देकर प्राप्त करें, हमारी ओर से किसी को मध्यस्थ तथा साक्षी (गवाह) माने और उससे सम्बन्धित प्रार्थना-पत्र प्रस्तुत करे तथा उसका समर्थन करे तथा तसदीक करे, वाद-पत्र उठावे छोड़ें अथवा समझौता करें तथा मुलहनामा दाखिल करे तथा उसके सम्बन्ध में प्रार्थना-पत्र दाखिल करके उसका समर्थन करे अर्थात् प्रकरण से सम्बन्ध रखने वाली कुल कार्यवाही डिग्री के भर पाई जाने के समय तक स्वतः अथवा सयुक्त करे। आवश्यकता होने पर किसी अन्य वकील महोदय को वकील कर।

उक्त सभी कार्यवाही जो उक्त सज्जन करेंगे प्रत्येक दशा में अपने किये की भाँति हमको सर्वथा स्वीकार होगी। अगर निश्चित शुल्क अथवा किसी अन्य रकम का कोई भी अंश किसी समय भी हमारी ओर पावना रहे, तो उन्हें अधिकार होगा कि वह हमें कोई नोटिस दिये बिना ही हमारी ओर से मुकदमें की की पैरवी न करें। वंसी दशा में उनका हमारे प्रति कोई उत्तरदायित्व न होगा। यदि वे किसी अन्य कार्य में व्यस्त रहने के कारण मेरे मुकदमें की समय पर पैरवी न कर सकें और मुकदमा एकतरफा हो जाय तो भी उनका उत्तरदायित्व न होगा। उक्त सज्जन को जब और जितनी फीस अदा करूँगा/करेंगे उसकी पक्की रसीद प्राप्त कर लेंगे और पक्की रसीद के अभाव में उक्त सज्जन की फीस की कोई अदायगी न समझी जायगी।

अतएव यह अभिभाषक-पत्र लिख दिया और अपने पास इसकी एक प्रति रख लिया जिससे कि समय पर काम आये।

स्वीकृत

स्वीकृत

तिथि २३ मास ११

सन् १९८८

स्वीकृत

Accepted
दिनांक
Attorney

हस्ताक्षर

हस्ताक्षर

हस्ताक्षर

साक्षी

साक्षी

Court fee remitted vide Notification No. M-1015/I-602(1)
Dated August 5, 1946 published in U.P. Gazette
Dated August 10, 1946, Part I, page 277.

Central Government of India
IN THE HIGH COURT JUDICATURE AT ALLAHABAD.

.....*Reg.*.....No. *186*.....of 1987

District :

H.N. Mishra

Petitioner/
Appellant/
Applicant/

VERSUS

Union of India

Respondent/
Opposite Party

NB Singh

I, ~~RAVI S. DHAVAN~~, Senior Standing Counsel for the
Government of India (except Income Tax and Railways) at the
High Court of Judicature at Allahabad, appear on behalf of :

The Government of India/Union of India/Central Government
(except Income Tax and Railways) and

Union of India

Resondent(s)/Opposite Party (parties) Nos.....
who is/are the Petitioner/Appellant/Applicant/Respondent/
Opposite Party in the aforesaid case.

NB Singh

~~RAVI S. DHAVAN~~
Senior Standing Counsel
Government of India
High Court, Allahabad.

Dated: 10.3.87

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH,

23-A Thornhill Road, Allahabad-211001

No. CAT / ALLD / 17208 Tol

Dated :

13/3/87

In re

Registration No.

of 198

APPLICANT

Versus

RESPONDENTS

To,

Please take notice that the applicant abovenamed has presented an application, a copy whereof is enclosed herewith, which has been registered in this Tribunal, and the Tribunal has fixed..... day of..... 198.... for the hearing of the said application

If no appearance is made on your behalf by yourself, your pleader or by someone duly authorised to act and plead on your behalf in the said application, it will be heard and decided in your absence.

Given under my hand and the seal of the Tribunal this..... day of..... 198 ..

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DEPUTY REGISTRAR

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THE 1937-1938 FISCAL YEAR

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Chambers

CHAMBERS (PA)

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CENTRAL ADMINISTRATIVE TRIBUNAL

REGIONAL BENCH: ALLAHABAD.

APPLICANT'S APPLICATION NO. _____ 1987

IN MATTER OF

Union of India, Department of
Science, Technology & Others.

.Applicant/
Respondents.

IN

APPLICANT'S NO. 186 OF 1987

P. Hari Prasad Misra,
37/35, Gills Bazar, Kanpur.

.Applicant

versus

1. Union of India through Secretary,
Department of Science (Production)
Ministry of Science, Government of India,
New Delhi.

2. Director General (Member Personnel)
Ordnance Factory Board, Government
of India, Ministry of Defence,
Ordnance Factory, 10-A Auckland Road,
Calcutta.

3. General Manager,
Ordnance Equipment Factory,
Kanpur.

.Respondents,

TO

The Hon'ble the Vice Chairman and his Co-
Members of the aforesaid Tribunal.

The humble application of the abovesigned

is respectfully states as under :-

1- That full facts have been narrated in the
accompanying counter affidavit.

2- It is therefore, in the interest of
justice that this Hon'ble Tribunal may kindly be
pleased to reject the stay application and no relief
available to be granted in favour of the applicant.

Y C A

It is, therefore, Most Respectfully
prayed that this Hon'ble Tribunal may kindly
be pleased to reject the stay application, as
no further relief can be granted in favour of
the applicant, otherwise the respondents shall
suffer irreparable loss.

Dated: _____, 1987.

(N.C. SINHA)
ADDL. STANDING COUNSEL
CENTRAL GOVT.
COUNSEL FOR THE RESPONDENTS.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

A NATIONAL Bench : ALLAHABAD.

COUNTER AFFIDAVIT

ON BEHALF OF

THE UNION OF INDIA, DEPARTMENT OF
DEFENCE, NEW DELHI & OTHERS.

RESPONDENTS.

IN

REGISTRATION NO. 186 of 1987

(District - Kanpur)

Mr. Hari Narain Misra,
37/35, Gills Bazar, Kanpur.

Applicant

Versus

Union of India & others.

Respondents.

Affidavit of Munnoo Lal aged about 49
years, s/o Shri Babu Lal, posted as
Joint General Manager, Ordnance
Equipment Factory, Kanpur.

(Deponent).

I, the deponent abovenamed do hereby
solemnly affirm and state on oath as under :-

1- That the deponent is posted as Joint General
Manager, Ordnance Equipment Factory, Kanpur and has
been deputed to file this counter affidavit on behalf
of the respondents and as such is well acquainted with

the facts deposed to below.

2- That the deponent has read the ~~written~~ petition application filed by the applicant and has understood the contents therein and is in a position to reply the same.

3- That the contents of paragraphs 1,2,3,4 and 5 of the application need no comments being matters of records.

4- That the contents of paragraphs 6(i), 6(ii), 6(iii), 6(iv), 6(v), 6(vi), 6(vii) and 6(viii) of the application are substantially correct. It is however, submitted that the applicant was offered an appointment incorporating the terms and conditions of employment vide letter No. 099/A/R/VOL/I/73, dated 31st December, 1972. The post was temporary and the appointment was made for one year or till the Union Public Service Commission nominates a suitable candidate, whichever is earlier. It was also stipulated that the applicant's service will be terminable on one month's notice given in writing by either side without assigning any reason. It was further stipulated that the President reserves the right of terminating the applicant's services forthwith on or before expiry of the stipulated period of notice by making payment to him of a sum equivalent to the pay and allowances

3.

for the period of notice or the expired portion thereof. The applicant has deliberately omitted to mention the provision of clause (xii) of the appointment letter wherein the applicant was advised to respond to Union Public Service Commission advertisement for the post of Assistant Surgeon Gr.I, which was the regular mode of filling up vacancies in the Director General of Ordnance Factories' organization and the applicant could not qualify himself to get his services regularised through Union Public Service Commission. A true copy of the appointment letter dated 31st December, 1972/1st January 1973 is being filed herewith and marked as Annexure-1 to this counter affidavit.

5- That the contents of paragraphs 6(ix), 6(x), 6(xi) and 6(xii) of the application are not correct and as such are denied. In this connection, it is submitted that the applicant was informed vide letter dated 11th January 1977 that screening of the existing Assistant Surgeon Gr.I to determine their suitability for enticement to the revised scale of Rs. 700-1300 and also for declaration of permanency is in active progress. It was also informed that as

4.

soon as a decision of the competent authority is received, all concerned will be suitably informed. The fact of the matter is that in accordance with the instruction contained in para 3 of Ministry of Defence letter No. 074/CP/A/M/USI/D(FY-II), dated 18th August 1975, the cases of regular Assistant Surgeon Gr.1 who have/had been on the strength of Director General of Ordnance Factories' Organisation, as on 1st January 1973, 1st January 1974, 1st January 1975 and 1st January 1976, were screened by the relevant departmental promotion Committee. The officers 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. Those officers who were not found fit by the Departmental Promotion Committee were re-designated as Junior Medical Officer. All other ad-hoc Assistant Surgeon Gr.1 like the applicant, were also placed in Class II revised scale of Rs. 650-1200/-.

That in reply to the contents of paragraph 6(xiii) of the application, it is submitted that the applicant belongs to the group of ad-hoc appointees employed solely on temporary basis and his services were extended on six monthly basis. In terms of his appointment letter, the applicant was advised from

5.

time to time to respond to Union Public Service Commission's advertisement for the post of Assistant Surgeon Dr.1 which was the regular mode of filling up of vacancies in Director General of Ordnance Factories Organisation, but the applicant could not qualify himself to get his service regularised through Union Public Service Commission. He was also informed from time to time that his services would be terminated either on one months notice or pay in lieu thereof as soon as Union Public Service Commission selected candidates were in actual position. One such notice No. OM/60, dated 26th July 1979 is enclosed herewith
Ann-II. ~~attached~~ and marked as Annexure II to this counter affidavit. It is further submitted that since the applicant could not qualify himself to get his services regularised through Union Public Service Commission as per terms and condition of his appointment, his services were terminated w.e.f. 2nd August 1980 under sub-rule (1) of Rule 5 of the Central Civil Services (CCS) Rules, 1965.

7- That in reply to the contents of paragraphs 6(xiv), 6(xv), 6(xvi), 6(xvii) and 6(xviii) of the application, it is submitted that the order of termination was not illegal and the same was not passed without jurisdiction. The impugned order was passed with due authority and jurisdiction and

6.

statutory period of one month's notice was also given. It is however, not disputed that the suit No. 772 of 1980 - Dr. B.N. Mishra vs. Union of India was decreed on the ground that the plaintiff's appointing authority was the President of India and not the Director General of Ordnance Factories. The first appellate Court has upheld the judgment and decree of the Trial Court on another ground which rejecting the grounds given by the lower Court for decreeing the suit. The appellate court has held that the appointment of the applicant was by the President and therefore, he alone was competent to terminate the services of the applicant. ~~XXXXXXXXXX~~ The second appeal was dismissed by the Hon'ble High Court on the ground that the initial ~~Appointment of the respondent no.2 was made by the~~ appointment of the applicant having been made by the President, the respondent no.2 can not be said to have been the appointing authority despite the fact that the term initially laid in the order of appointment was extended by him.

That the contents of paragraph 6(xix) of the application need no comments. It is further submitted that the execution case is still progressing in the trial Court.

9- That in reply to the contents of paragraphs

6(xx), 6(xxi), 6(xxii), 6(xxiii) and 6(xxiv) of the application, it is submitted that in the re-instatement order, the word "AD HOC" was incorporated. However, it was amended to read as "TEMPORARY" by an subsequent order dated 22nd April 1985.

10- That ~~inxxvxx~~ the contents of paragraph 6(xxv) of the application need no reply.

11- That in reply to the contents of paragraph 6(xxvi) of the application, it is not disputed that the execution Case No. 262/83 is still pending/ progressing in the Trial Court. It is further submitted that the decree holder had been re-instated in service in compliance of the judgment and order passed by the Trial Court. Since the decree holder has failed to comply with the requisites of Article 193 of the Central Service Rules, payment of arrears of pay for the intervening period has been held up.

12- That the contents of paragraph 6 (xxvii) of the application need no comments. Since the appointing authority of the applicant was the President of India, hence the termination order/^{was}also issued by him.

13- That the contents of paragraph 6 (xxviii) of the application need no comments. It is submitted that to tide over /

Requirement in absence of Union Public Service Commission's sponsored Medical Officers, the Ordinance Factory, Kanpur with the approval of higher authorities, advertised for recruitment of four short term Medical Officer in specific discipline for a period of six months only. The terms and conditions in respect of the short term Medical Officer are entirely different than Assistant Medical Officers. The applicant was appointed for a period of one year or till the Union Public Service Commission nominated suitable candidates. The services of the applicant were extended every six months with the approval of Union Public Service Commission. The applicant's service was terminated due to the fact that the Union Public Service Commission had not agreed for further continuance of the services of ad-hoc appointees beyond one year. A copy of the letter dated 21st May 1986 sent by the Union Public Service Commission is enclosed herewith and marked as Annexure-11.

Annexure-12 to this counter affidavit. The terms and conditions of services of doctors, who were appointed as well as referred to by the petitioner are quite different. Their services get automatically terminated after six months. Therefore, the averments made by the applicant in paragraph under reply is wrong and denied.

14- That the contents of paragraphs 6(xxix), 6(xxx) and 6(xxi) of the application are not correct and as such are denied. It is further submitted that the applicant was appointed for a period of one year or till the Union Public Service Commission nominates suitable candidates. The services of the applicant were extended every six months with the approval of the Union Public Service Commission. The applicant's services were terminated due to the fact that the Commission disapproved further continuance of the services of adhoc appointee beyond one year. Moreover, the applicant could not qualify himself to get his services regularised through UPSC. The services of persons who were appointed as short-term Medical Officers (S.T.M.O.) are quite different and do not entitle him terms and conditions as laid down in the case of the applicant. Their services get automatically terminated after six months.

15- That the contents of paragraph 6(xxvii) of the application are not correct and as such are denied. The applicant has deliberately mis-interpreted the contents of the letter in this paragraph. This letter was issued to all the General Managers of the Railways for guidance in connection with absorption of U.C. selected candidates and retrenchment of Adhoc Senior Medical Officers and Short Term Medical Officers

...selected candidates.

...to the contents of paragraph
...application, it is admitted that
...recruited on a non-term basis for a term
...was extended for a period of
...to qualify through a regular
...applicant failed. This clearly
...of his appointment. The
...employee quasi-permanent or
...only when the said employee is employed
...for more than 3 years, and approval
...authority is made declaring the employ-
...permanent. In the instant case,
...employed only for a period of
...replaced by an candidate selected by
...the end of the one year period, the
...services stated terminated unless extended
...authority for a further period. As
...the applicant quasi-permanent in the
...made. Hence the contention of the applicant
...was illegally not granted the certificate of
...of quasi-permanency is baseless.
...the contents of paragraph (xxxiv) of
...are not correct and as such are denied.
...the applicant was re-instated in service on the

dict of judgment of the Court due to the fact that the Appellate lost the case on technical ground that the applicant's appointing authority was President of India but his services were terminated under the order of Director General of Ordnance Factories. The termination order to be given as UPSC have decided not to extend the extension to ad-hoc Medical Officers and the order dated 21.5.1986 (Annexure-III to this petition dated 21.5.1986). Therefore, there was no alternative, but to terminate the services of the applicant by the order issued by the President of India, who is the competent authority to do so.

18- That the contents of paragraph 6(xxxv) of the application are not correct and as such are denied. It is further submitted that the impugned order is legally valid and the same is not arbitrary. The applicant was advised from time to time to qualify himself from DMC to regularise his appointment in his own interest, but he could not qualify himself. Hence the applicant is not a suitable person to be retained in service and his services were rightly terminated, as per the terms of appointment.

19- That the contents of paragraph 6(xxxvi) of the application are not correct and as such are denied. It is submitted that the applicant cannot claim any right whatsoever for declaration of quasi - permanent

On the ground that he was allowed to continue in service beyond one year and was given regular increments. Since the Govt. could not sponsor suitable doctors to this Organisation, the services of the applicant was extended every six months with the prior approval of the Govt. As the applicant could not justify himself from Govt., there was no alternative to terminate his services in terms of his appointment of retired. Declaration of quasi-permanency which is a statutory rule, can not be claimed, as a matter of right only on the ground of continuance in service and getting increments. Moreover, the fact that the applicant cannot stand up by himself, belies the contents of this paragraph under reply.

20- The contents of paragraph 6(xviii) of the application are not correct and as such are denied. It is further submitted that due to shortage of the medical officer in the Director General of Ordnance Factory Organisation, and due to non-availability of sufficient number of Govt. sponsored doctors, Ministry of Defence started employment of short term medical officers. They are appointed for a period of six months only and thereafter their services are terminated. Thus short term medical officers are being appointed to tide over immediate service requirement in absence of Govt. sponsored medical officer and that

and not make any claim to the applicant, who was not
concerned by the same.

11- That the contents of paragraph 6(xxxviii) of
the application are not correct and as such are denied.
It is submitted that in compliance with the order of
the Hon. J. L. Nunsif, Kampur, the applicant was
reinstated in service w.e.f. 18th January 1985. The
case was decided on technical ground that the
applicant's appointing authority was the President of
India and he was terminated under order of Director
General of Ordnance Factories. The termination order
was not given as UFI have declined to give any
further extension to adhoc medical officer. But now
the termination order was issued by the President of
India. Hence the impugned order is legally valid and
there is no mala fide intention behind it. Moreover, the
applicant has not been discriminated against and
singled out for such treatment as the services of all
similarly placed doctors have been terminated.

12- That the contents of paragraph 6(xxxix) of
the application are not correct and as such are denied.
The services of the applicant have already been
terminated w.e.f. 18th September, 1986 and he is no
longer in the strength of this Organisation.

23- That the contents of paragraph 6(xxix) of the application are matter of record. However, it is submitted that the feeder grade for promotion to the post of S.M.O.'s is form A.M.O.s. Since the applicant was not even an AMO, but only a temporary junior Medical Officer, ~~therefore~~. He could not have been considered in the post of S.M.O., even if he would have been in service. Therefore, the averments made in paragraph under reply are immaterial to the point of dispute.

24- That in reply to the contents of paragraph 6(xxixi) of the application, it is submitted that in compliance of court's order, the applicant had been re-instated in service with full benefits. As regards payment of arrears of pay and other allowances for the intervening period, it is submitted that the decree holder has failed to comply with the requisites of Article 193 of the Central Service Rules. Hence the decree holder is not entitled to any payment under the decree until or unless he strictly complies with the Article 193 of the Central Service Rules. However, the decree holder has filed an Execution Case, which is progressing in the Mag Trial Court. However, it is admitted by the applicant in paragraph 6(xxvi) of the application that a suit regarding his claim for arrears is still pending in a different court. The applicant can not be allowed to raise the disputed matter

before another Court of Law before the Hon'ble Tribunal. On this ground alone the application is liable to be dismissed. It is reiterated that the termination of the applicant w.e.f. 18th September 1986 (Afternoon) under sub-rule (1) of Rule 5 of the CCS(RS) Rules, 1965 is legally valid.

25- That the contents of paragraph 6(xxxxi) of the application are not correct and as such are denied. The impugned order is not hit by Article 14 and 16 of the Constitution of India.

26- That the contents of paragraph 6(xxxxii) of the application are not correct and as such are denied. The applicant has been paid a sum equivalent to the amount of his pay plus allowances for the period of one month notice at the same rate at which he was drawing them immediately before the termination of his service. The termination order is not in contravention of the provision of any Rules.

27- That the contents of paragraph 6(xxxxiv) of the application are not correct and as such are denied. The services of the applicant was rightly and legally terminated under the terms and conditions laid down in his appointment and in accordance with Central Civil Service(Temporary Service)Rules, 1965, which regulated his appointment.

that in reply to the contents of paragraphs 6(xxxv), 6(xxxvi), 6(xxxvii), 6(xxxviii), 6(xxxix) and 6(xxxx) of the application, it is submitted that the applicant was recruited on adhoc basis for a term of one year. His tenure was extended six monthly to give him chance to qualify through UPSC for regular appointment. The post of Assistant Surgeon Gr.I now re-designated as Junior Medical Officer are gazetted posts and it is obligatory under Article 320 of the Constitution of India that all gazetted appointment under Government of India be filled through UPSC, and the applicant failed to qualify for selection in the said manner and he thus remained temporary and the question of declaring him quasi permanent did not and could not arise.

The applicant was an adhoc temporary appointee and as such he could not be declared quasi permanent or permanent. Extract from Rule 3 of the Temporary Service

Annex-IV. Rule 3 being also marked as Annexure-IV to this counter affidavit. The permission to the applicant to cross the efficiency bar or to allow him increments did not amount to considering the applicant as a regular employee. Continuance in service for 3 years continuously is not the sole criteria for declaration of quasi permanent. Another criteria is that the competent authority, after considering all relevant factors must make a declaration to that effect. The applicant was not in continuous regular employment as his services were being extended

over six months. He was not found suitable by the UPSC. The fact that the administrative authorities did not place any adverse entry in his Annual Character Roll does not prove his professional competence.. The fact that he failed to qualify through UPSC, in spite of repeated instruction from the Department, shows that professionally his claim is not tenable.

34- That the contents of paragraph 6(bxxxxi) of the application are not correct and as such are denied. It is further submitted that the applicant was appointed on ad hoc basis purely in a temporary capacity and the services of the applicant have been terminated under sub-rule(1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, as per terms and conditions of his appointment letter. The applicant is not entitled to continue on the post from which he has already been terminated w.e.f. 18th September, 1986 (A/A) of the President of India. The fact that he was not found suitable by the PM for regular appointments belies all the claims of the applicant.

35- That in reply to the contents of paragraph 7 of the application, it is submitted that as the applicant has failed to make out any prima facie case for interference by this Hon'ble Tribunal, no relief is liable to be granted in the applicant's

1. v. 18.

21- In reply to the contents of paragraph 8 of the application, it is submitted that the applicant failed to make out a prima facie case for interference by this Hon'ble Tribunal, as such no interim relief can be granted in his favour.

22- That the contents of paragraphs 9, 10, 11, 12 and 13 of the application need no comments.

That the contents of paras 1, 2 and 32

of this affidavit

are true to my personal knowledge; those of paras 3, 4, 5, 7 partly, 8 to 17, 19 & 23, 24 partly, 26, 28, 29 are

based on records and those of paras

are based on

affidavits and those of paras 6, 7 partly, 18, 24 partly, 25, 27, 30 and 31 are based on legal advice,

which all I believe to be true. No part of it is

false and nothing material has been concealed in it.

Witness my hand.

SUBSCRIBER.

Attest: Chaudhary, Clerk to Shri M. Singh,

Vocated, High Court, Allahabad declare that the person

making this affidavit and alleging himself to be the

deponent is known to me personally and I identify him

19.

is the same person.

Shady
Identifier.

solemnly affirmed before me on this 24th day
of April 1987 at 9:00 am/pm by the deponent, who is
identified as aforesaid.

I have satisfied myself by examining the
deponent that he understands the contents of this
affidavit, which has been read over and explained to
him.

NOT A COMPLETION.

ANNEXURE I

IMMEDIATE

NO.093/A/M/Vol.5/72
Government of India,
Ministry of Defence,
Directorate General, Ordnance Factories,
6, Esplanade East,
Calcutta-1, the 31st Dec.1972/1st Jan.
1973

Mr. A. K. Saha,
B. Sc. Officer,
Ordnance Factories

Subject:- Appointment as an Assistant Surgeon Ord(Male)
in Ordnance & Equipment Factories.

Sir,

I am directed to state that on the recommendation
of the Selection Board convened by the DGOF the President
is pleased to offer you a temporary post of Asstt. Surgeon
(Male) in the Ordnance Factories Organisation.

The terms and conditions of appointment are as
follows:-

- (i) You will be required to undergo a medical
examination by a Medical Board at a place to be
determined by the Director of Medical Services,
Govt. of Uttar Pradesh, Lucknow. The standard of
physical fitness shall be as prescribed in the
attached copy of the medical regulations. The
prescribed fees for the Medical Examination
shall be paid by you to the Medical Board at the
time of medical examination. No travelling
allowance will be allowed in respect of
journeys performed by you in connection with the
medical examination. Date and time of medical
examination will be communicated to you direct
by the Director of Medical Services, Govt. of
Uttar Pradesh, Lucknow. Your appointment is
subject to your being declared medically fit
as above.

- (ii) Your initial pay will be fixed at Rs.350/-p.m.

...

1. Scale of pay of 350-25-500-30-590-25-30-800-30-830-35-50/- according to rules in addition to dearness and other usual allowances admissible under the rules and orders governing the grant of such allowances in force at any time to time. Non-practising allowance at the rate of 33 1/3% of pay subject to a minimum of Rs.150/- per mensem is also admissible. Private practice will not be allowed at all.

ii) The post is temporary. Your appointment will be for one year or till the U.P.S.C. nominates a suitable candidate whichever is earlier.

iv) You will be on probation for a period of 3 months and this period is extendable at the discretion of the Government.

v) Your service will be terminable on one month's notice given in writing by either side without assigning any reasons. The Government, however, reserves the right of terminating your service forthwith on or before the expiry of the stipulated period of notice by making payment to you of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.

vi) You will be subject to conditions of service as applicable to temporary Civilian Government servants paid from Finance Services Estimates in accordance with the orders issued by the Government of India from time to time.

vii) You are liable to serve anywhere in India.

viii) You will not be eligible for the grant of travelling allowance for the journey undertaken the joining time only and the joining time for the purpose of joining duty.

ix) You will be required to take oath/affirm in the following form :-

"I do swear/solemnly affirm that I will be faithful and bear true allegiance to India and to the Constitution of India as by law established and that I will uphold the sovereignty and integrity of India and that I will carry out the duties of my office loyally, honestly and

at impartiality (so help me God").

ii) In accordance with Central Civil Services (Conduct) Rules, 1954, you are not eligible for appointment under the Govt. of India, if you have more than one wife/husband living. You are, therefore, required to complete the declaration in attached form and forward it to this HQ, alongwith your acceptance of appointment.

iii) If any declaration given or information furnished by you proves to be false or if you are found to have wilfully misrepresented any material information, you will be liable to removal from service and/or with such other action as Govt. may deem necessary.

iv) In your own interest, you should respond to the C.S. & A. advertisements for the posts of Asstt. Surgeons etc. in the Ordnance and Equipment Factories.

5. If you accept the offer on the terms and conditions specified above, you may intimate your acceptance to this Hqs. B. 31-1-73 at the latest and report for duty direct to the General Manager, Ordnance Equipment Factory, Secunderabad immediately. Your appointment is subject to your being declared medically fit by the Board as at para 2(i) above within 2 months from the date of joining.

Encs:-11 sheets

Yours faithfully,
Sd/ A.M. Mazumdar
A.M.O.F.

Encl. copy.

ANNEXURE II

NO. GM/80

ENGINEERING EQUIPMENT FACTORY

KANPUR: DATED 26th JULY '79.

1. Mr. M. K. Dey, J.O.
2. Mr. K. K. Dey, J.O.
3. Mr. (Mrs) N. Singh J.O.
4. Mr. (Mrs) N. Verma, J.O.

Through Principal Medical Officer.

FOR THE PURPOSE OF ADHOC APPOINTMENT OF JMOs-
OF U.P.S.C.

Intimation has been received from DGOF, Calcutta that sanction has been accorded by the UPSC to the continuance of adhoc Junior Medical Officers upto 31st December, 1978 or till they are replaced by UPSC candidates, whichever is earlier. The DGOF has further intimated that these Junior Medical Officers are, however, eligible to resign to leave earlier if they so desire.

Sd/-
(MR. PALANSHI) (M)
GENERAL MANAGER.

TRUE COPY.

ANNEXURE III(A)

Confidential

Ministry of Defence
(Py-1)

Subject:-Termination of service of Dr. . Mishra, SHO, O
No. 254/ANN/A/ dt. 17-3-1986.

2. The continuance of ad-hoc appointment of Dr. Mishra be
and the period of one year was taken up with the UPSC. A
copy of Govt's letter No. F.2/1(15)/72-A.III/A.U.5, dated
21-5-1986 received in the regard, is forwarded herewith,
and may please send the proposal for issue of termination
order urgently.

(Rajinder Mohan)
Desk Officer

Min. Secy,
UPSC
Finance Advisory Board,
Delhi.

No. 1(7)/84/ (Py-1), dt. 16-6-1986.

ANNEXURE III(B)

(10/1)

Confidential

GO.S.2/1(15)/72-A.III/A U.5
New Delhi, 21-5-1986

The Secretary, the Govt. of India,
Ministry of Defence,
Department of Defence Production,
Bans Phevan, New Delhi

(By name to Shri Rajinder Mohan, Desk Officer)

Subject:- Ad-hoc appointment to the post of Asstt. Medical
Officer in the Ordnance and Ordnance Equipment
Section, Department of Defence Production, Ministry
of Defence-Continuation of Ad-hoc appointment of
Mr. ... Mishra regarding -

Sir,

I am directed to refer to your letter No.F1(7)/86
(try-1), dated 5-5-1986 on the subject mentioned above and
to say as follows :-

2. The AEC (Exemption from Consultation) Regulations,
1986, do not contemplate obtaining concurrence of the
Commission for continuance of ad-hoc arrangements beyond
one year and the Regulations only indicate that the cases of
ad-hoc appointments should be reported to the UPSC who,
in their turn, could include in their Annual Report to be
placed before the Parliament instances of such continued
ad-hoc appointments beyond one year limit prescribed in
the Regulations. The Commission have accordingly decided
that they will not entertain any such reference and
neither agree nor give any advice regarding the continuance
of any ad-hoc appointment beyond a period of one year.

6-22
-2-

In the circumstances it is regretted that the proposal of the Ministry for the continuation of the ad-hoc appointment under reference cannot be processed at present. The Commission advise that necessary proposal for filling up the post on regular basis may be sent to the Commission as early as possible.

Yours faithfully,

Sd(Smt. S. Gautia)
Desk Officer

Union Public Service Commission

(222/10240)

TRUE COPY.



(EXHIBIT)

10-1-1944

GOVERNMENT-EMPLOYMENT

3. GOVERNMENT EMPLOYMENT - ALL GOVERNMENT EMPLOYEES

Permanent Service -

(1) If he has been in continuous service for

for more than three years; and

(2) If the employee is a permanent employee

having regard to the nature of his duties

conduct and character of his duties; and

employment in a full-time position on a permanent

the Government is entitled to be employed in

to that effect.

207

Kindly issue
copy of statement
to Mr. H.N. Misra

filed to-day
cyl

Journal of Management Studies, 19(6), 701-718.

Doc. No. 10
A-112

11) Einmal unter 0 5 10 15 20 25 30 35 40 45 50 55 60 65 70 75 80 85 90 95 100

$$16 \div$$