

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Transferred Application No.165/86.

Dr.(Mrs.)Sumati Prakash Shere,
36 ADP Wadi, Ghodapdeo Road,
Old Tin Chawl, Room No.5,
Byculla,
Bombay.400 033.

... Applicant

V/s.

1. Union of India, Ministry of Defence, New Delhi.
2. The Chief of the Naval Staff, Naval Headquarters, New Delhi.
3. The Flag Officer Commanding-in-Chief, Headquarters, Western Naval Command, Bombay.
4. The Medical Officer-in-Charge, Naval Hospital, Karanja(Uran),
5. The Naval Armament Supply Officer, Naval Armament Depot, Karanja(Uran). ... Respondents.

Goram: Hon'ble Member(A), Shri P.Srinivasan,
Hon'ble Member(J), Shri M.B.Mujumdar.

Appearances:

Shri M.D.Angal,
advocate for the
applicant and
Shri M.I.Sethna,
counsel for the
Respondents.

JUDGMENT :-

¶Per Shri P.Srinivasan, Member(A)¶ Dated: 30.8.1988

This application was originally filed as Writ Petition No.304 of 1985 before the Bombay High Court. On transfer to this Tribunal, it has been renumbered as Transferred Application No.165/86.

2. The applicant was appointed as an Assistant Surgeon Grade.I in the Naval Hospital at Karanja with effect from 16.2.1982 by a letter of the same date addressed to her by the headquarters office of the Western Naval Command, Bombay (Exhibit 'A' to the

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application). The letter stated that the appointment was purely on ad hoc basis for a period of six months or till a regular candidate from the Union Public Service Commission became available whichever was earlier. The appointment was "on a pay scale of Rs.700-40-900-EB-40-1100-50-1300". The applicant joined duty accordingly on 17.2.1982. The tenure of the appointment was however extended by successive six month periods from time to time, the last such extension being upto 15.2.1985. However, by letter dt. 12.1.1985 (Exhibit 'C'), the Headquarters Office of the Western Naval Command informed her that her services would stand terminated with effect from 15.2.1985. She is challenging this letter in this application.

3. The respondents have resisted the application by filing a reply.

4. Shri M.D.Angal learned Counsel who appeared for the applicant with Shri C.S.Thakore made the following submissions: The applicant was interviewed before her appointment on being sponsored by the Employment Exchange. According to the applicant's say, she was told that if selected, she would be appointed on a permanent basis to a permanent post. Shri Angal fairly conceded that there was no evidence in writing to support this assertion of the applicant. The letter calling the applicant for interview produced at the hearing was perused by us and we found a clear statement therein that the appointment to be made in pursuance of the interview was on ad hoc basis till the post was filled up on regular basis on the recommendations of the Union Public Service Commission. After seeing this, Shri Angal did not pursue

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this contention further. The main thrust of Shri Angal's argument was that the services of an ad hoc appointee, as in this case, could be terminated only when a regular candidate became available. The rules of recruitment for the post of Assistant Surgeon did not require reference to the Union Public Service Commission (UPSC). The selection of the applicant for appointment after interview should therefore be treated as a regular appointment particularly as her services were not terminated after the initial period of six months stipulated in the order of appointment. The applicant was not aware that the term of her appointment was being extended every six months as no such intimation was given to her. On the other hand, there was a permanent post of Assistant Surgeon, Grade.I in the Naval Hospital in which she was working. She was given annual increments, leave and all other facilities available to persons regularly appointed. Her appointment, therefore had all the "trappings" of a regular appointment which could not be terminated without giving her an opportunity of being heard. No reference had been made by the respondents to UPSC calling for regular candidates for appointment nor was the applicant asked to appear before the UPSC for regular selection. Even if an ad hoc appointee had to be discharged for want of a vacancy - which was not the case of the respondents - the principle of "last come first go" should have been followed but that had not been done here as persons appointed after the applicant ^{were} retained in service. If the termination of the applicant's services was on account of her conduct then it was a punishment which could not have been imposed without holding a departmental inquiry and hearing

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her. Therefore, Shri Angal submitted, the action of the respondents in terminating the services of the applicant could not be supported on any ground and deserved to be struck down.

5. Shri M.I.Sethna, learned Senior Central Government Standing Counsel, refuting the contentions of Shri Angal, submitted that when an ad hoc appointment is made for a specific term, it was entirely within the discretion of the authorities to renew the appointment or not after the expiry of the term. There was no automatic right conferred on the appointee to be so reappointed. If the authorities found that the work of the person so appointed did not come upto the mark, they had every right not to renew his or her appointment. There was no question of a penalty being involved because the appointment itself gets exhausted on the expiry of the term for which it is given. ^HIn this case, the authorities were not happy with the performance of the applicant and so when the term of her appointment expired on 15.2.1985, - not before that - they did not renew the appointment. In such a case the principle of "last come first go" had also no application.

6. We have carefully considered the submissions on both sides. The appointment of the applicant was indeed ^{on}an ad hoc basis for a specific term initially. ^MWe have perused records maintained by the respondents and the service book of the applicant and are satisfied that the term was indeed extended from time to time by successive periods of six months, the last of which expired on 15.2.1985. At the end of each term, it was ^Mentirely within the discretion of the authorities ~~whether~~ to renew the appointment or not. In order to decide whether such fresh appointment should be given, the

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the authorities have naturally to consider whether the work of the employee has been upto the mark or not. If they find that it has not been upto the mark and for that reason do not renew the appointment for a fresh term, it does not amount to a penalty ^{by attracting} affecting the principles of natural justice. Only ^{if} if the services are terminated before the expiry of the prescribed ^{term} term, can an inference be drawn, depending on the circumstances of the case, that a penalty has been imposed but not if the appointment itself comes to an end on its own terms. ^{by} That the ad hoc appointee gets increments of salary while in service or that other "trappings" of regular service are present is not material for this purpose. When the appointment comes to an end on its own terms, it does not run counter to the proposition that Government Service begins as a contract and is thereafter governed by status or the rules of service. The case of Dr. Sangeeta Narang A.T.R. 1988(1) C.A.T. 556 decided by the Delhi Bench of this Tribunal relied on by Shri Angal is not in para materia with the present one, but the right of Government to make short term appointments even against permanent posts was recognised in ^{by} that judgment. Further the observations therein as to the circumstances in which a short term appointment could be terminated are of interest:

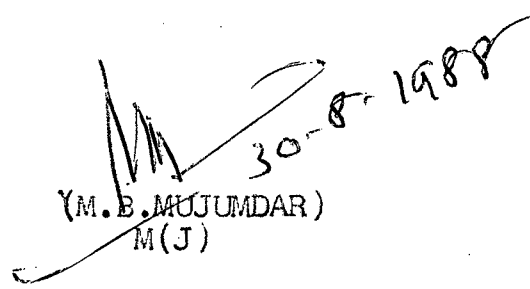
"..... the services of the petitioner could be terminated only if the same were no longer required or if the concerned authority was of the opinion that the performance of the particular petitioner is not upto the mark or he is not otherwise suitable for the post" (emphasis supplied)

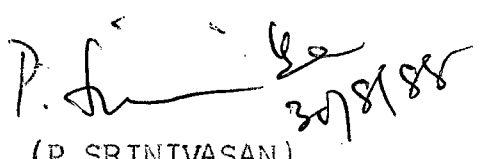
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7. We have perused the file of the respondents and showed it to Shri Angal also. We find that the authorities were indeed not satisfied with the performance of the applicant and so her reappointment after the expiry of the term was not recommended, and this cannot be termed as a penalty. In such circumstances, it was not necessary to wait till a regular employee became available. In this view it is not necessary to consider whether reference to the UPSC was necessary for making regular appointment, though it appears on a ^{by cursory} ~~censory~~ look at the recruitment rules that such reference was necessary and indeed it is well known that most if not all fresh/regular appointments to Civilian Posts in Class.I (Group 'A') are made in association with the UPSC. ^{by} The Case of Dr.S.C.Kaushik V/s. Union of India 1981(1) S.L.R. Guj 214 cited by Shri Angal is again of no help here because there the service of an officiating employee were terminated and another appointed in his place: it was not a case of non-renewal of ad hoc appointment after the expiry of the prescribed term because the authorities did not find the employee upto the mark.

8. In the light of the above observations the application is dismissed but in the circumstances of the case, parties will bear their own costs.



(M.B. MUJUMDAR)
M(J)



(P. SRINIVASAN)
M(A)

After the above order was pronounced, Shri C.S. Thakur prayed that the operation of the order may be stayed for 12 weeks as the applicant

proposes to file Special Leave Petition
before the Supreme Court.

We consider it proper to accede to his
request. The operation of this order is
stayed upto 30th November, 1988 or till
an order is passed by the Supreme Court
in this regard whichever is earlier.


(M.B. MUJUMDAR)
Member(J)

 30/8/88
(P. SRINIVASAN)
Member(A)