

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG.NO.6, 4TH FLR, PRESCOT RD, FORT,
MUMBAI - 400 001.

ORIGINAL APPLICATION NO:406/92.

DATED THE 24TH DAY OF FEBRUARY, 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.

Hon'ble Shri D.S.Baweja, Member(A).

Dr. (Mrs) Shubhada Dave,
Asstt. Medical Officer
under General Manager
Central Railway-Bombay
Residing at C/o.
Shri Deepak Dave,
C/1458 Railway Officers'
Colony - Bhusawal - 485201.

... Applicant.

By Advocate Shri L.M.Nerlekar

v/s.

1. Union of India,
Through: General Manager,
Central Railway,
Bombay VI 400 001.

2. Chief Medical Officer,
Central Railway,
Bombay VI-400 001.

... Respondents.

By Advocate Shri S.C.Dhawan.

ORDER

Per Shri R.G.Vaidyanatha, Vice Chairman

This is an application filed under section 19 of Administrative Tribunals Act. Respondents have filed reply. We have heard the learned counsels appearing on both sides.

The applicant, a Medical Doctor, came to be appointed as Doctor on adhoc basis in the Central Railway. The first order of appointment is dated 14/8/86 appointing her on adhoc basis for a period of six months. She was working at different places. She has also mentioned that she was on Maternity leave and subsequently she had to remain absent due to sickness. She wrote letter dated 10/6/91 asking for a posting to a particular place where her husband was working and she got a reply

vide letter dated 17/9/91 informing her that her request for posting cannot be considered since her name had been excluded from the Railway Rolls from 1/10/90. She is challenging the said order and the consequent termination w.e.f. 1/10/90. She sent representation to General Manager by way of appeal to which she did not get any reply. It is also her case that her name was not forwarded by respondents to UPSC for regularisation. Her case is that removal of her name from Railway rolls is arbitrary and illegal. No enquiry has been held and no show cause notice has been given to her. She therefore wants this Tribunal to quash the order dated 17/9/91 and direct respondents to reinstate her w.e.f. 1/10/90 with all consequential benefits and forward her name to UPSC for regularisation.

2. The respondents in their reply have justified the action taken by them. It is stated that when the applicant asked for a particular posting by letter dated 10/6/91, she was informed by Impugned letter dated 17/9/91 that her request cannot be considered since her name has been excluded from the Railway Rolls. It is stated that during the period of 4 years, she has worked only for about 10 months. She had remained absent after the expiry of Maternity of leave for a long time. She had never raised with the department, the question of forwarding her name to UPSC. It is stated that the applicant's appointment was purely temporary and adhoc for a period of 6 months as a stopgap arrangement or till replaced by regularly posted candidate whichever is earlier. The appointment order further mentions that the services can be terminated at any time without assigning any reason and without notice. It is also noted that as per the appointment order she should have availed three chances in the selective/competitive examinations held by UPSC for being regularly appointed as a regular Doctor. Though,

the UPSC advertised on 4 occasions during 1986-90, she did not avail the opportunity to apply to UPSC. It is stated that the Railway Administration reviewed the appointment of applicant from time to time and continued her services till 30/9/90. The Railway administration has not renewed her appointment from 1/10/90. That is why her name has been removed from Railway Rolls with effect from 1/10/90. It is therefore stated that the action taken by the respondents is purely as per rules and as per terms of contract in the order of appointment.

3. The learned counsel for the applicant has questioned the correctness and legality of the action taken by respondents in removing her name from Railway Rolls w.e.f. 1/10/90. He has argued that there was no enquiry, no show cause notice and therefore the impugned action is contrary to law besides being in violation of Principles of Natural Justice. He also argued that the respondents have not forwarded the name of applicant to UPSC for regularisation. It is therefore submitted that applicant is entitled to all the reliefs prayed for in the application.

On the other hand, the learned counsel for respondents submitted that this is a case of adhoc appointment, and her services are terminated in pursuance of order of appointment. As far as regularisation is concerned, his submission is that it is for the applicant to avail the chances whenever advertisements are made by UPSC and the applicant availed no such chances and therefore there is no fault on the part of Railway Administration.

As far as the question of termination is concerned, we find that the action taken by Railway Administration is as per contract of appointment. The appointment order

is at page-10 of the paperbook. It is dated 14/8/86. It clearly mentions that the appointment of applicant is purely adhoc, stopgap and temporary for a period of 6 months or till a regularly selected candidate is posted whichever is earlier. Therefore on the basis of the appointment order, the appointment order is only for a period of 6 months. Therefore, the contract comes to an end by efflux of time. It appears subsequent appointment orders were issued on same terms. Admittedly, the applicant remained absent for quite a long period. Therefore, Railway Administration has reviewed the appointment of the applicant and continued inspite of her absence till 30/9/90. From 1/10/90 naturally it comes to an end. This Tribunal by exercising judicial review cannot grant fresh order in favour of applicant from 1/10/90. Therefore, the appointment comes to an end strictly by virtue of terms of the contract. The order of appointment further provides that the services can be terminated even earlier than the prescribed time without assigning any reason and without notice. Therefore, action of the respondents is purely within the terms and conditions mentioned in the appointment order.

4. The arguments of the learned counsel for applicant about not issuing show cause notice or holding enquiry does not merit since this is an order of termination in terms of contract. The applicant cannot go behind the terms of contract. She is not a regular employee to claim benefit of service. Since this is a contractual appointment, she is to depend only on the terms of contract. About holding enquiry or issuing show cause notice in respect of permanent employees cannot be applied to adhoc employees, who is governed by terms of contract. The services of permanent employees are governed by service rules applicable from time to time

framed by Government., and principles of natural justice, etc. In the present case, it is simplicitor case of removal of name since contract period comes to an end.

5. In addition to above terms of contract, the appointment order also mentions that the applicant should avail the opportunity given by UPSC by way of advertisement for regular appointment and if she does not avail 3 chances, her services would be terminated without any notice. The counsel for respondents brought to our notice that during the period, 1986-90 there was advertisement 4 times by UPSC and the applicant has not availed of a single opportunity and the adhoc appointment was terminated at the end of the contract.

Therefore, the question of regularisation of applicant's service now does not arise. She never availed the opportunities provided by UPSC by Public Advertisement. Further, now we cannot give a direction for regularisation or to forward the applicant's name to UPSC when she is no longer in service from 1990. Therefore, the relief asked for by the applicant does not survive at all. We find that the respondents have acted according to the terms and conditions of the contract of appointment, and the applicant cannot now agitate her case before this Tribunal.

6. In the result, we find no merit in the application and therefore it is dismissed. No costs.

(D.S. BAWEJA)
MEMBER (A)

(R.G. VAIDYANATHA)
VICE CHAIRMAN

abp.