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III THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.874/92

Date of order: 22-3-1996

Dr.Arun Kumar Sharma

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr.R.N.Mathur

: Counsel for applicant

Mr.U.D.Sharma

: Counsel for respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Administrative Member

Hon'ble Mr.Patan Prakash, Judicial Member

PEF: HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER.

This O.A No.874/92 Dr.Arun Kumar Sharma Vs. Union of India & Others was disposed of by the Tribunal by order dated 27.9.93. The respondents filed a Special Leave Petition before the Hon'ble Supreme Court against the order of the Tribunal. The said SLP, No.4876 of 94, Union of India & Ors. Vs. Dr.Arun Kumar Sharma, was disposed of by the Hon'ble Supreme Court vide their judgment dated 27.7.1994 by which the appeal was allowed and the order passed by the Tribunal was set aside and the matter was remanded to the Tribunal for reconsideration in the light of the observations of the Hon'ble Supreme Court in their judgment. The O.A has been heard afresh and is now being disposed of by this order, in the light of the observations of the Hon'ble Supreme Court.

2. In the aforesaid O.A, the applicant had prayed that the oral order dated 23.8.87 terminating the services of the applicant, earlier appointed as a Doctor in the Central Govt. Health Scheme (CGHS) may be quashed, the respondents may be directed to reappoint the applicant in preference to all other persons and treat him in continuous service from the date of his initial appointment i.e. 16.12.85 with all consequential benefits and that they may be further directed to give the applicant regular pay scale w.e.f. his initial appointment on 16.12.85. His last prayer was that the appointment order of Dr.Kuldeep Mahendiratta be quashed and he may

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be removed from service and instead the applicant may be appointed on the post of Medical Officer in the Polyclinic under the CGHS, Jaipur.

3. The brief facts of the case as stated in the order dated 27.9.93 earlier passed by the Tribunal, which are not in dispute, are that the applicant was appointed as a Medical Officer in CGHS, Jaipur on short term contract basis w.e.f. 16.12.85 and the contract was extended from time to time with breaks till 19.8.87. Thereafter the contract was not renewed. The applicant had contended that Doctors who had joined the service of the respondents later than the applicant had been continuing in service while the service contract of the applicant was not renewed. Reference was made during the arguments, when the case was heard earlier, to an order dated 17.8.92 by which the services of a number of Doctors who were junior to the applicant at Jaipur had been regularised w.e.f. 22.10.91. Attention was also drawn to orders passed by this Bench of the Tribunal on 12.8.93 and 26.8.93 respectively in the cases of two other Doctors (Mrs Priya Thawani and Sudhir Malhotra) in whose cases the Tribunal had directed that their cases should be considered for re-engagement/ regularisation. During the arguments the respondents had contended that a complaint was received against the applicant from the Principal, SMS Medical College, Jaipur, alleging that the applicant while working as a Radiologist in the CGHS at Jaipur had also been doing his Diploma Course in Radiology in the Medical College. The applicant's explanation was called for and it was furnished. The Tribunal had observed that thereafter an order dated 18.8.87 was issued from the office of the Chief Medical Officer, CGHS, Jaipur, whereby the applicant was re-engaged on short term monthly basis w.e.f. 29.7.87 to 19.8.87 but the service contract was not renewed after 19.8.87.

4. The observations of the Tribunal in the order dated 27.9.93 were that even after the applicant had furnished his

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explanation to the respondents regarding doing the Diploma Course in SMS Medical College, he was re-engaged on the same terms and conditions vide order dated 18.8.87. Therefore, by implication the fault, if any, on the part of the applicant in pursuing the said Course was condoned by the respondents. The Tribunal found no reason to distinguish the applicant's case from those of the other two Doctors in whose cases orders had been passed on 12.8.93 and 26.8.93, as mentioned above. The Tribunal had further observed that a perusal of the order dated 17.8.92 issued by the Ministry of Health and Family Welfare revealed that several Doctors who had been initially appointed later than the date on which the applicant was appointed were considered for regularisation and their services were regularised w.e.f. 22.10.91. The Tribunal was, therefore, of the view that the applicant deserved the same treatment. The Tribunal accordingly held that the applicant is entitled to be considered for regularisation on the same terms and conditions and on the same basis on which regularisation of services of Doctors mentioned in the order dated 17.8.92 had been made. The Tribunal had directed that the process of selection as envisaged by the Rules should be gone through and the UPSC should also be consulted before the applicant is regularised. The Tribunal finally directed that if the applicant is found eligible for appointment on regular basis after the process of selection as mentioned above is gone through, he may be given appointment as Medical Officer from the date from which Doctors mentioned in the order dated 17.8.92 had been given appointments, with all consequential benefits which were given to the Doctors mentioned in the order dated 17.8.92. However, it was specifically directed by the Tribunal that the applicant shall not be entitled to wages for the period from 20.8.87 to the date when he actually takes over charge after he is appointed on a regular basis.

5. In the judgment of the Hon'ble Supreme Court there is a

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reference to an order dated 2.11.88 passed by the Govt. of India, Ministry of Health and Family Welfare which was passed during the pendency of the O.A before the Tribunal, whereby all the participating units in the Central Health Services were directed that the cases of all such ad hoc medical officers whose ad hoc appointments were likely to continue/have continued for more than one year should be reported to the Ministry within 10 days for making a reference to the UPSC as per the judgment of the Tribunal in the cases of Dr.(Mrs) Sangesta Narang and Dr.Sunil Kumar Arya and in accordance with the said directions the CGHS Jaipur sent to the UPSC the bio data of Medical Officers who were working on ad hoc basis at Jaipur for the purpose of considering them for regularisation. The name of the applicant was not sent presumably because he was not in employment with the CGHS at that time. Thereafter, as observed by the Hon'ble Supreme Court, order dated 17.8.92 was passed by the Govt. of India, Ministry of Health & Family Welfare, whereby the services of a ~~number~~ of Medical Officers working on ad hoc basis were regularised. As already observed by the Tribunal in its earlier order dated 27.9.93, the applicant's grievance was that the services of a number of Medical Officers who were junior to the applicant were regularised but he had wrongly been excluded from such regularisation. As far as the directions of the Hon'ble Supreme Court in the present case are concerned, these are reproduced below:

"A perusal of the order dated November 2, 1988 shows that it deals with the matter of regularisation of medical officers who were in employment on ad hoc basis on the date of the passing of the said order and whose ad hoc appointments were likely to continue or had continued for more than one year. Since the services of the respondent had been terminated on August 19, 1987 prior to the passing of the said order, he could not be granted the benefit of that order and he could avail its benefit only if the

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termination of his services with effect from August 19, 1987 was set aside by the Tribunal in the petition which the respondent had filed and which was pending before the Tribunal on the date of issuance of the order dated November 2, 1988. The Tribunal, while extending the benefit of order dated November 2, 1988 to the respondent, has failed to note that the said benefit could be extended to the respondent only if it was found that the order terminating his services was invalid and he was in employment with the CGHS on November 2, 1988. The Tribunal has, however, not considered this part of the claim of the respondent about the invalidity of the termination of his services and in the absence of any finding in that regard the order passed by the Tribunal extending the benefit of the order dated November 2, 1988 to the respondent cannot be upheld. Since the Tribunal has not considered the question regarding validity of the termination of the services of the respondent it would be appropriate that the matter is remitted to the Tribunal for considering the said question and in the light of the finding recorded on the said question the Tribunal should consider whether the respondent is entitled to the benefit of the directions contained in the order dated November 2, 1988."

6. The question that we have now to consider, therefore, is whether the termination of services of the applicant w.e.f. 19.8.87 (as per the respondents) or from 22.8.87 (as per the applicant) was valid. If the termination of the applicant's services in August 87 is held to be invalid or illegal, he would be deemed to be continuing in service as on 2.11.88 and would, therefore, be eligible for consideration for regularisation in terms of the order dated 2.11.88 passed by the Ministry of Health and Family Welfare to which a reference has been made in the judgment of the Hon'ble Supreme Court.

7. During the arguments before us now, the learned counsel for the applicant stated that the applicant's initial stand in the O.A was that the termination of his services was invalid and that

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he was entitled to relief in terms of the various provisions of the Industrial Disputes Act. However, according to him, this point was not argued before the Tribunal. The argument put forward before the Tribunal was that the applicant should be extended the same benefit in the matter of regularisation of his services which had been extended to Medical Officers who had been appointed in the CGHS Jaipur subsequent to the date of appointment of the applicant and therefore who were junior to the applicant. He added that after the applicant had joined the CGHS and was in service with it, the respondents had, on receipt of a complaint against him, called upon him by Anxx.R3 dated 10.7.87 to explain whether he was doing a full time Diploma Course in Radiology at SMS Medical College, Jaipur, against the Rules. The applicant's reply is at Anxx.R2 dated 15.7.87 wherein he stated, inter alia, that he was not continuing the said Course since his appointment in the CGHS. Thereafter vide order dated 18.8.87 (Anxx.A7) his contract with the CGHS was renewed from 29.7.87 to 19.8.87, but his services actually stood terminated w.e.f. 22.8.87. Thus his services were renewed even after the respondents had received his explanation regarding doing Diploma Course and therefore, the respondents could be said to have accepted his explanation in this regard as satisfactory. Yet, the reply filed by the respondents revealed that the termination of services had been effected on account of a complaint received against the applicant that he had been doing Diploma Course in Radiology in SMS Medical College, Jaipur, while in employment with the CGHS. Therefore, according to him, the action of termination was in fact punitive in nature. In support of this argument, he drew attention to para h) at pages 10 to 11 of the reply of the respondents to the OA, wherein it has been stated that the service record of the applicant was not satisfactory and there was a complaint against him as referred to above. In the aforesaid reply of the respondents, it was also mentioned that the applicant had

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suppressed this fact and no government servant can undertake Diploma Course without permission of the competent authority. According to the learned counsel for the applicant, principles of natural justice had been violated while taking action in terminating his services without affording him an opportunity of being heard. Therefore, the termination of his services was invalid and illegal and deserves to be set aside. Therefore, once the order of the termination was set aside, he could be deemed to be in service and therefore, entitled to regularisation of his services in terms of the order of the Ministry of Health and Family Welfare referred to in the judgment of the Hon'ble Supreme Court and also in view of the fact that services of several Medical Officers appointed subsequent to the applicant had been regularised. Therefore, the applicant was entitled to the same relief which was granted by the Tribunal by order dated 27.9.93, passed earlier.

8. The learned counsel for the respondents, during the arguments, denied that the termination of the applicant was penal in nature or that it was founded on a complaint received against him to the effect that he is doing Diploma Course in Radiology in SMS Medical College, while in service with the CGHS. He clarified that para h) of their reply is in fact a reply to para (h) at page 6 of the O.A wherein the applicant had stated that his service record was very good and he had served the department and the patients to the best of his ability. He maintained that the applicant had been appointed on short term contract basis on monthly wages as revealed by the various orders annexed by the applicant to his application. On expiry of the contract of service as extended upto 19.8.87 vide Anxx.A7, his service contract was not renewed. The respondents had a right to appoint a person on contract basis and in view of the nature of his appointment and the specific conditions attached thereto, he had acquired no right to hold the post. Therefore, the termination of his services was valid

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and legal in terms of the conditions of his appointment which was on a short term contract basis on monthly wages. He added that in the order dated 18.7.87 (Annex.A7) it had been clarified that his service would stand terminated from the afternoon of 19th Aug. 87 if not discontinued earlier. Thus his services came to an end on 19.8.87 because the contract was not renewed. Even if his actual termination was w.e.f. 22.8.87, as contended on behalf of the applicant, it makes no difference to the nature of his appointment and the validity of termination of his services. He also argued that even if it is assumed that the termination was on the basis of the misconduct on the part of the applicant in pursuing a Diploma Course while in employment with CGHS, this was only a motive and not a foundation for the order of termination.

9. After the Hon'ble Supreme Court had set aside the order earlier passed by the Tribunal and the case was being heard afresh, we had asked the respondents on 3.1.96 to verify from the records whether the issue that the applicant had been undergoing a Diploma Course while in service with CGHS was taken into account in not renewing the applicant's contract of service with the CGHS. The respondents had also been asked to bring the record of the case to the Tribunal to enable it to verify the position in this regard. We had also, on that date, called upon the applicant to file an additional affidavit stating whether or not he had been doing the Diploma Course as aforesaid during his service in the CGHS. On the last date of hearing the learned counsel for the respondents filed a copy of letter dated 29.1.96 from the Additional Director, CGHS, Jaipur, addressed to the counsel for the respondents stating that the file regarding engagement of Medical Officers including the applicant prior to 1988 is not traceable in spite of the repeated efforts. The applicant, however, filed an additional affidavit as directed by the Tribunal.

10. We have heard the learned counsel for the parties and

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have gone through the material on record.

11. As regards the appointment of the applicant as Medical Officer in the CGHS, it was initially made on 16.12.85, as stated by the applicant at page 3 of the O.A. This appointment was renewed from time to time with some breaks, as stated by the applicant and it finally stood terminated from 19.8.87 or from 22.8.87. The initial order of appointment w.e.f. 16.12.85 has not been presented by the applicant but orders of renewal of appointment from time to time have been presented by him. The respondents have also not filed the order of initial appointment. However, the orders of renewal of appointment show that the applicant was appointed on short term contract basis for periods varying between 1 to 3 months at a time. In orders of renewal of appointment dated 11.6.87 (Annex.A6) and 18.8.87 (Annex.A7) he has been described as having been engaged on short term monthly wages basis. It is thus clear that the appointment of the applicant was on a short term contract basis or monthly wage basis. It is not the case of the applicant that the respondents had no right to appoint him on contract or monthly wage basis and that his appointment from the initial date of appointment should be deemed to be a regular appointment. Therefore, the nature of the appointment of the applicant cannot be questioned at this stage. Accordingly, such an appointment would come to an end if terminated by a specific order or if it is not renewed. His appointment was not after any selection as per the prescribed procedure. Therefore, the applicant had acquired no right to hold the post. Hence, the termination of his services w.e.f. 19.8.87/22.8.87 by nonrenewal of his contract of service cannot be considered to be invalid or illegal. Once it is held that the termination of services of the applicant is valid, he cannot be deemed to be in service on 2.11.88 and is therefore, not entitled to consideration for regularisation in terms of the order dated 2.11.88 passed by the Ministry of Health and Family Welfare.

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Accordingly in the light of the specific directions of the Hon'ble Supreme Court, the applicant is not entitled to regularisation in view of the fact that termination of his services was valid and legal.

12. We may now deal with the question raised by the learned counsel for the applicant that the termination was in fact punitive in nature and was effected without following the principles of natural justice. On a perusal of the reply of the respondent, we find that the averments in para h) at pages 10 and 11 regarding the conduct of the applicant are in fact in reply to the averments in para (h) of the application at page 6 thereof, wherein the applicant had claimed that his service record was very good. The Anxx.P1 to P6, presented by the respondents alongwith their reply are also in support of the averments in para (h) of their reply which are in fact reply to para (h) of the applicant's averments. The respondents have not produced the record to show whether the termination of the services of the applicant was on the basis of a complaint received against him regarding doing a Diploma Course while in employment with the CGHS. However, even if it is assumed that the termination of the services of the applicant was in view of the complaint against him and the misconduct alleged on his part in doing Diploma Course while in employment with the CGHS, the action taken against him cannot be considered to be in violation of the principles of natural justice. Anxx.P1 is the complaint received against the applicant. By Anxx.P3 dated 10.7.87 his explanation was called for and by Anxx.P2 dated 15.7.87 his explanation was received. Thereafter, if the respondents came to the conclusion that his explanation was not satisfactory and therefore his services needed to be terminated, they had come to this conclusion after giving an opportunity to the applicant to explain his conduct. Since the applicant was employed on a short term contract basis/on monthly wages, all that one could expect was

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that the minimum principles of natural justice should have been observed by the respondents while terminating services even of such a nature if the order is considered to be punitive in nature. Such minimum principles of natural justice had been followed by the respondents by calling upon him to explain his conduct and taking action only after receiving his reply. Thus, the position is that even if the termination is held to be penal in nature, action in this regard has been taken after following the minimum principles of natural justice and therefore, the order cannot be assailed on the ground that it is violative of the principles of natural justice.

13. In the affidavit filed by the applicant, he has taken contradictory stands with regard to his doing Diploma Course in Radiology while in service with CGHS and has not categorically denied that he was doing the Diploma Course while serving with the CGHS. At one place in the affidavit he has reproduced the reply given by him earlier when his explanation was called for. He has further stated in the affidavit "That my service in Radiology Department of Polyclinic, CGHS has not affected in any manner the Diploma Course". We do not understand what this observation means and what is its relevance here. He has also stated in the affidavit that since he was doing the Diploma Course without any payment (receipt of any stipend) it was necessary for him to earn something to keep body and soul together.

14. Even during the arguments, the learned counsel for the applicant did not categorically state that the applicant had totally discontinued the Diploma Course while serving with the CGHS. He added however that the applicant had not violated any Rules of the CGHS while doing the Diploma Course. The reference to violation of Rules in Annex.P3 while calling for his explanation was therefore misplaced. He himself drew attention to note 7 appended to Annex.P5 dated 31.1.86 which was a notification for inviting

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applications for the Diploma Course which the applicant eventually joined. This note reads as under:

"7. Private practice in any form during the training course is prohibited. Training is exclusively full time."

This, according to the learned counsel for the applicant is a condition attached by the College conducting the Diploma Course and this condition was also not violated by the applicant. The applicant did not do any private practice while he was pursuing the Diploma Course. The requirement that the training should be full time does not mean that the applicant cannot take up employment while pursuing the Diploma Course. We are, however, of the view that when there is a condition attached that the training should be full time, it means that the applicant cannot also be engaged in employment which was also obviously of a full time nature. The applicant could not be doing full time employment and also doing full time Diploma Course at the same time. It is also significant to note that while the applicant joined service with CGHS in December 1985, the notification inviting applications for Diploma Course in SMS Hospital is of January/February 86. Thus the applicant must have joined Diploma Course after joining service with CGHS. It is not his case that he took prior permission of CGHS authorities before doing so or that he ever informed them about it. In these circumstances, the respondents' calling upon the applicant to explain whether he had been doing Diploma Course against the Rules was justified. Thereafter, if they took action against the applicant on being not satisfied with his explanation, the action taken by them could not be said to be in violation of the principles of natural justice. It can also not be said that there was no material or basis for the action taken against the applicant by the respondents, if the termination is alleged to be penal in nature.

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15. For all the above reasons, we hold that the termination of the services of the applicant was valid and legal. Therefore, in view of the observations and directions of the Hon'ble Supreme Court, the applicant is not entitled to the benefit of regularisation as directed to be granted to him by the earlier order of the Tribunal dated 27.9.93. The O.A. is, therefore, dismissed. No order as to costs.



(Ratan Prakash)
Member (Judl.)



(O.P. Sharma)
Member (Adm.)