

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.214/90.

Date of Judgement 21.7.1992

Dr. G.Subba Raju

.. Applicant

Vs.

1. Union of India,
Rep. by its Secretary,
Min. of Health &
Family Welfare,
Nirman Bhavan,
New Delhi-110011.
 2. Director,
Central Govt. Health Scheme,
Nirman Bhavan,
New Delhi-110011.
 3. Dy. Director,
Central Govt. Health Service,
1-7-155, Bakaram,
Hyderabad-500048.
- .. Respondents

Counsel for the Applicant :: Shri Panduranga Chari for
Shri G.Ramachandra Rao

Counsel for the Respondents:: Shri N.Bhaskara Rao, Addl. CGSC

CORAM:

Hon'ble Shri R.Balasubramanian : Member(A)

Hon'ble Shri C.J.Roy : Member(J)

[Judgement as per Hon'ble Shri R.Balasubramanian, Member(A)]

This application has been filed by Dr. G.Subba Raju under section 19 of the Administrative Tribunals Act, 1985 against the Union of India, Rep. by its Secretary, Min. of Health & Family Welfare, Nirman Bhavan, New Delhi-110011 & 2 others. The prayer in this O.A. is to quash the Office Order No.A.11901/23/MW/86/CGHS/1422 dt. 19.6.89 and for a direction to the respondents to reinstate the applicant in service as Medical Officer with all incidental benefits including monetary benefits.

2. The applicant was appointed as Medical Officer on contract monthly wages basis in the Central Govt. Health Scheme (CGHS for short) vide memo dt. 4.11.86 issued by the Chief Medical Officer, CGHS, Hyderabad. He was posted as Medical Officer, at CGHS, Charminar, Hyderabad. It is contended that though

- 2 -

his appointment as Medical Officer was ^{or}adhoc/on contract basis he was appointed against a regular post in a clear vacancy. The applicant's name was also sponsored by the Employment Exchange. While so, his services were abruptly terminated due to the posting of one Dr. Kapil Deo, a regular U.P.S.C. candidate. It is the case of the applicant that even with the posting of Dr. Kapil Deo he need not be displaced because there are several other Medical Officers like Dr. Jaipal Reddy and Dr. E.V.Narayana Rao who are similar to the applicant working as Medical Officers on the date of termination of his services, of course on adhoc or on contract basis like the applicant. It is also his case that when the adhoc arrangement continued for more than one year the respondents ought to have referred the matter to the U.P.S.C., New Delhi for continuing his services as required under proviso III of clause (b) of Regulation 4 of the U.P.S.C. (Exemption from the Consultation) Regulations, 1958. The applicant has drawn our attention to the case of Dr. Mrs. Sangeeta Narang & others Vs. Delhi Administration & others [ATR 1988(1) CAT 556] adjudicated by the Principal Bench and that he is placed similar to the applicant in that case. He is also quoting the judgement in O.A.No.643/88 of this Bench in support of his prayer. The learned counsel for the applicant has also drawn our attention to the decision of this Bench in O.A.No.486/90.

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3. The respondents have filed a counter affidavit and oppose the application. The facts of the case are not disputed. It is stated that Doctors are appointed on monthly contract basis to tide over the difficult position in Dispensaries as a stop-gap arrangement and that the services of the applicant were terminated consequent to the posting of the regular incumbent Dr. Kapil Deo. It is stated that this is the practice obtaining in the CGHS. As regards the case of Dr. E.V.Narayana Rao, cited by the applicant, the respondents state that in his case there was a direction from this Bench in O.A.No.643/88.

applicants - 3 -

reply to

4. The applicants have filed a counter affidavit.

It is contended therein that when a vacancy is filled up with the regular incumbent, it is the juniormost Medical Officer in that unit appointed on adhoc basis that will have to go and not the senior one, while such juniors continue. It is also pointed out that pursuant to the direction of the Principal Bench in the case of Dr. Sangeeta Narang & others Vs. Delhi Administration & others [ATR 1988(1) CAT 556] a reference was made by the respondents to the U.P.S.C. The Commission replied the respondents back stating that adhoc appointments have ^{only} to be reported to the Commission only for the purpose of including in the annual report to be submitted to the Parliament and that for any other purpose, the matter should be examined by the concerned Department in consultation with the Dept. of Personnel. It is stated that the matter was in turn, taken up with the Dept. of Personnel & Training and their decision is still awaited, regarding the proposal for the continued appointment of adhoc Medical Officers till 30.6.90.

5. We have examined the case and heard the rival sides. Before proceeding with the case, we will refer to cases to which our attention has been drawn by the learned counsel viz: the case of Dr. Sangeeta Narang & others Vs. Delhi Administration & others [ATR 1988(1) CAT 556], O.As No.643/88 and 486/90. The judgement in O.A.No.643/88 (E.V.Narayana Rao Vs. Health Secretary) was delivered by the Bench on 27.4.89. The Bench had relied on the decision of Principal Bench in the case of Dr. Sangeeta Narang & others Vs. Delhi Administration & others. The direction in that O to the respondents was to report to the U.P.S.C. the case of the petitioner and others similarly situated who are likely to continue on these posts on adhoc and temporary basis for more than one year as required by proviso (iii) to clause (b) of Regulation 4 of the UPSC (Exemption from the consultation) Regulation, 1958. The Bench further directed

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be

that they shall be continued in service in the light of the advice of the U.P.S.C. till regular appointments are made to these posts. It was also observed by the Bench that when an appointee, though temporary or adhoc, with longer years of service is kept out while the juniors are continued it would be violative of the rights under Articles 14 and 16 of the Constitution of India. It was observed that as long as vacancies are available and juniors to the applicant (therein) are continued on adhoc and temporary basis the applicant would also be entitled to such adhoc/temporary appointment. It was, however, mentioned that such services are liable to be terminated if there are no vacancies or if regular U.P.S.C. selected candidates are appointed. As for the other case, O.A.No.486/90 (Dr. V.Jayapal Reddy Vs Health Secretary) referred to by the learned counsel for the applicant, we find that the case is yet to be adjudicated. The case will be dealt with on its own merits in its turn.

6. As of now, we do not know what decision has been taken after consultation with the Dept. of Personnel regarding continuing the adhoc arrangement, based on the advice given by the U.P.S.C. to whom a reference was made by the respondents. Be that as it may, propriety requires that when the services of an adhoc appointee in a unit are to be terminated it should be done in the reverse order of length of service. In other words, when a vacancy is filled up by the regular appointee, the adhoc appointee with the least service on that date should be the one to go. If this principle is violated, as observed by the Bench in the case of O.A. No.643/88, it will be a violation of Articles 14 and 16 of the Constitution of India. In this case, the services of the applicant stand terminated by the order dt. 19.6.89.

7. In view of the position described above, we direct the respondents:

(a) to act in accordance with ~~any~~ ^{the} decision of the Dept. of Personnel, if any ^{is} taken and

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(b) to re-engage the applicant, if any adhoc appointee junior to him in length of service is continued in that unit, if need be, by terminating the services of the juniormost adhoc appointee in that unit.

8. The directions in this judgement will be complied with by the respondents within a period of three months from the date of receipt of this order.

R. Balasubramanian
(R. Balasubramanian)
Member(A).

C. J. Roy
(C. J. Roy)
Member(J).

Dated: 21st July, 1992.

8-22/7/92
Deputy Registrar (J).

23

Cop to:

1. The Secretary, Ministry of Health and Family Welfare, Nirman Bhavan, New Delhi - 110011.
2. The Director, Central Government Health Scheme, Nirman Bhavan, New Delhi - 110011.
3. The Deputy Director, Central Government Health Service, 1-7-155, Bakaram, Hyderabad - 500048.
4. one copy to Mr. G. Ramachandra Rao, Advocate, 3-4-498, Borkatpura, Hyderabad.
5. one copy to Mr. Navan Bhatia, Jyoti Addl. C. Sec. CTS, Hyderabad.
6. one spare copy.

5/10/92
22/7/92