

(19)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR
Date of order: 05-01-2007

OA No.137/1996

Lt. Col. S. Srinivasan s/o Shri K.S. Srinivasan, resident of 182,
AWHO, Ambabari, Jaipur.

.. Applicant

Versus

1. Union of India through the Secretary to the Govt. of India,
Ministry of Defence, New Delhi- 110 011.
2. The Chief of the Army Staff, Army Headquarters, DHO PO, New
Delhi.
3. The Station Commander, Station Headquarters (Army), Jaipur
4. The Officer Commanding, Military Hospital, Jaipur
5. Capt. Hari Prasad Soni, AMC (retd), Re-employed as Medical
Officer, OPD, Ex-servicemen Wing, Military Hospital, Jaipur
Cantt.
6. Maj. P.K. Patta, AMC, MO OPD, Ex-servicemen Wing, Jaipur.

.. Respondents

Mr. R.S. Bhadauria, counsel for the applicant

Mr. M. Refiq, counsel for the respondents

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

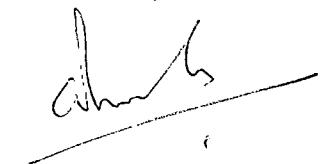
Hon'ble Mr. N.P. Newani, Administrative Member

Order

Per Hon'ble Mr. N.P. Newani, Administrative Member

In this OA, the applicant, Lt. Col. (retd.) S. Srinivasan, has
prayed for following reliefs:-

"i) to issue appropriate writ, order or direction or any other
relief in the nature thereof commanding the respondent to
revoke the order of appointment of Capt. Hari Prasad Soni
bearing No. 5027/4/A dt. 2.5.97 inter-alia reinstating the
petitioner after recalling impugned order dated 1.2.1996

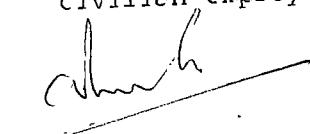


(Ann.1) with all consequential benefits.

ii) to issue appropriate writ, order or direction commanding the respondents to release arrears of salary @ Rs. 5000/- p.m. instead of Rs. 4000/- p.m. which works out to be Rs. 1000/- p.m. from the date of appointment till to date amounting of Rs. 18000/- (Rupees eighteen thousands) and thereafter full salary as paid to other counterparts i.e. Rs. 5000/- p.m. be paid. An interest @ 24% be also allowed on the arrears.

iii) to issue appropriate writ, order or directions commanding the respondents to allow 30 days earned leave in a year and 20 days casual leave in a calander year as is applicable to other similarly situated persons in other station under the aegis of respondent No.2"

2. The OA was admitted on 12.3.1997 subject to just exceptions. The respondents have raised a preliminary objection that since the applicant was employed with the Military Hospital in the Army at Jaipur and his services were at disposal of the Indian Army, this Tribunal will have no jurisdiction to entertain the OA. In his rejoinder, the applicant has controveted this by stating that the applicant, after his release from Army, no longer remained a combatant and his re-employment is on same footing as civilian employees serving in defence forces and, therefore, the Tribunal is well within its right under Sec. 14 of the Administrative Tribunals Act to entertain the OA. We have considered the rival contentions with regard to the jurisdiction. The first part of objection of the respondents is based on the contention that applicant was employed with the Military Hospital in the Army at Jaipur but just because somebody is working in the Military Hospital in the Army at Jaipur, does not become an army personnel governed under the Army Act and, in any case, the fact remains that there are quite a good number of civilian employees in the Army Hospital located at peace stations.

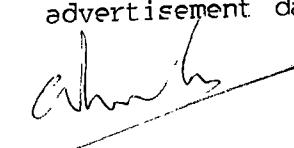


The second contention put forward by the respondents is that his services were at the disposal of Indian Army. We are of the opinion that this contention by itself does not mean that the applicant was not a civilian employee. We also note from the letter dated 14.10.1993 addressed to the applicant by Lt. Col.I/C of Military Hospital, Jaipur (Ann.A2) that the funds to meet the expenditure on "augmentation of resources in M.I. Room of Military Hospital are being provided through AG's Welfare Fund, Kendriya Sainik Board and one time grant from AGI" It, therefore, appears that the applicant was not being paid out of Defence Estimates and it further buttresses the argument that the applicant, a retired/released officer, was a civilian employee being paid a fixed amount per month and not salary in a pay scale. We, therefore, hold that the applicant was a civilian person who was engaged by the Military Hospital, Jaipur to augment the resources to improve services for ex-servicemen and, therefore, this Tribunal has jurisdiction to entertain the OA.

3. This is an old case, presented on 26.2.1996 and with the agreement of the rival parties, has been heard for final disposal without waiting for any further impleadment of the present Medical Officer who has now been engaged for augmenting the resources at the Hospital and also for technicalities like a further reply being awaited from official respondents against the amended OA.

4. We have heard the learned counsel for the parties and perused all the material on record, including the rejoinder filed on behalf of the applicant.

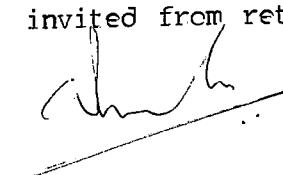
5. The case of the applicant is based on the grounds that he was appointed after selection by a Board of Officers as a follow up of advertisement dated 13.2.1994 (Ann.A3); that he had rendered more



than 1 year 8 months of satisfactory service and there was hardly any justification to replace him with another officer of same rank and qualification only to adjust one of the favourites of the respondents; that he had objected in writing to certain terms and conditions and had ultimately signed the agreement under protest; that his counterparts were getting the prescribed salary of Rs. 5000 p.m. but he had been paid only Rs. 4000/- p.m. and on his asking arrears of back wages as also leave etc, his services were terminated vide Ann.A1; that an ad-hoc employee cannot be replaced by another ad-hoc employee and finally that the termination order was not an order simplicitor but a disguised dismissal order and, therefore, issued in violation of Articles 311(2) of the Constitution of India.

6. The respondents by filing a reply have denied the case of the applicant. The learned counsel for the respondents strenuously argued that the applicant was just engaged on contract basis on terms and conditions incorporated in the appointment letter dated 9.6.1994 (Ann.A4) in response to the advertisement dated 10.2.1994 published in Patrika. It was clearly mentioned therein that the appointment is for a duration of one year with provision of one month's notice on either side. The respondents also denied that they had received any letter from the applicant objecting to certain conditions in Ann.A4 or that the applicant had signed the agreement under protest. It has also been contended that the applicant was not holding any civil post, he was just on a contract with a fixed monthly wage and, therefore, there is no question of the violation of Article 311 of the Constitution of India.

7. We have carefully considered the rival contentions. We find that the advertisement itself had mentioned that applications are invited from retired/released defence med., Nur. and Para medical



personnel to augment the OPD services. The appointment letter Ann.A4 clearly mentions that the appointment is for a duration of one year with provision of one month's notice on either side. Total monthly emoluments of Rs. 4000/- has also been mentioned. Having known all these conditions, the applicant accepted the offer and joined. His assertions that he objected in writing to certain conditions has been denied by the respondents. For arguments sake, even if it is supposed that the applicant did object in writing to certain conditions or non-availability of entitled facilities, it does not make any difference because the applicant willingly took up the engagement on fixed wage of Rs. 4000/- p.m. with conditions as incorporated in appointment letter. We are, accordingly, of the considered opinion that the applicant was not appointed on a civil post with a pay scale on ad-hoc basis and, therefore, the judgments in case of Bhartendu Sharma Instrument v. State of Haryana, 1955 (2) SLR 248 (Punjab and Haryana High Court) and State of Haryana v. Piara Singh, 1992 (2) LAB-IC 2168 (SC) are distinguishable. In fact, we are constrained to hold that the applicant was engaged neither on re-employment basis nor appointed on ad-hoc basis but was really on a contract basis and was, therefore, liable to be terminated at one month's notice on either side, notwithstanding duration of one year mentioned in the letter of appointment (Ann.A4).

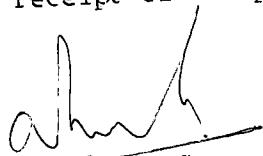
8. Before we leave this case, we would like to observe that the circular letter dated 5.8.1993 from the Army Headquarters annexed by respondents themselves as Ann.R1, which is the authority for the scheme of augmentation of resources in M.I.Rooms of Military Hospitals to improve OPD services to ex-servicemen clearly stipulates in paragraph 13(b) that monthly emoluments of Medical/Dental Officers will be Rs. 5000/- p.m. The applicant has also contended that his counterpart at Military Hospital, Jodhpur



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is being paid Rs. 5000/- p.m. and this has not specifically been controverted by the respondents. In view of this, it was not just legal for the respondents to pay the applicant only Rs. 4000/-, instead of Rs. 5000/- p.m. in violation of the circular of the Army Headquarters (Ann.R1).

9. In the result, while we would not like to interfere with the order of termination at Ann.A1, we dispose of this OA with a direction to respondents to fix monthly wages of the applicant at Rs. 5000/- p.m. for the period the applicant worked with them and pay him the entitled arrears within four months of the date of receipt of a copy of this order. Parties to bear their own costs.



(N.P.NAWANI)

Adm. Member



(B.S.RAIKOTE)

Vice Chairman