

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

J A I P U R

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Date of Order : 4.04.2002.

O.A.NO. 507/1996

Dr. Priya Thawani W/o Dr. V.K. Thawani, aged around 40 years, Resident of 476, Adarsh Nagar, Jaipur, presently posted as Medical Officer, C.G.H.S., Jyoti Nagar, Jaipur.

.....Applicant.

versus

1. Union of India through Secretary, Ministry of Health & Family Welfare, Government of India, Nirman Bhawan, New Delhi.
2. Director General, Central Government Health Scheme, Ministry of Health and Family Welfare, Nirman Bhavan, New Delhi.

.....Respondents.

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Mr. K.L. Thawani, Advocate, for the applicant.

Mr. R.L. Agarwal, Advocate brief holder for

Mr. Bhanwar Bagri, Advocate for the respondents.

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CORAM :

Hon'ble Mr. Gopal Singh, Administrative Member

Hon'ble Mr. J.K. Kaushik, Judicial Member

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PER MR. GOPAL SINGH :

In this application under section 19 of the Administrative Tribunals Act, 1985, applicant, Dr. Priya Thawani, has prayed for quashing the impugned order dated 29.11.1995 (Annex.A/4) and for a direction to the respondents not to treat the period from 17.7.1989 to 25.9.1995 as dies non and further to give promotion to the applicant on the post of Senior

*Gopal Singh*

Medical Officer from the date junior persons to her, were given promotion, with all consequential benefits.

2. Applicant's case is that she was initially appointed as a Medical Officer on the basis of monthly contract / ad hoc basis on 4.1.1983. By order dated 17.7.1989, her services were terminated by the respondent - department. This termination was challenged by the applicant in O.A. No. 290/1989 before the Jodhpur Bench, where the application was held as premature and dismissed. The applicant again approached the Tribunal vide O.A. No. 572/1989 but this O.A. was withdrawn by the applicant. Thereafter, a fresh O.A. No. 814/1989 challenging the termination order, was filed before the Jodhpur Bench of the Tribunal. This Application has been transferred to Jaipur Bench and given a fresh number 318/1992. The O.A. No. 318/1992 was decided by this Bench on 12.8.1993 with the following observations :-

"10. We, therefore, hold that the applicant is entitled to consideration for regularisation of her services 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 has been done. Of course, the process of selection, as envisaged by the various rules and instructions of the Government, will have to be gone through and consultation with the UPSC may also be required. We direct that the respondents shall consider the case of the applicant in the light of the above observations within a period of six months from the date of receipt of this order and if the applicant is found eligible for appointment on regular basis, she should be given the said appointment from the same date from which the Doctors mentioned in the order dated 17.8.92 have been given. All other consequential benefits which are available to the Doctors mentioned in the order dated 17.8.1992 shall also be extended to the applicant."

In compliance to the orders of the Tribunal aforementioned, the respondent-department issued orders dated 29.11.1995 (Annex.A/4), giving all benefits to the applicant. However, it was stated in this order that the period from 17.7.1989 i.e. the date of termination of her services to

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the date she actually joins duty, was to be treated as dies non and will not count for any benefit. It is for this reason that the applicant has approached again this Tribunal through the present O.A.

3. We have heard the learned counsel for the parties and perused the record of the case carefully.

4. The only controversy now remains to be debated upon is, whether the period from termination to reinstatement is to be treated as duty or dies non. Reinstatement as a result of Court's order has been dealt with at Item No. 4 in Chapter 5 Reinstatement -A Digest, Seventh Edition of Swamy's Manual on Disciplinary Proceedings at Page 241. We consider it appropriate to reproduce below the said provision :-

"4. Reinstatement as a result of court order

Two categories of cases are dealt with here :

1. Setting aside on merits.- When the dismissal, removal or compulsory retirement of a Government servant is set aside by a Court of Law/Administrative Tribunal on the merits of the case, without any reservation, full pay and allowances are to be allowed to the Government servant on reinstatement for the entire period of absence including the period of suspension and the entire period has to be treated as duty for all purposes.

2. Other cases.- ....."

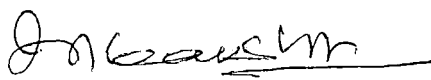
In terms of the above provision, the entire period from the date of termination of her services i.e. 17.7.1989 to the date of her rejoining/reinstatement i.e. 25.9.1995 has to be treated as on duty because the applicant has been extended the benefit of reinstatement on the direction of this Tribunal. The learned counsel for the applicant has also cited three judgements in support of his case reported in ; 2000 (2) ATJ . . . 50, 1994 (28) ATC 709 and 1995 (30) ATC 370 (Madras). However,

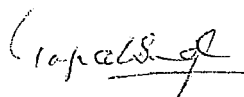
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~~However~~ we do not consider it necessary to give details of these judgements. The learned counsel for the respondents has, by way of a preliminary objection raised the issue of Limitation and contended that the case is hit by limitation. The applicant is praying for consideration of period from 17.7.1989 to 25.9.1995 in the present O.A. filed on 3.9.1996 much beyond the period of limitation. In our view the applicant has been agitating the question of her termination right from the very beginning and, therefore, we do not consider that the O.A. is hit by limitation. The learned counsel for the respondents has also cited the judgement of Telecommunication Engineering Services Association (India) and another Vs. Union of India and another reported in 1994 (4) SLR 15, in support of his contention that the period from 17.7.1989 to 25.9.1995, cannot be treated as duty. We have carefully gone through this judgement and do not find it relevant to the case.

5. In the light of the above discussions, we find that there is merit in this application and the same deserves to be allowed. Accordingly, we pass the order as under :-

"The O.A. is allowed. Para 4 of the impugned order dated 29.11.1995 (Annex.A/4), is quashed and set aside. The respondents are directed to treat the period from 17.7.1989 to 25.9.1995 as spent on duty and arrange payment of pay and allowances for the said period within three months from the date of receipt of a copy of this order. The applicant would also be entitled to all the consequential benefits including promotion, seniority etc. No costs."

  
(J.K. Kaushik)  
Judl. Member

  
(Gopal Singh)  
Adm. Member

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