

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 23.10.01 ✓

OA 386/2002 with MA 407/2002

Dr. Sudhir Malhotra s/o Shri Sohan Lal Malhotra r/o 11/46, Malviya Nagar, Jaipur.

... Applicant

Versus

1. Union of India through Secretary, Health & Family Welfare, Department of Health, Nirman Bhawan, New Delhi.
2. Addl. Director, Central Govt. Health Scheme (Near Jaipur Railway Station), Jaipur.

... Respondents

CORAM:

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR.GOPAL SINGH, ADM.MEMBER

For the Applicant

... Mr.A.C.Upadhyaya

For the Respondents

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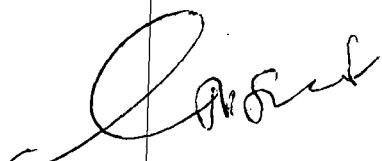
O R D E R

PER MR.JUSTICE G.L.GUPTA

The relief claimed in this OA are these :

"That the compliance of the Hon'ble CAT order dated 26.8.93 may kindly be ordered to be made and the appellant should be appointed as a Doctor and his services may kindly be regularised as per the Hon'ble CAT order dated 26.8.93."

2. It is averred that the applicant was initially appointed as Medical Officer on monthly wage basis for three months contract w.e.f. 27.1.87. The contract period was extended from time to time. Ultimately, the services of the applicant were terminated w.e.f. 30.11.88. The applicant challenged the said order of termination by filing OA 66/92. The said OA was disposed of giving directions to the Union of India for considering the case of the applicant for regularisation on the same terms and conditions and on the same basis on which the regularisation of services of Doctors mentioned in the order dated 17.8.92 was done. Now the case for the applicant is that the respondents have mis-interpreted the CAT's order and have requested the UPSC to hold examination, which could not be done, and further that the applicant could not appear in the written test held on 19.11.98 because of his illness for which he had informed the UPSC to hold the



examination after some time but his request was not accepted.

3. The applicant has also filed MA 407/2002 seeking condonation of delay.

4. We have heard the learned counsel for the applicant and perused the documents placed on record.

5. It is evident from the relief claimed that the applicant wants compliance of the order of this Tribunal dated 26.8.93 through this OA. The OA can be filed against some adverse order passed by the employer or for refusing to grant relief claimed by way of representation. Fresh OA cannot be entertained for implementation of the order of the Tribunal passed in the earlier OA. This OA is, therefore, liable to be dismissed on this ground alone.

6. The applicant's stand that the CAT's order has been misinterpreted by the respondents is not tenable. What the court said was that the case for regularisation of the applicant be considered on the same terms and conditions and on the basis on which regularisation of the Doctors had been done in 1992. It was further observed that the process of selection, as envisaged by the rules and instructions, was to be followed. When there was clear direction that the process of selection was to be followed and it was also stated that the UPSC was to be consulted, it was implicit that the respondents could hold the written examination also, if provided in the rules or instructions.

7. The Instant OA has been filed on 4.9.2002 whereas the applicant was aggrieved from the order dated 28.10.98, whereby he was asked to appear in the written test. No explanation whatsoever has been given by the applicant for not approaching the Tribunal within the period of limitation from the letter dated 28.10.98, if he thought that cause of action had accrued to him from this letter, which, as a matter of fact, did not give cause of action to the applicant. As already stated, the court had allowed the respondents to follow the process of selection as envisaged by the rules/instructions. When the respondents informed the applicant about the programme of written test, it could not give cause of action to the applicant to approach the Tribunal.

8. The applicant has filed MA 407/2002 for condonation of delay. The delay is said to be of some two-three months. The limitation has been claimed from the letter dated 23.1.2002. As a matter of fact, if



any cause of action could accrue to the applicant from the letter dated 23.1.2002 then it cannot be said that the OA was filed after expiry of the period of limitation. It has been filed within one year. It is obvious that the MA is misconcieved. At the same time, it may be stated that the cause of action could not accrue to the applicant from the communication dated 23.1.2002 because it is a reply to the notice sent by the applicant's Advocate. The reply of the respondents to the notice could not give fresh cause of action to the applicant when this Tribunal had already decided the matter in the earlier OA.

9. It is further noticed that the respondents had given liberty to the applicant to appear in the examination but he did not appear on the pretext of illness. Regarding his illness on the date of examination also, no document whatsoever has been placed on record.

10. From whatever angle we see, the matter is not worth admission. It is liable to be dismissed in limine.

11. Consequently, the OA and MA both are dismissed in limine.



(GOPAL SINGH)

MEMBER (A)



(G.L.GUPTA)

VICE CHAIRMAN