

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL


16.02.2009

OA No.101/2006

Mr. R.S.Bhadauria, counsel for the applicant
Mr. Y.K.Sharma, proxy counsel for
Mr. Sanjay Pareek, counsel for respondent Nos. 1 to 5
None present for respondent No.6

Heard the learned counsel for the parties.

For the reasons dictated separately, the OA
stands disposed of.


(M.L.CHAUHAN)
Judl. Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 16th February, 2009

Original Application No.101/2006

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

Dr. Gurmeet Kaur
D/o Sardar Avtar Singh Kumar,
r/o near Raj Keshar Hotel,
Mala Road, Kota (Raj.)
Ex-Lady Medical Officer,
Family Welfare Centre,
Military Hospital,
Kota.

.. Applicant

(By Advocate: Mr. R.S.Bhadauria)

Versus

1. The Union of India through
Its Secretary to the Govt. of India,
Ministry of Defence,
New Delhi.
2. The Director General,
Armed Forces Medical Services,
Ministry of Defence,
M Block,
New Delhi-110 001.
3. The Deputy Director Medical Services,
Headquarters,
South Western Command,
Jaipur through GOC-in-C.
4. The Commanding Officer,
Military Hospital,
Kota (Raj.)

5. Col. R.R. Pulgaonkar,
Commanding Officer,
Military Hospital,
Kota (Raj.)

.. Respondents

(By Advocate: Mr. Y.K.Sharma, proxy counsel for Mr. Sanjay Pareek for respo. No. 1 to 5)

O R D E R (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- i) Issue an appropriate writ, order or direction commanding the respondents to quash and set aside the order of termination dt. 25-2-06 (Annex.A/1) being ab-initio illegal non-est and without jurisdiction and the applicant be re-instated in service from the date her services were dispensed with, with all consequential benefits.
- ii) Issue an appropriate writ, order or direction staying the advertisement dt. 28.2.06 (Annex.10) calling for a suitable candidate for appointment on the post of Lady Medical Officer in the Family Welfare Centre, Kota and pending disposal of this OA, and the applicant be permitted to discharge duty of LMO as hither-to-fore as order of termination dt. 25.2.06 (Annex-A/1) has no sanction of law. Alternatively the appointment of the new lady doctor be made subject to decision of this OA and the applicant be permitted to implead the new LMO as respondents as and when situation so arise without compromise of her right to salary for the period of the applicant remain before the Hon'ble Tribunal.
- iii) Issue any appropriate writ, order or direction commanding the respondents to release the salary for the period May 05 to date of termination with 12% interest on the arrear and the person responsible for illegally depriving the applicant of his dues be made to pay the amount of salary from their pocket including interest.

- iv) Issue an appropriate writ order or direction which is deemed fit and proper in the facts and circumstances of the case beneficial and favourable to the applicant. Besides, any order adverse to the interest of the applicant if passed subsequent to filing of the OA be deemed to have been challenged in this OA and same be permitted to be brought on record with a prayer to quash the same if in the circumstances so warranted.
- v) The respondents be burdened with heavy cost throughout for compelling the applicant to approach the Hon'ble Tribunal well knowing that action of respondents to terminate the services of applicant simpliciter is contrary to terms and conditions of service.

2. Briefly stated, facts of the case are that the applicant was given offer of appointment as part-time Lady Medical Officer vide order dated 30.01.2001 (Ann.A2) on fixed emoluments of Rs. 4000/- on the terms and conditions stipulated therein. Pursuant to the said offer of appointment issued by the competent authority, the appointment order was issued in favour of the applicant by one Shri P.Krishnamurthy, Col. Commanding Officer on 15.2.2001. Consequently, pursuant to the said order the applicant joined on 21.2.2001. However, services of the applicant were terminated vide order dated 25.2.2006 (Ann.A1). Pursuant to passing of the order dated 25.2.2006, the respondents issued advertisement published in Rajasthan Patrika dated 28.2.2006 (Ann.A10) where the said post has been advertised to be filled on part-time basis. Feeling aggrieved of the aforesaid action of the respondents, the applicant has filed this OA praying for the aforesaid reliefs.

3. When the matter was listed on 14.3.2006, this Tribunal while issuing notices granted ex-parte stay restraining the respondents to proceed further pursuant to advertisement dated 28.2.2006 (Ann.A10) till the next date of hearing taking note of the grievance of the applicant that since the applicant has been working on the said post since 21.2.2001 and it was not permissible for the respondents to again make part-time appointment by advertising the post on the same terms and condition on which the applicant was engaged and it was permissible for the respondents to continue service of the applicant on part-time basis. The said stay was continued from time to time.

4. The respondents have filed reply on 20.7.2006. When the matter was listed on 8.11.2006, this Tribunal passed the following order:-

"Heard the learned counsel for the applicant. None is present on behalf of the respondents. As a last indulgence, the matter is adjourned to 11.12.2006. It is made clear that no further adjournment will be granted on that date.

The learned counsel for the applicant while drawing my attention to Para 4.3 of the OA has stated that the applicant has not been paid his emoluments/salary since 1st May, 2005. This part of averment has not been denied by the respondents in the reply. From the material placed on record, it is clear that service of the applicant was terminated vide order dated 25.2.2006 (Anne.A1). Under these circumstances, when the respondents have not denied that the applicant has performed duties

as Lady Medical Officer on part-time basis during the aforesaid period, it is not justified for the respondents not to make payment of salary. The respondents shall clarify this position on the next date of hearing.

Further, the legal ground taken by the applicant in this OA is that his appointing authority is DDMS whereas his service has been terminated by the Commanding Officer who is not the authority equivalent to DDMS. The respondents have taken stand that appointing authority is Commanding Officer of the Military Hospital. This contention of the respondents is contrary to the circular dated 26.6.1996 (Ann.R1) in which terms and conditions for appointment of Lady Medical Officer have been given and as per Para 3(d) the appointment letter shall be issued only by the appointing authority at the service HQ/Ord. Factory Board, who is competent to make appointment the civil posts.

As such, the respondents are directed to produce the relevant circular on record in order to show as to who is the appointing authority in respect of Lady Medical Officer while granting appointment to the civil posts. Let necessary affidavit be filed within four weeks failing which it will be presumed that the respondents have nothing to say in the matter and this Tribunal shall proceed to decide the matter accordingly.

Let copy of this order be sent to respondent No.3"

Pursuant to the said order passed by this Tribunal, the respondents have filed additional reply on 12.1.2007. At this stage, it will be useful to quote Para 3 and 4 of the additional reply, which thus reads:-

"3. That I have gone through the entire matter. With reference to the first query in

Para (a) it is submitted that as per Govt. policy in vogue issued by Ministry of Defence, Director General Armed Forces Medical Services which is the controlling authority vide letter No.19491/DGAFMS/DG-3C dated 04 June 1996 (A copy of the same has already been submitted before the Hon'ble Tribunal alongwith the reply to original application and the same has been marked as Annexure R-1), it is laid down that only one part time LMO is authorized for each class II Family Welfare Centre. As per Appendix 'B' of aforesaid letter part time LMO can be appointed maximum up to a period of three years. The applicant was appointed on 21 February 2001. She completed three years on 21 February 2004. Hence, the CDA which is audit authority of Govt. objected any further payment as it was against the Govt. policy. In this regard CDA has issued number of letters to the Commanding Officer, Military Hospital, Kota. Some of the letter dt. 25.09.2004, 04.11.2004, 18.11.2004, 08.2.2004, 22.07.2005, 26.07.2005, 29.09.2005 and 09.03.2006 are submitted herewith and marked as Annexure-B, C, D, E, F, G, H, and I respectively. As a result no further payment was made after 01 May 2005. The case shall be taken up with Competent Financial Authority for ex-post-facto extension of temporary appointment w.e.f. 22 February 2004 to 25 February 2006 and consequent payment of period w.e.f. 01 May 2005 to 25 February 2006.

4. That with regard to point raised in para (b) it is submitted that as per Govt. Policy, Ministry of Defence, Office of DGAFMS letter No. 19491/DGAFMS/DG-3C dated 04 June 1996 (Annexure R-1) refers the appointment letter was required to be issued by DGMS (Army) which is located at Army HQ Delhi. This fact is clear from para 3 (d) of the aforesaid letter as it is clearly mentioned that appointment letter shall be issued only at the service HQ, which is DGMS (Army). However, the applicant was appointed by the then Commanding Officer of the Military Hospital Kota Col P Krishnamurthy & DDMS, Southern Command and both were not issued by the appointing authority. It appears same was issued inadvertently and bonafide error was committed during the ordinary course of business, however, inspite of legal error, since she was

physically rendering the service, the pay and allowances were continued to be given to her till the maximum Govt. ceiling i.e. three years and for the remaining period up to 30 April 2005. Once the error came to the notice as intimated by CDA, I, Commanding Officer of Military Hospital, Kota immediately issued termination notice to avoid further multiplication of errors in conformity with the Govt. policy. The fact was intimated verbally to my immediate superior-ADMS HQ.61 Sub Area."

5. The applicant has filed rejoinder thereby reiterating the submissions made in the OA.

6. I have heard the learned counsel for the parties and gone through the material placed on record.

7. So far as grievance of the applicant that she has not been made payment for the period w.e.f. 22.2.2004 to 25.2.2006 and consequent payment of period w.e.f. 1st May 2005 to 25.2.2006 is concerned, in view of the stand taken by the respondents in para 3 of the additional affidavit as reproduced above, the grievance of the applicant does not survive now. Accordingly, the respondents are directed to process case of the applicant for taking ex-post-facto extension of temporary appointment for the purpose of making payment for the aforesaid period and make payment within a period of two months from the date of receipt of a copy of this order, in case the same has not been made so far.

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8. As regards second grievance of the applicant is concerned, that the termination order dated 25.2.2006 be quashed being illegal, I am of the view that in view of the stand taken by the respondents in para 4 of the additional affidavit, as reproduced above, and in view of the policy decision dated 26.6.1996 (Ann.R1) which, inter-alia, provide for selection and appointment, whereby it is specifically stipulated in para 3(d) that appointment letters shall be issued only by the appointing authority at the service HQ/Ord. Factory Board, who is competent to make appointments to the civil posts and such formal appointment letter has to be issued as per Appendix-B, the applicant is not entitled to any relief. The respondents have also placed on record format of appointment letter Appendix-B. Para 1(d) of this Appendix stipulates that appointment on part-time basis can be made for a period of three years from the date of joining in the first instance and further extension can be granted by the appointing authority based on the recommendations of SEMO, if the service rendered is found satisfactory. In view of this specific stipulation contained in the policy decision, the appointment of the applicant could have been made at the first instance for three years. As can be seen from the material placed on record, the applicant was allowed to continue till the order of termination of her service was passed by the respondents on 25.2.2006


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without any authority of law and without any appropriate extension granted by the appropriate authority. Be that as it may, since as per policy decision appointment of the applicant could have been made at the first instance for 3 years, in the absence of any appropriate order passed by the competent authority, the applicant has got no legal right to continue in service till appropriate order is passed by the competent authority extending the further appointment of the applicant on the said post. As such, no mandamus can be issued by this Tribunal thereby directing the respondents to continue the applicant in service on part-time basis.

9. However, in order to do justice between the parties, I am of the view that it was not permissible for the respondents to advertise the post again without considering the case of the applicant for extension, who has admittedly put in about 5 years' service, in terms of Para 1(a) of Appendix-B which form part of para 3(d) of policy decision dated 26.6.1996. Accordingly, the advertisement dated 28.2.2006 (Ann.A10) calling for suitable candidate for appointment as Lady Medical Officer for Family Welfare Centre, Kota is quashed and set-aside. Liberty is reserved to the applicant to make appropriate representation to the authority concerned for extension of her service in terms of para 1(a) of

Appendix-B and if such representation is made within a period of 15 days from the date of passing of this order, the respondents shall consider the same and pass reasoned and speaking order. Till such decision is not taken, the respondents are restrained from filling up the aforesaid post on part-time basis. The respondents shall take follow-up action regarding filling up the post or otherwise as advertised vide Ann.A10 based on the decision to be rendered on the representation of the applicant.

10. With these observations, the OA stands disposed of. No costs.



(M.L. CHAUHAN)

Judl.Member

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