

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.1/2016

New Delhi, this the 14th day of February, 2017.

HON'BLE MR. JUSTICE PERMOD KOHLI, CHAIRMAN
HON'BLE MR. K.N.SHRIVASTAVA, MEMBER (A)

Dr. Anand Prakash Sharma
S/o Late Dr. P.N.Sharma
Aged about 65 years
R/o Flat No.40, 112, I.P.Extension
Patpar Ganj, New Delhi-92.

-Applicant

(By Advocate: Shri T.D.Yadav)

V E R S U S

1. Union of India through Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi.
2. The Additional Director (HQ)
CGHS, R.K.Puram, Sector 12,
New Delhi.

..Respondents.

(By Advocate: Shri Subhash Gosain & Shri Gyanendra Singh)

ORDER (ORAL)

By Mr. Justice Permod Kohli

The applicant on his superannuation from NDMC as CMO (NFSG) was engaged on contractual basis as Homeopathic Medical Officer on 06.05.2013 vide order dated 30.04.2013 (Annexure B). On his representation

dated 08.04.2014, his contractual engagement was extended for another year w.e.f. 01.05.2014 (Annexure C) and again another extension was given upto 13.02.2016 (Annexure D) and he was continued up to 65 years or whichever may earlier, vide order dated 06.05.2014.

2. Respondents, however, passed the impugned order dated 03.12.2015 terminating the contractual engagement of the applicant on the ground that due to joining of new regular doctor, his services were terminated with immediate effect being senior most birthday-wise. This order is subject matter of challenge in the present OA.

3. This Tribunal, on consideration of the matter, passed an interim order on 07.01.2016, staying the operation of impugned order dated 03.12.2015 for a period of 14 days. Thereafter, the interim order continued.

4. Counter affidavit has been filed by the respondents. It is stated that the applicant had submitted his acceptance along with the undertaking on 04.05.2013 and signed the contract that the appointment was purely on contract basis for a period one year or till the regular incumbents joins or on his attaining the age of 65 years,

whichever is earlier. It is further stated that since new regular doctor joined, the applicant's engagement was terminated vide impugned order dated 03.12.2015.

5. Shri Subhash Gosain, learned counsel appearing for the respondent has placed on record office memorandum dated 30.04.2013 whereby the guidelines for appointment of Ayush doctors on contract basis in Central Government Health Scheme were notified. The conditions of appointment for contractual doctors are specified in the said Office Memorandum. The relevant part of the said guidelines read as under:-

"1. The appointment is purely on contract basis for a period of one year with effect from the date of joining or till the regular incumbent joins or on attaining the age of 65 years, whichever is earlier. Thereafter the contract will lapse automatically unless extended if considered necessary. Appointment can be terminated at any time, on either side by giving 15 days notice. The government reserves the right to terminate the appointee by paying remuneration for half a month in lieu of notice without assigning any reason for failure to perform assigned duties to the satisfaction of the competent authority."

6. In view of the aforesaid, the contractual engagement can only be up to attaining the age of 65 years. Admittedly, the date of birth of the applicant is 14.02.1951 mentioned at Annexure D, which fact is not disputed by learned counsel for

the applicant. Thus, the applicant could have only continued up to 13.02.2016. However, the fact remains that the applicant's services were dispensed with vide the impugned order on attaining the age of 65 years. Learned counsel for the applicant submits that person junior to him on contractual engagement has been allowed to continue, whereas the applicant has been disengaged vide impugned order. He further submits that in such a situation, the principle of 'last come first go' would apply and even if regular employee joins, junior most contractual employee has to make way first.

7. In view of the stay granted by the Tribunal on 07.01.2016, the applicant was required to be allowed to continue as contractual employee. The respondents, however, did not permit the applicant to continue. The applicant has thus filed this OA. The respondents thereafter passed an order dated 15.02.2016 allowing the applicant to join duty with immediate effect, whereas admittedly his contractual engagement has already expired on 13.02.2016. Order dated 15.02.2016, while allowing the applicant to join, mentions that "*contract will expire on attaining the age as 65*

years i.e. 13.02.2016.” This order seems to be a fraud, not only on the applicant but on the court as well.

8. Be that as it may, the order implementing the court's direction after the expiry of contractual engagement is of no relevance and help to the applicant. Impugned order terminating contractual engagement of the applicant is contrary to settled principle of law and is thus liable to be quashed.

9. The OA is accordingly allowed. The order dated 03.12.2015 is hereby set aside. The applicant would be entitled to the salary for the post of Doctor (Homeopathy) for the period from 03.12.2015 to 13.02.2016. Let the salary for this period be paid to the applicant within two months from the date of receipt of copy of this order, failing which the applicant shall be entitled to interest at the rate of 6%.
No order as to costs.

(K.N.Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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