

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.152 of 2015

This the 26th day of October, 2015

**HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER (J)
HON'BLE MR. SHEKHAR AGARWAL, MEMBER (A)**

Dr. Purushotam Paliwal (60 years)
S/o late Sh. Bal Krishan,
R/o E-4/119, Ground Floor,
Sector-7, Rohini,
Delhi-110085.

... Applicant

(By Advocate: Shri Ravinder Yadav)

Versus

1. Union of India
Through its Secretary,
Ministry of Health & Family Welfare,
Department of Health & Family Welfare,
156-A, Nirman Bhawan, C-Wing,
New Delhi-110001.
2. Central Government Health Scheme (HQ)
Through its Additional Director,
A-545, Nirman Bhawan,
New Delhi.
3. Central Government Health Scheme (North Zone)
Through its Additional Director,
Shankar Road,
New Rajinder Nagar,
New Delhi.
4. Central Government Health Scheme
Through its M.O. I/C,
C-1, Janakpuri-I,
New Delhi-58.

... Respondents

(By Advocate : Shri Subhash Gosai)

ORDER (ORAL)

MR. JUSTICE L.N. MITTAL, MEMBER (J) :

By filing this OA, the applicant – Dr. Purushotam Paliwal has impugned termination order dated 11.8.2014 whereby his services as Doctor on contract were terminated.

The applicant has also claimed consequential relief of salary and allowances and continuity of service and compensation for harassment and mental agony.

2. The applicant was appointed as Doctor on contract vide letter dated 11.2.2014 (Annexure A/2) for a period of one year on the basis of terms and conditions (Annexure A/1 collectively). However, his services were terminated vide impugned order dated 11.8.2014 with immediate effect in view of his performance reports. The applicant has challenged the impugned order on various grounds.

3. The respondents controverted the grounds pleaded by the applicant to challenge the impugned order and raised various pleas.

4. The applicant filed rejoinder to repudiate the stand of the respondent and to reiterate his own version.

5. We have heard counsel for the parties and perused the case file.

6. Main thrust of the argument of the counsel for the applicant is on Condition No.2 as contained in terms and conditions dated 11.3.2013 (part of Annexure A/1). Accordingly, the said Condition no.2 is reproduced hereunder:-

“2. The Authority reserves the right to terminate the appointee by paying remuneration for 7 days in lieu of notice any time during the tenure even without assigning any reason or for failure to perform assigned duties to the satisfaction of the competent authority.”

7. Counsel for the applicant contended that the applicant was neither given 7 days notice nor paid remuneration for 7 days in lieu of notice period. Counsel for the applicant also contended that no inquiry was conducted before terminating the services of the applicant. It was also contended that performance reports (Annexure A/8 (Colly)) on the basis of which the applicant's contractual employment was terminated are not correct. Counsel for the applicant cited the following judgments of the Hon'ble Delhi High Court:-

- a. ***Ajaib Singh vs. Delhi State Industrial Corporation Ltd. And Ors.***, 1985 (5) FLR 56;
- b. ***Narinder Singh Ahuja vs. The Secretary, Ministry of Health and Family Welfare***, in Writ Petition (C) No.1741/2014 decided on 3.11.2014; and
- c. ***The Chairman Canteen and Ors., vs. Lt. Col. Raj Singh (Retd.) and Anr.***, in Writ Petition (C) No.23128-30 of 2005 decided on 25.1.2007.

8. We have carefully considered the matter. As far as performance reports are concerned, it is settled position that this Tribunal cannot re-assess the performance of the applicant. The performance reports dated 7.7.2014 and 4.8.2014 (at pages 46 and 47 of the paperbook) contained the following remarks:-

“11.	Remarks if any	Dispenses medicines without any proper diagnosis, doses. Large no. of medicines are distributed which leads to shortage of medicines in the dispensary. Records the CGHS data.”
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“11.	Remarks if any	<p>1. Non compliance of the office order for not noting down the CGHS date & undue tactful pressurization to the in-charge.</p> <p>2. Non Satisfactory reply to the Memo dated 24/07/2014.</p> <p>3. Prescribe the non-formulary & metallic medicines to purchase from the market to the patients.”</p>
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Accordingly, in both these reports, extension of the applicant was not recommended. In view of the above remarks in the performance reports, this Tribunal cannot re-assess the performance of the applicant and cannot say that his performance was satisfactory or not. On the other hand, the competent authority has assessed the performance of the applicant and found it to be not upto the mark. In these circumstances, no inquiry was either required to be conducted before terminating the contractual employment of the applicant. The termination was on account of poor performance reports for which no inquiry could possibly be held. The judgments cited by the counsel for the applicant are completely distinguishable on facts. In the case of **Ajaib Singh** (supra), sub-rule on the basis of which the writ petitioner in the said petition was terminated had been challenged and the challenge was sustained. In the instant case, the conditions of employment have not even been challenged. In the case of **Narinder Singh Ahuja** (supra), one set of contractual employees was sought to be replaced by another set of contractual employees. This was held to be illegal. In the instant case, however, it is not so. In the case of

Lt. Col. Raj Singh (Retd.) and Anr. (supra), the question was whether the petitioners were Government servants or not. These judgments are of no help to the applicant in the instant case.

9. As regards failure of the respondents to give 7 days' notice or to pay remuneration for 7 days in lieu of notice as required by Condition No.2 extracted hereinbefore, the respondents in their counter have not even controverted the plea of the applicant in this regard. Para 5 C. of the OA is reproduced hereunder:-

“C. Because the authority failed to issue either a 7 days prior notice or paid any remuneration of 7 days in lieu of notice before terminating the services of applicant so much so that even the normal salary of the 11 days of August, 2014 has not been paid so far to the applicant.”

Corresponding reply of para 5 C. in the counter is reproduced hereunder:-

“5.(c) In reply to the contents of Para no.5 (c) of the present Original Application, it is submitted that Performance Report in respect of Dr Paliwal is still awaited.”

From the aforesaid pleadings, it is manifest that the respondents have not controverted the plea of the applicant regarding failure to comply with aforesaid Condition No.2 of the contract. In view thereof, we are of the considered opinion that respondents should be directed to pay remuneration for 7 days in lieu of notice to the applicant. The applicant is entitled to succeed to this extent only.

10. For the reasons aforesaid, we allow this OA partly and direct the respondents to pay to the applicant remuneration for 7 days in lieu of notice period. The needful shall be done within one month from the date of receipt of a copy of this Order. There shall be no order as to costs.

(SHEKHAR AGARWAL)
MEMBER (A)

(JUSTICE L.N. MITTAL)
MEMBER (J)

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