

**Central Administrative Tribunal  
Principal Bench**

**TA No.5/2016**

Reserved on : 02.12.2016  
Pronounced on : 06.04.2017

**Hon'ble Mr. Justice Permod Kohli, Chairman  
Hon'ble Mr. Shekhar Agarwal, Member (A)**

Dr. R. K. Jain  
S/o Late S. P. Jain  
R/o B-13/S-I,  
Dilshan Garden,  
Delhi-95.

... Applicant.

(In person)

Versus

1. Lt. Governor through  
Chief Secretary,  
Delhi Government,  
5, Shamnath Marg,  
Delhi-54.
2. The Commissioner, MCD,  
Civic Centre, Jawaharlal Nehru Marg,  
Near ITO,  
New Delhi.
3. The Additional Commissioner (Health)  
Civic Centre, Jawaharlal Nehru Marg,  
Near ITO,  
New Delhi.
4. The Medical Supdt.,  
Bara Hindu Rao Hospoital,  
New Delhi.

... Respondents.

(By Advocate : Shri Manjeet Singh Reen)

## : O R D E R :

### **Justice Permod Kohli, Chairman:**

The applicant filed writ petition before the Hon'ble High Court of Delhi wherein it was registered as Civil Writ Petition No.2567/1998. The said writ petition was later transferred to Principal Bench of this Tribunal vide order dated 26.07.2016. The same is registered before this Tribunal and numbered as TA No.5/2016.

2. Facts necessary for the disposal of this TA are noticed herein after. Posts of Senior Residents in Orthopaedics in Bara Hindu Rao Hospital, Delhi were advertised by the MCD. In response to the said advertisement, applicant submitted his application for consideration for appointment. He being post graduate specialist in Orthopaedics and eligible for the post, a call letter under No.39 was issued to him to appear for interview on 19.07.1997. The interview was to be conducted by a Selection Board comprising following five Doctors:-

- "1. Dr. Ashok Virmani, M.S., Hindu Rao Hospital.
2. Dr. S. C. Verma, Head of Deptt. Orthopaedics in H. R. Hospital.
3. Dr. R. C. Gupta, Sr. Ortho-Surgeon in H. R. Hospital.
4. Dr. U. C. Tyagi, Add. Medical Supdt. in H. R. Hospital, Member-Secretary.
5. Dr. Surendra Kumar, Chief Medical Officer, H. R. Hospital."

The Selection Board prepared a Panel of following candidates:-

- "1. Dr. Vivek Goel
2. Dr. Samresh Mohan

3. Dr. Alok Sud
4. Dr. Rajesh Kumar Jain
5. Dr. Ravi Sankar Srivastava
6. Dr. Ritesh Singh
7. Dr. Ajay Guglaini
8. Dr. Prabhakar Sharma
9. Dr. Zile Singh
10. Dr. Naveen Kothari.”

The name of the applicant figures at Sl. No.4 in the above Panel. It is stated that the MCD sanctioned eight posts of Senior Residents in Bara Hindu Rao Hospital, Delhi. On the recommendations of the Selection Board, two candidates at Sl. Nos.1 & 2 were appointed as Senior Residents. The 3<sup>rd</sup> candidate, namely, Dr. Alok Sud was also issued letter of appointment, but he did not join. The applicant being at Sl. No.4 (next in order) in the panel approached the respondents seeking his appointment as Senior Resident (Orthopaedics) on 12.03.1998. He submitted his application Annexure P-1 for issuance of appointment letter. It is alleged that the respondent No.5 who colluded and conspired did not entertain application of the applicant. It is also alleged that some subordinate officials who are dealing with the appointment also did not behave with the applicant properly. The applicant made representations.

3. It is stated that the respondents appointed Dr. Naveen Kothari who was at Sl. No.10 of the Panel. The applicant accordingly made further representation to Medical Superintendent, Bara Hindu Rao Hospital, i.e. Respondent No.4 on 05.04.1998. It is further stated that

the applicant made another representation dated 30.04.1998 to the Lt. Governor, Delhi. Receiving no response, the present TA has been filed seeking following reliefs:-

- “(i) issue writ of mandamus to the Respondents No.1 to 6 to appoint the Petitioner for the post of Sr. Resident-Orthopaedic in Bara Hindu Rao Hospital, Delhi, the vacancy has fallen vacant on dated 12-3-98 because of non-joining of Dr. Alok Sud.
- (ii) issue writ of certiorari for producing the records relating to the interview dtd. 19-7-97 for the post of Sr. Resident Orthopaedic and records relating to the Constitution of Selection Board and panel of selected candidates.
- (iii) issue any writ/order/direction which this Hon’ble Court deems fit and proper under the circumstances of the case.”

4. In the counter affidavit filed by the respondents, it is stated that the applicant is guilty of concealment of facts. It is stated that when Dr. Alok Sud who was at Sl. No.3 of the panel did not join by 11<sup>th</sup> of March, 1998, the date fixed for joining, the applicant came in the office of Hindu Rao Hospital on 12.03.1998, and requested for his appointment. The dealing assistant explained to him that after waiting for three days further offer letter will be issued. It is stated that on the same day, a Senior Resident of the Orthopaedics Department informed the dealing assistant that the applicant was terminated from the post of Senior Resident from Swami Dayanand Hospital (SDN) on administrative ground, and a letter was despatched to SDN Hospital for the copy of the orders and grounds on which the applicant was terminated. The office communication

was received on 16.03.1998, and according to the report, services of the applicant were terminated on the ground of molestation and misbehaviour with an unmarried female and other charges. It is stated that in the light of the aforesaid circumstances, the applicant could not be appointed. It is also the case of the respondents that there were only three sanctioned posts for Orthopaedics Department and rest five posts were in other departments. As regards the appointment of Dr. Naveen Kothari is concerned, it is stated that he was not appointed as Senior Resident but engaged on contract basis against the vacant post of GDMO for 44 days only. The respondents accordingly prayed for dismissal of the present OA.

5. The applicant has filed rejoinder to the counter affidavit alleging malafides and bias against the respondents. He has, however, admitted that his services were terminated by the Medical Superintendent, SDN Hospital, and he preferred an appeal against the order of termination dated 13.05.1997. The said appeal was pending at the time of filing this Application. It is also pleaded that the applicant was illegally and wrongfully terminated in violation of Article 311 of the Constitution of India.

6. The respondents have placed on record copy of the order dated 13.05.1997 whereby services of the applicant as Senior Resident (Orthopaedics) were terminated by the Medical Superintendent,

SDN Hospital. The respondents have also placed on record copy of the notings which indicate the basis for termination of services of the applicant. From the notings, we find that following allegations were made against the applicant:-

“One patient name Sahida resident of Ratoul submitted a complaint that Doctor in Orthopaedic Deptt. has molested her and used unparliamentary language while examining behind the screen in Ortho OPD, which has been further verified by H.O.D. that Dr. Rajesh Jan, Sr. Resident (Ortho) has examined the case & Dr. Rajesh called to explain his conduct but he has been found absent from the hospital at 1.30P.M. on 8.5.97 without any permission of H.O.D. (Orthod). Therefore on 9.5.97 (morning) Dr. Rajesh Jain, Sr Resident (Ortho) was asked to explain his conduct vide memo No.SDNH/PA/156 dt. 8.5.97, for which he has replied, which is irrelevant and unsatisfactory and evident that Dr. Rajesh Jain has grossly misbehaved & shown his misconduct while on duty in examination of the patients.

There are number of other complaints from HOD (Ortho) and other staff against Dr. Rajesh Jain. Out which recently as per report of HOD (Ortho) Dr. Rajesh Jain, Sr. Resident mis-diagnosed, mismanaged, an unmarried pregnant patient admitted in Ortho Deptt. on 19-4-97 for which his explain was also called and he has not replied satisfactorily. In view of his misconduct and negligence with the patients beyond any doubt.”

It is also revealed from the notings that the applicant was working in the SDN Hospital w.e.f. 31.08.1996 and has been engaged for a period of one year, which is a tenure job and his services can be terminated as per the conditions of appointment.

7. We have heard the applicant who appeared in person and Shri Manjeet Singh Reen, learned counsel for the respondents.

8. It is not in dispute that the applicant's name was included in the Panel for appointment to the post of Senior Resident (Orthopaedics) in Bara Hindu Rao Hospital. It is also not in dispute that his name figures at Sl. No.4, and there were three vacancies. The first two candidates from the panel joined whereas the third candidate Dr. Alok Sud did not join. The applicant being next in the panel was entitled to be appointed as Senior Resident. However, on account of information received by the Bara Hindu Rao Hospital regarding termination of services of the applicant by his previous employer, i.e., SDN Hospital, he was not issued any appointment letter. The record of notings herein above reveals that there was serious charge of molestation of an unmarried female patient. The applicant has admitted termination of his services by SDN Hospital. His defence is, however, that it was concocted and an appeal filed by him is pending. The post of Senior Resident is a tenure post. The selection was made in the year 1997. It is now more than 19 years since the selection was held. There was no interim order in respect to the post. At this belated stage after a period of 19 years, it is not possible to consider the claim of the applicant for appointment to the post when the present scenario of availability of the post is not known. Though for delay, the applicant cannot be blamed but the fact remains that after 19 years it is not possible for this Tribunal to consider the claim of the applicant for appointment as Senior

Resident (Orthopaedics) carrying tenure of one year only. Apart from that, we have noticed that the applicant's services were terminated by his previous employer on the ground of complaint by a patient. Though there is nothing in the order of termination which was passed invoking terms of employment but notings on the record produced by the respondents indicate serious allegations against the applicant. He preferred only an administrative appeal and never challenged his termination. This is an additional reason that we are of the considered view that no relief can be granted to the applicant. Transfer Application is dismissed.

**(Shekhar Agarwal)**  
**Member (A)**

**(Justice Permod Kohli)**  
**Chairman**

/pj/