

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

O.A.No.421/2016
MA No.410/2016

Order reserved on 28.04.2016

Order pronounced on 13.05.2016

**Hon'ble Mr. V.N. Gaur, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)**

1. Dr. Ankita Sharma, aged about 24 years,
D/o Jagdish Prasad,
R/o A-2/23, Block-A
PKT-2, Sector-18,
Rohini, Delhi.
2. Dr. Asha, aged about 20 years,
D/o Hari Singh,
R/o 34, Block-A,
Naveen Place,
New Delhi.
3. Dr. Kanika Khatri, aged about 25 years,
D/o Mahabir Singh,
R/o House No.1961/5,
Arya Samaj Road,
Pana Mamurpur,
Delhi.
4. Dr. Mohd. Rashi, aged about 25 years,
S/o Riyazuddin,
R/o B-1074,
Block B-10,
Kabir Nagar,
Delhi.
5. Dr. Seema Bhadri, aged about 27 years,
D/o Puran Parsad,
R/o 44-D,
Pocket-F, GTB Enclave,
Dilshad Garden,
Delhi.
6. Dr. Shivalika Sharma, aged about 28 years,

D/o Raman Bihari Sharma,
R/o C/o Sudhanshu Purohit,
C-407/E, Street No.17,
Bhajanpura,
Delhi.

All working as Junior Resident Doctor in Guru Teg Bahadur
Hospital.

.. Applicants

(By Advocate: Ms. Aishwarya Bhati with Shri Dilip Kumar Vinayak)

Versus

1. Govt. of NCT of Delhi through,
Its Secretary,
Department of Health and Family Welfare,
9th Level, 'A' Wing,
Delhi Secretariat,
I.P. Estate,
New Delhi-110002.
2. The Director,
Directorate of Health Services,
Govt. of NCT of Delhi,
F-17, Karkardooma,
Delhi-110032.
3. Medical Superintendent,
Guru Teg Bahadur Hospital,
Govt. of NCT of Delhi,
Dilshad Garden,
Delhi-110095.

..Respondents

(By Advocate: Mr. Vijay Kumar Pandita)

O R D E R

Mr. V.N. Gaur, Member (A) :-

MA No.410/2016

For the reasons stated therein, the MA filed for joining together
is allowed.

OA No.421/2016

2. The applicants in this case are Junior Resident (Dental Surgeon) working in Guru Teg Bahadur Hospital. They had applied in response to the recruitment notice dated 11.09.2015 for the post of Junior Residents (BDS) and on the basis of an interview, they were appointed on 03.10.2015. In the appointment order, it was stated that the appointment to the post of Junior Resident was on ad hoc and emergent basis for a maximum period of 89 days or till regular Junior Resident Doctor joins, whichever, was earlier. Tenure was later extended till 04.04.2016. By order dated 26.02.2016, the respondent No.1 extended the engagement period of all Junior Residents/Senior Residents by 3 months beyond 31.03.2016, however, by letter dated 29.03.2016 it was clarified that the same would not be applicable to the applicants in the present OA. By order dated 30.03.2016, this Tribunal has ordered that their services will not be dispensed with in the interim.

3. The applicants made representations to the respondents to extend their tenure by another six months to make it one year, in accordance with the Junior Residency Policy of the Government notified in 1992. In the meantime, the respondents have issued another notice on 07.01.2016 inviting applications for the post of Junior Residents (BDS) to be engaged again purely on ad hoc and emergent basis for GTB Hospitals for the period of 44 days

extendable up to six months. The applicants have, therefore, filed this OA with the following prayers :-

- “a) direct the Respondents to allow the Applicants to complete their tenure of one year; and/or
- b) pas such and other order(s) as this Hon’ble Tribunal may deem just and proper in the facts and circumstances of the case.”

4. It is the contention of the applicants that in most of the jobs they would be applying for, one of the eligibility conditions is that the BDS candidates should have done one year junior residentship. On the other hand, after doing the junior residency in one hospital, they would become ineligible to apply for junior residentship in another hospital. In support of this statement, the applicants have enclosed advertisement issued by Maulana Azad Institute of Dental Sciences and Jawaharlal Institute of Postgraduate Medical Education and Research, Puducherry. In these advertisements, it is clearly stipulated that those who have done junior residency earlier in any hospital/institute are not eligible.

5. The learned counsel for applicant argued that one of the conditions mentioned in the appointment letter was that the appointment of the applicants was till the appointment of regular Junior Resident Doctors. If the respondents fill up these posts with regular Junior Residents, the applicants would have no grievance, but the respondents have issued notice to replace the existing ad

hoc Junior Residents by another set of Junior Residents even before they could complete one year residentship, as per the policy of the Government.

6. On 05.06.1992, the Ministry of Health and Family Welfare had issued a circular (Annexure AA/1, page 94 of the paper book) that provided for selection of Junior Residents (erstwhile Houseman/House Surgeon) through a duly constituted Selection Committee subject to usual selection for SC/ST. It further provided that “the period of junior residency shall be either for one year in respect of house jobs for those not undergoing postgraduate course or three years junior residency in respect of postgraduate degree students/two years junior residency for post graduate diploma students”. This policy was adopted by Delhi Government. In support of this statement, the learned counsel referred to Hon’ble High Court judgment in **Resident Doctors Association of A.I.I.M.S. and Anr.** 2001 SCC OnLine Del 1327, wherein the Hon’ble High Court has observed that the said scheme (dated 05.06.1992) “was also adopted by the State Government for its four hospitals in Delhi”. In violation of the policy, the State Government had issued a letter on 07.12.2007 stating that the tenure of Junior Resident (Dental) would be only for a duration of six months. According to the learned counsel, the respondents cannot terminate the tenure of the applicants in contravention of the existing policy. The letter dated 07.12.2007 of the Government cannot be treated to

have superseded the 1992 policy, as there is no reference in their letter to this effect. The learned counsel referred to the judgment of this Tribunal in OA No.2868/2009 – **Dr. Rajeev Kumar Vs. UOI & Ors.** and OA No.160/2015 **Dr. Manish Gupta & Ors. Vs. Govt. of NCT of Delhi & Anr.** The learned counsel referred to the averments made in the rejoinder that there are several Junior Residents in GTB Hospital who had in the past completed full one year of junior residency even after the letter dated 07.12.2007 of the respondent No.1.

7. The learned counsel for respondents on the other hand submitted that in the notice itself, it had been clarified that the appointment of the applicants was extendable only up to six months. In the appointment order, it was further stated that the said appointment was on ad hoc and emergent basis for a period of 89 days or till regular Junior Resident Doctor joins, whichever is earlier. This cannot be interpreted to mean that the appointment of the applicant can be stretched indefinitely till the appointment of regular Resident Doctor. The duration of residentship of the doctors is a matter of policy on which the Government takes a call from time to time. In its letter dated 07.12.2007, the Government of NCT of Delhi had limited the duration of residentship to six months, and from then on this policy is uniformly followed. The respondents have accordingly issued the fresh notice to appoint

Junior Residents to meet the urgency requirements of the GTB Hospital.

8. We have heard the learned counsels and perused the record. At the core of the controversy is the fact that 1992 policy, a copy of which has been placed on record provides for junior residentship of one year in the hospitals. The respondents have not made any averments that this policy has since been superseded. The aforementioned policy was applicable to Delhi Government Hospitals, as is clear from observations made by the Hon'ble High Court in ***Resident Association of AIIMS and Anr.*** (supra). The letter dated 07.12.2007 on which maximum reliance has been placed by the respondents, refers to another letter No.F.7/767/2007/H&FW/3795 dated 08.10.2007 by which the approval of the competent authority for appointment of Junior Resident (Dental) for a duration of six months only (in hospitals/institutions under the Health and Family Welfare Department) was conveyed. A copy of the order dated 08.10.2007 where the decision to curtail the duration of residentship was taken has not been placed on record. We are, therefore, not sure in what context that order was issued because the order dated 07.12.2007 is only a clarification regarding prospectivity of the order dated 08.10.2007. The order does not state that it was superseding the 1992 policy of junior residentship which had been adopted by the

Government of Delhi and therefore, it can not be interpreted to have curtailed the tenure of Junior Residents for all times to come contrary to the existing policy. The duration of one year also makes of junior residentship compatible with the eligibility conditions normally advertised for the jobs for BDS Doctors. The six months tenure on the other hand would leave the applicants in lurch as they can neither apply for jobs nor can they apply in most of the institutions for another six months of residentship. This Tribunal while dealing with similar situation in respect of Senior Residents in OA No.160/2015 had taken a view that in the event of termination of the senior residentship of the doctors before the stipulated period of three years, they will not be able to complete senior residency and hence will not be in a level playing field when they face the job market.

9. We have perused the order of this Tribunal in OA No.2868/2009 relied upon by the applicants but the same would not be applicable to the present case as the issue before the Tribunal at that time was whether the time spent as Senior Resident in non teaching post will be off set if the candidate is selected for Senior Residentship against a teaching post.

10. In the circumstances, we are of the view that under the 1992 policy of the Government as adopted by the respondent -GNCTD, the applicants are entitled to continue as Junior Residents for a

maximum period of one year, if they apply for the same. During the arguments, learned counsel for the respondents made a statement that 14 posts were advertised on 06.01.2016 excluded the posts held by the applicants. Respondents, therefore, should have no difficulty in extending the tenure of the applicants to allow them to complete one year of residentship.

11. The respondents are directed to consider the representations of the applicants and extend the junior residentship upto one year wherever the applicants are willing and the respondents are satisfied with their services. The interim order dated 30.03.2016, by which the applicants were allowed to continue as Junior Residents is vacated.

12. Accordingly, the OA stands disposed of. No costs.

(Raj Vir Sharma)
Member (J)

(V.N. Gaur)
Member (A)

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