

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 1817/2017

New Delhi this the 26th day of October, 2017

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

1. Dr. Alekh Verma S/o Mr. Brijesh Verma
Aged about 32 years,
R/o Ist Floor, 11 Gandhi Square Malkha Kanj,
Delhi.
2. Dr. Shivangi Chauhan D/o Dr. B.S. Chauhan
Aged about 32 years,
R/o H.No.5/31, 2nd Floor, Old Rajinder Nagar,
Delhi-110060.
3. Dr. Manoj Kumar Meena S/o Mr. Harnath Meena
Aged about 36 years,
R/o H.No.3150-A, Gali No.229, Chander Nagar,
Tri Nagar, Delhi-110035.
4. Dr. Shakti Kumar Yadav S/o Mr. Ramesh Chand Yadav
Aged about 31 years,
R/o B-325C Illrd Floor, Hari Nagar,
Delhi-110064.
5. Dr. Shivakshi Sharma D/o Mr. Ashok Kumar Sharma
Aged about 36 years,
R/o Flat No.2447, D-2, Vasant Kunj,
New Delhi.
6. Dr. Kirtika Panda D/o Mr. Binay Kumar Panda
Aged about 31 years,
C/o Dr. Abhijit Acharya, 5/43 Ramesh Nagar,
Near Durga Mandir, New Delhi.
7. Dr. Aastha Narula D/o Mr. Govind Narula
Aged about 30 years,
R/o A-358, Vikas Puri, New Delhi-110018.
8. Dr. Priynaka Anand D/o Late Mr. Vinay Kumar
Aged about 29 years,
R/o J-5/113, Rajouri Garden, New Delhi-110027.

9. Dr. Akshi Katyal D/o Mr. Rakesh Katyal
Aged about 30 years,
R/o C-37, Ground Floor, Shivalik Malik Nagar,
New Delhi.

All working as Senior Resident Doctor in Hindu
Rao Hospital &
NDMC Medical College, Malka Ganj, Delhi-110007.

....

Applicants

(By Advocate: Shri Amit Verma with Ms. Aishwarya Bhati)

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,
Hindu Rao Hospital & NDMC Medical College,
Malka Ganj,
Delhi-110007.
4. CMO, Superintendent,
Hindu Rao Hospital & NDMC Medical College,
Malka Ganj,
Delhi-110007.
5. Additional Medical Superintendent,
Hindu Rao Hospital & NDMC Medical College,
Malka Ganj,
Delhi-110007.

.....

Respondents

(By Advocate: Sh. N.K. Singh for Ms. Avnish Ahlawat for R. No. 1 and
2 and Sh. M.S. Reen for R. No. 3 to 5)

ORDER (ORAL)**Hon'ble Mr. Justice Permod Kohli, Chairman**

The applicant numbers 7, 8 and 9 were appointed as Senior Residents on 17th, 8th and 9th October, 2015 respectively whereas applicant numbers 1, 3, 5 and 6 were appointed on 17th, 30th, 17th and 27th August respectively. Applicant number 4 was appointed on 10.02.2017 and applicant number 2 on 17.03.2017 as Senior Residents in the Department of Pathology and Microbiology on contract basis. Their initial appointment was for a period of 89 days and in some cases 44 days. However, their engagement was extended from time to time. As on the date of filing of this application, these applicants completed the tenure as indicated in the chart herein below:

S. No.	Name of Applicant	Duration of Service	Tenure start date	No. of Extensions given
1)	Priyanka Anand	1 yr 7 mnths	08.10.2015	10
2)	Akshi Katyal	1 yr 7 mnths	09.10.2015	10
3)	Aastha Narula	1 yr 7 mnths	17.10.2015	10
4)	Shivakshi Sharma	9 months	17.08.2016	5
5)	Manoj Kumar Meena	9 months	30.08.2016	1
6)	Kirtika Panda	9 months	27.08.2016	5
7)	Alekh Verma	9 months	17.08.2016	5
8)	Shakti Kumar Yadav	3 months	10.02.2017	0
9)	Shivangi Chauhan	2 months	17.03.2017	1

2. Respondent no. 4 invited applications for engagement as Senior Residents in the disciplines of Pathology and Microbiology vide advertisement dated 04.05.2017. The qualifications and the eligibility criteria have been prescribed in the said advertisement. Under condition 5 of the advertisement, the initial appointment is for a period of one year extendable on yearly basis up to a maximum of three years on the basis of satisfactory work and conduct report from the concerned HoD and written request from the Doctor concerned. In Para 7 of the advertisement it is further mentioned that where there is perpetual shortage in specialities where no fresh candidates are available, candidates

who have completed three years Senior Residency but are willing to serve as Senior Resident may also be allowed to appear in the interview. As regards existing contractual candidates are concerned, stipulation 8 provides that candidates who are presently working on contractual basis at HRH would have to apply afresh in response to the said advertisement. The applicants have challenged this advertisement in the present OA.

3. The main contention of the applicants to assail the aforesaid advertisement is that the three candidates i.e., applicant nos. 7, 8 & 9 had completed 1 year and seven months of senior residency as on date of filing of this Original Application whereas applicant numbers 1, 3, 5 and 6 had completed nine months and applicant numbers 2 and 4 two and three months respectively as on the date of filing of this application. It is stated that the tenure of Senior Residents in terms of MCI regulations/rules is three years. Some of the applicants who have completed more than 1 ½ years are sought to be replaced again by a temporary engagement vide impugned advertisement. Further contention of the applicants is that they have acquired sufficient experience as Senior Residents. Learned counsel for the applicant submits that the applicants would be more useful to the patients than the new appointees.

4. The claim of the applicants is being opposed by the respondents 3 to 5 i.e., North Delhi Municipal Corporation stating that the applicants are estopped from filing present application because of principle of estoppel under Section 115 of the Indian Evidence Act, 1872. It is further mentioned that the respondents are required to comply reservation roster providing reservation to reserved categories in Public Appointments. It is however stated that the appointment vide the impugned notification is sought to be made on regular basis initially for a period of one year and extendable on yearly basis upto a

maximum of three years on the basis of satisfactory work conduct and report from the concerned HoD.

5. Sh. M.S. Reen, learned counsel appearing for respondent nos. 3 to 5 submits that since the engagement of the applicants was on contract basis, they have no right to continue for the tenure post for three years. His further contention is that the continuation of the appointees has to be on the basis of satisfactory work and conduct.

6. We have heard learned counsel for the parties at length. At the first place there is absolutely not even a whisper in the counter affidavit that the work and conduct of the applicants was lacking in any manner and thus there is a presumption that the work and conduct of the applicants was and continued to be satisfactory till the date of filing of the reply.

7. Insofar as the question of the status of the applicants is concerned, notwithstanding the fact that their initial engagement was for a period of 89 and 44 days, the fact remains that they have been allowed to continue uninterruptedly for a period of over nine months and one and a half year. Asking them to leave residency midway is neither in public interest nor in the interest of the hospital and the applicants. The MCI guidelines clearly provide the tenure period of Senior Residents as three years. Three years residency period is also an eligibility criterion for applying for the post of Assistant Professor/Lecturer. Most of the applicants have completed more than one year/two years except applicant numbers 2 and 4 as their engagement was made in the month of February and March, 2017. Even they have also completed more than six months. Apart from these facts, this controversy is squarely covered by judgment of this Tribunal dated 03.02.2015 passed in OA No. 160/2015 wherein the following observation are made:

"4. Learned counsel for the respondents argued that the applicants were well aware when they joined as ad hoc Senior Resident that the appointment was for 89 days or till the regular Senior Resident doctors join. Therefore, they have no right to claim that just because they have continued beyond 89 days with extension from time to time, they cannot be replaced by Senior Resident doctors appointed on regular basis. It is stated that the process of appointment of Senior Resident Doctors on regular basis is contemplated and the applicants should await the results instead of praying for extension when they have no right accrued to them in terms of their appointment letter.

6. We are aware that the medical profession is one of the most difficult professions and unlike others e.g. degrees like B.Tech. from a technical institute or LLB from a Law Institute, a mere MBBS does not guarantee a job for a doctor. He/ she has to go through several stages and acquire experience as an intern, Junior Resident, then Senior Resident etc. and only thereafter are they considered eligible. That is why, for the post of Assistant Professor, the government insists that the applicants should have three yearsexperience as Senior Resident.

7. We also accept the argument of the applicants that it will be extremely difficult, perhaps impossible, for them to get their residency completed in some other organization now. Therefore, in effect, what will happen is that they will not be able to complete their senior residency and hence will not be in a level playing field when they face the job market. In fact, as pointed out by the learned counsel for the applicants, the scheme of senior residency itself speaks of a period of three years.

8. In the light of above, we are of the opinion that it will be against the principles of natural justice if the senior residency period of the applicants is terminated all on a sudden now (as they have been allowed to continue for a long period), thus depriving these doctors of a fair opportunity to compete with others".

8. In view of the above circumstances, we dispose of this application with the following directions:-

- 1) Applicants in the present OA shall be allowed to complete three years tenure as Senior Residents in their respective disciplines from the date of their initial engagement.
- 2) In view of the above direction, we decline the prayer for quashment of impugned advertisement notice dated 04.05.2017. The respondents are at liberty to make appointment to the post of Senior Residents in the relevant disciplines except the posts held by the applicants.

(K.N. SHRIVASTAVA)
MEMBER (A)

(JUSTICE PERMOD KOHLI)
CHAIRMAN

/ns/