

**Central Administrative Tribunal
Principal Bench**

OA No.1893/2016

New Delhi, this the 1st day of June, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. V. N. Gaur, Member (A)**

Dr. Paras Gupta
Junior Residential Dental
D/o Shri Sanjay Kr. Gupta
R/o C-10/41, Yamuna Vihar,
New Delhi 110 053. ... Applicant.

(By Advocate : Shri Prashant Khatana and Shri Sudhir Nagar)

Vs.

1. Govt. of NCT of Delhi
Through its Secretary,
Department of Health and Family Welfare
9th Level, 'A' Wing,
Delhi Secretariat, IP Estate,
New Delhi 110 002.
2. The Director
Directorate of Health Services,
Govt. of NCT of Delhi,
F-17, Karkardooma,
New Delhi 110 032.
3. Medical Superintendent
Sanjay Gandhi Memorial Hospital,
Block S, Mangolpuri,
New Delhi 110 083. Respondents.

(By Advocates : Shri Vijay Kumar Pandita)

: O R D E R (ORAL) :

Justice Permod Kohli, Chairman :

Pursuant to an advertisement issued by respondent No.2 for filling up the post of Junior Resident (Dental) in Sanjay Gandhi Memorial Hospital, the applicant applied for engagement as Junior Resident (Dental). The selection was required to be made through walk-in-interview. The applicant participated in the interview and was issued an offer of appointment vide letter dated 26.11.2015. Even though the

advertisement provides that the engagement shall be for a period of 89 days or till recruitment of Junior Resident on regular basis, whichever is earlier, however, in the offer of appointment, the engagement was initially up to 22.02.2016 or till the joining of regular candidate, whichever is earlier. Later vide office order dated 19.03.2016, the applicant and other doctors who were engaged as Junior Residents were allowed to continue up to 22.05.2016.

2. In para 4 (5) of the OA, it is stated that the extension has been continued up to 26.05.2016. The respondents have issued another advertisement dated 20.05.2016 (Annexure A-7) again inviting application for appointment as Junior Resident (Dental) against the vacant/anticipated posts purely on contract basis till 30.06.2016 or till Junior Resident on regular basis are appointed. From the aforesaid advertisement it appears that again the selection is to be made on the basis of walk-in-interview and for a period of less than one and a half month. The mode of fresh engagement is the same, i.e., on contract basis. The applicant is aggrieved of this second advertisement dated 20.05.2016.

3. Vide order dated 27.05.2016, Shri Vijay Kumar Pandita, learned counsel for the respondents was asked to seek instructions in the matter, and in the meantime the respondents were restrained from making any engagement against the vacancies advertised by the department vide advertisement dated 20.05.2016. The said order was extended thereafter on 30.05.2016.

4. Today, Learned counsel for the respondents has placed on record copy of the Notice dated 30.05.2016 whereby the interview proposed to be held pursuant to advertisement dated 20.05.2016 has been cancelled. He further made a statement under instructions from Dr. M. M. Kohli,

Dy. Medical Superintendent/HOD, Sanjay Gandhi Memorial Hospital, that the advertisement itself is being withdrawn. Taking note of this statement, we find that the main grievance of the applicant is redressed.

5. With regard to the relief claimed in the OA to allow the applicant to complete her tenure of one year, no rule or law has been placed on record. However, from an earlier judgment of coordinate Bench of this Tribunal dated 13.05.2016 in OA No.421/2016, **Dr. Ankita Sharma & Ors. vs. Govt. of NCT of Delhi & Ors.**, we find that reference is made to Circular dated 05.06.1992 issued by the Ministry of Health and Family Welfare, which *inter alia* provides for selection of Junior Residents through a duly constituted Selection Committee, and in the said circular, the period of junior residency is prescribed as 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.

6. During the course of arguments, learned counsel for the applicant has also placed on record a copy of the said circular, the relevant part is extracted hereunder:-

“(iii) As per the directions of the Supreme Court in its judgment dated 25.9.87 in Writ Petition Nos.348-352 of 1985, all the Universities are required to amend their Rules and Regulations to introduce a continuous three year post-graduate degree course and a continuous two year post-graduate diploma course from the Academic Year 1993. Accordingly, the period of junior residency shall be either for one year in respect of house jobs for those not undergoing postgraduate course or three year junior residency in respect of post-graduate degree students/two year junior residency for post-graduate Diploma students.”

Taking note of this circular the Coordinate Bench in its aforesaid judgment dated 13.05.2016 issued following directions:-

“11. The respondents are directed to consider the representations of the applicants and extend the junior residency 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.”

7. Shri Pandita has also placed on record copy of a circular dated 08.10.2007 issued by Government of National Capital Territory of Delhi, Health & Family Welfare Department, which relates to appointment of Junior Resident (Dental). It reads as under:-

“Approval of the Competent Authority is hereby accorded to the appointment of Junior Resident (Dental) for duration of 6 months only, in all hospitals, wherever applicable, under GNCT of Delhi.

However, this is subject to the condition that only those candidates shall be considered for residency who have completed their internship within 2 years from the date of filling up the posts.”

From the perusal of this circular, it appears that engagement of Junior Resident (Dental) is for a period of six months only. Based upon this circular, it is submitted by Mr. Pandita that engagement of the applicant cannot be extended beyond six months.

8. We have considered the Scheme notified by Government of India, Ministry of Health and Family Welfare. Apparently, there is a conflict between the Scheme notified by the Government of India and the Circular issued by Delhi Government. This controversy, however, seems to be creased out in view of the observations of the Tribunal in its earlier judgment dated 13.05.2016. The relevant observations are reproduced hereunder:-

“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 moths 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. Apart from above, one of the fundamental questions which remains to be addressed is whether a welfare State can adopt hire and fire policy and a temporary/contract employee can be replaced by another temporary/contract employee. If such a situation is allowed, it definitely breeds arbitrariness and corruption even in the engagement of temporary/contract employees. Such a practice has been deprecated by Hon'ble Supreme Court in ***State of Haryana vs. Piara Singh*** reported in 1992 AIR SC 2130, and various other judgments.

10. We find that the circular of the Delhi Government which is in clear conflict with the policy of the Central Government is not sustainable. However, without dealing with this circular and in tune with the earlier judgment of this Tribunal, we allow the applicant to make a fresh representation within a period of one week to Secretary, Health and Family Welfare Department, Government of NCT of Delhi. On receipt of such representation, the same shall be dealt with in accordance with the Government of India Scheme of 1992 and the observations made in the earlier OA and hereinabove. The respondents will particularly address

the question of re-engagement of the applicant up to the period of one year including her earlier period of engagement. A reasoned and speaking consequential order shall be passed by the respondents within a period of thirty days from the date of receipt of representation to be filed by the applicant.

11. With the above order, OA stands disposed of.

(V. N. Gaur)
Member (A)

(Permod Kohli)
Chairman

/pj/