

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.2185/2016

This the 4th day of October, 2016

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

1. Dr. Saboor Khan S/o Makhmoor Sultan Khan,
R/o 1733, Rodgaran Lal Kuan,
Delhi-110006.
2. Dr. Harvindr Kaur D/o Inderjit Singh,
R/o House No.1/35, Vasundra,
Ghaziabad (UP).
3. Dr. Rahul Tyagi S/o Dr. Anil Tyagi,
R/o KH 30/11 G-2, Bhagwan Park,
Jhareda Mazra, Burari,
Delhi-110084.
4. Dr. Uma Sharma D/o Hari Kishore Sharma,
R/o House No.2/16, Ram Mohalla,
Jhoripur, Delhi-110094.
5. Dr. Neha Dewan D/o Rajesh Dewan,
R/o 1/9585, Partapura West Rohtas Nagar,
Gali No.3, Shahdara, Delhi-110032.
6. Dr. Dhriti Khurana D/o Tapesh Khurana,
R/o 84-E, F Pocket, GTB Enclave,
Dilshad Garden, Delhi-110095.
7. Dr. Govind Singh S/o Soran Singh,
R/o H.No.91, Hind Puram Colony,
Mainpuri, Uttar Pradesh-205001.
8. Dr. Nidhi Tyagi D/o R. K. Tyagi,
R/o 6H/128, Sector 5, Rajinder Nagar,
Sahibabad, Ghaziabad, UP-201005.
9. Dr. Mohd Naseem S/o Tayyab Hussain,
R/o Shahbaj Pura Khurd, PS Naksha,

District Sambhal,
Uttar Pradesh-244302.

10. Dr. Ankita Gupta D/o V. P. Gupta,
R/o B-3, Institute of Hotel Management Pusa,
New Delhi.
11. Dr. Tabish Ahmed S/o Shareef Ahmed,
R/o C-10/161, Yamuna Vihar, Delhi.

All working as Junior Resident Doctor in Guru Teg Bahadur Hospital, Govt of NCT of Delhi, Dilshad Garden, Delhi-110095.

... Applicants

(By Advocate: Ms. Aishwarya Bhati)

Versus

1. Government of NCT of Delhi through its Secretary, Department of Health and Family Welfare, 9th Level, 'A' Wing, Delhi Secretariat, IP 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 Advocates: Mr. N. K. Singh for Mrs. Avnish Ahlawat)

ORDER

Justice Permod Kohli, Chairman :

Guru Teg Bahadur Hospital, Government of NCT of Delhi, vide its notice dated 07.01.2016 invited applications for the post of Junior

Residents (BDS) purely on *ad hoc* and emergent basis for 44 days, extendable up to six months with mandatory break of one day after every 44 days on the basis of satisfactory work and conduct report from the concerned HoD, on request from the doctor concerned, or till regular incumbents join, whichever is earlier. As many as 14 vacancies were notified. The date and time of interview was 20.01.2016, 10:30 a.m. onwards.

2. It appears that thereafter the respondent No.3 decided to change the mode of selection from *viva voce* to written examination followed by *viva voce* for the selection of Junior Residents (Dentistry) vide separate notice dated 12.01.2016. The aforesaid notice was followed by a corrigendum dated 14.01.2016 notifying that the selection shall be entirely based on written examination and there shall be no *viva voce* following the written examination.

3. On the basis of the result of the written examination, the applicants were selected vide office order dated 22.01.2016 as Junior Residents (Dentistry) for a period of 44 days on *ad hoc* and emergent basis or till regular candidates join, whichever is earlier. The appointment of the applicants was, however, extended for a further period of three months beyond 31.03.2016, i.e., up to 30.06.2016, or till Junior Residents/Senior Residents are recruited centrally on regular basis, whichever is earlier, vide order dated 26.02.2016. It appears

that some Junior Residents who were engaged on *ad hoc* basis filed OA No.421/2016 - *Dr. Ankita Sharma and others v Government of NCT of Delhi and others*. Respondent No.3 wrote to its advocate in respect to the said case that the extension granted vide order dated 26.02.2016 is not applicable to the applicants in the aforesaid OA and they would be governed by the old circular dated 07.12.2007 allowing for tenure of Junior Residents (Dentistry) for a maximum period of six months.

4. The claim of the applicants in the present OA is that on the basis of recommendations of the Kartar Singh Committee, the Government of India introduced a six-year residency scheme comprising junior residency and senior residency doctors in place of the then existing system of House Surgeons, post graduate students and registrars in all Central institutions/hospitals and other institutions wholly financed by the Central Government. It is stated that the post of Junior Resident has duration of three years only and cannot be extended beyond that. A circular dated 05.06.1992 was published by the Government of India, Ministry of Health and Family Welfare, prescribing the selection of candidates for post graduate medical and dental courses. The period of junior residency was stated to be either for one year in respect of house jobs for those not undergoing post graduate courses, or three years junior residency in respect of post graduate degree students/two years junior

residency for post graduate diploma students. The circular further prescribes that junior residency would be contract of service for one year in the case of housemanship and for two years or three years, as the case may be, for post graduate courses. All the applicants are bachelor of dental surgery from colleges like Dr. Ram Manohar Lohia Avadh University, Faizabad; Pt. B. D. Sharma University of Health Sciences, Rohtak; and CCSU, Meerut. The grievance of the applicants is that they are not being allowed to continue for a period of one year, which is the minimum junior residency period as prescribed in the circular of 1992, and that they are being removed prior to the completion of one year, which is likely to hamper their further career as they would be rendered ineligible for further studies, junior residency being minimum for a period of one year. The applicants have placed reliance upon judgment dated 03.02.2015 passed by this Tribunal in OA No.160/2015 - *Dr. Manish Gupta and others v Government of NCT of Delhi & others*, and an order dated 27.02.2015 in OA No.820/2015 whereby while issuing notice to the respondents, the Tribunal has ordered status quo regarding continuance of the applicants therein as Junior Residents. They have also relied upon a judgment dated 01.06.2016 passed in OA No.1893/2016 - *Dr. Paras Gupta v Government of NCT of Delhi & others*. It is accordingly submitted that the case of the applicants is squarely covered by the aforesaid judgments.

5. Reply has not been filed despite opportunities.
6. We have heard the learned counsel for parties. We find that the present case is squarely covered by the judgments referred to and relied upon by the applicants. The Tribunal in its judgment dated 13.05.2016 passed in OA No.421/2016 - *Dr. Ankita Sharma and others* (supra) passed the following directions:

“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.”

Considering a circular dated 08.10.2007 of the Government of NCT of Delhi and the Government of India's guidelines referred to above, this Tribunal in its judgment dated 13.05.2016 further observed as under:

“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 cannot 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 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.”

Relying upon the aforesaid judgment, this Tribunal in OA No.1893/2016 decided on 01.06.2016 – *Dr. Paras Gupta* (supra) made the following observations:

“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."

When this judgment was not complied with, the applicant therein initiated contempt proceedings in CP No.345/2016. During the pendency of the contempt proceedings, the respondents passed an order dated 29.09.2016, which reads as under:

"This department has received the copy of the Hon'ble CAT order dated 01.06.2016 in OA No.1893/2016 titled as Dr. Paras Gupta V/s GNCT of Delhi, where the Hon'ble CAT has passed the order as below:-

"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."

Further, a representation dated 07/06/2016 has also been received from the applicant Dr. Paras Gupta which has been considered in view of the aforesaid CAT direction and it has been decided that Medical Superintendent of Sanjay Gandhi Memorial Hospital will allow her to work as Jr. Resident, Dental in the hospital for a maximum period of one year including her previous tenure in the Hospital subject to observance of all codal formalities.

This issues with the approval of Competent Authority."

The applicant in the aforesaid OA has been allowed to continue as Junior Resident (Dental) in the Hospital for a maximum period of one year, including her previous tenure.

7. Present Application is accordingly disposed of in terms of the directions contained in judgment dated 01.06.2016 passed in OA No.1893/2016 duly implemented vide order dated 29.09.2016. Applicants in the present OA are entitled to same relief. We direct the respondents to grant similar treatment to the applicants.

(V. N. Gaur)
Member (A)

(Justice Permod Kohli)
Chairman

/as/