

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 4451/2013

Reserved on: 4.08.2016
Pronounced on: 12.08.2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

1. Dr. Prakash Chandra,
S/o Shri R.C. Sati,
Aged 30 years,
R/o B-54, East Vinod Nagar.
2. Dr. Brijesh Patel,
S/o Mr. Ram Nidhi Patel,
Aged 31 years,
R/o Room No.79, Dr. B.S. Ambedkar Hospital,
Rohini, New Delhi-110 085.
3. Dr. Rakesh Verma,
S/o Mr. Mahi Lal,
Aged about 35 years,
R/o B-3/257, Sultaan Puri.
4. Dr. Samita Gupta,
D/o Mr. Narender Nath,
Aged about 39 years,
R/o 41, Shalimar Park,
Bhola Nath Nagar, Shahdra,
New Delhi-110032.
5. Dr. Amit Tiwari,
S/o Mr. M.S. Tiwari,
Aged about 32 years,
R/o WZ 1C/1, 2nd Floor,
New Sahib Pura,
Near C.R.P.F. Camp,
Tilak Nagar, New Delhi – 110 018.
6. Dr. Charan Singh,
S/o Mr. Tej Bhan,
Aged about 30 years,
R/o House No.1250,
Village & Post Office Dichon Klan,
Najafgarh, New Delhi-110 043.
7. Dr. Arvind Kumar,

S/o Mr. Loki Ram,
Aged about 32 years,
R/o 1/3687, Ram Nagar Extn.,
Shahdra, New Delhi-110032.

8. Dr. Garima Chahl,
D/o Mr. Aman Kumar Chahl,
Aged about 32 years,
R/o C6175-A, Keshav Puram,
New Delhi-110035.
9. Dr. Anita,
D/o Mr. Krishan Kumar Sharma,
Aged about 26 years,
R/o F-18/48, Sector 8,
Rohini, New Delhi-110085.
10. Dr. Ravi Kant Bhaskar,
S/o Mr. Sita Ram,
Aged about 32 years,
R/o C-1/1104, Tulip Grand Appt.
Sec-35, Kundli,
Sonapat, Haryana-131001.
11. Dr. Febin,
D/o Mr. Sallaudin,
Aged about 27 years,
R/o 1006 Ground Floor,
Mukherjee Nagar,
New Delhi-110009.
12. Dr. Soniya,
D/o Mr. D.R. Choudhary,
Aged about 35 years,
R/o Flat No.45, Saket Kunj Appt.,
Sec-9, Rohini, New Delhi-110085.
13. Dr. Meenakshi,
D/o Mr. Mahender Singh,
Aged about 36 years,
R/o 2236, Raja Park,
Rani Bagh, New Delhi-110034.
14. Dr. Pankaj Rohilla,
S/o Mr. D.K. Rohilla,
Aged about 36 years,
R/o 2236, Raja Park,
Rani Bagh, New Delhi-110034.
15. Dr. Sarthak Tandon,
D/o Mr. Pradip Tandon,
Aged about 27 years,
R/o E-704, Pavitra Appt.,
Vasundhra Enclave,

New Delhi-110016.

16. Dr. Amrish Kumar Dubey,
S/o Mr. Madan Mohan Dubey,
Aged about 33 years,
R/o D-107, LIG Flats,
GTB Enclave, Dilshad Garden,
New Delhi-110095.
17. Dr. Kaustuv Kiran,
D/o Dr. K.K. Sinha,
Aged about 33 years,
R/o Flat No.231, Vasudha Appt.,
Rohini, New Delhi.
18. Dr. Sristi Mittal,
D/o Mr. S.K. Mittal,
Aged about 32 years,
R/o A.D. 106C, Pitampura,
New Delhi-110034.
19. Dr. Lalit Kumar,
S/o Mr. Raghubir Singh,
Aged about 34 years,
R/o 482/B, Jagatpuri,
New Delhi-110031.
20. Dr. Priyanita,
D/o Mr. Surender Tigga,
Aged about 36 years,
R/o Flat No.701, Sec-11,
Dwarka, New Delhi-110075.
21. Dr. Sheetal,
D/o Mr. Ishwar Singh Dalal,
Aged about 32 years,
R/o RZP2 34/35, New Roshan Pura,
Shiv Mandir Road, Najafgarh,
New Delhi-110043.
22. Dr. Sandeep Kashyap,
S/o Mr. Radhey Lal Kashyap,
Aged about 30 years,
R/o X-3506, Gali No.3,
Raghubar Pura No.2,
Gandhi Nagar, New Delhi-110031.
23. Dr. Umakant,
S/o Mr. Lakshmi Chand Sharma,
Aged about 29 years,
R/o C 8161 A, Keshavpuram,
Lawrence Road, New Delhi-110043.
24. Dr. Nitin Sharma,

D/o Mr. Om Prakash Sharma,
Aged about 32 years,
R/o J3/144, 1st Floor,
Rajouri Garden, New Delhi-110027.

25. Dr. Tejpal Singh,
S/o Shri Ram Bharose Dhakad,
Aged about 30 years,
R/o WZ-169, Lajwanti Garden,
New Delhi-110046.
26. Dr. Harish Kumar Gupta,
S/o Shri Radhakrishan Gupta,
Aged about 34 years,
R/o Krishana Colony,
Ramganj Mandi, Kota,
Rajasthan.
27. Dr. Sushil Michael Kindo,
S/o Shri Rafail Kindo,
Aged about 37 years,
R/o F-195, Ishwar Bhawan,
Lado Sarai, New Delhi-30.
28. Dr. Rajendra Singh,
S/o Lala Ram Sheoran,
Aged about 29 years,
R/o B-134, 2nd Floor,
Jhilmil Colony, Shahdara,
New Delhi-95.
29. Dr. Bina,
S/o Birbal Tejan,
Aged about 28 years,
R/o RZ-J Block 21/231,
West Sagarpur, New Delhi-110046.
30. Dr. Archana Singh,
D/o B.S. Pachgra,
Aged about 29 years,
R/o E-1016, Saraswati Vihar,
New Delhi-110034.
31. Dr. Debashish Mukherjee,
S/o Ranjeet Singh Mukherjee,
Aged about 30 years,
R/o 96 E, Pocket B, Dilshad Garden,
New Delhi-110095.
32. Dr. Sumit Kr. Dixit,
S/o Shri H.S. Dixit,
Aged about 27 years,
R/o E-519, Gali No.9,
West Vinod Nagar,

New Delhi-110092.

33. Dr. Poonam,
D/o Rishi Pal Sehrawat,
Aged about 35 years,
R/o 7352, Sec-B-10,
Vasant Kunj, New Delhi-110070.
34. Dr. Abhishek Kr. Mishra,
S/o Ashwani Kr. Mishra,
Aged about 31 years,
R/o C-85/F3, Dilshad Garden,
Extn.-2, DLF Sahibabad,
Dist. Ghaziabad-201005.
35. Dr. Pradeep,
S/o Braj Nandan Prasad,
Aged about 32 years,
R/o H.No.410, Second Floor,
Indira Vihar, New Delhi-110009.
36. Dr. Archana Saini,
D/o Vinod Kumar Saini,
Aged about 30 years,
R/o Flat No.38-D, D-1B Block,
Janakpuri, New Delhi.
37. Dr. Tripti Sinha,
D/o R.B. Sinha,
Aged about 32 years,
R/o CH1/A, Hari Nagar,
New Delhi.
38. Dr. Deepa Bajaj,
D/o Yograj Bajaj,
Aged about 29 years,
R/o D-126, Ramdutt Enclave,
Uttam Nagar, New Delhi-59.
39. Dr. Deepika,
D/o Dharam Bir Singh,
Aged about 32 years,
R/o 425/SFS, Golden Jubilee Apartment,
Sec-11 Extension, Rohini-85.
40. Dr. Mohit Tiwari,
S/o Ramkrishna Tiwari,
Aged about 29 years,
R/o E-67, Prem Nagar, Kirari,
Sultanpuri, Delhi-86.
41. Dr. Shiv Shankar Prasad,
S/o Ram Prasad Singh,
Aged about 31 years,

R/o 58-D, Pocket-B,
Mayur Vihar Phase-II,
New Delhi.

42. Dr. Rajan Kr. Mishra,
S/o Ram Narayan Mishra,
Aged about 32 years,
R/o HN-60, Pooth Kalan,
Delhi-86.
 43. Dr. Som Pal,
S/o Satbir Singh,
Aged about 29 years,
R/o Birlavas P.O. Nanukhur,
Dist. Gurgaon, Haryana.
 44. Dr. Bihade Kapil Prahlad Rao,
S/o Prahlad Rao,
Aged about 31 years,
R/o 10/20, 4th Floor,
Old Rajendra Nagar,
New Delhi-60.
 45. Dr. Nitin Chahar,
S/o U.S. Chahar,
Aged about 29 years,
R/o B2, Type-4, Pandara Road,
New Delhi.
- .. Applicants

(By Advocate : Shri Nishant Upadhyay)

Versus

1. NCT of Delhi,
Through Chief Secretary,
Government of NCT of Delhi,
New Delhi-110002.
2. Govt. of NCT of Delhi,
Through Directorate of Health Services,
Office of the Chief District Medical Officer .. Respondents

(By Advocate : Shri Vijay Kumar Pandita)

ORDER

Mr. P.K. Basu, Member (A)

The applicants are qualified MBBS doctors from MCI recognized institutions. They were selected by the Government

of Delhi, Department of Health and Family Welfare and posted in various government run hospitals, purely on contract basis. The initial public notice for appointment of Medical Officers on contract basis against which the applicants have been appointed, issued in September 2011, had indicated that the pay would be Rs.53000/- per month (fixed). The applicants grievance is that against a similar public notice for appointment of Medical Officers, purely on contract basis in 2008, the Medical Officers were offered a remuneration which was minimum basic pay in the pay scale of Rs.8000-13500 plus allowances including NPA.

2. The case of the applicants is that while 2008 appointees are drawing their remuneration at the minimum of the pay scale for regularly appointed Medical Officers, they have been granted a much lesser remuneration of Rs.53000/-, which is discriminatory and arbitrary as they perform the same functions as the Medical Officers of 2008 batch. Through this OA, they have, therefore, prayed that the respondents be directed to maintain parity between the Medical Officers of 2008 batch and 2011 batch.

3. Learned counsel for the respondents explained the background of the case stating that earlier the requirement of doctors for the purpose of operation and maintenance of health delivery in Delhi was being met exclusively from the Central Health Service (CHS) Cadre. In mid-1990, the government stopped the process of encadrement of new posts and suggested GNCTD to fill the vacant posts by making contract engagement

as a stop gap arrangement. Later in 2006, it was decided that GNCTD should form its own cadre of doctors. At the official level, it was agreed that the initial constitution of the new service would be drawn from following two sources:

- (a) Members of the CHS who opt to be a part of the new service being proposed.
- (b) Individuals who have been appointed by the Government of NCT of Delhi on contract basis against ex-cadre posts from the year 1995-96 onwards as per the advice of the Ministry of Health and Family Welfare.

4. The rules and regulations of Delhi Health Service (Allopathy) 2009 were finally notified on 23.12.2009. It is added that the contractual engagement of doctors in the year 2008 was made on pay scale which was prior to the formation of Delhi Health Services Rule 2009 with the view that these doctors may be inducted in the initial constitution on suitable assessment by UPSC under DHS (Allopathy) Rules which cannot be done in respect of doctors appointed after the formation of DHS (Allopathy) Rules 2009 and, therefore, doctors are appointed on consolidated remuneration instead of pay scale. Also, engagement on contract basis is covered under the judgment of Hon'ble Supreme Court in the matter of **Secretary, State of Karnataka & ors. Vs. Uma Devi (3) & ors.**, 2006 (4) SCC 1 which does not allow induction/ regularization in cadre rules in respect of doctors engaged on contract basis.

5. Finally, it is argued that the applicants had been offered appointment on contract basis on consolidated payment of Rs.53000/-. They had the choice of accepting the offer and there was no compulsion. Now that they have accepted the offer after knowing the terms and conditions, they have no right to pray for higher remuneration.

6. The learned counsel for the respondents also relied on decision of this Tribunal dated 31.10.2015 in OA No. 2558/2014 in which similar issue of employees appointed on contract basis and not being given benefits given to regular employees the Tribunal examined several judgments of the Hon'ble Supreme Court and came to the following conclusion:

"32. What emerges from the above quoted judgments is that the settled law is that contractual employees who have not come in through a regular appointment procedure, have no right to claim the same pay scale and other benefits as accrued to the regular employees. However, in *Victoria Massey (supra)* and *Satish Kumar and others (supra)*, this Tribunal has passed orders granting such benefits to some contractual employees. The Hon'ble High Court upheld the decision of the Tribunal in *Satish Kumar (supra)* but modified the order to the extent that Craft Instructors should be given Basic Pay, Grade Pay, D.A., HRA and Transport Allowance. We have already discussed this earlier and explained why in our opinion these cannot be treated as precedence.

33. In view of overall principle as laid down by the Hon'ble Supreme Court, we are of the opinion that the ratio that contractual employees have no right to claim emoluments at par with regular employees of same designation still holds the field. Thus the government can appoint employees on contract on consolidated salary, which is not the same as the pay and allowances given to a regular employee. If held otherwise, there are several implications. We give here one such instance. It is common practice now-

a-days in government offices that some of the group 'D' jobs which were being undertaken by permanent government employees are now got executed by outsourcing to a contractor who places the services of such staff based on bidding process and subject to provisions of the Minimum Wages Act. These hired staff, though not government employees, perform the same task as a Multi Tasking Staff or say cleaner/ sweeper etc. If the veil of this outside contractor is lifted, then all such staff would claim remuneration equivalent to those of similar regular staff. In our view, the order of the Tribunal in Victoria Massey (supra) and the judgment of the Hon'ble High Court in Satish Kumar and others (supra) are specific to the facts and circumstances of those cases and will not overturn the ratio laid down by the Hon'ble Supreme Court in the judgments cited above."

The Tribunal came to the conclusion after examining the following judgments of the Supreme Court:

- (i) **State of Haryana and others Vs. Jasmer Singh and others**, JT 1996 (10) SC 876
- (ii) **Kumari Priti Chopra Vs. Managing Director M.P. Hastshilp Vikas**, 2002 (2) AISLJ 197
- (iii) **Utkal University and another Vs. Jyotirmayee Nayak and others**, 2003 (2) SCSLJ 249
- (iv) **Orissa University of Agriculture and Technology and another Vs. Manoj K. Mohanty**, 2003 (1) SCSLJ 363
- (v) **Mahendra L. Jain and others Vs. Indore Development Authority and others**, (2005) 1 SCC 639

(vi) State of West Bengal and another Vs. West Bengal Minimum Wages Inspectors Association and others, (2010) 5 SCC 225

7. Learned counsel for the applicants relied on the judgment of the Hon'ble High Court of Delhi in CWP Nos.3641, 42, 43, 44, 45, 46, 49, 50 and 59 of 1998, **Government of National Capital Territory of Delhi and others Vs. Dr. V.S. Chauhan and others**. This was a similar case of doctors appointed on contractual basis and they sought parity with regularly appointed doctors. The Writ was allowed.

8. We have heard the learned counsel for the parties and gone through the pleadings available on record.

9. In view of the fact that the settled law is that contractual employees who have not come in through a regular appointment procedure, have no rights to claim the same pay scale and other benefits accrued to regular employees and order of the Coordinate Bench in OA 2558/2014, the prayer of the applicants cannot be allowed. OA is dismissed. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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