

**Central Administrative Tribunal
Principal Bench**

OA No. 4067/2015

MA No. 1429/2016

MA No. 3698/2015

Order Reserved on: 23.07.2016

Order Pronounced on: 19.08.2016

Hon'ble Mr. V. Ajay Kumar, Member (J)

Hon'ble Dr. B.K. Sinha, Member (A)

Dr. Sonu, Age about 26 years,
D/o Sh. Surendra Kumar,
R/o House No.34/105,
Nera Lucky Biscuit Factory,
Bramhpuri Road,
Jaipur, Rajasthan-302002

- Applicant

(By Advocate: Mr. A.M. Tripathi)

VERSUS

1. Union of India,
Through Secretary,
Ministry of Ayurveda, Yoga
& Naturopathy, Unani, Siddha &
Homoeopathy (AYUSH)

2. Department of AYUSH
Joint Secretary,
"AYUSH BHAWAN"
B Block, GPO Complex,
INA, New Delhi-110023

- Respondents

(By Advocate: Mr. Gyanendra Singh)

ORDER

Dr. B.K. Sinha, Member (A):

MA No. 3698/2015

This MA filed by the applicant seeking exemption from filing fair typed copies of dim documents annexed with the OA is dismissed as having become infructuous on the ground that the OA itself has already been heard and the order is being pronounced.

2. **MA No. 1429/2016**

In the instant MA filed on 22.04.2016 by the applicant for forfeiting the right of the respondents to file their reply in the OA on the ground that they were deliberately not filing the same causing prejudice to the case of the applicant, notice was issued on 27.04.2016, returnable on 23.07.2016 on which date the OA had already been fixed for hearing. However, in the meantime, the respondents had filed their reply on 20.07.2016.

3. When the matter came up for hearing on 23.07.2016, the learned counsels for the rival parties were patiently heard and the reply filed by the respondents was also taken into account. After hearing both the parties, the order was reserved. Hence, the instant MA having become infructuous also stands dismissed.

4. The applicant, in the OA filed under Section 19 of the Administrative Tribunals Act, 1985, is a Doctor, who was appointed to the post of Medical Officer (Ayurveda)/Research Officer (Ayurveda) on 17.11.2014. However, prior to her appointment, the applicant got selected for the Post Graduation Course (Gynecology) of three years with the National Institute of Ayurveda, Jaipur in the session 2013-2014. On 08.12.2014, the applicant requested for extension of time up to 30.06.2016 for joining the post of Medical Officer/Research Officer so that she could complete her P.G. Course which was granted for a period of six months on 26.03.2015. The applicant, on the same date, applied that she should be granted time till 17.07.2015 so that she could complete her Post Graduation. On 03.09.2015, the applicant was intimated that her candidature for the post of Medical Officer/Research Officer in the Ministry of AYUSH had been cancelled. The applicant further submits that it was learnt

from an RTI reply that her representation was still pending consideration.

5. The grounds adopted by the applicant are that if she were to be compelled to join at this juncture of time, she would be required to return the entire amount received by her towards stipend in addition to lose her one and half years of studies. Where if she allowed to complete her studies, the Department would be richer by having MD (Gynecology) without spending any amount for a post for which minimum requirement is BAMS.

6. The respondents have filed their counter affidavit rebutting the averments of the applicant. It has been stated that the maximum period to which the appointment would be extended is of six months at the expiry of which the offer of appointment would lapse automatically. The respondents claim that DoPT had already issued a letter dated 26.03.2015 to the applicant to join the post of Medical Officer/Research Officer (Ayurveda) before 16.06.2015 failing which the offer of appointment dated 17.11.2014 would stand cancelled and that no further representation for extension of joining time would be entertained. After cancellation of the appointment, the Government has already moved to UPSC for appointing another suitable person in her place. It is a Group A gazette post and it cannot be left vacant for a long time. The applicant had joined the PG course on 16.12.2013 and would have continued till 30.06.2016. Thus, here appointment would be delayed by almost a period of two years. Besides there is no provision in the rules to grant extension beyond six months. The respondents have relied upon the OM dated 09.08.1995 which, *inter alia*, states that extension of joining time beyond six months is not at all permissible in any circumstance. They have strongly pleaded for the OA to be dismissed.

7. We have considered the pleadings of rival parties as also the documents adduced and the citations relied upon on either side and have patiently heard the arguments advanced by the learned counsels for the parties.

8. The only issue to be decided in this OA is that whether extension of time beyond six months is permissible within the rules and is in public interest. In this regard, we take note of DoPT Om dated 09.08.1995 which clearly stipulates that *the OM No. 35015/2/93-Estt.(D) dated 09.08.1995 read with OM No.9/23/71-Estt(D) dated 06.06.1978(CP:85) which provides that “....an offer of appointment should clearly specify that period (which shall not normally exceed one or two months) after which the offer would lapse automatically if the candidate did not join within the specified period. If however within the specified period, a request is received from the candidate for extension of time, it may be considered by the Ministries/Departments but extension beyond three months should not be granted liberally and it may be granted only as exception where facts and circumstances so warrant and in any case only upto a maximum of six months from the date of issue of original offer of appointment. An offer of appointment would lapse automatically after the expiry of six months from the date of issue of the original offer of appointment.* Besides the letter of the Ministry dated 26.03.2015 issued to the applicant had clearly directed her to join before 16.05.2015, failing which the offer of appointment issued to her vide OM dated 17.11.2014 would stand cancelled automatically. It was further specifically mentioned that no further representation for extension of joining time would be entertained. For the sake of greater clarity, we extract the relevant para of the letter as follows:-

“2. You are, therefore, requested to join the post of Medical Officer/Research Officer (Ayurveda) in this Ministry on or before 16.05.2015; failing which the offer of appointment issued to you by this Ministry vide letter No.A.12025/08/2014-E.1 (AYUSH) dated 17.11.2014 shall stand cancelled automatically. This is also to inform that no further extension of joining time received from your end will be entertained by this Ministry.”

9. From the perusal of the above, it is abundantly clear that there is no provision for extension of time beyond six months following which the appointment is subject to automatic revocation. That revocation has already taken place. We also note that the respondents have relied upon a decided case of the Hon'ble Delhi High Court rendered in **Ajay Kumar vs. Union of India & Ors.** [WP(C) No. 267/2013, CM Appl. 555/2013 decided on 16.01.2013] wherein the Hon'ble High Court has held as under:-

“11. This Court sees neither arbitrariness nor discrimination in regard to the stipulation of a fixed period within which a successful candidate has to report for duties to his post. As discussed previously, if discretion is allowed to individual appointing authorities, the resultant chaos would throw out of gear the entire process of filling up of vacancies and jeopardize the management of a cadre. Besides, each department or agency in the government would be clueless about the number of vacancies it possesses and indeed the number of successful candidates who are waiting in line to join at a given point of time. It is quite likely that a large number of posts would remain unmanned and unfilled awaiting individual predilections of selected candidates who would join according to their convenience. To avoid such anomalous and possibly disastrous eventualities, a uniform approach was directed by the OM of 6.6.1978 as modified by the later Memorandum of 9.8.1995. The Memorandum relied upon by the petitioner of 28.8.1997, in no way, detracts from the instructions and contents of the two previous Office Memoranda. Both are clearly reasonable and non-discriminatory.

12. Although the above observations are dispositive of the present case, the Court also notices that the petitioner approached the respondents with a representation after his appointment lapsed, for the first time, on 15.9.2010; he appears to have made repeated representations and finally elicited their response in 2011. During the hearing, his counsel urged with certain vehemence that in terms of the OM dated 28.8.1997, the petitioner could still be accommodated in a later training batch. This Court is of the opinion that such submission is based on the misreading of the OM dated

28.8.1997. It does not and cannot be read as permitting something which is contrary to the OM of 6.6.1978; the allusion to those who report after four weeks clearly means those who report within the overall period of six months or at worst those whose lapsed appointments are allowed to be revived on the ground of their falling within the “exceptional” category in “public interest”. It was not – and perhaps justifiably so – the petitioner’s case that his is an exception case; certainly, we see no elements of public interest, underlining his claim for being accommodated in a subsequent batch.”

10. Similarly, we find a series of representations even after offer of appointment has lapsed and we do not propose to go through them. It suffices to say that the present case is squarely covered by the afore decision of the Hon’ble High Court in WP(C) No. 267/2013, CM Appl. 555/2013 *ibid*.

11. In conclusion, it could be easily stated that we find no merit in the claim of the applicant. Accordingly, the OA is dismissed with no order as to costs.

(Dr. B.K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

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