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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No.1695/2003

New Delhi this the 4th day of December, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)  
Hon'ble Shri Serweshwar Jha, Member (A)

Sumeet Banerjee  
S/O Shri Subir Banerjee (C),  
as senior Cardian Technician,  
Safdarjang Hospital, Govt. of India,  
New Delhi  
R/O Quarter No. 14, Sector-2,  
R.K. Puram, New Delhi.

..Applicant

(By Advocate Shri M. S. Ahluwalia )

VERSUS

1. Union of India through its  
The D.G.H.S., M.H. Section,  
Ministry of Health, Nirman Bhawan,  
New Delhi.
2. The Principal and Medical Superintendent,  
Safdarjang Hospital, Govt. of India,  
New Delhi.

..Respondents

(By Advocate Shri S.M. Arif )

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J))

This application has been filed by the applicant with reference to Paragraphs 5 and 6 of the respondents' Memo. dated 21.12.2001 (Annexure A 1) and order dated 6.3.2002 (Annexure A 2 ).

2. The applicant has prayed that a direction may be given to respondent No.1 to expedite the proceedings of regularisation of the service of the applicant as Senior Cardiac Technician (S.C.T.), further to quash Paras 5 and 6 of the aforesaid Memo. dated 21.12.2001 and the order dated 6.3.2002 regarding extension of his ad-hoc period beyond 4.1.2003 after completion of one year of ad-hoc service.

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3. The Tribunal by ad-interim order dated 8.7.2003 had restrained the respondents from terminating the services of the applicant and not to replace him with another ad hoc employee. That order has been continuing till date.

4. We have heard Shri M.S.Ahluwalia, learned counsel for the applicant and Shri S.M.Arif, learned counsel for the respondents. Learned counsel for the respondents has also produced the relevant files in which the relevant decision pertaining to the issues raised in question have been taken by the competent authorities.

5. From annexures A-1 and A-2, annexed by the applicant himself in the OA, it is noticed that Memo. dated 21.12.2001 had been issued by the respondents offering the post of SCT on ad hoc basis for a period of one year in the scale of Rs.4500-7000 plus usual allowances as admissible under the Rules. Paragraphs 5 and 6 of this Memo. reads as under :-

"5 His appointment is made purely on ad hoc basis for a period of one year, which may be extended /curtailed at the discretion of the competent authority.

6. The ad hoc appointment will not confer him any right for regularisation of the same or benefits such as seniority etc. on a future date. The Medical Supdt. reserves the right of termination of the ad hoc appointment at any time without assigning any reason or giving notice etc. to the officer concerned".

18. Annexure A. 2 order referred to by the applicant is inter-Departmental order which states, inter-alia, that

respondent No. 2 has appointed the applicant as S.C.T in the Safdarjang Hospital w.e.f. 4.1.2002(FN) on ad hoc basis for a period of one year or till such time regular appointment is made, whichever is earlier. This order has been issued in pursuance of Annexure A-1 Memo., offering the appointment of the post of S.C.T to the applicant. In terms of these orders, it is, therefore, seen that the applicant was appointed as S.C.T on ad hoc basis for a period of one year i.e. it would have normally expired on 4.1.2003. The terms and conditions of offer of appointment as set out in Paragraphs 5 and 6 of the Memo. dated 21.12.2001 are relevant. It is also relevant to note that the applicant has filed this OA after accepting those very terms and conditions of ad hoc appointment, only on 3.7.2003. It is settled law that an ad hoc appointee does not have an enforceable right to have his services regularised de hors the Rules. Taking into account the fact that the applicant has accepted the offer of appointment he was well aware that his ad hoc appointment as S.C.T. was for a period of one year or till such time a regular appointment is made, whichever is earlier. The termination of applicant's services after one year by the respondents cannot, therefore, be faulted. The applicant cannot also claim regularisation of his services contrary to the provisions of the Recruitment Rules.

6. When the case was heard on 21.10.2003 the parties referred to the disputed facts as to whether the amount of Rs.51,074/- (by cheque) due to the applicant was despatched

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by Regd. post by the respondents, as it was vehemently submitted by the learned counsel for the applicant that this has not been received by the applicant. Shri S.M.Arif, learned counsel has produced the Regd. envelope together with the cheque for the aforesaid amount dated 16.10.2003 with the letter from the Accounts Officer dated 17.10.2003 in original which has also been shown to Shri M.S.Ahluwalia, learned counsel. From the envelope it is noticed there is a remark "Left". The applicant who is present in Court and identified by the learned counsel for the applicant, has submitted that before October, 2003 he left the address to which the Regd. letter had been sent and is now residing with another Govt. servant. He has also stated that he has duly intimated the respondents about the change of his address but they have not taken note of the same. The fact of intimation of change of address has been disputed by the learned counsel for the respondents who submits that there is no such letter in their record. Be that as it may, during the hearing, Shri M.S.Ahluwalia, learned counsel has submitted that the applicant is prepared to accept the amount mentioned in the cheque dated 16.10.2003 without prejudice to the merits of the case. Accordingly, this cheque has been handed over to the applicant by the learned counsel for the respondents on proper receipt.

7. The main contentions of Shri M.S. Ahluwalia, learned counsel is that the applicant even now continues on ad hoc basis on the same terms and conditions and the job is of a permanent nature. On the other hand, learned counsel

for the respondents has stated that the appointment of the applicant on ad hoc basis was only for one year and he was fully aware of the terms and conditions of his engagement when they sent Memo, dated 21.12.2001. They have stated that they had no power to give further extension of the ad hoc appointment beyond one year. They had, however, sought the approval of the concerned Department for extension of applicant's ad hoc appointment for the smooth functioning of the Cardiology Department and for patient care services. As they had not received any reply from the DOP&T, respondent No.2 could not continue the ad hoc service of the applicant beyond 4.1.2003.

8. With regard to the above facts, we note from a perusal of the relevant file submitted by learned counsel for the respondents, that an Office Order dated 31.5.2003 has been issued, terminating the ad hoc services of the applicant to the post of S.C.T w.e.f. 4.1.2003. Learned counsel for applicant has vehemently submitted that no such order has been received by the applicant and he, therefore, continues in service on ad hoc basis. In view of the reasons given above, we are unable to agree with this contention of the learned counsel for applicant. However, taking into account the relevant facts and the position in law, the respondents cannot also terminate the ad hoc appointment of the applicant by passing an Office Order dated 31.5.2003 with retrospectively effect from 4.1.2003. In other words, it was for the respondents to have taken

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timely action either to get the ad hoc appointment extended in accordance with law, rules and Instructions or terminated his services w.e.f. 4.1.2003 by passing suitable orders within time. They have failed to do this. In this view of the matter as the respondents have indeed allowed the applicant to continue working beyond one year on ad hoc basis on the same terms and conditions will be entitled to be paid the differences of pay and allowances, in accordance with the order dated 6.3.2002 for the intervening period.

9. We also note from the Departmental files submitted by the learned counsel for the respondents, that by office order dated 6.6.2003 the competent authority has appointed the applicant to the post of S.C.T on contract basis w.e.f. 4.1.2003 (AN) for 89 days, on a consolidated payment of Rs.6750/- P.M. In view of what has been stated above, the contract would take effect only from 1.6.2003. Taking into consideration the aforesaid Office order dated 31.5.2003, the contentions of the learned counsel for the applicant that he should be continued on ad hoc basis on the same terms and conditions as previously offered to him by Memo. dated 21.12.2001 is without any basis and is accordingly rejected.

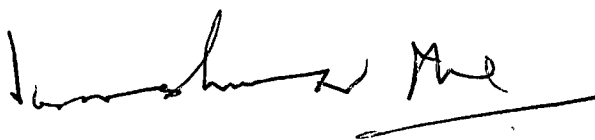
10. As mentioned above, it is settled law that an ad hoc employee does not have any enforceable right to have his services regularised. The applicant's claim for expediting the proceedings for regularisation of his services is also without any basis and accordingly fails. The applicant


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having fully accepted the offer of appointment dated 21.12.2001 as S.C.T on ad hoc basis cannot later on turn around and say that Paragraphs 5 and 6 of that Memo. should be quashed and set aside. There is force in the submissions of learned counsel for respondents that he has acquiesced in those terms and conditions at the time the offer was accepted. Accordingly the claims to the contrary are rejected.

11. In view of what we have stated above, the OA only succeeds partly to the extent that the respondents are directed to pay the differences of pay and allowances admissible to the applicant on ad hoc basis from 4.1.2003 till 31.5.2003, based on the terms and conditions mentioned in the Memo. dated 6.3.2002. This amount shall be arranged to be paid to the applicant as expeditiously as possible and in any case within one month from the date of receipt of a copy of this order. In the circumstances of the case, the interim order dated 8.7.2003 stands vacated.

No order as to costs.

  
( Sarweshwar Jha )  
Member (A)

  
( Smt. Lakshmi Swaminathan )  
Vice Chairman (J)

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