

\$~02

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2462/2017**

Date of decision: 20th March, 2017

SAROJ BALA

..... Petitioner

Through Mr. Jose P. Verghese and Mr. Dhruv
Jose, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondent

Through Mr. Sanjoy Ghose, ASC for GNCTD.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

Dr. Saroj Bala, in this writ petition, impugns the order dated 15th November, 2016, passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short), dismissing OA No.1556/2014 filed by her. The petitioner had made the following prayers before the Tribunal:-

“In view of the submissions made hereinabove, it is most respectfully prayed that this Hon’ble Tribunal may graciously be pleased to:-

(a) direct the Respondents No.1 & 2 to confirm the job of the applicants on the post where they are working as Paediatrics & Pathologist in the office of Respondent No.3 & 4 hospital and regularize the applicants on the same posts and also the Respondents be directed to fix the cadre by adopting their own procedure for regularization

without any consultation with the Respondent No.5 and the regularization must be followed from the date of their confirmation and appointment from initial date of appointment and accordingly the seniority of the applicants are also considered, in the interest of justice and fair-play;

(b) quash the impugned order F.No.9/31(16)/2012-AP.2 dated 27th February, 2014 issued by the Respondent No. 5 to the applicants do not impose on them, which are not followed by the directions of the Hon'ble High Court and not followed the instructions by the Court and the order has no legal force in case of the applicants, where the applicants name were not considered in suitability test;

(c) Pass any other and further order as this Hon'ble Court may deem fit, just and proper in the facts and circumstances of the case;”

2. It is noticeable that the petitioner did not challenge and question the vires of Rule 6 (2) of the Delhi Health Service (Allopathy) Rules, 2009 (“the Rules”). For the sake of convenience, we would like to reproduce Rule 6, which reads:-

“6. Initial Constitution of the Service

(1) All the officers appointed under the Central Health Service Rules, 1996, who are working in the Government of NCT of Delhi as on the date of publication of these rules in the official gazette and who opt to be part of this service shall be deemed to have been appointed under these rules and they shall be members of the service in the respective grades.

(2) All officers appointed on contract basis/ad-hoc basis on or before 18th December 2006, i.e. the date of issue

of the Government of Delhi's O.M. No.F.70/49/2006/H&FW/SSHFW/463-475 dated 18th December, 2006, on the basis of their suitability as assessed by the Commission and requisite educational qualifications and experience prescribed for the post and being found fit, shall be deemed to have been appointed under these Rules and assigned to the Sub-Cadre of General Duty Medical Officers or Non-teaching Specialists, as the case may be, and they shall be members of the Service at the entry level of the respective Sub-Cadre at the initial constitution stage.”

Rule 6 (1) of the Rules states that officers appointed under the Central Health Service Rules, 1996, who were working in the Government of NCT as on the date of publication of the Rules and who opt to be a part of the Delhi Health Service shall be deemed to have been appointed under the Rules. Sub-Rule (2) relates to the contractual doctors like the petitioner, who have been appointed on *ad-hoc* basis on or before 18th December, 2006. These ad-hoc contractual doctors were to be considered for appointment in the Delhi Health Service on assessment of their suitability by the Commission provided they have the requisite qualifications and experience prescribed for the post. Ad-hoc doctors had to be found fit for appointment.

3. In terms of Rule 6 (2), the petitioner cannot claim spontaneous or deemed regularization as she was appointed on contractual and ad-hoc basis. Noticeably, the posts are a Group ‘A’ posts and appointments could not have been made, except through the selection process in which the Commission, i.e. the Union Public Service Commission, was involved.

4. The petitioner like several other doctors who were appointed on contract basis prior to 18th December, 2006, had participated in the selection process as envisaged by the aforesaid Rule 6(2). Suitability of 529 doctors,

who were appointed on contractual basis, was assessed by the Assessment Board constituted by the Commission. 523 doctors were declared fit in the assessment/selection process which had continued from 27th March, 2012 to 4th April, 2012. Six Junior Specialists including the petitioner herein were declared unfit for appointment and induction in the Delhi Health Service.

5. These six doctors including the petitioner had filed OA No.3653/2012, which was allowed vide decision dated 28th May, 2013, with the direction to the authorities to once again assess their candidature for regularization keeping in view the record of their performance in the Delhi Health Service as contractual employees. Due weightage was to be given to their experience.

6. The Commission had challenged this decision in W.P. (C) No.6260/2013, ***Union Public Service Commission Vs.Dr. Akshay Bahadur & Ors.***, which was decided on 28th October, 2013, recording as under:-

“12. The first respondent Dr.Akshay Kumar, after acquiring MBBS Degree obtained a Masters Degree in Surgery in the year 1997. He completed senior residency i.e. 3 years PG experience from Maulana Azad Medical College New Delhi and joined pursuant to a contract on February 26, 2000. Till today he has worked as Incharge of the Surgery Department for 9 years and has performed more than 2000 major surgeries including Cholecystectomy, Pyelolithotomy, Thyroidectomy, Perotidectomy, Resection of half of the liver, Laparoscopic and advanced laparoscopic surgeries. Major Cancer surgeries including Breast Cancer, Cancer of Kidney, Cancer of Intestines, testicular cancer, prostate cancer and cancer of skin etc. Till date, to his credit, the mortality rate in all surgeries conducted by him is Nil. He was twice nominated for advance ‘No Scalpel Training’ to China because he had performed

maximum number of NSV cases. Respondent No.2 Dr.Beena Aggarwal, after acquiring MBBS Degree obtained a Masters Degree in Surgery from Swai Man Singh Medical College Jaipur in the year 1987. She completed senior residency i.e. 3 years PG experience from Hindu Rao Hospital Delhi and joined pursuant to a contract on May 01, 1999. Since the year 2004 she has worked as Incharge of the Surgery Department. She was the pioneer in Laparoscopic surgeries at G.G.S.G.Hospital established by the Government of NCT Delhi at North Delhi and had performed major surgeries exceeding 4000 including Cholecystectomy, Pyelolithotomy, Thyroidectomy, Parotidectomy, Laparoscopic and advanced laparoscopic surgeries. Major Cancer surgeries including Breast Cancer, Cancer of Intestines, testicular cancer and cancer of skin etc. She has also performed plastic surgeries like cleft lip. Respondent No.3 Dr.Saroj Bala, obtained MBBS Degree followed by a Post Graduate Degree in Paediatrics. Obtaining employment on contract in June 04, 2004 she has been posted at the N.C.Joshi Hospital Karol Bagh. She has been the Nursery Incharge for sick new born children. The neo-natal death rate is below the statistical death rate in India in the nurseries of which she was incharge of. She has handled thousands of sick new born children. Respondent No.4 Dr.Vimla, obtained MBBS Degree followed by a Post Graduate Degree in Pathology from King George Medical College Lucknow and took contract employment on June 07, 2004. Not a single pathological opinion given till date has been found to be wanting or a wrong analysis. Apart from working in the Path Lab senior resident teaching experience has been acquired. Respondent No.5 Dr.Narender K.Verma, as also respondent No.6 Dr.Ashish Gopal, after obtaining MBBS Degree obtained Post Graduate Degree in ENT. The former took contract employment on June 30, 2000 and the latter in July, 2000. Both of them have performed surgeries in the

field of ENT with no mortality till date. The two have acquired expertise in use of laser and cryo technique.

13. In other words the work of all six respondents is not only extensive but is rich in experience. At the cost of public exchequer the five out of six have acquired new skills with new technology being introduced. Surely, all this is relevant and must find a weightage in the criteria of evaluation.

14. But since every decision must have a backing of, if not a rule of law, a jurisprudence on the subject, we would only say that the evaluation of contract appointed doctors and specialists had to be at a point of time which was at a distance from the point as of when the evaluation for fitness had to be done i.e. suitability had to be assessed as on the date of contract employment. If today i.e. on October 28, 2013 we are required to appraise an event as of October 28, 2003, across the arch of the years, in the perspective of the distance, the events to be recollected may have a vivid place but the recollection cannot be sans what happened between October 28, 2003 and October 28, 2013.”

7. Pursuant to the aforesaid directions, the Commission constituted another Advisory Board to re-examine fitness and appointment of these six doctors, who had earlier been declared unfit. The criteria for assessment was revised in terms of the directions given by the High Court in the order dated 28th October, 2013, with 100 marks being allocated for personal talk and 100 marks for bio-data. For being declared fit, a candidate was required to score aggregate 50% marks. For allocation of marks for bio-data, the following criteria was adopted:-

“1. Work experience for a period upto 10 years or more-50 marks (5 marks for each completed year of work

experience as on 01.01.2014)

2. Essential qualifications -10 marks

3. Additional academic qualification -10 marks

4. Professional training/new skills acquired related
to the field of work -20 marks

5. Research publications and report/project
Reports/Awards/Scholarships/higher
Responsibilities -10 marks”

8. An Assessment Board, including the Chairperson and two outside experts in the relevant stream, was constituted by the Commission. Suitability of the six doctors including the petitioner herein was assessed on 21st February, 2014. The Assessment Board, as per the revised criteria mentioned above, assessed three of the doctors as fit/suitable and the petitioner and two others were assessed as unfit/unsuitable for being inducted into the Delhi Health Service.

9. The petitioner thereupon filed OA No.1556/2014, which was dismissed by the impugned order dated 15th November, 2016. The primary contention of the petitioner, which has been rejected in the impugned order, was that she should have been regularized without any further assessment as she had worked as a doctor since 2004. The said contention in our opinion has been rightly rejected in view of Rule 6 (2) and the directions passed in earlier order dated 28th October, 2013, by the High Court in W.P. (C) No. 6260/2013.

10. Counsel for the petitioner submits that Rule 6 (2) is ultra vires. However, we find that no such plea and contention was raised before the Tribunal and, therefore, this plea cannot be raised or argued before us. We

are not the Court of first instance as per the Administrative Tribunals Act, 1985. This challenge may not even be permissible in view of the orders passed in the first round of litigation.

11. Another contention raised in the writ petition, though not raised in the OA, is as to the allocation of 100 marks for personal interaction. This challenge was not made before appearing and allocation of marks by the interview board. We do not think that the said criteria can be or should be allowed to be challenged in the present case. Written examination was not to be held for the contractual doctors for induction into the service under the Recruitment Rules. Personal interaction, therefore, along with meeting the essential qualifications and requisite experience were the relevant parameters which had to be taken into consideration.

12. General insinuations have been made against the Commission that their officers were biased, but the petitioner had not made any allegation of personal bias against any member of the Assessment Board.

13. In view of the aforesaid discussion, we do not find any merit in the present writ petition and the same is dismissed. No costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

MARCH 20, 2017

NA