

Government of Jammu & Kashmir
Health & Medical Education Department
Civil Secretariat, Srinagar/Jammu.

Subject: OA No 61/1856/2021 titled Dr Anil Motta Vs UT of J&K & Ors.

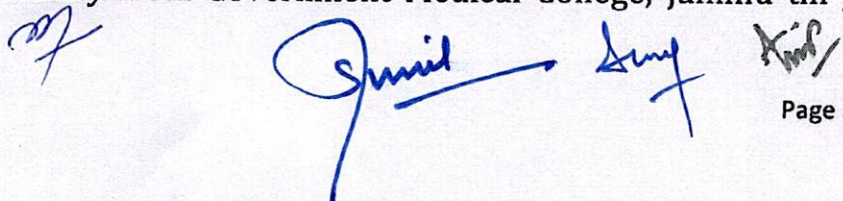
Ref. No. KRC/Med/Meg/209/110-12/2021 dated 06.01.2021 from Resident Commission, Prithviraj Road, New Delhi.

Government Order No. 286 -JK(HME) of 2022
Dated: 10 -05-2022

WHEREAS, the Resident Commissioner, J&K, New Delhi vide communication No. KRC/Med/Meg/209/110-12/2021 dated 06.01.2021 has stated that Dr. Anil Motta, S/o Mr. S.L. Motta, was appointed as Junior Resident for a period of one year in SKIMS vide Government Order No. 18-IMS of 1985 dated 28-01-1985. Thereafter, he was recommended by the J&K Public Service Commission to be appointed by the Department of Health for the post of Assistant Surgeon vide No. PSC/DR-Health-159-85 dated 11-11-1985;

AND WHEREAS, subsequently he was appointed as Assistant Surgeon in Health & Medical Education Department vide Government Order No. 857-HME of 1985 dated 16-11-1985 and was directed to report to Director Health Services, Kashmir for his posting within 21 days. However, vide Government Order No. 287 of 1985 dated 29-11-1985, it has been ordered that the doctors working in SKIMS, Srinagar will continue to work there, after joining their duties in pursuance of the Government Order No. 857, till the completion of their tenure period. There is nothing on record to show that Sh. Motta ever reported to Director Health Services, Kashmir pursuant to the Government Order No. 827. He however, continued as Junior Resident in SKIMS vide Government Order No. 11-IMS of 1986 dated 28.02.1986;

AND WHEREAS, the tenure period of Dr. Anil Motta was however, extended from time to time in SKIMS, till 16-12-1990 as reflected in his service book. Meanwhile, Dr. Anil Motta migrated from the valley and drew his leave salary from Government Medical College, Jammu till July,




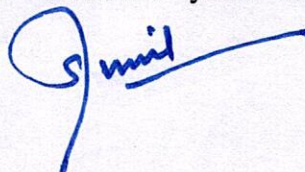
1995, and thereafter from Resident Commission's office w.e.f. August, 1995 onwards. He submitted his LPC along with an affidavit for the said purpose;

AND WHEREAS, subsequently, his salary was stopped w.e.f. March, 2018 in response to the communication received vide No. SKIMS/Per/1758/2018-523 dated 20.01.2018 from the Director, SKIMS & Ex-Officio Secretary to Government in reference to his office letter No. KRC/Accts/Mig/Med/1/5601/2017 dated 14.11.2017 wherein it was conveyed that the post of Resident at SKIMS is purely a tenure post, which does not qualify for any pensionary benefits and the Junior Residency offered by SKIMS is a tenure post for a fixed period of one year and no doctor can permanently work as Junior Resident on such tenure posts;

AND WHEREAS, Principal Resident Commissioner, J&K, New Delhi vide letter No. KRC/Med/Mig/209/1321-1322/18 dated 30.05.2018 addressed to the Director, SKIMS with a copy to Health & Medical Education Department, sought a clarification regarding joining of Dr. Anil Motta, Sr. Resident in Health and Medical Education department as Assistant Surgeon as the doctor continued to work in SKIMS till his migration. The clarification was sought to the effect that whether the said doctor is a full time employee of H&ME Department and whether he is eligible to receive migrant salary and other emoluments;

AND WHEREAS, in response, Director, SKIMS, vide his letter No. SIMS/Per/31500/2018 4525 dated 14.06.2018 clarified the status of Dr. Anil Mota, Senior Resident as under:-

- 1) "Dr. Anil Mota was selected as Junior Resident on 01.03.1985 vide Govt. Order No. 18-IMS of 1985 dated 28.01.1985 and he joined on 01.03.1985 (FN).
- 2) He was confirmed by the Public Service Commission as Assistant Surgeon in the Health & Medical Education Department vide Govt. Order No. 857-HME of 1985 dated 16.11.1985 and deputed to SKIMS to continue working at SKIMS. He continued as Junior Resident vide Govt. Order No. 11-IMS of 1986 dated 28.03.1986;
- 3) He was selected for "post-graduation course in General Medicine in SKIMS vide Govt. Order No. 155 dated 28.01.1986 and thus selected as Trainee Resident w.e.f. 28.01.1986.
- 4) During his post-graduation course, he was asked to furnish a bond to work in SKIMS for at least 7 years after completion of post-graduation.

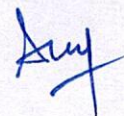


- 5) He was reverted as Junior Resident w.e.f. 1.8.1988 vide Order No. 35-IMS of 1988 dated May 6, 1988 and he continued working as that, till he passed his post-graduation examination vide notification No. Acad 21/88 dated 17.08.1988.
- 6) He was appointed as Resident vide order No. SIMS/1073 of 1988 dated Sept, 16, 1988 w.e.f. 17.08.1988 to 16.12.1988.
- 7) He was subsequently appointed as Senior Resident vide Govt. Order No. 134 IMS of 1988 dated 17.12.1988 which he continued uninterrupted till his migration from Kashmir after which as per records he drew migrant leave salary.
- 8) The pay scale of Senior Resident SKIMS in 1990 was Rs. 3150-4500 and presently it is 15600-39100+6600.

AND WHEREAS, Principal Resident Commissioner, J&K, New Delhi received another clarification from SKIMS vide No. SIMS/Per/31500/2018-6594-96 dated 19.09.2018 stating that pay scale applicable to Assistant Surgeons of Health Services, J&K, would be applicable to Dr. Anil Motta, Migrant Senior Resident w.e.f. December, 1995, i.e. the date of completion of his bond period with SKIMS. Consequently, his salary was released w.e.f. March, 2018;

AND WHEREAS, meanwhile, Principal Resident Commissioner, J&K, New Delhi received a communication vide No. F1 (125)/10/Estt/LBSH/2018-Part-file 6143 dated 14.09.2018 from Dy. Medical Superintendent/HoD, Govt. of NCT of Delhi, Lal Bahadur Shastri Hospital, Khichripur, Delhi regarding complaint against Migrant employees drawing salary from more than one Government. Enclosed with this letter was a copy of complaint filed by one Dr. B.D. Sharma, Member of a Private Audit Team in the matter. In the said complaint, the name of Dr. Renu Mahaldar, wife of Dr. Anil Motta figured, who was working at Lal Bahadur Shastri Hospital as Specialist in Anesthesia Department and was also employed with the J&K Government. Therefore, the salary of migrant doctor was kept withheld w.e.f. September, 2018;

AND WHEREAS, keeping in view the gravity of the matter and to clarify the issue of double employment of the migrant doctors, Dr. Anil Motta was asked to submit the ITRS for the last five years prior to 2018-19 vide Resident Commission's office No. KRC/Med/209/584/17 dated 02-05-2019;



AND WHEREAS, Dr. Anil Motta responded vide his application dated 21-10-2019, wherein he furnished the ITRs for the last five years and also requested for release of his salary w.e.f September, 2018. A perusal of the same revealed that almost fifty percent of the income of the migrant doctor was from business/other professions apart from his salary. Dr. Anil Motta furnished an affidavit dated 30th October, 2019 stating therein that he has not drawn any salary from any other Governmental or non-governmental source and that his income from other sources is only from the private practice/consultation. Informal queries by Resident Commission's office also revealed that Dr. Motta has been serving, all along, as consultant in private hospitals;

AND WHEREAS, accordingly, the matter was taken up with the Director, Finance, H&ME Department, J&K Government, vide this office Letter No. JKRC/Actts/209/14/2021 dated 04.05.2020 to seek the clarification regarding services of Dr. Anil Motta vis-a vis SRO-132 dated 23.04.1998 and SRO-290 dated 25.09.1998. In response, the Director Finance, H&ME Department, conveyed vide letter No. HME/Actts/46/2019-I dated 6.7.2020, that the said doctor may be treated as Assistant Surgeon (designation attached with initial appointment) instead of Senior Resident, the designation attached at SKIMS, Soura;

AND WHEREAS, there is nothing on record to substantiate that Dr. Anil Motta is an employee of Health & Medical Education. The clarification from Health & Medical Education Department regarding his repatriation back to Health & Medical Education Department after completion of his tenure posting in SKIMS is still pending. Further, no order to this effect has been issued in favour of the doctor till date. Also, there is no entry in his service book which can substantiate his joining as Assistant Surgeon in the H&ME Department. Further, whether migrant doctors, have been allowed to work full time/part time as consultants in private hospitals, would also need to be clarified;

AND WHEREAS, Principal Resident Commissioner, J&K, New Delhi vide communication dated 06.01.2021 requested to issue clarification to the status of employment of Dr. Anil Motta whether he is an employee of Health & Medical Education, whether he is a Government employee at all or

not. Further, even if he is to be treated an employee of Health & Medical Education, it may be clarified whether his salary can be released or not, in view of the fact that Dr. Anil Motta has been serving, all along, as Consultant in private hospitals, as evident from his affidavit and ITRs;

AND WHEREAS, Health & Medical Education Department vide letter No. HME/Accts/46/2019 dated 15.02.2021 requested Resident Commissioner, J&K, New Delhi to consider the services of Dr. Anil Motta in Health & Medical Education Department as Assistant Surgeon with effect from the date he joined in Government Medical College Jammu i.e. 02/1990 after his migration from the valley. However, as regards release of salary, it shall be advisable to release the same after establishing/ascertaining the facts with regard to employment/job in private hospitals and if found involved, action as warranted under rules may kindly be initiated on the merits of the case;

AND WHEREAS the applicant filed an application OA No. 61/1856/2021 titled Anil Motta V/S UT of J&K, Secretary H&ME & Ors. before the Hon'ble CAT at Jammu wherein he prayed for the following relief in the nature of writ of:-

- a) *Mandamus directing the respondents to release the unpaid salary of the petitioner from August 2018 to August 2020, i.e. till his superannuation for the post of Assistant Surgeon alongwith the interest @ 18% that accrues on the unpaid arrears.*
- b) *To accord the benefit of the time bound promotion in terms of G.O No. 595-HME of 1988 dated 22.07.1988 notionally w.e.f. 02/1990 and monetarily from 13.07.1988 i.e. when his case was forwarded by the Director Finance, H&ME Department to the Joining Resident Commissioner, Resident Commission Office, New Delhi.*
- c) *That also release all the pensionary benefits including pension, gratuity, commutation and Encashment of leave salary, with interest at the rate of not less than 12% per annum from the date of his retirement 20.08.2020.*

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d) Directing the respondents in particular Chief Pay Accounts Officer, Resident Commission, New Delhi to disburse the General Provident Fund of the petitioner to the tune of Rs. 31,57,250/- which is lying pending in his office and stands submitted by the Accounts Officer, GP Fund Migration Cell Jammu on 06.07.2021.

e) Any other order which the Hon'ble Tribunal may deem fit and proper may also be passed in favour of the applicant and against the respondents.

AND WHEREAS, the aforesaid doctor has filed OA No. 61/1856/2021 titled Dr. Anil Motta V/S UT of J&K, Secretary H&ME & Ors. passed by the Hon'ble Central Administrative Tribunal. The operative part of the interim order dated 20.12.2021 is reproduced as under:-

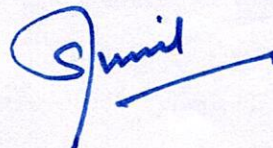
"the OA is disposed of with direction to the respondents to treat the OA as representation of the applicant and consider the case of the applicant for regularization as also release the unpaid salary of the applicant from August-2018 to August 2020, i.e till his superannuation along with interest that accrues on the unpaid arrears as per rules. Respondents are also directed to consider releasing all the pensionary benefits including pension, gratuity, commutation and encashment of leave salary along with interest as per rules. The Chief Pay & Accounts Officer, Resident Commission, New Delhi is directed to disburse the General Provident fund of the applicant to the tune of Rs 31,57,250/-. The respondents will pass a reasoned and speaking order in this regard and communicate the same to the applicant within a period of two months from the date of receipt of a certified copy of this order.

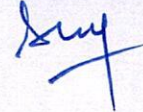
It is made clear that we have not entered into the merits of the case.

No order as to costs."

AND WHEREAS, Health & Medical Education Department vide letter No. HME-Acct/363/2021-02 dated 20.12.2021 intimated the Principal Resident Commissioner, J&K, New Delhi that as already clarified vide letter No. HME/Accts/46/2019 dated 15.02.2021, the employment of Dr. Anil Motta in H&ME Department is w.e.f. 02.1990, as per the certificate issued by the Accounts Officer, Government Medical College, Jammu and accordingly, it was requested to Principal Resident Commissioner, J&K,









New Delhi to forward the pension case of the doctor to the Accountant General, J&K in accordance with laid down rules;

Now therefore, it is hereby ordered that the employment of Dr. Anil Motta in Health & Medical Education Department be considered w.e.f. 02.1990, as per the certificate issued by the Accounts Officer, Government Medical College, Jammu and accordingly, the pension case of the doctor be forwarded by the Principal Resident Commissioner, J&K, New Delhi to the Accountant General, J&K in accordance with laid down rules. However, with regard to release of salary & other allied issues same be released after establishing/ascertaining the facts with regard to employment/job of Dr. Anil Mota in private hospitals during the period in question and if found involved, action as warranted under rules may be initiated on the merits of the case.

By order of the Government of Jammu and Kashmir.

Sd/-

(Vivek Bharadwaj) IAS

Additional Chief Secretary

Health & Medical Education Department

No. HD-Lgal/34/2022-02

Dated: 10.05.2022

Copy to the:-

1. Principal Secretary to the Hon'ble Lieutenant Governor.
2. Joint Secretary (Jammu, Kashmir & Ladakh), Ministry of Home Affairs, Government of India.
3. Principal, Resident Commissioner, J&K, New Delhi.
4. Director, SKIMS, Soura Srinagar.
5. Principal, Government Medical College, Jammu.
6. Director, Archives, Archeology & Museums, J&K.
7. Director, Health Services, Kashmir.
8. Director Finance, Health and Medical Education Department.
9. OSD to Advisor (B) to Lieutenant Governor.
10. Concerned doctor.
11. Private Secretary to Additional Chief Secretary, Health and Medical Education Department.
12. Government Order file/Stock file/ I/c Website H&ME.

(Mohammad Iqbal Lone)

**Under Secretary to the Government
Health & Medical Education Department**