



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 86/2015

New Delhi, this the 30th day of January, 2020

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)**

Dr. (Mrs.) Nirojini Mallick, Aged 56 years,
W/o Dr. A.K. Mallick,
R/o 903, Mahavir Apartments,
Plot 5A, Sector 22, Dwarka, Delhi-110077.

.. Applicant

(By Advocate: Shri Deepak Verma)

Versus

1. The Secretary,
Ministry of Labour & Employment,
Shram Shakti Bhawan, Rafi Marg,
New Delhi-110001.
2. The Director General,
Employees State Insurance Corpn. (ESIC),
Panchdeep Bhawan, CIG Road, N. Delhi-110002.
3. The Medical Commissioner,
Employees State Insurance Corpn. (ESIC),
Panchdeep Bhawan, CIG Road,
New Delhi-110002.
4. The Director,
Directorate (Medical) Delhi,
ESI Scheme, Dispensary Complex,
Tilak Vihar, New Delhi-110018.
5. The Medical Supdt.,
ESIC Model Hospital,
Bharat Nagar, Ludiana-141001.

.. Respondents

(By Advocate : Shri Akshay Thakur for
Shri Yakesh Anand)



O R D E R (ORAL)

Justice L. Narasimha Reddy, Chairman

The applicant joined the service of the Employees State Insurance Corporation (ESIC), the 2nd respondent herein, on 17.12.1990 as General Duty Medical Officer. She was promoted to the Senior Administrative Grade (SAG) on 17.12.2010, and was placed in the Pay Band-4 of Rs.37400-67000 with Grade Pay of Rs.10,000/- and her pay was fixed at Rs.44,500/-, whereas the pay of another Doctor, by name P.K. Jain, who was promoted few months subsequent to the applicant, i.e. on 27.03.2011, was fixed at Rs.46,140/-. The applicant made a representation on 19.02.2014, pointing out the anomaly in the pay structure, in comparison to Dr. P.K. Jain; and the same was forwarded to the Head Office, which, in turn, gave a reply on 15.09.2014, stating that the anomaly occurred on account of exercise of option by the junior to the applicant; and failure on the part of the applicant to exercise the option, at the relevant point of time. The same is challenged in this O.A.



2. The applicant contends that she is entitled for upgradation of emoluments. Reliance is placed upon an OM dated 04.11.1993 issued by the Department of personnel & Training (DoP&T), as well as various orders passed by this Tribunal.
3. Respondents filed counter affidavit opposing the O.A. It is stated that the applicant was very much senior to the Doctor, with whom she is comparing her salary, but the anomaly occurred due to non-exercising the option by the applicant, to avail the benefit of promotion from the date on which the next increment fall due, whereas his junior has exercised such option.
4. We heard Shri Deepak Verma, learned counsel for the applicant and Shri Akshay Thakur, proxy for Shri Yakesh Anand, learned counsel for the respondents.
5. It is not in dispute that the applicant is senior to Dr. P.K. Jain. While the applicant was appointed on 17.12.1990, Dr. Jain was appointed on 27.03.1991. Both of them were promoted in SAG, on completion of



10 years of service in the PB-4 (Rs.37400-67000) with GP Rs.10000/-.

6. There existed a facility for exercising an option by the officers, at the time of their promotion. It will be open to an officer to avail the benefit of promotion with effect from the date, on which the next increment become due. In such an event, the officer will continue to draw the same salary, as earlier, but would be entitled for the grade pay of the higher post. His pay would be stepped up with effect from the date, on which the next increment accrues to him. The result of such an exercise would be phenomenal compared to the one, where the pay scale for the promotional post is decided, with reference to the date of promotion itself.

7. If the employee fails to exercise the option or intends to get fixed the pay instantly, the benefit will be slightly less. The applicant did not choose to exercise the option and, accordingly, her salary was fixed in the SAG with effect from the date of promotion. In contrast, Dr. Jain exercised the option, to wait till the next date



of increment became due. The comparative figures marched as under:

The basic pay of the applicant as on 17.12.2010 was Rs.44,500/- and it was revised to Rs.46,140/- w.e.f. 01.07.2012, on which date her increment became due. In case of Dr. P.K. Jain, he was drawing the basic pay of Rs.42,990/- as on 27.03.2011, the date on which he was promoted; and when his increment became due, i.e. on 01.07.2011, his basic pay at once shoot up to Rs.46,140/-.

For both of them, the Grade Pay was Rs.10,000/- from the date of their promotion. The anomaly, referred to above, is the result of exercise of the option by Dr. P.K. Jain, to wait till the next increment became due and failure to do so, on the part of the applicant. Rule 1-C of FR 22, which govern the situation, reads as under:

“(1-C) Option for fixation of pay from the date of next increment on promotion and method of fixation – On promotion from one grade to another / financial upgradation under ACP, a Government servant has an option under FR 22(1)(a)(1) to get his pay fixed in the higher post either from the date of his promotion, or from date of his next increment, viz. 1st July of the year. The pay will be fixed in the following manner in the revised pay structure:-



In case the Government servant opts to get his pay fixed from his date of next increment, then, on the date of promotion, pay in the pay band shall continue unchanged, but the grade pay of the higher post will be granted. Further re-fixation will be done on the date of his next increment i.e. 1st July. On that day, he will be granted two increments: one annual increment and the second on account of promotion. While computing these two increments, basic pay prior to the date of promotion shall be taken into account. To illustrate, if the basic pay prior to the date of promotion was ₹ 100, first increment would be computed on ₹ 100 and the second on ₹ 103.

(a) In case the Government servant opts to get his pay fixed in the higher grade from the date of his promotion, he shall get his first increment to the higher grade on the next 1st July if he was promoted between 2nd July and 1st January. However, if he was promoted between 2nd January and 30th June of a particular year, he shall get his increment on 1st July of next year.”

8. It is true that in O.M. dated 04.11.1993, the instances that warrant the upgradation of the pay of the seniors are provided, as under:

- “(a) both the junior and senior officer should belong to the same cadre and the posts in which they- have been promoted or appointed should be identical and in the same cadre;
- (b) the scales of pay of the lower and higher posts in which the junior and senior officer are entitled to draw pay should be identical;
- (c) the anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments or on any other account the



above provisions will not be involved to step up the pay of senior officer.”

9. The instant case does not fall in them. The explanation to the rule is contained in para 2 of the OM, which reads as under:

- “a) where a senior proceeds on Extra Ordinary Leave which results in postponement of Date of next Increment in the lower post, consequently he starts drawing less pay than his junior in the lower grade itself. He, therefore, cannot claim pay parity on promotion even though he may be promoted earlier to the higher grade;
- (b) If a senior foregoes/refuses promotion leading to his junior being promoted/appointed to the higher post earlier, junior draws higher pay than the senior. The senior may be on deputation while junior avails of the ad-hoc promotion in the cadre. The increased pay drawn by a junior either due to ad-hoc promotion in the cadre. The increased pay drawn by a junior either, due to ad-hoc officiating/ regular service rendered in the higher posts. for periods earlier than the senior, cannot therefore, be as anomaly in strict sense of the term
- (c) If a senior joins the higher post later than the Junior for whatsoever reasons, whereby he draws less pay than the junior, in such cases senior cannot claim stepping up of pay at par with the Junior.”

10. The instant case is proximate to clause (a) of para 2. It is the voluntary act of the applicant, i.e., failure to exercise the option, that has resulted in an anomaly.



Therefore, the respondents cannot be required to upgrade the pay of the applicant. The various orders relied upon by the applicant are referable to the situation mentioned in para 1 of the O.M. dated 04.11.1993.

11. Though in O.A. No.2162/2011, an observation was made, we do not find any pointed discussion, with reference to the provisions of law.

12. We do not find any merit in the O.A. and, accordingly, the same is dismissed. There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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