



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**CP No. 14/2016
in
OA No. 2151/2014**

New Delhi, this the 13th day of March, 2020

**HON'BLE MRS. JUSTICE VIJAY LAKSHMI, MEMBER (J)
HON'BLE MR. PRADEEP KUMAR, MEMBER (A)**

Udai Veer Singh
S/o Shiv Pal Singh
ESI, Dispensary Mayur Vihar Dellhi

... Applicant

(through Sh. Sagar Saxena)

Versus

1. Mr. Deepak Kumar,
Director General,
ESIC Headquarter,
CIG Road, Panchdeep Bhawan
New Delhi-110002

2. Mr. Shankar Aggarwal
Secretary,
Union of India,
Ministry of Labour,
Shram Shakti Bhawan,
Rafi Marg, New Delhi, 110001

... Respondent/Contemnors

(through Ms. Jhun Jhun with Sh. Rishabh Nanglia
and Sh. S. K. Tripathi for Sh. Gyanendra Singh)



ORDER (ORAL)

BY HON'BLE MR. PRADEEP KUMAR, MEMBER (A):

1. The applicants herein are working as Pharmacists which carries a pay scale of Pay Band-I of Grade Pay of Rs. 2800 in the respondents ESIC. The applicants had since been granted ACP/MACP benefits and at present, they are in the Grade Pay of Rs. 5400 in Pay Band-III.
2. The applicants herein had earlier preferred the OA No. 2151/2014 which was decided vide order dated 06.05.2015 wherein following directions were passed:-

“13. In view of the above position, we allow this OA and direct the Respondent-ESIC to formulate a proper cadre structure for the Pharmacists working under them and thereafter consider the Applicants and other similarly placed persons for promotions to the higher grades so created. They shall also suitably amend the existing Recruitment Rules for the post of Pharmacists. While doing so, they may be guided by the recommendations of the Pharmacy Council of India and their own specific requirement. They shall also set in motion of the cadre structure as early as possible but in any case within a period of 4 months from the date of receipt of a copy of this order. There shall be no order as to costs.”

3. The respondents challenged these directions by filing Writ Petition No. 8082/2016 before the Hon'ble High Court of Delhi, which was dismissed as withdrawn vide order dated 09.11.2017. The order passed by the Hon'ble High Court reads as under:-



"This is a petition filed under Article 226 of the Constitution of India by the petitioners against the order dated 06.05.2015 passed by the Central Administrative Tribunal, by which the O.A. filed by the respondent was allowed.

Ms. Geeta Luthra, learned Senior Counsel, on the basis of instructions of Mr. Sahay, submits that the order passed by the Central Administrative Tribunal dated 06.05.2015 has been complied with inasmuch as three posts have been created. She further submits that promotional channels to higher grade have also been created for the respondents. In view thereof, it is contended that the writ petition is not pressed.

Learned counsel appearing for the respondents submits that after appropriate information is received, in case the respondents have any grievance, they would seek such remedy in accordance with law.

The writ petition as well as C.M.APPL33506/2016 is dismissed in view of the statement made."

4. The applicants have now preferred the instant CP, alleging that the directions of the Tribunal in Para 2 above, have not been complied with.
5. The applicants pleaded that the Pharmacy Council of India has recommended a 7 level cadre structure starting from level of Pharmacists with Pay Scale of Rs. 1640-2900 and going up to the 7th higher level of Director (Pharmacy), which is equivalent to Director of Medical Education. It is pleaded that despite orders by the Tribunal, this has not been implemented.
6. The respondents had prepared a proposal to create the post of Pharmacist (PB-I with Grade Pay of Rs. 2800) which is Entry Grade. Thereafter, Sr. Pharmacist at PB-II with Grade

Pay of Rs. 4200/- and thereafter, Chief Pharmacist at PB-II with Grade Pay of Rs. 4600/-.



The respondents prepared the recruitment rules also and the same were formally discussed with ESIC Pharmacists Association who appears to be a recognized body in ESIC who have a Pan-India operation with large number of staff. The respondents also submitted a minutes of said meeting dated 23.01.2020. In follow up, formal consent has also been sought from ESIC Pharmacist Association, however an agreement has not been reached as yet.

7. The respondents have also produced a letter dated 11.03.2020 addressed to Sh. Sunil Kumar, Pharmacist, who is the President of ESIC Pharmacists Association, seeking the acceptance of Association to the changes and the Recruitment Rules (RRs). This letter reads as under:-

"Please refer the discussions during the subject meeting in which the statutory provisions related to published draft RRs were brought to the participants of the meeting duly explaining the reasonability of the proposed RRs.

In this regard it may be recalled that ESIC Pharmacists Association was required to submit a written statement after their discussion with other members of the association along with Shri Udaiveer Singh who has separately filed a case OA 2151/2014 before Hon'ble CAT, Principal Bench for finalization of RRs. The said written submission is still awaited despite repeated personal reminders.

It may be noted that non-finalization of the said RRs is solely attributable to your association at this stage because your



association itself is obstructing the process by taking up the matter through different channels.

You are once again requested to submit your written statement as assured in the said meeting by 13th March 2020 positively else it will be presumed that you have nothing to say in this regard and process to finalize the RRS in question will be initiated.”

8. The respondents pleaded that it is in view of non-communication of consent by ESIC Pharmacist Association, that the RRs have not been finalized as yet. It is due to this that despite the efforts, posts could not be operated. However, ACP/MACP benefits have been extended to the applicants.
9. The applicant however, pleaded that non acceptance of the proposal by ESIC Pharmacists Association cannot be a cause for the ESIC Corporation not to comply with the directions given by the Tribunal in Para 2 above, and therefore, the applicant pleaded that there is a case for contempt.
10. Matter has been heard. Learned counsel Sh. Sagar Saxena represents the applicants and learned counsels Ms. Jhun Jhun with Sh. Rishabh Nanglia & and Sh. S. K. Tripathi for Sh. Gyanendra Singh represent the respondents.
11. The Tribunal's directions were to decide a cadre structure for ESIC and while doing so ESIC was to be guided by recommendations of Pharmacy Council of India as well as by the own specific requirements of ESIC.



12. It is also seen that the respondents ESIC had been proactive and they have prepared the RRs and the consent was sought from ESIC Pharmacists Association. Since, ESIC is a big organization who has an ESIC Pharmacists Association, it can be easily understood that their consent may be necessary to maintain Industrial peace and smooth functioning. It is seen from the letter dated 11.03.2020 that the said consent was sought but it is still awaited from the Association.

13. It appears that the Association is not satisfied with the three levels proposed by ESIC in keeping with their requirements and instead, they are seeking creation of more or all the 7 level of posts as was recommended by the Pharmacy Council of India.

14. The Tribunal's directions were to keep the recommendations of the Pharmacy Council of India as a guidance only and it was to be modified by ESIC to suit their specific requirements. The Tribunal had not directed to adopt the recommendations of Pharmacy Council of India.

15. In view of substantive action taken by respondents, the Tribunal is of the view that there is no justification for contempt. It is noted that it is an unworkable situation if members seek compliance of directions but their Association withholds consent to the proposed course of action by ESIC, which was undertaken in follow up of same very directions. It is

also expected of members of ESIC Pharmacists Association to pursue with their Association for communicating consent.

16. In view of forgoing, there is no case for contempt. Accordingly, the CP is closed and notices are discharged. No costs.



(Pradeep Kumar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

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