

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 2542/96

New Delhi, this the 4th day of November, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri N. Sahu, Member (A)

Dr. (Km) Lalitesh Kashyap
Medical Officer-cum-Medical Supdt.,
Ayurvedic Hospital,
Lodhi Road,
New Delhi.Applicant
(By Advocate: Shri V.K. Rao)

Vs.

Union of India through

1. Secretary (ISM & H),
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi.
2. Director General,
Health Services,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi.Respondents

(By Advocate: Shri M.K. Gupta)

O R D E R (ORAL)

Dr. Jose P. Verghese-

The petitioner in this case was working as Senior Medical Officer in the scale of Rs. 1100-1600/- and was transferred to the post of Medical Superintendent in Ayurvedic Hospital, Lodhi Road, New Delhi (in short AHLRND) w.e.f. 28.2.1981. Thereafter the said scale of pay was revised in accordance with the recommendations of the 4th Pay Commission to Rs. 3000-4500/-.

2. Subsequently, a High Power Committee detailed for the purpose of looking into the grievance of the medical personnel working in various posts, recommended inter alia the upgradation of the post of Superintendent AHLRND from the existing scale of Rs. 3000-4500 to Rs. 4500-5700 and thereafter to SAG level to Rs. 5900-6700 in

due course. This recommendation of the Tikku Committee was accepted by the Government of India on 5.12.1991 but the same was not implemented in the case of the petitioner who was holding the post of Superintendent AHLRND in the scale of Rs. 3000-4500. Aggrieved by the non-implementation of the said recommendation in the case of the petitioner while similar recommendation of the same Committee report has been implemented in case of many other Medical personnel, petitioner has come to this court by this present OA for appropriate reliefs.

(3)

3. After notice, the respondents have filed the reply stating that as per para 2 of the said order by which the respondents have accepted the recommendations of the Tikku Committee, the said sub para 2 of para 1 will come into force from the date from which the respective posts are filled in the upgraded scale and it was stated that till today the respondents have not appointed the petitioner to the said post and for this reason the petitioner is not entitled to the upgradation or upgraded scale of pay. It was also submitted by the respondents that the recruitment rules for appointment to the said post was issued by a gazette notification dated 8.11.1995 according to which the post is a selection post to be filled up by promotion failing which by transfer on deputation.

4. We have considered the arguments on both sides and perused the entire records and we were of the opinion that the respondents should have given effect to the order by which the respondents themselves have accepted the recommendations of the Tikku Committee Report by their order dated 5.12.1991 and para 1 (ii) thereof was

applicable to the post the petitioner was holding, and the same should have been implemented in the same manner the remaining part of the recommendation of the Tikku Committee in this case as well as in large other number of cases have been implemented by the respondents. We also find that the rules subsequently notified on 8.11.1995, does not indicate to have retrospective application and in the absence of the same it is presumed that the rules are to apply prospectively only and the non-selection on the basis of subsequent rules cannot be a ground for denial of the relief to the petitioner in this case.

(A)

5. We have also considered that the present post being the post of Superintendent in AHLRND, belongs to a post in the indigenous medicine and same orders have been implemented in other branches of the medicines, the respondents should also have implemented the order in the manner in which the said recommendations have been implemented in other branches of the medicines. In the absence of which the same may amount to be discrimination against the medical personnels belonging to the indigenous branch.

6. In the circumstances, we find that the petitioner has been discharging the duties of the post of Superintendent, AHLRND w.e.f. the date of the order by which the respondents have implemented the Tikku Committee Report in other cases namely 5.12.1991 till today and we are of the opinion that the petitioner is also entitled to the upgradation of the post of Superintendent in the scale of Rs. 4500-5700/- as per the said order. The ground taken by the respondents that the petitioner has not been appointed to the said post cannot be accepted, for the

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reason that the transfer made to the post of Superintendent, AHLRND will have to be considered as posting since the petitioner has discharged the duties of the said post from the said date. (5)

7. In the circumstances this OA needs to be allowed to the extent that the petitioner is entitled to the upgraded scale of Rs. 4500-5700/- w.e.f. 5.12.1991 as long as she continues to discharge the duties of the post of Superintendent, AHLRND and thereafter the SAG level scale also will be considered in accordance with the rules, as and when the petitioner becomes eligible under the rules promulgated in the year 1995. Respondents may settle the payment of arrears within three months from the date of receipt of a copy of this order and we are giving this three months time with a view to avoid further litigation and the respondents shall implement this order within the time stipulated by this court and thereafter if any further delay occurs, the amount due to the petitioner shall be paid with 9% interest thereafter, that is to say, after the expiry of three months.

8. In view of this, this OA is allowed to the extent stated above.

Narasimha
(N.Sahu)
Member (A)

naresh

Verghese
(Dr. Jose P. Verghese)
Vice-Chairman (J)