

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2672/1997
T.A.No.

195

(11)

22-8-2000
DATE OF DECISION 22-8-2000

Sh.M.B.Singh & Ors

....Petitioner

Sh.S.K.Gupta

....Advocate for the
Petitioner(s)

VERSUS

UOI & Ors

....Respondent

Sh.G.R. Nayyar

....Advocate for the
Respondent

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)
The Hon'ble Shri S.A.T.Rizvi, Member(A)

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other
Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan
Member)

Central Administrative Tribunal
Principal Bench

O.A. 2672/97

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New Delhi this the 22nd day of August, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri S.A.T. Rizvi, Member(A).

1. Dr. M.B. Singh,
S/o late Dr. Joga Singh,
R/o Flat No. 85, Sheetal
Apartments, Sector 14,
Plot No. 12,
Delhi-110085.
2. Dr. L.K. Advani,
S/o Shri Ram Swarup Tiwari,
R/o I/IV ESI Dispensary, NIA-I,
Kanpura, New Delhi-110015.
3. Dr. V.P. Kaushik,
S/o Shri Jageram Sharma,
R/o 37-A, Nai Basti, Okhla,
New Delhi-110025.
4. Dr. H.S. Bhardwaj,
S/o Shri Ramswaroop Bhardwaj,
R/o 351-B-Pkt, Dilsad Garden,
Delhi-110095.

... Applicants.

(By Advocate Shri S.K. Gupta)

Versus

Employees State Insurance Corporation through
Director General, Employees State
Insurance Corporation,
ESIC Building, Kotla Road,
New Delhi-110002.

... Respondent.

(By Advocate Shri G.R. Nayyar with Shri Moti Ram, Deputt.
official)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicants, four in number are aggrieved by the letter issued by the respondents dated 12.2.1997 rejecting their request for modification in the effective date of their promotion as Senior Ayurvedic Physician.

2. The applicants joined the respondents, that is, ^{the} Employees State Insurance Corporation (for short

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'Corporation') as Ayurvedic Physicians in the pay scale of Rs.2200-4000 (Group 'A' Junior Scale). According to them, their prospects for promotion to the higher pay scales in the Corporation were comparable to their counter-parts in the service of Central Government and other Departments. Shri S.K. Gupta, learned counsel has submitted that the Ministry of Health and Family Welfare by their letter dated 5.12.1991, had issued instructions regarding career improvement and cadre restructuring of the practitioners of the Indian System of Medicine and Homeopathy and in this regard had agreed for upgradation and creation of the posts (Annexure A-3). He has also referred to the letter of the Ministry dated 9.6.1992. In this letter, with regard to the career improvement and cadre restructuring of the posts, in question in the Ministry, it has been stated that the posts in higher grades should be functionally justified.

3. Shri S.K. Gupta, learned counsel has submitted that in other Organisations like the Municipal Corporation of Delhi and NDMC, Homeopathic, Ayurvedic and other Doctors practising in the Indian Systems of Medicine were upgraded in the higher pay scale of Rs.3000-4500 w.e.f. 5.12.1991. His contention is that the applicants, who are similarly situated ~~as other~~ persons in the MCD and NDMC, should also have been given the higher pay scale as Senior Ayurvedic Physician w.e.f. 5.12.1991 and not from 2.5.1995 as done by the respondents. He has further contended that under Section 17(2)(a) of the ESIC Regulations, the Corporation was required to adopt the pay scales and other service conditions, as applicable to similarly situated staff in

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Central Government unless the Corporation has taken a conscious decision to the contrary. He has very vehemently contended that no such decision has been taken by the respondents and has also submitted that we should call for the records to ascertain this position. He has relied on the judgement of the Delhi High Court in Lal Bahadur Singh & Ors. Vs. Union of India & Ors. (CWP No. 4060/98), decided on 26.5.2000 (copy placed on record). He has also submitted that the decision of the Tribunal with respect to Regulations governing the Corporation, in particular Section 17(2)(a) which has been dealt with by the Tribunal in Dr. K.C. Tamaria Vs. ESIC and Anr. (OA 2014/99), decided on 14.2.2000 (copy placed on record) is not applicable to the facts of the present case because that applicant had retired from service of the Corporation. In the circumstances, learned counsel for the applicants has submitted that since other similarly situated persons in MCD and NDMC have been given the higher pay scales w.e.f. 5.12.1991, a direction may be given to the respondents to upgrade the four posts of Ayurvedic Physicians to the Senior Time Scale with effect from the same date after quashing the impugned letter dated 12.2.1997.

4. We have considered the reply filed by the respondents and had also heard Shri G.R. Nayyar, learned counsel. He has relied on the judgement of the Tribunal in Dr. K.C. Tamaria's case (supra). He has submitted that the respondents have increased the promotional opportunities of Ayurvedic Doctors who are employed in the Corporation. The respondents have submitted that the applicants were approved for promotion as Senior Ayurvedic Physician on regular basis in the pay scale of Rs.3000-4500 on the

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recommendations of the DPC w.e.f. 2.5.1995, which is the date when the DPC was held. The respondents have also stated that these promotions were made after proper functional justification of creation of the posts in that grade. They have also stated that these are not time bound ^{is} promotions and, hence, no justification made out for promoting them from the back date. Learned counsel had also submitted that in the circumstances, there is no justification in the claims of the applicants for creating the posts and their selection from a retrospective date as the same can be given only after the posts were created in the higher scale and the DPC was held.

5. We do not see any force in the contentions of Shri S.K. Gupta, learned counsel for the applicants that merely because the Ministry of Health and Family Welfare had dealt with the subject of career improvement of practitioners of Indian System of Medicine in which they had suggested upgradation and creation of posts in the higher scale for Doctors practising in these systems, the applicants who are working in the Corporation were entitled to get the benefits of the higher scale w.e.f. 5.12.1991. We are also unable to agree with his contentions that the reasoning and conclusion of the Co-ordinate Bench of the Tribunal in K.C. Tamarra's case (supra) with regard to the effect of the provisions of Section 17(2)(a) of the ESIC Regulations will not be applicable to the facts of the present case. In the present case, the respondents have taken action in accordance with the decision of the Ministry of Health and Family Welfare letter dated 5.12.1991, later on by amending their Rules for creation of more posts of Senior Ayurvedic Physician. ^{also} They have stated that these

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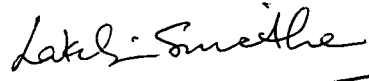
posts were created in October, 1994 and thereafter the DPC was held for promotion of eligible officers on 2.5.1995. The promotion order has thereafter been passed promoting the applicants on regular basis against these posts in the higher scale of Rs.3000-4500 from the date of recommendation of the DPC, i.e. 2.5.1995. In the circumstances of the case, there is no legal infirmity in the action taken by the respondents to justify any interference in the matter. In other words, until the respondents, that is the Corporation had taken necessary action in terms of Section 17(2)(a) of the ESIC Regulations, the benefits under the Central Government Rules will not be applicable to the applicants, who are working in the Corporation. The contention of Shri S.K. Gupta, learned counsel, that the Corporation should have amended its regulations simultaneously with the amendments made by the Central Government to the rules which are applicable to its staff in the corresponding pay scales, cannot be accepted as this is a matter for the respondents to take a view on, in the light of the decision taken by the Central Government. In the facts and circumstances of the case, the decision of the Delhi High Court in Lal Bahadur Singh's case (supra) will also not be applicable to the applicants on the contention raised by the applicants' counsel that other Organisations like MCD and NDMC have given the benefit of higher pay scales to their employees. This is so having regard to the catena of judgements of the Hon'ble Supreme Court in which the law is settled as to the applicability of the principles of equal pay for equal work in different Organisations (See. for example, State of UP Vs. J.P. Chaurasia (AIR 1989 SC 19), Supreme Court Employees Welfare Association Vs. Union of India (AIR 1990

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SC 334), Randhir Singh Vs. Union of India (AIR 1982 SC 879)
and Shyam Babu Verma & Ors. Vs. Union of India & Ors.
(1994(27) ATC 121).

6. In the result, for the reasons given above, we
find no merit in this application. The same is accordingly
dismissed. No order as to costs.


(S.A.T. Rizvi)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'