

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1042/89
T.A. No.

1989

DATE OF DECISION 3.11.1989

Shri Krishan Avtar Gupta Applicant (s)

Shri N. Safaya Advocate for the Applicant (s)

Versus

Employees State Insurance Corporation Respondent (s)

Shri D. P. Malhotra Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P. K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. I. K. Rasgotra, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

(delivered by Hon'ble Shri P.K. Kartha, V.C.)

This application has been filed by a Junior Medical Officer, Grade II working in the Employees State Insurance Corporation praying that he be given the pay-scale on the basis of the recommendations of the Fourth Pay Commission along with all allowances and benefits as had been made available to the E.S.I.C. with all consequential benefits. By way of interim relief it has been prayed that he be paid salary in the scale of pay of Rs.2200-4000 and also non-practising allowance of Rs.600/- per month instead of Rs.150/- per month. The application came up for admission on 30.10.1989 when we went through the records of the case carefully and heard the learned counsel for both the parties. In our opinion, the application can be disposed of at the admission stage itself.

2. Prior to the revision of the pay-scales of the employees of E.S.I.C. pursuant to the recommendations made by the Fourth Pay Commission, there existed two scales of pay, viz., Rs.700-1300 and Rs.650-1200. The Fourth Pay Commission recommended the merger of these two scales of pay into Rs.2200-4000 and this was accepted by the E.S.I.C. vide Memorandum dated 2.6.1987. However, in the case of the applicant and some other Junior Medical Officers, the revised pay-scale has not been implemented in view of the Special Leave Petition (Civil) Nos.7472-7491/87 filed by the E.S.I.C. in the Supreme Court against the judgement of the Tribunal dated 19.2.1987 in Dr. (Mrs.) Prem Lata Choudhari Vs. E.S.I.C. One of the points raised in that case was relating to the scale of pay of the applicants. They had been appointed on ad hoc basis in the scale of pay of Rs.650-1200 and they had claimed for the pay scale of Rs.700-1300. The Tribunal upheld their claim.

3. The question for consideration in the present proceedings is whether in view of the pendency of the Special Leave Petition filed by the respondents in the Supreme Court, the Tribunal is competent to adjudicate upon the reliefs sought by the applicant.

4. The applicant has stated that after his appointment, he filed OA-593/83 in this Tribunal praying for giving him the pay-scale of Rs.700-1300. It was heard along with other applications, including that of Dr. (Mrs.) Prem Lata Choudhari, and disposed of vide the judgement of

the Tribunal dated 19.2.1987, mentioned above.

5. The learned counsel for the respondents has opposed the admission of the present application on the ground that the issues raised by the applicant are sub judice before the Hon'ble Supreme Court. In this context, they have relied upon the interim orders passed by the Supreme Court on 14.8.1987 and 3.4.1989 in the S.L.P. filed by the respondents.

6. By order dated 14.8.1987, the Supreme Court, while directing issue of notice to the respondents, granted interim stay of the judgement of the Tribunal dated 19.2.1987 and ordered that E.S.I.C. shall not terminate the services of the respondents in the S.L.P. until further orders. By order dated 3.4.1989, Special Leave was granted and the interim order made on 14.8.1987 was made absolute with the modification that Mr. Guru Prasad, who had been directed to be reinstated by the order of the Tribunal, will be reinstated, subject to the final disposal of the appeal.

7. The effect of the interim orders passed by the Supreme Court on 14.8.1987 and 3.4.1989 is that the operation of the judgement of the Tribunal dated 19.2.1987 remains stayed during the pendency of the S.L.P. Therefore, the direction of the Tribunal in the said judgement to the effect that the applicants are entitled to the pay-scale of Rs.700-1300, also remains stayed.

8. The applicant has filed the present application without prejudice to his rights and contentions in the S.L.P. filed by the respondents. He has stated that he is one of the applicants in CMP-32877/88 which was filed in the Supreme Court in the S.L.P. mentioned above, praying for grant of scale ^{of pay 2} as per the recommendation of the Fourth Pay Commission. He further states that the said C.M.P. was

withdrawn as the Hon'ble Judges of the Supreme Court had observed that he may approach the Central Administrative Tribunal for the relief as the same was not the subject matter of the appeal. The applicant has not, however, produced a copy of the CMP-32877/88, nor has he produced a copy of the order said to have been passed by the Hon'ble Judges of the Supreme Court giving him liberty to approach this Tribunal. The respondents have denied the averments made by the applicant about the observations purported to have been made by the Hon'ble Judges of the Supreme Court.

9. To our mind, the issue whether the Junior Medical Officers, Grade II are entitled to the pay-scale of Rs.700-1300 being sub judice in the Supreme Court, it will not be open to this Tribunal to adjudicate upon ^{the} relief sought in the present application which is also virtually the same, as the two scales of Rs.700-1300 and 650-1200 have been merged into one scale of Rs.2200-4000 after the Fourth Pay Commission's recommendations have been accepted by the respondents. The effect of the stay order passed by the Supreme Court is that the judgement of this Tribunal dated 19.2.1987 which directs the respondents to pay to the petitioners salary in the scale of Rs.700-1300, remains inoperative. That being so, we cannot adjudicate upon the issue raised in the present application which is for the grant of the same pay-scale after the Fourth Pay Commission's recommendations have been accepted by the respondents. The rule of sub judice will apply to the instant case.

10. In the facts and circumstances of the case, we hold that the present application is not maintainable during the

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pendency of the S.L.P. Nos. 7472 -- . 7491/87 in the Hon'ble Supreme Court. On this ground, the application is dismissed at the admission stage itself. The parties will bear their own costs.

I.K. Rasgotra
(I.K. Rasgotra) 3/11/89
Administrative Member

P.K. Kartha
3/11/89
(P.K. Kartha)
Vice-Chairman (Judl.)