

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA 1315/91

Date of decision: 3rd April, 1992
" "

Dr. Gopal Saran ... Applicant

versus
Union of India & Ors... Respondents

For the Applicant ... Sh. B. B. Raval,
Counsel.

For the Respondents... Sh. Jog Singh,
Counsel.

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THE HON'BLE MR. T. S. OBEROI, MEMBER (J)

1. Whether reporters of the local papers may be allowed to see the Judgement? Yes.
2. To be referred to the reporters or not? Yes.

JUDGEMENT

In this OA, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant seeks the following reliefs:-

(i) To quash the impugned letter dated 28th July, 1990 (Annexure 'A') as illegal, arbitrary and violative of the Fundamental Rights of the applicant guaranteed under Articles 14, 16 and 21 of the Constitution and direct the respondents to grant the Non-Practising Allowance to the applicant with effect from 1.1.1986 (Date stipulated by the Fourth Central Pay Commission).

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(ii) Award exemplary cost for this application with a further request to grant any other relief/reliefs or pass any other order/orders as deemed fit in the light of the facts and circumstances of the case.

2. The applicant's case is that he was appointed as Deputy Assistant Director(Non-Medical), Central Research Institute,Kasauli,under the Directorate General, Health Services, Government of India, on 14.1.1970. Prior to that,he was in the service of Government of Bihar, from May,1956 onwards. He was promoted as Assistant Director(Non-Medical), in the same institute, with effect from the forenoon of 29th November,1979(Annexure A-5). The Non-Practising Allowance to Veterinary Doctors holding posts for which a Bachelor's degree in Veterinary Science was the minimum qualification, was sanctioned by the Government, vide(Annexure A-7,page 24),at the rates mentioned therein, with effect from 1.1.1986. The applicant though presently holding the post of Assistant Director(Non-Medical),claims the Non-Practising Allowance,at the admissible rate, in accordance with the Annexure A-7, on the ground that he having possessed M.V.Sc. degree at the time of joining as Deputy Assistant Director(Non-Medical), is entitled to the said Non-Practising Allowance with effect from 1.1.1986,particularly as one of the conditions(Condition No.3), contained in Annexure A-3 was that private practice of any kind whatsoever, was not allowed. His

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representation to this effect, was forwarded by the Director of the said Institute, and in the opinion of the latter (Annexure A-8), the applicant would be entitled to the Non-Practising Allowance, as he possessed the Post Graduate degree in Veterinary Science. But the applicant's representation was rejected by the Director General of Health Services on the ground that the post held by him does not require, a degree in Veterinary Science, as the essential qualification.

3. The respondents have contested the applicant's case and have also filed a counter, wherein they have taken up the stand that as the post of Assistant Director (Non-Medical), held by the applicant, does not require a degree in Veterinary Science, as the only essential qualification, he is not entitled to the Non-Practising Allowance, as claimed by him. It was also contended that the very fact that the post of Assistant Director (Non-Medical), which the applicant is presently holding, has M.Sc. degree in Bio-chemistry, with other requirements of experience etc. as the requisite qualification for the post, it goes without saying that this post does not fall within the exclusive domain of Veterinary Science, and incumbents with degrees in other disciplines could also be appointed on that post.

4. In the rejoinder filed by the applicant, his contentions, as contained in the OA, were reiterated.

5. I have also heard the learned counsel

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for both the parties, and have given careful thought to the respective contentions. I have also perused the documents placed by them on record.

6. Paragraph 3 of Ministry of Finance, Department of Expenditure, Government of India, New Delhi, Office Memorandum dated 29.9.1988 (Annexure A-7) allowing Non-Practicing Allowance may be reproduced as under:-

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The Non-Practicing Allowance at the above rates would be admissible only for those veterinary posts for which a degree in Veterinary Science is the minimum qualification."

A perusal of the above would show that the determining factor for the grant of Non-Practicing Allowance to the veterinary posts is that the minimum qualification possessed by the incumbent should be a degree in Veterinary Science. Viewing the same from the requirements of the post of Deputy Assistant Director (Non-Medical), which the applicant initially held, and from which he was promoted to the present post of Assistant Director (Non-Medical), it would be abundantly clear that for none of these posts, a degree in Veterinary Science is the exclusive requirement. In other words, for the post of Deputy Assistant Director (Non-Medical), the essential requirement was M.Sc., and in the alternative M.V.Sc degree in Bio-chemistry/ Micrology etc., and for the post of Assistant Director (Non-Medical), the essential qualification was M.Sc. degree in Bio-chemistry with 7 years research/teaching experience in medical and

public health problems etc. This essentially demonstrates that the requirement for none of these posts envisages a degree in Veterinary Science as the minimum qualification, which happens to be the criterion for allowing Non-Practicing Allowance as per Department of Expenditure Office Memorandum ibid. Moreover, to my mind, providing for the holders of some other degrees such as M.Sc. in Bio-chemistry, etc. as the educational qualification, for the post of Assistant Director (Non-Medical), presently held by the applicant, and his claiming the Non-Practicing Allowance with effect from 1.1.1986, goes to show that a degree in Veterinary Science is not a minimum requirement, exclusively.

The applicant's case may be viewed from another angle. His plea that his holding of Master's degree in Veterinary Science essentially includes the lesser degree of a Bachelor in Veterinary Science and he having been promoted from the post of Deputy Assistant Director (Non-Medical), he should be granted the Non-Practicing Allowance. Suffice to say that in case this argument is accepted it would lead to anomalous situation, as, any one holding the alternative degree, which entitles an incumbent to this post would not be granted the said allowance, and, therefore, the plea put forth by the applicant in this regard, cannot be accepted. Another plea put forth by the applicant was that one of the conditions in the letter of appointment to the post of Assistant Director (Non-Medical) (Annexure A-3) was that private practice of any kind would not be allowed, and, therefore, this should also entitle

the applicant to the Non-Practicing Allowance. I am afraid, on this ground also the grant of Non-Practicing Allowance cannot be allowed, as the condition debarring the private practice might have been stipulated, keeping other administrative aspects in view. Further, the grant of NPA, to my mind, is essentially related to the post held by the incumbent, which, in the instant case, is Asstt. Director (Non-Medical). The plea that there are three posts of Veterinary Doctors/Assistant Surgeon as mentioned in the recommendations of the Director of Institute (Annexure A-8), which the applicant has to occasionally look after, would also, to my mind, not entitle the applicant to such allowance, as occasional or casual attendance to such duties would not be enough to attract grant of such allowance, on some solitary occasions, when all the three incumbents to the said posts may be away from duty, such as, leave etc.

7. As a result of the above discussion, I am not inclined to grant the present OA which, accordingly, is dismissed, without any order as to costs.

Oberoi 3.4.92
(T.S. OBEROI)
MEMBER(J)