

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

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OA No.1415/92

Date of decision: December 11, 1992

Dr.Krishna Autar Gupta ... Applicant
versus

Employees State Insurance
Corporation through
its Director(Medical),
New Delhi. .. Respondent

CORAM: THE HON'BLE SH.P.C.JAIN, MEMBER(A)
THE HON'BLE SH.J.P.SHARMA, MEMBER(J)

For the Applicant .. Sh.N.Safaya, Counsel.
For the Respondents .. Sh.G.R.Nayyar, Counsel.

Judgement

(Delivered by Hon'ble Sh.P.C.Jain, Member(A))

The applicant was appointed in the Employees State Insurance Corporation as Medical Officer Grade-II on an ad hoc basis for a period of 90 days and he contends that his appointment was being renewed continuously without break. He was appointed on a fixed salary of Rs.650 per month in the grade of Rs.650-1200. He filed OA No.593/86 in the Central Administrative Tribunal which was disposed of by a common judgement in T-492/86 on 19.2.1987. The question raised therein primarily was as to the legality and propriety of the Employees State Insurance Corporation appointing Junior Insurance Medical Officers Grade II on an ad hoc basis for a period

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of 90 days at a time for a maximum period of 9 months with a break of a day or two at the end of each 90 days period and the validity of the termination of their services while the vacancies exist. The claim of the applicants therein for the scale of Rs.700-1300 which was allowed to regular ~~Junior~~ Insurance Medical Officer Grade II was also considered. In the aforesaid judgement dated 19.2.87, the Tribunal held that the applicants therein would be entitled to the scale of Rs.700-1300 and allowances admissible thereon and also to the same benefits of leave, maternity, increment on completion of one year and benefit of their service conditions. It was also held that the applicants shall be continued in service and their cases shall be referred to the UPSC and upon consultation with the UPSC, they shall be continued in service in the light of the advice of the UPSC. Respondents in the above case filed S.L.P No.7491/87 in the Supreme Court and on 14.8.87 following orders were passed:-

" Issue notice, pending notice there shall be interim stay but the petitioner shall not terminate the services of the respondents until further orders".

The S.L.P. was admitted on 3.4.1989. The applicant thus continued in service in pursuance of the above

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orders of the Supreme Court.

2. By an order passed on 21.5.90 (Office Order No.27 of 1990, at page 43 of the paper-book), the ESIC sanctioned a scale of Rs.2000-60-2300-EB-75-3200-100-3500 to the applicant along with 10 other Doctors who were similarly appointed on ad hoc basis with effect from their respective dates of such appointment. Annual increments from the date following completion of one year from the date of initial appointment, subject to the relevant orders, were also allowed. It was further stated that these ^{Insurance} ad hoc/Medical Officers placed in Group 'B' pay scale will be outside the ESIC medical cadre and till they continue as such equal number of posts of IMO Grade-II in the scale of Rs.2200-75-2800-EB-100-4000 (Group A) in ESIC Medical Cadre will be kept outside the Medical Cadre of ESIC. These orders were passed without prejudice to the Special Leave Petition filed by the Corporation against Tribunal's order dated 19.2.87 already referred to above.

3. It may be stated here that before the above Office Order dated 21.5.90 was issued, the applicant filed OA No.1042/89 praying for that he be given the pay scale on the basis of the recommendations of the Fourth Pay Commission

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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, he had prayed that he be paid salary in the scale of Rs.2200-4000 and also non-practising allowance of Rs.600/- per month instead of Rs.150/- per month. By the judgement dated 3.11.89, the Tribunal held that in view of 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 OA which was virtually the same, as the two scales of Rs.700-1300 and Rs.650-1200 have been merged into ^{one} ~~one~~ scale of Rs.2200-4000 after the acceptance of the recommendations of the Fourth Pay Commission. Further, it was also observed that " 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 Commission's recommendations have been accepted by the respondents. The rule

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of sub-judice will apply to the instant case".

4. Vacancies of Insurance Medical Officer Grade-II were advertised by the respondents and the applicant also applied for the same without prejudice to his rights in the appeal pending in the Supreme Court. On selection, he was offered appointment vide Memorandum dated 7.5.92(page 45 of the paperbook). It is clearly stated in this offer of appointment to the applicant that he will be allowed to draw an initial pay of Rs.2200/- only in the scale of Rs.2200-4000 plus Non-practising Allowance at the usual rate as admissible to analogous posts in the Central Health Services. The appointment was to be on temporary basis for the present and the applicant was to be on probation for a period of two years. The applicant accepted the aforesaid offer of appointment vide letter dated 11.5.92(at page 57 of the paperbook).

5. In this OA under Section 19 of the Administrative Tribunals Act,1985, the applicant has assailed the alleged reduction of his pay from Rs.2300 in the scale of Rs.2000-3500 to Rs.2200 in the scale of Rs.2200-4000. It is also contended by him that he was also due to

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cross Efficiency Bar on 1.4.92 in the scale of Rs.2000-3500 which would raise his pay from Rs.2300 to Rs.2375 and this should be taken as the basis for fixing his pay in the scale of Rs.2200-4000.

6. The respondents have contested the OA by filing their reply to which the applicant has also filed a rejoinder. As the pleadings in this case were complete, it was decided with the consent of the parties to finally dispose of this OA at the admission stage itself. We have accordingly perused the material on record and also heard the learned counsel for the parties.

7. The main contention of the applicant is that as he has been continuously working, ^{C. his} ~~as~~ ^{C. under} appointed in pursuance of the offer of appointment dated 7.5.92 in the scale of Rs.2200-4000 ^{C.} ~~it~~ does not amount to or cannot be treated as fresh appointment but this is an offer which is subject to the outcome of the appeal pending in the Supreme Court. It is also contended that without prejudice to his claim to pay in the scale of Rs.2200-4000 from his initial date of appointment, he is entitled to protection

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of his basic salary in the grade of Rs.2000-3500 and, therefore, his pay on appointment in the scale of Rs.2200-4000 should be fixed on the basis of his pay, after crossing the EB with effect from 1.4.92 in the scale of Rs.2000-3500. The stand taken by the respondents is that the offer made to the applicant for appointment in the scale of Rs.2200-4000 is for a fresh appointment which has been unconditionally accepted by the applicant, and that the offer clearly stated that his pay will be fixed at the initial stage of Rs.2200 in the aforesaid scale of pay and, therefore, the applicant is not entitled to the relief prayed for.

8. We have given our careful consideration to the rival contentions of the parties. The material on record, as ~~we have~~ ^{we} already referred to above, ^{shows that} sanction of the scale of Rs.2000-3500 to the applicant with effect from the initial date of appointment is in Group 'B' post scale of pay while his fresh appointment in the scale of Rs.2200-4000 is in a Group 'A' post scale of pay. Further, his appointment on the aforesaid Group 'A' post of the scale to that post is in pursuance of a fresh process of selection. The

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applicant has not placed on record or cited any rule under which the benefit of increments drawn by him in the lower post in Group 'B' scale has to be allowed to him on his initial appointment in the scale of a Group 'A' post. The fact remains that the claim of the applicant to pay in the pay scale for the Group 'A' post from the initial date of appointment is still sub-judice before the Supreme Court. Unless his claim is allowed finally by the Supreme Court, he cannot get the relief prayed for in this OA. Thus, at this stage, the OA is devoid of merit and is accordingly dismissed, leaving the parties to bear their own costs. Needless to state that the interim order passed on 28.5.92 automatically stands vacated and if the applicant has drawn any excess pay under the protection of this interim order, the same can be adjusted by the respondents from his future salary. If the applicant succeeds in his claim pending with the Supreme Court, he may work out his rights in the matter of pay fixation in the scale of Rs.2200-4000 and approach the Tribunal in accordance with law, if so advised.

J.P. Sharma
(J.P. SHARMA)
MEMBER(J)

P.C. Jain
(P.C. JAIN)
MEMBER(A)