

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

(149)

O.A.NO. 358/90**~~T.A.NO.~~**DATE OF DECISION 3.01.1997Dr. Uma Shankar PetitionerMr. P. H. Pathak Advocate for the Petitioner [s]
VersusUnion of India & Ors. RespondentMr. Akil Kureshi Advocate for the Respondent [s]**CORAM**

The Hon'ble Mr. K. Ramamoorthy : Member (A)

The Hon'ble Mr. A. K. Mishra : Member (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ?
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

No

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Dr. Uma Shankar
Medical Officer
D.2/9 Postal Complex
Shahibaug
Ahmedabad 380 004.

..... Applicant

(Advocate : Mr. P. H. Pathak)

VERSUS

1) Union of India
through:
Director General Posts
Dak Bhavan
New Delhi

2) Chief Postmaster General
Gujarat Circle,
Near Akashwani
Ashram Road,
Ahmedabad.

..... Respondents

(Advocate : Mr. Akil Kureshi)

J U D G E M E N T

In

OA/358/90

Date : 3.01.1997

Per : Hon'ble Shri K. Ramamoorthy : Member (A)

The application has been filed seeking pay-benefits for ~~the~~ holding the Incharge post by the applicant which post bore a higher salary scale.

2) The applicant has been appointed as a Medical-Officer in the grade (Rs. 700-1300) as per memo dated 4th June, 1985 (Annexure A/8). The applicant was put incharge of the dispensary as per details given below :-

A) 27.6.1985 to 29.3.87 - 8 months approx.

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B) 3.5.86 to 10.6.86 -EL - 1 month approx.

C) 23.8.86 till today 30.11.88 - 2 yrs.2months
7 days.

3) It is the contention of the applicant that he was entitled to higher emoluments under FR.22C. He has represented in the matter, however, the representation was rejected. Hence this application.

4) The respondent-deptt. on the other hand had stated that the applicant had been put incharge purely on local basis as a temporary arrangement and this was a permissible arrangement as per D.G.P & T, New Delhi letter dated 2.5.1978 (Annexure A/3). The applicant was not the senior most in his cadre. Therefore no claim for such a benefit could be asked for by the applicant.

5) The learned counsel for the applicant and counsel for the respondents were heard. It is the applicant's case that having discharged higher responsibilities involved in the post of Incharge, higher emoluments could not be denied. The learned counsel for the applicant has cited the case decided by the Supreme Court as reported in Supreme Court Almanac 1996 (7) scale, para:630 in the case of Judhister Mohanty Vs. State of Orrisa & Ors.

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6) In this case the Apex court has remarked as under :-

" It is a settled position that if the Government, for want of candidate, directs an officer in the lower cadre to perform the duties of the post in the higher cadre, during the period, necessarily, the incumbent would be entitled to the payment of the salary attached to the post if the incumbent had performed the duties in that post. Similarly where concerned officer is on promotion from lower cadre to the higher cadre, though on ad hoc or even temporary basis, the incumbent would be entitled to the payment of the salary attached to the post for the period of his discharging the duty in that post. "

7) The applicant had further stated that non grant of such scale is violation of article 14 and 16A of the Constitution of India as equal pay will have to be given for equal work.

8) The learned counsel for the respondents on the other hand had stated that claim of the applicant was untenable. The applicant is a member of a regular cadre of C.G.H.S. and one of the junior most employee and not even senior most within the station even.

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Asking the applicant to hold the post of Incharge was purely an interim and short term arrangement. When the post of Incharge Medical officer was upgraded, it has been envisaged that post can be handled by the officer in the lower scale pay also. It is found specifically mentioned in the order dated 2.5.1978 (Annexure A/3) filed by the applicant himself. The learned counsel for the respondent-deptt. has also rightly pointed out that an identical matter had come for consideration before the Tribunal vide OA No:94/91 with MA/20/93 and this Tribunal has disallowed this petition, by order dated 9.3.1995, wherein detailed reasoning has been given as to why the applicant was not entitled for the higher scale.

9) The Tribunal agrees with the learned counsel for the respondents that this case also stand on all ^{four} forces with OA No:94/91 (Supra). As regards the Supreme Court's judgment referred to by the applicant's counsel, it was applicable to particular facts of the case. The question of infringement of article 14 and 16 did not arise, as while creating upgraded post specific stipulation had been made that the post can be handled by an officer in the lower grade in CGHS also.

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10) In view of the above, the application is
repealed.
disallowed. There will however, be no order as to
costs.



(A.K. Mishra)
Member (J)



(K. Ramamoorthy)
Member (A)

npa