

# CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

**O.A. NO.** 94/1991 WITH M.A. NO.20/1993

**DATE OF DECISION** 9-3-1995

Dr. P.C. Goklani Petitioner

Party-in-Person Advocate for the Petitioner (s)

Versus

Union of India & Another Respondent

Mr. Akil Kureshi Advocate for the Respondent (s)

## CORAM

The Hon'ble Mr. N.G. Patel, Vice Chairman

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

## 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. P.C. Goklani,  
Medical Officer,  
P & T Dispensary,  
Maninagar,  
Residing at: Gr. No.1,  
Postal Officer's Quarters,  
Shahibaug,  
Ahmedabad.

..... Applicant

(Party - in - Person)

Versus

1. Union of India,  
Through Director General,  
Department of Posts,  
Dak Bhavan,  
New Delhi - 110 001.
2. Chief Post Master General,  
Gujarat Circle,  
Ahmedabad - 380 009.

..... Respondents

(Advocate : Mr. Akil Kureshi)

J U D G M E N T

O.A. NO.94/1991 WITH M.A. NO.20/1993

Date : 9-3-1995

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

This application has been filed for grant of benefits of higher pay as the applicant had been holding the post with higher pay from 3-12-83 upto 26-8-86 and, even thereafter, as he was entitled to the benefit of higher scale upto 30-11-88 under next below Rule F.R. 30 as some Officers junior to him were holding charge of the higher post.

2. The facts of the case are as follows. The services of the applicant as Junior Medical Officer were regularised by the UPSC in 1979 and the applicant was posted as Medical Officer in the scale of pay of Rs.700-1300 in

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1983 at Lal Darwaja Dispensary in Ahmedabad. He was also given the charge of the Medical Officer, In-charge. However, the post of In-charge Medical Officer was upgraded to the scale of Rs.1100-1600 in 1978. As the applicant was given the charge of this post, the applicant claims that he had a right to get the benefit of the higher scale. In 1986, this charge was taken away from the applicant and he was continued as Junior Medical Officer in the very same dispensary when a regular incumbent entitled to the scale of Rs.1100-1600 was formally posted in that dispensary. The applicant, however, has contended that in another dispensary in Usmanpura, an Officer junior to him was allowed to continue to hold the charge of higher post of Medical Officer and on that analogy, the applicant claims that he should get the benefit of next below Rule.

3. In their reply, the respondents have stated that while it is true that the post of In-charge Medical Officer at Lal Darwaja dispensary where the applicant was serving had been upgraded in 1978, due to non-availability of incumbents in that scale to serve in the circle, the charge was given to the seniormost Junior Medical Officer available within the dispensary. This practice was prevalent in the case of other dispensaries also where the seniormost Junior Medical Officer was asked to hold the charge till a regular incumbent became available. This contingency was also specifically provided for when the posts were upgraded and Annexure A/2 clearly stipulates that if Junior Medical Officer is posted against any of these posts, he shall not have any claim for pay in the higher grade. The Medical Officers are either appointed to this

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higher grade or get this grade by promotion. It is not the claim of the applicant at any stage that he had been selected for appointment to the post of Medical Officer in the grade of Rs.1100-1600 or that he had been formally promoted to that grade by virtue of seniority.

4. The main question for consideration before the Tribunal is the question as to whether the applicant was entitled to the provisions contained in F.R. 22-C in view of the fact that he was asked to hold the charge of the Medical Officer In-charge of the dispensary which post carries the scale of Rs.1100-1600. While the applicant relied his claim on the Ministry of Personnel O.M. dated 10-4-1987, the respondents' contention is based on the fact that such a claim can arise only when an Officer is formally promoted or appointed to the higher post. The applicant had made a representation in this regard, the department while rejecting the request has also clarified the position by a speaking order as produced at A/11. Incidentally, this speaking order covers the case of another Medical Officer also who also claimed similar benefits.

5. The applicant is an Officer of the C.H.S. which cadre has definitely laid down recruitment rules for appointments in each one of the grades within the service either by direct appointment or through promotion. It is also a well known fact that in a large cadre spread all over the country, vacancies are bound to arise from time to time and local officiating arrangements have to be made to look after the function of the incumbents of the vacant

posts. In the present case, it is clear that the post of Medical Officer in Lal Darwaja though upgraded could not immediately be manned by regular Officer in that grade. When the Scheme itself provides, as is shown in Annexure A/2 that in case of temporary charges, the Officers posted to hold the charge on a temporary basis will continue to draw their own scale only, such an arrangement cannot be faulted. If the benefits of the higher scale were to be granted, it would have necessarily to go then by transfer of the seniormost Medical Officer within the circle which might mean frequent temporary transfers. To avoid such a transfer, if the department has resorted to the provision of handing over the charge to the seniormost Medical Officer available within the dispensary itself, it is a decision taken due to administrative contingency. Grant of a higher scale of post to such an Officer who is available on the spot merely due to fortuitous circumstances cannot also be defended. It is true that such arrangements by its nature should be basically temporary in nature which cannot be said to be the case when, as in the present case, the applicant has been holding the charge for more than two years. However, it is also significant that the Officer was given this charge specifically with this understanding, as is seen by the letter at Annexure A/2. It is also significant that he had chosen to represent against this matter only in 1988 long after he had been relieved from the charge of the In-charge position. This Tribunal, therefore, upholds the contention of the respondents that for this specific arrangements made in his case, the benefit of F.R. 22-C need not be given



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6. His contention for claiming the benefits of higher pay on next below Rule again is not tenable since there has been no question of any reversion. In fact, the applicant continued to work in the same dispensary till the appointment of a Senior Officer appointed in the higher scale in regard to whose appointment or seniority, the applicant has no dispute whatsoever. On a regular incumbent being available, the withdrawal of the charge from the Officer, and continuing him in the scale of post of his appointment does not amount to punitive reversion.


7. Under the very circumstances whereby the applicant had earlier the benefit of being the In-charge Medical Officer, a situation had arisen in another dispensary whereby the seniormost Officer within that dispensary was given charge of the In-charge Medical Officer's position. That also being a local arrangement and that also being a case where the Officer was not entitled to the benefit of higher pay, the question of the applicant claiming the benefit of next below Rule does not arise, even if that Officer is junior to the applicant. The applicant's claim that he could have been transferred to a dispensary whereby by virtue of seniority he could have got the benefit of In-chargeship also is not a tenable argument since in the first place, the transfer of a Junior Medical Officer from one place to another is entirely within the discretion of the appointing authority. Moreover, the applicant's own appointment in the first place in Lal Darwaja has not been made on such consideration of his being the seniormost Medical Officer, entitled to hold the post of In-charge either.


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8. The applicant's claim of getting the benefits of higher pay on the plea of equal pay for equal work does not survive since the appointment to that post is purely a transitional arrangement and he was only asked to look after the duties of the Medical Officer In-charge.

9. For the reasons stated above, the Tribunal does not find anything wrong in the order passed by the Director (Medical) on 29-9-89 vide Annexure A/11. The petition is disallowed. No order as to costs. M.A. No.20/1993 filed by the applicant is also disallowed.

  
(K. Ramamoorthy)  
Member (A)

  
(N.B. Patel)  
Vice Chairman

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