

Central Administrative Tribunal
Ernakulam Bench

Date of decision: 12.1.90

Present

Hon'ble Shri N.V. Krishnan, Administrative Member

Original Application No.50/89

Molly Mammen

: Applicant

Vs.

1. Union of India, rep. by
Secretary,
Home Department,
New Delhi.
2. The Administrator,
Union Territory of Lakshadweep,
Kavaratti.
3. The Secretary (Administration),
Administration of the Union Territory,
Lakshadweep, Kavaratti.

M/s CP Damodaran Nayar &
D. Krishna Prasad

: Counsel for
Applicant

Mr. PV Madhavan Nambiar, SCGSC

: Counsel for respondents (1&2)

O R D E R

Hon'ble Shri N.V. Krishnan, Administrative Member

This applicant seeks (i) a direction to the second respondent, the Administrator, Union Territory of Lakshadweep (Respondent-2) to fix her pay on the post of Theatre Trained Nurse (Head Nurse) w.e.f. 6.7.82 and (ii) to quash the order dated 16.3.88 (Annexure-VI) issued by the third respondent, the Secretary (Administration) of the Union Territory of Lakshadweep (Respondent-3), rejecting her representation dated 4.2.88 against the pay fixed by proceedings F.No.62/3/84-DMHS dated 1.8.87. The events leading

to this application can be briefly noticed.

2.1 The applicant was working as a Staff Nurse when by an order of Respondent-2 dated 6.7.82, she was promoted as Theatre Trained Nurse at the Indira Gandhi Hospital, Kavaratti. She was, however, reverted as Staff Nurse by a subsequent order dated 6.1.83. She challenged this order in OP 362/83 before the High Court of Kerala and it was quashed by the judgment dated 2.4.84.

2.2 In the meanwhile, the post of Theatre Trained Nurse itself was transferred by an order dated 26.3.84 from Indira Gandhi Hospital, Kavaratty to the Govt. Hospital at Minicoy.

2.3 The applicant's case was considered in the light of the judgment in OP 362/83. By his order dated 15.6.84, the second respondent cancelled the earlier order dated 6.1.83 reverting her to the post of Staff Nurse and she was simultaneously transferred to the Govt. Hospital at Minicoy Island as Theatre Trained Nurse, as the post stood transferred to that hospital.

2.4 This order of transfer was successfully challenged in OP 5609/84 before a Single Judge in the High Court

of Kerala. Against his judgment, Respondent-2 filed Writ Appeal No.37/86 which was allowed by the Division Bench. The earlier order of the learned Single Judge was set aside and the Division Bench declined to interfere with the impugned order of transfer. At the same time, the appellant (Respondent-2) was directed to reconsider the questions in regard to the posting of Surgeons to Minicoy and Kavaratti and in regard to the transfer retransfer of the post of Theatre Trained Nurse, taking into consideration public interest and also to re-examine the question of giving a proper posting to the petitioner (the present applicant) consistent with public interest. Pending such reconsideration, for which period of three months was allowed, the Court also directed that the applicant shall not be disturbed from Kavaratti where she was then functioning.

2.5 In pursuance of the aforesaid direction, the matter was reconsidered by Respondent-2. Taking into account the prevailing circumstances, ^{he} re-transferred the post of Theatre Trained Nurse by his order dated 3.9.86 (Annexure-1) from the Govt. Hospital, Minicoy to the

Indira Gandhi Hospital, Kavaratti. By the same order, he also appointed the applicant to that post.

2.6 Then, the applicant, who was under orders of transfer as Theatre Trained Nurse (Head Nurse) at Govt. Hospital, Minicoy since 15.6.84 but had not proceeded to take over that charge, ~~she~~ took charge on 17.9.86 as Theatre Trained Nurse at the Indira Gandhi Hospital, Kavaratti.

2.7 Her grievance is that, while she is entitled to draw pay as Theatre Trained Nurse from 6.1.83 - the date she was wrongly reverted to the post of Staff Nurse but quashed by the High Court - to 16.9.86, the date preceding ^{the date} she assumed charge again as Theatre Trained Nurse at Kavaratty, she has been paid only as a Staff Nurse on the lower scale. By the impugned Annexure-VI order, Respondent-3 has turned down her representation in this regard stating that the pay fixation order issued on 1.8.87 was in order. Hence, she claims proper pay fixation.

3. The Respondents have averred in their reply that the applicant is not entitled to any relief. In the circumstances mentioned above, it is contended that after

she was transferred to the Govt. Hospital, Minicoy as Theatre Trained Nurse by an order dated 15.6.84, she was not entitled to pay on that post at the Indira Gandhi Hospital, Kavaratti, as that post did not exist at the latter hospital. She continued during this period only as a Staff Nurse, until she again took over after that post was retransferred to this place charge as Theatre Trained Nurse at Kavaratty on 17.9.86/

Hence, for this period she can be paid only as Staff Nurse. Respondents, further, state that in view of the judgment dated 2nd April, 84 of the High Court of Kerala in OP 362/83, the applicant has been paid salary as Theatre Trained Nurse from 6.1.83 to 16.6.84.

4. I have seen the records of the case carefully and also heard the arguments advanced by the learned counsel. Apparently, there is some confusion in the mind of the applicant as to the period for which she has not been paid salary as Theatre Trained Nurse.

The first relief sought by her is that Respondent-2 be directed to fix her pay as Theatre Trained Nurse (Head Nurse) w.e.f. 6.7.82 onwards. Such a prayer

cannot be sustained for the following ~~xx~~ obvious reasons:-

(i) The applicant was promoted as Theatre Trained Nurse from 6.7.82 only and was reverted by the order dated 6.1.83. There is no averment to the effect that during this period ^{too} she was not paid on the higher pay scale applicable to the Theatre Trained Nurse (Head Nurse).

(ii) Her ~~xxx~~ reversion by the order dated 6.1.83 was quashed by the High Court of Kerala in OP NO.362/83 by a judgment dated 2.4.84. Respondent-2 has informed her by the OM dated 23.4.87 (Annexure-2) that she will be paid pay of the post of Theatre Trained Nurse from 7.1.83 to 15.6.84, ie, from the date of reversion till she was again promoted as Theatre Trained Nurse and transferred to the Government Hospital, Minicoy. In para 7 of the reply affidavit also it is stated she has been paid the salary of Theatre Trained Nurse for this past period.

5. Therefore, the only question for consideration is whether the applicant is entitled to be paid the salary of Theatre Trained Nurse from 16.6.84 (ie, a date of ~~xxxxxx~~ of her transfer to the Govt.

q Hospital, Minicoy where that post had been transferred)

upto 16.9.86, ie, the date ^{prior to the date} she took over as Theatre

Trained Nurse in the Indira Gandhi Hospital, Kavaratti.

6. The learned counsel for the applicant contends that it was only once that she was reverted from the post of Theatre Trained Nurse by the order dated 6.1.83, but that order was quashed by the High Court of Kerala. Therefore, she should always be deemed to have the status of a Theatre Trained Nurse and, therefore, she is entitled to the pay of that ^{post} even for the above period.

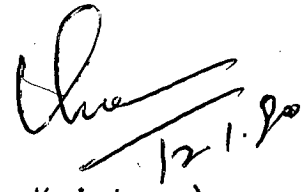
7. This contention has to be repelled because she would have got the pay on this higher post had she joined against this post at the Government Hospital, at Minicoy, to which Hospital the post had been transferred in March, 84. Even though there was an order dated 15.6.84 transferring her to the Govt. Hospital, Minicoy on that post, she refused to comply with that direction and continued at the Indira Gandhi Hospital, Kavaratty, where such a post did not exist. The only post which existed there and against which she worked

[illegible]

8. In the result, I do not find any substance in this application which is dismissed. There will be, however, a direction by way of abundant caution, to the third respondent to pay her salary for the period ~~xxx~~

from 7.1.83 to 15.6.84 as a Theatre Trained Nurse,
less the amount already paid.

9. The application is disposed accordingly and
there will be no order as to costs.



(N.V. Krishnan)
Administrative Member
12.1.90