

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

O.A.No.497/04

Thursday this the 12th day of August 2004

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN  
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER

Dr.S.S.Mishra,  
S/o.K.N.Mishra,  
Senior Ayurvedic Physician,  
Indira Gandhi Hospital,  
Kavaratti, Union Territory of Lakshadweep.      Applicant

(By Advocate Mr. P. V. Mohanan)

## Versus

1. Union of India represented by  
Secretary, Ministry of Health and  
Family Welfare, Department of Indian  
System of Medicine And Homeopathy,  
New Delhi.
2. The Administrator,  
Union Territory of Lakshadweep,  
Kavaratti, Union Territory of  
Lakshadweep. Respondents

(By Advocate Mr.S.Radhakrishnan [R2] & Mr.C.Rajendran,SCGSC [R1])

This application having been heard on 12th August 2004 the Tribunal on the same day delivered the following :

O R D E R

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

The applicant a Post Graduate in Ayurveda and a Diploma holder in Yoga was recruited as an Ayurvedic Physician in the then pay scale of Rs.650-1200 on 28.12.1982 in accordance with the provisions of the Recruitment Rules notified by the Ministry of Health and Family Welfare Notification No.Z.28015/4/78-AE dated 16.1.1979. Consequent on the implementation of the IVth Central Pay Commission report the post of Ayurvedic Physician group B was upgraded as group A with effect from 1.1.1986 in the scale of pay of Rs.2200-4000 and the applicant was brought to that scale of pay with effect from 1.1.1986. Subsequently the

applicant was promoted to the post of Senior Ayurvedic Physician in the scale of Rs.3000-4500 with effect from 1.1.1991 by order dated 4.3.1992. The claim of the applicant is that he was entitled to be promoted to the post of Chief Ayurvedic Physician in the pay scale of Rs.3700-5000 (pre-revised) with effect from 1.1.1996. All the doctors working in the Union Territory of Lakshadweep in the Modern System of Medicine are included in the Central Health Service and are getting the pay and allowances attached to that service. However, the post of Ayurvedic Physician in the Lakshadweep have not been included in the Central Government Health Scheme. The applicant is aggrieved by the fact that the post of the Ayurvedic Physician in Lakshadweep administration is not included in the Central Government Health Scheme and he is not granted the benefits of insitu promotion on par with those belonging to Central Government Health Scheme. He approached this Tribunal filing OA 1348/00. The OA was disposed of permitting the applicant to make a representation regarding the date of effect of his insitu promotion to the 2nd respondent within a month and directing the 2nd respondent to consider the same in the light of rules and instructions on the subject and to give an appropriate reply within three months. It was also observed that regarding the inclusion of the post of Senior Ayurvedic Physician and Ayurvedic Physician in Lakshadweep administration in the cadre of CGHS, ISM&H a direction was given to the 1st respondent to finalise the amendment to the Recruitment Rules referred to in Annexure R-2 (c). Pursuant to the above direction contained in the order of the Tribunal the applicant submitted a representation claiming the benefit of insitu promotion with effect from 1.1.1996 and in reply to that

the 2nd respondent issued the impugned order telling him that the order in regard to grant of insitu promotion to the grade of Chief Ayurvedic Physician in the scale Rs.12000-16500 having been issued on 16.11.2000 without any retrospective effect the applicant was not entitled to the insitu promotion with effect from an earlier date. Aggrieved by that the applicant has filed this application seeking to set aside Annexure A-8 order in so far as it denies promotion to the applicant in the scale Rs.12000-16500 with effect from 1.1.1996 and for a direction to the respondents to promote the applicant to the grade of Rs.12000-16500 with effect from 1.1.1996 with all consequential benefits.

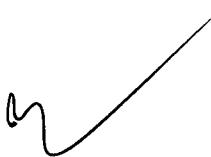
2. Shri.P.V.Mohanan, learned counsel of the applicant, taking us through the averments in the application stated that had the respondents taken action at appropriate time immediately after the recommendation of the Vth Central Pay Commission, the insitu promotion could have been given to the applicant with effect from 1.1.1996 and just for the reason that it was delayed by the respondents for no valid reason the applicant should not be deprived of the benefit of insitu promotion with effect from 1.1.1996. He further argued that the benefit of insitu promotion having been granted to the Chief Ayurvedic Physician in organised sector with effect from 25.1.1999 in terms of Annexure A-3 the action on the part of the respondents in not extending that benefit atleast from that date to the applicant is wholly unjustified. Shri.P.V.Mohanan referred us to a number of rulings of the Apex Court, for instance, Baleswar das & others Vs. State of U.P. & others 1980 (4) SCC 226, Direct Recruits Class II

*(Handwritten signature/initials)*

Engineering Officers Association & others Vs. State of Maharashtra & others AIR 1990 SC 1607, Kailash Chandra Rajawat Vs. Union of India & others 1994 Supplementary SCC (1) page 71 and Union of India & others Vs. Satya Prakash Vasight 1994 27 ATC 401.

3. Shri.S.Radhakrishnan, learned counsel for the 2nd respondent submitted that Annexure A-4 order having been issued without reference to the recommendation of the IVth Central Pay Commission and did not intend retrospective operation the claim of the applicant that he should be entitled to insitu promotion with effect from 1.1.1996 or 25.1.1999 is baseless and therefore this application does not cross the threshold of maintainability.

4. We have considered the arguments of the learned counsel in the light of the pleadings in the application and materials brought on record. All the judgements referred to by Shri.P.V.Mohanan and quoted in page 9 of the application are on entirely different set of facts and circumstances and the dicta has absolutely no relevance even remotely to the issue in question. The argument of Shri.P.V.Mohanan that applicant is entitled to insitu promotion atleast with effect from the date on which the Chief Medical Officers in organised sector has been granted by Annexure A-3 also has no force because the Chief Medical Officers in the organised sector under the Lakshadweep administration are not similarly situated as the applicant and therefore they do not belong to a homogenous class with him. The parameters for grant of insitu promotion prescribed in Annexure A-3 order dated 25.1.1999 and that in Annexure A-4 dated



16.11.2000 are entirely different. According to the order dated 25.1.1999 (Annexure A-3) the eligibility criteria is 6-10 years with a bench mark whereas for the Chief Ayurvedic Physician under the Lakshadweep administration it is only 5-9 years service and there is no bench mark. Annexure A-4 order dated 16.11.2000 conveyed the sanction of the President to provide insitu promotion to the category of Medical Officers in the unorganised sector. It is not stated anywhere that the order has retrospective effect although it is not mentioned that it is prospective. Any rule or order can be understood only as prospective unless there is any indication that it was meant to be retrospective in operation. Therefore the claim of the applicant that the applicant should be given retrospective placement by insitu promotion on the basis of Annexure A-4 with effect from 1.1.1996 or 25.1.1999 has no basis at all. The application, therefore, does not cross the threshold of maintainability as contended by the learned counsel of the applicant.

5. In the light of what is stated above the application which does not disclose any valid cause of action is rejected under Section 19(3) of the Administrative Tribunals Act, 1985.

(Dated the 12th day of August 2004)

H. P. DAS

ADMINISTRATIVE MEMBER

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A. V. HARIDASAN  
VICE CHAIRMAN