

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 30 MAY 1988

APPLICATION NO 142 / 88(F)

W.P. NO.

Applicant

Dr P. Vijayakumar

To

Respondent

V/s

The Secy, M/o Health & Family Welfare,
New Delhi

1. Dr P. Vijayakumar
Medical Officer in-charge
CGHS Dispensary No. 9
Gangnahalli
Bangalore - 560 032
2. Shri Mohandas N. Hegde
Advocate
Kurubara Hostel Building
2nd Main Road, Gandhinagar
Bangalore - 560 009
3. The Secretary
Ministry of Health & Family Welfare
Nirman Bhavan
New Delhi - 110 011
4. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER ~~BY THE BENCH~~ ~~BY THE BENCH~~ ORDER
passed by this Tribunal in the above said application on 25-5-88.

30-5-88
Encl : As above

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DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 25th DAY OF MAY, 1988

Present : Hon'ble Sri P.Srinivasan

Member (A)

APPLICATION No.142/88(F)

Dr. P.Vijayakumar,
Medical Officer in-charge,
CGHS Dispensary 9,
Gangenahalli,
Bangalore - 32.

...

Applicant

(Sri M.N.Hegde

... Advocate)

vs.

Union of India,
represented by Secretary,
Ministry of Health and
Family Welfare,
New Delhi - 11.

...

Respondent

(Sri M.V.Rao

... Advocate)

This application has come up before the Tribunal today.

Hon'ble Sri P.Srinivasan, Member (A) made the following :

ORDER



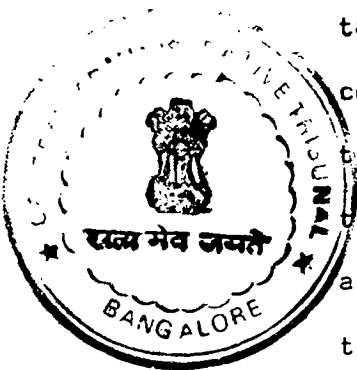
The applicant who was working as Medical Officer in-charge in the Central Government Health Scheme (CGHS) Dispensary No.9 at Bangalore when this application was filed, is currently working as Chief Medical Officer, CGHS, Bangalore. The applicant initially joined service in the Central Health Scheme (CHS) in 1972. When the Central Government Health Scheme (CGHS) was introduced in 1976, he was absorbed in CGHS as a Medical Officer in the Junior Class I Scale. By order dated 14.8.1986 he was promoted to the senior scale of the service in the grade of Rs.1100-1600 at that time. According to this order he was given promotion to the senior scale with retrospective effect from 25.11.1982. However, he was given pay in the senior scale only from 15.12.1986, ie., from a date later than that of the order

P. Srinivasan

granting him promotion to that scale. His grievance in this application is that he should have been given pay in the senior scale of the service with effect from the date from which he was promoted to that scale i.e., 25.11.1982 and not from 15.12.1986 as has been done by the respondents.

2. Sri M.W.Hegde, learned counsel for the applicant submitted that granting the applicant retrospective promotion from 25.11.1982 and not allowing him pay in the higher scale from that date was a self contradictory action. The order promoting him with effect from 25.11.1982 should have been given effect to in full by granting him pay in the higher scale from that date itself. He submitted that rule 56(2) of the CCS Leave Rules on which the respondents had relied to deny the applicant pay in the senior scale for the period ^{M 25.11.1982} ~~1.10.1982~~ to 22.2.1985 when he was on study leave was not applicable to him. He drew attention to the instructions issued by the Government in pursuance of FR 30 extracted at para 10 at page 144 of the 8th edition of Swamy's Compilation of Fundamental Rules and Supplementary Rules(FR and SR). According to him these instructions cover the case of the applicant and he was entitled to pay in the senior scale from 25.11.1982, even though he was at that time on study leave. In any case, Sri Hegde urged that the ^{M was entitled} applicant to pay in the senior scale from 23.2.1985 atleast, the date on which he returned from study leave and joined duty. The applicant's pay should have been fixed notionally on 25.11.1982 and on resumption of duty from study leave on 23.2.1985 his pay should have been fixed after giving increments for the intervening period.

3. Sri M.Vasudeva Rao, learned counsel for the respondent strongly resisted the contentions of Sri Hegde. The applicant could be given pay in the senior scale only from 15.12.1986



P. S. -

because the post of Senior Medical Officer in Bangalore where the applicant was working was created only from that date. Pay allowable to him during the period of the Study leave granted to him from 1.10.1982 to 22.2.1985 was governed by Rule 56(2) of the CCS Leave Rules which says that during study leave, a Government official can be granted only the pay and allowances which he was drawing immediately before he proceeded on leave. Prior to 1.10.1982, the applicant was drawing pay and allowances in the Junior Class I scale and therefore, he was rightly allowed the same pay and allowances for the period 1.10.1982 to 22.2.1985. No doubt the applicant rejoined duty on 23.2.1985 after study leave. But on that date no order had been passed promoting him to the senior scale. Moreover when the applicant rejoined duty after study leave on 23.2.1985, there was no vacancy of a post of Senior Medical Officer at Bangalore and the applicant was required to report for duty at Lucknow, but he expressed inability to proceed to Lucknow and rejoined duty at Bangalore itself. He had further requested that he be retained at Bangalore against a vacancy likely to become available when a new Dispensary started functioning. The new Dispensary started at Bangalore on 15.12.1986 and along with it a post of Senior Medical Officer in the senior Class I scale became available and that was why the applicant was granted pay in the senior scale from 15.12.1986.



4. I have considered the rival contentions carefully. As mentioned earlier, by order dated 14.8.1985, the applicant was promoted to the senior scale retrospectively from 25.11.1982. He was on study leave from an earlier date i.e., 1.10.1982 to 22.2.1985. Rule 56(2) of the CCS Leave Rules provides that during study leave availed in India, leave salary payable to a Government servant shall be the same as that which he drew immediately before proceeding on such leave along with the

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allowances admissible thereon. This rule squarely applies to the case of the applicant. Para 10 at page 144 of the 8th edition of Swamy's Compilation of FR and SR deals with a different situation, i.e., of a person who, while undergoing training or instruction in India, is treated as on duty under FR (9)(6)(b). It is common ground in this case that the applicant was on study leave and no order has been produced to show that the said period of study leave between 1.10.1982 to 22.2.1985 was treated as duty under FR(9)(6)(b). That being so, under rule 55(2) of the CCS Leave Rules, which is not challenged in this application, the applicant was entitled to pay and allowances during the period upto 22.2.1985 only at the rate at which he was drawing the same prior to 1.10.1982 and the action of the respondents in allowing pay and allowances on this basis has to be upheld and the applicant's objections thereto has to be rejected.

5. Now come to the period starting from 23.2.1985. It is common ground that the applicant rejoined duty after study leave on 23.2.1985. The respondents say that he was asked to join duty at Lucknow but he had expressed his inability to go there and joined duty at Bangalore instead. The respondents further say that on 23.2.1985 there was no post of senior Medical Officer available in Bangalore. Now admittedly the applicant was promoted to the Senior Scale in retrospective effect from 25.11.1982 and at that time he was posted in Bangalore though on study leave. It is not disputed that on 25.11.1982 there was no post in the senior scale in Bangalore. Obviously, therefore the promotion of the applicant had nothing to do with the existence of a senior scale post in Bangalore on the date from which the promotion became effective. Therefore,

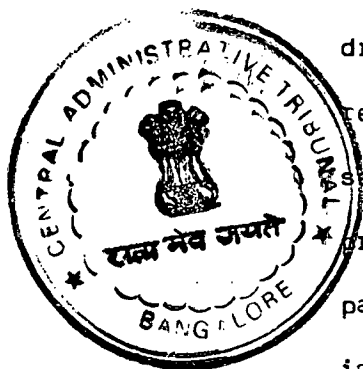


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the objection of the respondent that on 23.2.1985 there was no senior scale post in Bangalore is neither here nor there. The other objection that the applicant was asked to join at Lucknow but joined at Bangalore instead has also no merit. It was for the respondents to insist that the applicant joined at Lucknow. Obviously, it was with the consent of the respondents that the applicant rejoined at Bangalore on 23.2.1985. Once he joined duty he became entitled to the benefit of the senior scale pay as a result of his retrospective promotion from 25.11.1982. I therefore direct the respondents to pay the applicant pay and allowances in the senior scale with effect from 23.2.1985 when he rejoined duty at Bangalore.

6. The next question is as to the exact stage in the senior scale in which the applicant should be fixed as on 23.2.1985. I understand that there is a concordance table indicating the pay in the senior scale to be allowed corresponding to the pay drawn in the junior scale immediately before promotion. The respondents are directed to fix the pay of the applicant in the senior scale notionally from 25.11.1982, date from which he was promoted. He will, however not be entitled to draw the higher pay till 23.2.1985, but the intervening period will count for increments. On this basis his pay in the senior scale on 23.2.1985 should be fixed and he should be paid arrears of pay arising there from as expeditiously ^{as possible}.

7. The application is disposed of on the above terms. Parties to bear their own cost.



TRUE COPY

[Signature]
DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

[Signature]
(P. SRINIVASAN)
MEMBER (A)