

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00892/2016

Wednesday this the 21st day of March, 2018

CORAM:

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

Dr. Naina P.S.,
D/o. P. Satisan, aged 55 years,
Chief Medical Officer, ESIC Model Hospital,
Asramam, Kollam - 691 002
Residing at A 81, T.C. 9/2628,
Elankom Gardens, Vellayambalam,
Thiruvananthapuram – 695 010.

..... **Applicant**

**(By Advocates – Mr. P.C. Sasidharan &
Mrs. Rekha Vasudevan)**

V e r s u s

1. Employees State Insurance Corporation,
represented by its Director General,
Panchadeep Bhavan,
Comrade Inderjeet Gupta (CIG) Marg,
New Delhi – 110 002.
2. Joint Director (Med),
Employees State Insurance Corporation,
Panchadeep Bhavan,
Comrade Inderjeet Gupta (CIG) Marg,
New Delhi - 110 002.
3. Deputy Director (Med. Admin),
Employees State Insurance Corporation
Model Hospital, Panchadeep Bhavan,
Comrade Inderjeet Gupta (CIG) Marg,
New Delhi – 110 002.
4. Medical Superintendent,
Employees State Insurance Corporation
Model Hospital, Asramam, Kollam – 691 002

5. Deputy Director (Admin),
Employees State Insurance Corporation
Model Hospital, Asramam, Kollam – 691 002.
- 6 Deputy Director (Finance),
Employees State Insurance Corporation
Model Hospital, Asramam, Kollam – 691 002.

..... **Respondents**

(By Advocate – Mr. T.V. Ajayakumar)(no representation)

This Original Application having been heard on 07.03.2018, the Tribunal on 22.3.2018 delivered the following:

ORDER

O.A.No. 892/2016 is filed by Dr. Naina PS, Chief Medical Officer, ESIC Model Hospital, Ashramam, Kollam aggrieved by Annexure A7 order dated 18.3.2016 declining the applicant's request for pay fixation at par with her junior.

2. The reliefs sought in the OA are as under:

(i) Quash Annexure A7 issued by the Ist respondent letter to the extend it denies the applicant the Non Practicing Allowance with effect from 1.1.2003;

(ii) Declare that the applicant herein is entitled to be granted the Non Practicing Allowance with effect from 1.1.2003 onwards and to direct the respondents to draw and disburse the same to the applicant within a time frame;

(iii) Declare that the applicant herein is entitled to be granted fixation of pay and arrears thereof in the promoted posts of Insurance Medical Officer Grade I and Chief Medical Officer with effect from 19.9.2005 and 19.9.2010 respectively and to direct the respondents to grant the applicant pay fixation in the posts of Insurance Medical Officer Grade I and Chief Medical Officer with effect from 19.9.2005 and 19.9.2010 retrospectively and to disburse the arrears thereof within a short time frame;

(iv) Alternatively direct the Ist respondent to consider and pass orders on Annexure A8 representation dated 23.6.2016 within a short time frame;

(v) To grant such other reliefs as may be prayed for and the court may deem fit to grant, and

(vi) Grant the costs of this Original Application.

3. The brief facts of the case are as under:

The Applicant was initially appointed as Assistant Insurance Medical Officer in the Kerala Health Services. She was deputed to ESIC Hospital, Kollam and when that hospital was taken over by the ESI Corporation, she exercised her option to be absorbed in the ESIC with effect from 1.1.2003. Service conditions of the applicant thereafter were governed by the ESIC (Staff & Conditions of Service) Regulations, 1959 as amended from time to time (Annexure A1).

4. She was promoted as Insurance Medical Officer Grade I w.e.f 1.1.2007. The next promotional post was that of Chief Medical Officer. Alleging that her promotion was getting delayed, she approached this Tribunal, filing OA 159/2014. In the same OA seeking promotion, she also highlighted another grievance of less pay than her junior. The said OA was disposed of directing the first respondent to consider and pass orders on her representation after affording an opportunity of being heard. (Annexure A2). Accordingly the applicant was granted a personal hearing and she, in turn submitted her written notes to the 1st respondent (Annexure A4).

5. In the meanwhile, the applicant was granted promotion retrospectively as Insurance Medical Officer Grade I with effect from 19.9.2005 and as Chief Medical Officer w.e.f. 19.9.2010 (Annexure A5). Applicant submitted her willingness to join the promoted posts with effect from the date of promotion and also submitted her option for fixation of pay accordingly. However the request of the applicant for removing the anomaly in pay due to non-grant of Non Practicing Allowance (NPA for short) with

effect from her date of absorption was rejected and she was granted the NPA only w.e.f. 1.3.2008 (Annexure A7). Applicant claims that the date of 1.3.2008 is not relevant in her case and she ought to be granted NPA with effect from 1.1.2003. Her representation pointing out this anomaly and seeking rectification has not got any reply. She further submits that one Dr. Premlal K.I with whom the applicant has been claiming stepping up of pay, has been granted and disbursed the fixation and arrears w.e.f the date of his promotion as Chief Medical Officer ie., from 24.3.2013.

6. As grounds the applicant states that due to non-grant of NPA w.e.f. 1.1.2003, she is put to irreparable loss. The reason stated for non-grant of NPA during 2003 to 2008, that she was covered by the State Government Rules goes against the Annexure A1 Circular which clearly lays down that the employees on their absorption to the services under the Ist respondent will be governed by the service conditions prevailing under the first respondent-ESIC. She claims discrimination in her treatment in relation to Dr. Premlal. No justifiable reason is shown by the respondents to deny the applicant NPA w.e.f. 1.1.2003, the date of her absorption.

7. The abovesaid OA which was filed on 25.10.2016 was admitted on 26.10.2016 granting sufficient time to the respondents to file their reply. However, no reply came to be filed even after several adjournments and the Registrar on 3.8.2017 placed the case before the Bench on 28.8.2017. On that day as a last chance, respondents were granted time upto 9.10.2017 to file reply statement on payment of costs of Rs. 1000/-. However no reply was filed even after this order. On 10.1.2018 it was ordered that if no reply is filed within two weeks, it would be presumed that the respondents had no intention to contest the matter and the case was finally posted to 31.1.2018. On 31.1.2018 as a very last chance, the matter was again adjourned to

7.3.2018 stating that the order dated 10.1.2018 would prevail. On 7.3.2018 when the case was posted for final hearing, none was present on the side of the respondents. It is learnt that Shri T.V. Ajayakumar who had filed Memo of Appearance on behalf of the respondents had been instructed not to appear. It was also seen that despite all the directives of this Bench, no reply has been filed on behalf of the respondents. The applicant's counsel was heard and the matter was reserved for orders.

8. As can be seen, in view of the recalcitrant attitude of the respondents, I have only one side of the issue to be considered. I deprecate in strong terms the failure of the respondents to reply to the OA despite adequate time being availed for the purpose. As the contentions in the OA are uncontroverted, I allow the prayers sought in the OA. O.A succeeds. All benefits claimed in the O.A, except the grant of costs, are allowed and I direct that the benefits should be disbursed within three months from the date of receipt of a copy of this order. No order as to costs.

(E.K Bharat Bhushan)
Administrative Member

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List of Annexures by Applicant

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| Annexure A-1 | - | True copy of the Circular No. 542/A/45/12/ (1)/MHA/03(ADM) dated 22.10.2003 issued by the 5 th respondent. |
| Annexure A-2 | - | True copy of the order dated 25.02.2015 in O.A. No. 180/159/2015 of this Honourable Tribunal. |
| Annexure A-3 | - | True copy of the letter No. A-33/14/Promotion/Absorbees/Kerala-Med-IV dated 14.09.2015 addressed by the 3 rd respondent to the 4 th respondent. |
| Annexure A-4 | - | True copy of the written notes of submission dated 20.09.2015 submitted by the applicant before the 1 st respondent. |
| Annexure A-5 | - | True copy of the Office Order No. 96 of 2015 dated |

10.12.2015 issued by the 3rd respondent.

- Annexure A-6 - True copy of the willingness dated 09.01.2016 submitted by the applicant to 1st respondent.
- Annexure A-7 - True copy of the Order No. A-33/14/Promotion/Absorbee/Kerala-Med-IV dated 18.03.2016 issued by the 1st respondent.
- Annexure A-8 - True copy of the forwarding letter No. 542/A/19/11(34)Adm.03 dated 23.06.2016 addressed by the 5th respondent to the 1st respondent along with the representation dated 23.06.2016 submitted by the applicant to the 1st respondent.
- Annexure A-9 - True copy of the option submitted by the applicant for fixation of pay.
- Annexure A-10 - True copy of the relevant page of Pay Fixation Details of the applicant as available from the official website of the 1st respondent.
- Annexure A-11 - True copy of the Office Order No. 35 of 2015 dated 25.02.2015 issued by the 5th respondent.
- Annexure A-12(a) - True copy of the pay slip for the month of August 2015 of the applicant.
- Annexure A-12(b) - True copy of the pay slip for the month of August 2015 of Dr. Premlal.

PPS to Member