

**Central Administrative Tribunal
Ernakulam Bench**

OA No.180/00175/2018

Thursday, this the 7th day of November, 2019.

CORAM

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

Hon'ble Mr.Ashish Kalia, Judicial Member

Abhilash S.G, aged 32 years,
S/o Sreekantan,
Staff Nurse,
Sree Chitra Tirunal Institute for Medical
Sciences & Technology,
Thiruvananthapuram-695 011.

Applicant

(Advocate: Mr. C.S.G.Nair)

versus

1. Director,
Sree Chitra Institute for Medical Sciences and Technology,
Thiruvananthapuram-695 011.
2. Senior Deputy Director (Administration),
Sree Chitra Institute for Medical Sciences and Technology,
Thiruvananthapuram-695 011.
3. Secretary,
Sree Chitra Institute for Medical Sciences and Technology,
Thiruvananthapuram-695 011.
4. President,
Governing Body of Sree Chitra Institute
for Medical Sciences and Technology,
Thiruvananthapuram-695 011.
5. Union of India represented by its
Secretary,
Department of Personnel and Training,
New Delhi-110 001.

Respondents

(Advocate: Mr.T.R.Ravi for R1-4, Mr.Anil Ravi, ACGSC for R5)

The OA having been taken up on 1st November, 2019, this Tribunal delivered the following order on 07.11.2019:

ORDER

By Ashish Kalia, Judicial Member

The applicant is presently working as Staff Nurse under the 1st respondent. He had initially joined as Sister Grade II in AIIMS, New Delhi on 28.12.2010. After his selection as Staff Nurse in ESIC Kerala Region, he submitted a technical resignation in order to join the ESIC Hospital, Kollam. His technical resignation was accepted by AIIMS and on joining ESIC, the pay drawn by him in AIIMS was protected. Later, the applicant had applied for the post of Staff Nurse in Sree Chitra Tirunal Institute for Medical Sciences and Technology through ESIC and on selection, he had submitted technical resignation which was accepted and he was relieved. On joining SCTIMST, the applicant sought pay protection, based on Annexure A13, but by Annexure A12, the same was denied. The applicant, thereafter, made a representation to the respondents on 16.7.2017 (Annexure A10), seeking pay protection. By Annexure A12, his representation was rejected.

2. Notices were issued and the respondents put up their appearance through Sri T.R.Ravi who has filed a reply statement on behalf of the respondents. In the reply statement, it is submitted that as far as the SCTIMST is concerned, the Central Government Rules which have been adopted by the Governing body of the Institute alone are applicable and the SCTIMST has its own rules and regulations made under the provisions of the SCTIMST, Trivandrum Act. The Hon'ble High Court has, in its judgment in W.P.(C) Nos.8891/2009 and

17370/2010, held that the Institute has their own powers to adopt the prescription made by the Central Government with riders in its discretion. The applicant was offered the post of Staff Nurse in the Institute with the starting pay clearly mentioned in the offer of appointment (Rs.12540/- pre-revised) and Grade Pay of Rs.4600. It is further submitted that the Governing Body which is the executive committee of the Institute had decided to introduce its own rules subject to its budgetary provisions and keeping in view the important roles of employees in patient care services/working conditions in the hospital which serves as tertiary referral centre for cardio vascular, thoracic and neurological diseases and patient care is being carried out without bystanders. The applicant had accepted the job in the institute knowing fully well the conditions stated in the offer letter. The relieving of the applicant by AIIMS was on technical resignation protecting his lien in the service of AIIMS in accordance with their rules, whereas the rules of SCTIMST had never retained the lien of any of the employees who resigned from its services. SCTIMST never grant pay protection to candidates working in Public Sector Undertakings, Universities, Semi Government Institutions or Autonomous Bodies when they are appointed in Government. The applicant had got selection to All India Civil Services while working in a PSU and his pay was not protected based on the above. Stating that there cannot be any compliant on this score, the respondents have prayed for dismissal of the OA.

3. Heard learned counsel for the parties at length and perused the records. Mr.C.S.G.Nair, learned counsel for the applicant has drawn our attention to

office memorandum dated 30th March, 2010 (Annexure A13), which read as follows:-

“2. Subsequent to the implementation of the recommendations of the 6th CPC and the issue of CCS (RP) Rules, 2008, the system of Running Pay Bands and Grade Pays has been introduced. Accordingly, in partial modification of this department's OM dated 7.8.89 and 10.7.98 referred to above, the method of pay fixation in respect of those appointed on or after 1.1.2006 will be as under:

“In case of candidates working in Public Sector Undertakings, Universities, Semi Government Institutions or Autonomous Bodies, who are appointed as direct recruits on or after 1.1.2006 on selection through interview by a properly constituted agency including Departmental Authorities making recruitment directly, their initial pay may be fixed by granting them the Grade Pay attached to the post. Further, their pay in the Pay Band may be fixed at a stage so that the pay in the Pay Band + Grade Pay and DA as admissible in the government, protects the pay + DA already being drawn by them in their parent organizations. The pay in the Pay Band fixed under this formulation will not be fixed at a stage lower than Entry Pay in the revised Pay Structure (Corresponding to the Grade Pay applicable to the post) for direct recruits on or after 1.1.2006 as notified vide Section II, Part A of First Schedule to CCS (RP) Rules, 2008. The pay in the Pay Band fixed under this formulation will not exceed Rs.67000, the maximum of the Pay Band PB-4.”

and tried to impress upon this Tribunal that as per the DoPT guidelines, the pay of Public Sector Undertakings, Universities and Autonomous Bodies, ought to be protected and SCTIMST is part of Government. The Tribunal has perused the offer of appointment dated 6.12.2016 (Annexure A6), which is duly accepted by the applicant. It shows that the applicant has been selected and offered appointment as Staff Nurse in Pay Band of Rs.9300-34800 with Grade Pay of Rs.4600. The question raised by the applicant whether his pay can be protected or not, hinges on the fact whether DoPT instructions are applicable to the respondent institution or not, in terms of the judgment passed by Hon'ble High Court of Kerala (supra). under SCTIMST Rules, they are are not bound

by the same as they have got their own powers to adopt prescriptions made by Central Government with riders in its discretion. Learned counsel for the respondents submitted that the respondents have never adopted or granted pay protection to the employees of Autonomous Bodies, Public Sector Undertakings and Universities.

4. On the contrary, learned counsel for the applicant has failed to convince us with anything on record to show that similarly situated persons like the applicant have been given the pay protection. Thus the offer of appointment, once accepted, is binding on both parties concerned. The applicant cannot raise any objection, after joining the said post, in view of the terms and conditions enumerated in the appointment order. In view of the above facts and circumstances of the case, we find no merit in the OA, and the same is dismissed with no order as to costs.

(Ashish Kalia)
Judicial Member

(E.K.Bharat Bhushan)
Administrative Member

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Annexures filed by the applicant:

- Annexure A1: Copy of the Memo No.F-45-501/2010 Estt (TC) dated 24.9.2012.
- Annexure A2: Copy of the joining report dated 29.10.2012.
- Annexure A3: Copy of the office order No.81/2014 dated 19.6.2014.
- Annexure A4: Copy of the Pay Slip for the month of March, 2017.
- Annexure A5: Copy of the No Objection Certificate No.544/A/36/11/EHP/11 Admn dated 16.9.2015 issued by the ESIC Hospital Paripally, Kollam.
- Annexure A6: Copy of the order of appointment bearing No.P&A11/09/SCTIMST/2015 dated 6.12.2016 issued by the 1st respondent.
- Annexure A7: Copy of the letter No.P&A/11/09/Staff Nurse/SCTIMST/2015 dated 27.12.2016 issued by the 2nd respondent.
- Annexure A8: Copy of the Office Order No.113/2007.
- Annexure A9: Copy of the Inter Office memo date 5.5.2017 issued by the 1st respondent's office.
- Annexure A10: Copy of the representation dated 16.7.2017.
- Annexure A11: Copy of the pay slip for September 2017.
- Annexure A12: Copy of the Memo No.P&A.VPF-2483/2467/2414/SCTIMST/2017 dated 13.10.2017 issued by the 2nd respondent.
- Annexure A13: Copy of the OM No.12/3/2009-Pay.I dated 30.3.2010 issued by the 5th respondent.
- Annexure A14: Copy of the OM 28020/1/2010 Estt.(C) dated 26.12.2013.
- Annexure A15: Copy of the OM No.28020/2010 Estt © dated 17.8.2016
- Annexure A16: Copy of the order dated 7.6.2017 in OA No.990/2016 issued by the Bangalore Bench of this Tribunal.
- Annexure A17: Copy of the judgment in the case of Sanjog Kapoor vs. Union of India & Others dated 20.4.2007.
- Annexure A18: Copy of the OM No.28020/1/2010-Estt.(C) dated 26.12.2013 issued by the DoPT.
- Annexure A19: Copy of the order dated 31.1.2012 in OA No.2009/2011 of the Principal Bench.
- Annexure A20: Copy of the order issued by the 1st respondent on 12.10.2017 in respect of the recommendations of the 7th CPC.