

PROCEEDINGS OF THE DIRECTOR OF INSURANCE MEDICAL SERVICES
Thiruvananthapuram - 14

Sub:- IMS Department - Establishment - TA 700/2013 dated 31.08.2017 of the Hon'ble Kerala Administrative Tribunal (W.P.(C)No.2023/11 of the Hon'ble High Court of Kerala) - Judgement complied with - Orders issued.

Read:- Judgement dated 31.08.2017 of the Hon'ble Kerala Administrative Tribunal

Order No. E5-5001/2011/DIMS Dtd. 23.11.2017

In the Judgement read above, the Hon'ble Kerala Administrative Tribunal has directed the first respondent i.e. the Director of Insurance Medical Services to reconsider the eligibility of the petitioners for a notional fixation of pay in the post of Head Nurse with effect from the retrospective date of promotion.

All the petitioners while working as Staff Nurses in various ESI institutions were promoted to the Posts of Head Nurses as per Order No. E5-12700/04/DIMS Dtd. 19.06.2004 and Order No. E5-12700/04/DIMS Dtd. 21.06.2005. The petitioners No. P1, P2, P3, P4, P5, P11 and P12 were promoted to the posts of Head Nurses, vide Order dated 19.06.2004 and the petitioners No. P6, P7, P8, P9 and P10 were promoted as Head Nurses, vide Order dated 21.06.2005. All the incumbents, those are included in the Order dated 19.06.2004 were also included in the Order dated 21.06.2005 by specifying the date of promotion and date of occurrence of vacancy in the post of Head Nurse. The Order issued on 21.06.2005 only specifies the date of promotion and date of occurrence of vacancy in the post of Head Nurse and does not mean granting promotion retrospectively with effect from the date of occurrence of vacancy in the post of Head Nurse. The petitioners misunderstood that the order dated 21.06.2005 means granting promotion retrospectively with effect from the date of occurrence of vacancy in the post of Head Nurse. As per the standing Rules, the

petitioners' claims for monetary benefit with effect from the date of occurrence of vacancy in the promoted posts were rejected. Aggrieved by this, the petitioners preferred writ petition W.P.(C) No.33844/09 before the Hon'ble High Court of Kerala which was disposed of by Judgement dated 24.06.2010 directing the first respondent i.e. the Director of Insurance Medical Services to consider the claims of the petitioners. Since all Head Nurses were eligible for Higher scale with effect from the date of assuming charge in the promoted post, as per the Rules in force the representations of the petitioners were rejected and Orders issued thereby complying with the direction of the Judgement (Ext.P17). Aggrieved by the same the petitioners preferred W.P.(C) No.2023/11(TA No.700/13) which was disposed of by directing the first respondent i.e. the Director of Insurance Medical Services to reconsider the eligibility of the petitioners for a notional fixation of pay in the post of Head Nurse with effect from the retrospective date of promotion. Based on the Judgement, till date three petitioners i.e. Smt. Naina thora C., Smt. Sujatha VK of ESIC Hospital, Asramam and Smt. KK Beena, Nursing Superintendent Grade-II, ESI Hospital, Vadavathoor have submitted requests for the notional fixation of pay with effect from the retrospective date of promotion as Head Nurse.

All the petitioners joined in the promoted posts on different dates after issuing the orders. Though the petitions are promoted as Head Nurses, the Rule applicable for fixation of pay in the promoted posts was by applying Rule 23 (a) of Part I KSR. Monetary benefit is with effect from the date of joining duty in the promoted post. In the communication letter dated 03.09.2005 (Ext.P8), the Director of Insurance Medical Services clarified that the petitioners are eligible for higher pay with effect from the date of occurrence of vacancy and the posts of Head Nurses and Staff Nurses are interchangeable. But on further examination of the matter, it is realized that the

previous communication was irregular and hence revised communication was forwarded to all Heads of ESI institutions, vide letter No.. E5-12700/2004/DIMS dtd. 07.10.2005 (Ext.R3). The Director of Insurance Medical Services thus instructed to the Internal Audit wing of the Department to examine the fixation particulars of all Head Nurses, those who are promoted vide Order No. E5-12700/04/DIMS Dtd. 19.06.2004 and Order No. E5-12700/04/DIMS dtd. 21.06.2005 and if any erroneous notional fixation is found, take necessary steps to refund the excess pay drawn. Hence recovery notices to recover the excess pay drawn were issued to all Head Nurses who were granted erroneously notional fixation of pay with effect from the date of occurrence of vacancy in the promotion post. Based on G.O.(P) No. 1016/2000/FIN dated 12.07.2000 as per Rule 23(a) Part I KSR, an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date he assumes the duties of that post. So normally, the claim for the monetary benefit is from the date of assumption of charge in the promotion post.

There was a wrong assumption among the petitioners that the duties of Head Nurses and Staff Nurses were interchangeable and hence they were eligible for fixation of pay with effect from the date of occurrence of vacancy as per Rule 23(C) of KSR Part I. A person on promotion is eligible for monetary benefit with effect from the date of occurrence of vacancy only in cases where there was no change of duty. But in the case of Head Nurses which are the supervisory posts, only Rule 23(a) Part I KSR applies and they are not eligible for the notional fixation of pay in the post of Head Nurse with effect from the date of promotion or with effect from the date of occurrence of vacancy. G.O.(P)No.1016/2000/FIN dtd. 12.07.2000 and Government letter No. 23805/F2/2010/LBR dtd. 09.03.2011 specifically clarifies that a person on

promotion which involves change of duties is not eligible for notional fixation of pay with effect from the date of occurrence of vacancy in the posts of Head Nurse.

None of the Departmental or Government orders permit the inter changeability of duties between Staff Nurse and Head Nurse.

The petitioners come under the purview of Part I KSR Rule 23(a) and they are eligible for fixation of pay only with effect from the date of assumption of charge as Head Nurse. Hence the claim of the petitioners for notional fixation of pay with effect from the date of promotion in the promoted posts of Head Nurse is not admissible and thus it is rejected.

The Order of the Hon'ble Kerala Administrative Tribunal thus stands complied with.

Sd/-

DR. AJITA NAIR R.

Director of Insurance Medical Services

To

1. The Advocate General, Kerala Administrative Tribunal, Vanchiyoar, Thiruvananthapuram
2. The Superintendent, ESI Hospital, Mulamkunnathukavu/Ezhukone/Asramam./Olarikkara/Parippally
3. The Incumbents

Copy to:-

1. The Regional Deputy Director, Insurance Medical Services, South Zone, Kollam/Central Zone, Ernakulam/North Zone, Kozhikode.
2. The Audit Superintendent, Insurance Medical Services, Thiruvananthapuram
3. File/Stock File

Forwarded/by Order

Superintendent

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