

Central Administrative Tribunal,
Principal Bench

O.A. No.156/2002
M.A. No.130/2002

New Delhi this the 28th day of January, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. Shankar Prasad, Member (A)

1. Ms. Garima Seth
D/o Shri B.R. Seth,
Data Entry Operator,
National Pharmaceutical Pricing Authority,
Jhandewalan Extension
New Delhi.

R/o D-861, Mandir Marg,
Peshwa Road,
New Delhi.
2. Shri Gangadhar Ghadai
D/o Shri Pasu Ghadai,
Data Entry Operator,

R/o 530-A, Khokarwali Gali No.2
Lado Sarai,
New Delhi-30
3. Shri Mukesh Mohindru,
S/o Shri P.P. Mohindru,
Data Entry Operator,

R/o C-5-D/11A, Janakpuri,
New Delhi-58
4. Ms. Meena Ramchand,
D/o Shri Ramchand Pardasani,
Data Entry Operator,

R/o 14/87-A, Vikram Vihar,
Lajpat Nagar-IV,
New Delhi-24
5. Ms. Jagjit Kaur,
D/o Shri Gurmukh Singh,
Data Entry Operator,

R/o B-1/193, Yamuna Vihar,
New Delhi-53
6. Ms. Harjeet Kaur,
D/o Shri Joginder Singh,
Data Entry Operator,

R/o 121/1, Lane No.5,
Safdarjung Enclave,
New Delhi

- 7. Ms. Swaran Beniwal,
D/o late Shri J.N. Beniwal,
Data Entry Operator,

R/o 133, Mandir Marg,
(Opp. Banwarilal Hospital)
New Delhi
 - 8. Ms. Neetu Rajora,
W/o Shri Bharat Kumar,
Data Entry Operator,

R/o 33, Bhagwan Nagar,
Ashram, Delhi
 - 9. Ms. Gagan Singh
W/o Shri Rahul Singh,
Data Entry Operator,

R/o A-4/5-10, Nav Bharat Appts.
Paschim Vihar,
New Delhi-63
 - 10. Ms. Sonia Bathla,
D/o Shri Nand Lal Bathla,
Data Entry Operator,

R/o 204, Dhakka,
Near Kingsway Camp,
New Delhi-9
- Applicants

(By Advocate : Shri K.N.R. Pillai)

Versus

- 1. Union of India, through
The Secretary
Ministry of Chemical & Fertilizers,
Uduog Bhawan
New Delhi
 - 2. The Member Secretary,
National Pharmaceutical Pricing Authority,
2E/21, Jhandewalan Extension,
Link Road,
New Delhi
- Respondents

(By Advocates: Shri Adish C. Aggarwal with Shri Neeraj Goyal)

O R D E R (ORAL)

Justice V.S. Aggarwal:-

MA No.130/2002

MA No.130/2002 for joining together in OA

No.156/2002 is granted.

OA No.156/2002

2.. The applicants by virtue of the present application seek a direction that they should be granted the same pay scale of Rs.5000-8000/- with allowances as admissible to regular Data Entry Operators and the same benefits of leave and other service conditions should be awarded to them without giving artificial breaks. They claim that if they apply for regular recruitment, they should be given age relaxation and when regular recruits become available, they should be posted in vacant posts and only after vacant posts are filled up, the applicants should be replaced.

3. The facts alleged are that the National Pharmaceutical Pricing Authority (for short, the NPPA) is an attached office of the Ministry of Chemicals and Fertilizers. It has five divisions headed by five Directors with other staff. For its technical/investigation part of the work, temporary appointments of Data Entry Operators ^{was made}. The applicant No.1 was so appointed in December 1997 at a consolidated salary of Rs.5000/- and other applicants had also been appointed subsequently on almost identical terms. The practice was started by issuing termination orders on the ground of non-availability of work. After three days, they were re-appointed for another period of 89 days.

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4. The applicants contend that they are doing the same work as any other regular employees. They are Graduates with Diploma/Certificate in Computer Application and the pay scale for such posts is Rs.5000-8000/-. They are being given the minimum of the scale as consolidated emoluments. No Dearness Allowance, House Rent Allowance etc. are admissible. Keeping in view the acute unemployment in the country, the respondents have exploited the situation and, therefore, invoking the principle of 'equal pay for equal work' and also the fact that they are discharging similar duties, they claim the abovesaid reliefs.

5. In the reply filed, the application has been contested. It has been pleaded that the Government of India had issued the Drug Price Control Order, 1995 by prescribing 74 bulk drug prices which are to be fixed by the Government based on certain criteria. The formulations using these bulk drugs also came under the purview of the Drug Price Control Order. Therefore, their prices had to be fixed by the Government. For fixing the bulk drug prices of scheduled drugs, cost cum techno-economic studies are undertaken by the NPPA. Whenever there is a change in prices of bulk drugs or any other inputs, the concerned manufacturer approaches the NPPA for fixation of the price or alternatively suo moto exercise is undertaken by the NPPA when there is a

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change in price of inputs. For the purpose of cost-cum-techno-economic studies and formulation of prices, NPPA collects information through available literature, interaction with company's fact sheets and personal visits to the factories. For these purposes, various levels of posts have been created in the NPPA. NPPA basically works as an officer oriented organisation. Depending on the requirement from time to time, some supporting staff and stenographic assistance is provided. In order to help the officers and preparation of report, some Data Entry Operators, young professionals are engaged purely on temporary, contract and need based basis. The work so assigned is seasonal. Once the study is complete, the price of bulk drug is fixed. It will remain valid for three years. Next study would start after three years. Similarly in the case of formulations, the prices so fixed by the NPPA will remain in force till there is substantial increase in the price of inputs after which the company would approach NPPA for fixation of prices afresh.. In this process, the quantum of work varies from time to time. When NPPA was formed, the prices of many bulk drugs were required to be fixed. With the passage of time, the pendency has gone down. The work will again go up when the validity of such prices is over.

6. It has been asserted that there are no regular posts and there is no question of the applicants being regularised.

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7. During the course of submissions, our attention has been drawn as to whether we will have jurisdiction to entertain the application with respect to persons serving in the NPPA. However, the learned counsel for the applicants has drawn our attention to the Resolution of the Department of Chemicals and Petrochemicals dated 29.8.1997. It shows that the Government had decided to establish an independent body of experts to be called as NPPA consisting of a Chairperson in the status of the Secretary to the Government of India besides the Members etc. It is entrusted with the task of prices-revision and other related matters such as updating the list of drugs under price control. It has also to monitor the process of decontrolled drugs. The expenditure of the authority shall be borne by the Central Government. It clearly, therefore, shows that respondent No.2 is not a separate entity or a society registered in the Societies Registration Act. It is only an attached office of the Ministry of Chemicals and Fertilizers. Consequently, this Tribunal will have jurisdiction to entertain the application.

8. The learned counsel for the applicants had contended that the applicants are being appointed for a temporary period taking advantage of unemployment situation. Their services are being terminated to be re-employed once again after a few days while the work exists in the department.

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9. Our attention has been drawn to some of the documents on the record.

10. The normal terms and conditions of Data Entry Operators have been placed on the record, a copy of which is at Annexure AI. Clauses (1), (3), (4) and (7) of the same read:-

- "(1) The period of assignment will be initially for six months/one year with effect from the date of joining in NPPA.
- (3) He/She will be paid a consolidated fee of Rs.5000/- (Rupees Five thousand only) per month for his/her service to the NPPA, subject to his/her submitting pre-receipted bill in triplicate duly stamped on the original in advance.
- (4) The assignment does not carry any house rent allowance, dearness allowance, city compensatory allowance, free medical facility and or any other perquisites.
- (7) He/She will not be entitled for any kind of leave including casual leave."

After a person has served for the specified period, an order is issued. A representative order is at Annexure A-V. It is to the following effect:-

"The undersigned is directed to say that your services are no longer required in the NPPA due to non availability of work.

Therefore, your engagement with the NPPA will be discontinued w.e.f. 30.09.2001."

Sd/-
(B.L.Meena)
Under Secretary (Admn.)"

After a few days, the same person is re-employed by

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passing the following order:-

"The undersigned is directed to inform that you are hereby engaged as DEO/YP purely on contract and adhoc basis w.e.f.03.10.2001 to 31.12.2001 or till such time the work is available for you whichever is earlier. During the period of your appointment in National Pharmaceutical Pricing Authority (NPPA) you will be entitled for a consolidated honorarium of Rs.5000/-/Rs.7000/-pm.

Sd/-
(B.L.Meena)
Under Secretary (Admn.)"

These facts were not controverted. A bare reading of these orders clearly show that the contention of the respondents that after the work was over, the services of the applicants were disengaged is incorrect. The argument that it is because of non-availability of the work that their service are no more required does not stand scrutiny because after a few days all the persons are being re-employed. The notional breaks that, therefore, are being given cannot be approved.

11. We know from the decision of the Supreme Court in the case of **Rattan Lal and Ors. v.State of Haryana and Ors.**, (1985) 4 SCC 43 that such breaks so given would be violative of Article 14 of the Constitution. Identical indeed is the position herein and this practice, therefore, cannot be approved.

12. As per the appointment letter, only a fixed amount was being given. We were told that there are no recruitment rules and it was hardly in

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controversy that the scale for the similar posts was Rs.5000-8000/-.

13. The applicants contend that they should be awarded, the Dearness Allowance and House Rent Allowance etc. at the minimum of the pay scale i.e. Rs.5000/-.

14. This Tribunal in the case of Dr.(Mrs.)Sangita Narang and Others v. Delhi Administration, Etc., [1988] 6 ATC 405 had gone into this controversy. This Tribunal held that keeping in view the principle of 'equal pay for equal work', the said persons who were Doctors could not be denied the benefit of leave, continuity in service, House Rent Allowance etc. The said order of this Tribunal had been upheld by the Apex Court. This is very much applicable to the facts of the present case and there is no reason as to why the applicants are not entitled to the allowances at the minimum of the scale of Rs.5000-8000/- besides casual leave i.e. one casual leave for the service of one month.

15. So far as regularisation of the applicants is concerned, our attention has not been drawn to any regular post. The learned counsel for the respondents had contended that there are no recruitment rules and sanctioned posts in this regard.

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In the absence of regular posts, no direction requires to be issued because the applicants can only work continuously so long as there is need and they cannot be replaced by any other person to be appointed on similar terms.

16. For these reasons, we dispose of the present application with the following directions:-

- (a) the applicants would be entitled to the allowances at the minimum of the pay scale i.e. Rs. 5000-8000/-;
- (b) they would be entitled to one casual leave if they serve for full one month; and
- (c) in the absence of any regular posts, the applicants shall be allowed to continue without a break so long as work requires. Of course, in case of indiscipline or any such act, the respondents would be at liberty to terminate their services.

No costs.

Announced.

Shankar Prasad

(Shankar Prasad)
Member (A)

/sns/

V.S. Aggarwal

(V.S. Aggarwal)
Chairman