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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO 2408/2002

Date of Decision 21-4-2003

Mrs. Snehalata Mitter ... Applicante.

and Ors.

Shri Kumar Panigrahi ... Advocate for the Applicant

VERSUS

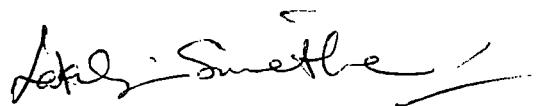
Union of India and Anr., ... Respondents

Mrs. Harvinder Oberoi Advocates for the Respondents

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri V.K. Nagotsa, Member (A).

1. To be referred to the Reporter or not ? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No


(Smt. Lakshmi Swaminathan)

Vice Chairman (J)

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2408/2002

New Delhi this the 21st day of April, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri V.K. Majotra, Member (A)

1. Mrs. Sneh Lata Mitter,
Lecturer in Physiotherapy
W/O Dr. Jagdish Mitter
R/O C-4/Type-IV, Staff
Quarter, Safdarjung Hospital,
New Delhi.
2. Mrs. Sushma Bhagi,
Physiotherapist,
W/O Shri R.K. Bhagi,
R/O 13/27, Shakti Nagar,
Delhi.
3. Dr. A.K. Biswas,
Senior Physiotherapist,
S/O Late Moti Lal Biswas,
R/O 40/33, C.R. Park,
New Delhi.

..Applicants

(By Advocate Shri Kumar Parimal)

VERSUS

1. Union of India
through the Secretary (Expenditure),
Ministry of Finance,
North Block, New Delhi.
2. The Secretary,
Ministry of Health and Family Welfare,
(Department of Health),
Nirman Bhawan, New Delhi.

..Respondents

(By Advocate Mrs. Harvinder Oberoi)

O R D E R (ORAL) .

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

This application has been filed by the applicants
being aggrieved by the order issued by the respondents
dated 1-2-2002. This order itself has been passed in
pursuance of Tribunal's judgement dated 7.8.2001 in OA 901
of 1998.

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2. The applicants along with others who were employed as Lecturers in Physiotherapy and Physiotherapists and Senior Physiotherapists and Association of Physiotherapists and Occupation Therapist of Delhi Government Hospitals and CGHS (Association since has been dissolved) had filed OA 2323/1989 seeking appropriate ^{pay} scales of pay for the aforesaid categories of posts w.e.f. 1.1.1986, as recommended by Respondent No.2/Ministry of Health and Family Welfare by their Memorandum dated 28.8.1986. They have contended that these categories of posts were not considered by the 4th Central Pay Commission and hence, Respondent No. 2 had recommended the following scales of pay for these categories:

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|---|-----------|
| "1. Physiotherapists/Occupational Therapists(PTs./OTs); | 2000-3200 |
| 2. Lecturers in Physiotherapy/ Occupational Therapy; and | 2000-3500 |
| 3. Senior Physiotherapists/Senior Occupational Therapists." | 2200-4000 |

According to the applicants, the 3rd Pay Commission had considered the aforesaid categories and had recommended the higher pay scales for various categories of Physiotherapists. The 4th Central Pay Commission had accorded the following pay scales to the aforesaid categories of the applicants:

- | | |
|--|-----------|
| "1. Physiotherapists/Occupational Therapists; | 1400-2300 |
| 2. Lecturers in Physiotherapist/ Occupational Therapist; | 2000-3200 |
| 3. Physiotherapist Grade-I (CGHS) | 2000-3200 |
| 3. Senior Physiotherapists/Senior Occupational Therapist." | 2375-3500 |

The applicants have stated that the above scales as recommended by the 4th Central Pay Commission were only the replacement scales as that Pay Commission had not dealt with specifically with the said four categories of Para-Medical Staff. The Ministry of Finance did not agree to the recommendations of Respondent No.2 for giving the higher pay scales to the categories of posts held by the applicants.

3. In the impugned order in the present application dated 1.2.2002, the respondents have stated that if the 4th Central Pay Commission had not mentioned any category/class of posts or for which no specific recommendations have been made, it cannot be stated that the Commission had not looked into the merits of those posts. According to them, wherever the old relativities are sought to be continued, the recommendations of the 4th Central Pay Commission are contained in Chapter 8 of Part 1 of their Report and wherever the Commission felt justified to establish new relativities it made specific recommendations on that behalf in other relevant chapters. They have also referred to the report of the 5th Central Pay Commission, relevant portion of which reads as follows:

"Our Consultants as well as Secretary (Health) and DGHS, during discussions with us, have strongly urged that this category needs to be upgraded. Keeping in mind the educational qualifications and nature of duties of PTs/OTs and other relevant factors we do not recommend parity with medical practitioners. However, we also feel that the present scale of Rs.1400-2300 is low vis-a-vis minimum qualifications and the nature of duties. We, therefore, recommend that PTs/OTs may be placed at the level of Rs.1640-2900 at induction. Since we are not in favour of parity with doctors, career progression of PTs/OTs will follow the usual ACP pattern. Lecturers in PT/OT should accordingly be placed in the scale of

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pay of Rs.2000-3500 and Senior Physiotherapists/Senior Occupational Therapists in the scale of pay of Rs.2200-4000".

4. The respondents have stated that the recommendations of the 5th Central Pay Commission have been accepted by the Government and the revised pay scales have been made effective from 1.1.1996. As per the existing policy, no retrospective effect can be given to the revision of the pay scale on the basis of the recommendations of the 5th Central Pay Commission which is an expert body. They have also relied on the judgement of the Supreme Court in Union of India and Anr. Vs. P.V. Hariharan, etc. (CA No.7127/98), decided on 12.3.1997 in which their Lordships have observed:

"Before parting with this appeal, we feel compelled to make a few observations. Over the past few weeks, we have come across several matters decided by Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great dents and happens to have a full picture before it. As the proper authority to decide upon this issue is very often, the doctrine of "equal pay for equal work" is also being mis-understood and mis-applied. Freely revising and enhanced the pay scales across the board. We hope and trust that the Tribunals will exercise the restraint in the matter".

5. Learned counsel for the applicants has contended that in OA 901/1998, the respondents were directed to reconsider the matter in terms of the following observations:

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"In the circumstances, it is now left to the Ministry of Health and Family Welfare, Respondent No.2, herein, once again to take up the matter with the Secretary (Expenditure) in the Ministry of Finance, Respondent No. 1 herein, so as to ensure that the matter is considered afresh and on merits instead of going into the question whether the same was considered by the Fourth Pay Commission or not. We are convinced that the Ministry of Health and Family Welfare acting in consultation with the Ministry of Finance (Department of Expenditure) have the necessary power to go into this question in detail and, as stated, purely on merits, having regard to their own recommendations made in August, 1986. While doing so, that Ministry will no doubt take into account factors such as the entry level qualifications, experience, horizontal and vertical relativities and other relevant considerations in reaching a just and proper decision in this case".

Their grievance is that while the respondents have stated in the impugned order dated 1.2.2002 that the matter has been reconsidered by the Government, they have not taken into consideration the fact that the 4th Central Pay Commission had not gone into the question of the revision of pay scales of the posts held by the applicants. In the O.A., the applicants have, therefore, prayed that the impugned order dated 1.2.2002 may be quashed and set aside, with a direction to the respondents to determine their pay scales on the basis of the recommendations dated 28.8.1986 given by Respondent No.2 w.e.f. 1.1.1986 along with all consequential benefits.

6. We have seen the reply filed by the respondents and heard Mrs. Harvinder Oberoi, learned counsel. They have referred to the fact that the Tribunal in its order dated 8.6.1994 in OA 2323/1989 have stated that the rejection of the recommendations of Respondent No.2 has been done by the Ministry of Finance (MOF) on untenable and irrelevant grounds and that the same is arbitrary. Accordingly, the rejection order of the MOF conveyed to the

applicants by letter dated 15.11.1988 was quashed in the matter of granting the revised pay scales of pay w.e.f. 1.1.1986. Even on reconsideration, the MOF rejected the proposal vide communication dated 12.10.1994. On that, the applicants filed Contempt Petition No. 139/95 in OA 2323/89 which was dismissed, leaving it open to them to challenge the same in the manner prescribed by law. Subsequently, the applicants filed O.A.901/98, in which the Tribunal had observed that "we are left in no doubt that the fourth Pay Commission did not specifically consider the claims of the applicants for the grant of higher pay scales on merits and in terms of the clear and specific recommendations made by the Ministry of Health and Family Welfare themselves way back on 28.8.1986". The Tribunal further observed that "The entire matter, therefore, still needs to be reviewed and there is an obvious need to consider the matter on merits in keeping with the recommendations made by the Ministry of Health and Family Welfare. That the 4th Pay Commission did not consider the matter on merits is no longer in doubt and we need not repeat it here". It was in these circumstances, it was left open to Respondent No.2 once again to take up the matter with the Secretary (Expenditure) in the MOF - Respondent No.1, so as to ensure that the matter is considered afresh and on merits instead of going into the question whether the same was considered by the 4th Pay Commission or not". Accordingly, the impugned order dated 12.10.1994 was quashed and set aside. Further, on the directions of the Tribunal in OA 901/1998, the respondents have stated that the entire matter has been reconsidered afresh by the Government but it has not been found possible to revise the pay scales upward as demanded by the

applicants for the reasons given in the counter affidavit. They have emphasised on the fact that the Pay Commission is a High Powered Commission and an expert body which has not thought fit to disturb the old relativities or to establish new relativities for old ones. Learned counsel for the respondents has submitted that the applicants cannot claim parity with Medical practitioners based on the educational qualifications and nature of duties. They have, however, submitted that the 5th Central Pay Commission had recommended the pay scale of Rs.1640-2900 (pre-revised) by upgrading the pay scale from Rs.1400-2300 for PTs/OTs keeping in view the minimum qualifications required for this post and also the nature of duties. Lecturers in PT/OT were placed in the scale of Rs.2000-3200 and Sr. Physiotherapists and Sr. Occupational Therapists were placed in the pay scale of Rs.2200-4000.

7. During the hearing, learned counsel for the applicants has submitted that at no stage the applicants are claiming parity with MBBS/BAMS doctors/Dental Surgeons in their pay scales. He has submitted that the reality of the situation has to be taken into account, while dealing no doubt with the recommendations of an expert body, like the 4th Pay Commission. He has submitted that the 4th Pay Commission did not deal with the pay scales of the category/class of posts which the applicants occupy which fact has also been recognised by the Tribunal in the aforesaid orders. In the circumstances, he has contended that the order dated 1.2.2002 is patently irrational, unjust and prejudicial to a section of employees, i.e. applicants. He has also emphasised that the applicants have already resorted to the Tribunal by four different

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applications. He has submitted that the pay scale of Rs.1640-2900 (pre-revised) recommended by the 5th Central Pay Commission is a replacement scale of Rs.1400-2300 for PTs/OTs at the time of induction and atleast this scale should be granted to the applicants w.e.f. 1.1.1986.

8. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. We have also considered various orders of the Tribunal followed by the subsequent ^{the 18/} orders issued by the Government, including the impugned order dated 1.2.2002. As seen from the recommendations of the 5th Central Pay Commission, quoted in paragraph 3 above, it had not recommended parity of PTs/OTs with Medical Practitioners. However, they had recommended that the present scale of Rs.1400-2300 which is the scale applicable under the 4th Central Pay Commission, is low vis-a-vis minimum qualifications and the nature of duties. They had, therefore, recommended that the PTs/OTs may be placed at the level of Rs.1640-2900 at induction, Lecturers in PTs/OTs were accordingly to be placed in the pay scale of Rs.2000-3500 and Senior Physiotherapists/Senior Occupational Therapists in the pay scale of Rs.2200-4000. Normally one cannot have any grievance on the action of the respondents accepting the recommendations of an expert body like the 5th Central Pay Commission, that is granting of the revised scales of pay w.e.f. 1.1.1996. As per the existing policy, no retrospective effective has been given to the revision of the pay scales. However, in Tribunal's order dated 8.9.1994 in OA 2323 of 1989, with regard to

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four categories of Para Medical Staff, it has been observed that the 4th Pay Commission had not specifically dealt with them in their report. It was precisely for this reason that the four categories of posts with which the Tribunal was dealing with, were given the replacement scales as recommended in Para 8.9 of the 4th Pay Commission's report. The revised pay scale given to the PTs/OTs was Rs.1400-2300, Lecturers in PTs/OTs Rs.2000-3200, Physiotherapist Grade-I Rs.2000-3200 and Senior PTs/OTs in the scale of Rs.2375-3500. The respondents themselves have stated in the impugned order dated 1.2.2002 that the 5th Pay Commission itself had felt that the present scale of Rs.1400-2300 for PTs/OTs is low vis-a-vis minimum qualifications and had recommended the replacement scale of Rs.1640-2900 at induction. Similarly, they have also recommended the replacement scales as mentioned in their recommendations quoted in para 3 above. At the same time, we are fully conscious of the judgement of the Hon'ble Supreme Court in P.V. Hariharan's case (supra) that normally the Courts/Tribunal should not interfere in such matters i.e. revise and enhance the pay scales across the Board or disturb the relativities of the pay scales, etc. However, this is a case where taking into account the recommendations of the 5th Central Pay Commission itself and lack of it in the 4th Central Pay Commission as held by the Tribunal in OA 901/98, part of the relief claimed by the applicants has to be allowed.

9. Taking into account the totality of the facts and circumstances of the case and the aforesaid judgements of the Tribunal, particularly the judgement of the Tribunal dated 8.6.1994 in OA 2323/89 and the recommendations of the

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5th Central Pay Commission with regard to these four categories of staff wherein it has been observed that the present scale of Rs.1400-2300 is low, we allow this application partly with the following directions.

- (i) Following the recommendations of the 5th Central Pay Commission, we direct the respondents to grant the pay scale of Rs.1640-2900 (pre-revised) for Physiotherapists/Occupational Therapists notionally w.e.f. 1.1.1986 and with actual benefits only with effect from 1.1.1996;
- (ii) Similarly, the revised pay scales/replacement scales recommended by the 5th Central Pay Commission for the other categories of staff for the posts held by the applicants i.e. revised pay scales of Rs.2000-3500 and Rs.2200-4000 shall be granted to them notionally w.e.f. 1.1.1986 and with actual benefits from 1.1.1996;
- (iii) The consequential monetary benefits, as a result of the aforesaid directions, shall be granted to the applicants within three months from the date of receipt of a copy of this order.

No order as to costs.

V.K.Majotra
(V.K.Majotra)

Member (A)

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)

Vice Chairman (J)

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