

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 537/2001

(6)

New Delhi this the 6th day of September, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)

Anita Sharma
W/o Shri Rajesh Sharma
R/o H-281, Nanak Pura
Moti Bagh-II, New Delhi. Applicant

(By Sh. S.K. Gupta, Advocate)

-versus-

1. Union of India through
Secretary
Ministry of Health & Family Welfare
Nirman Bhawan
New Delhi.
2. The Director General of
Health Services
Nirman Bhawan
New Delhi-110 011.
3. The Principal & Medical Superintendent
Lady Hardinge Medical College & Hospital
New Delhi -110 001. Respondents

(By Mrs. Meenu Maine, Advocate)

O R D E R (ORAL)

Sh. V.K. Majotra, M(A):-

On selection, the applicant was appointed against the post of Physical Instructor in Lady Hardinge Medical College & Smt. S. K. Hospital, New Delhi in October 1994. She joined on this post on 19.11.1994. By the present OA, she has claimed higher pay scale of Rs. 2200-4000 (pre revised) vis a vis the scale in which she was placed i.e. Rs. 1400-2600 (pre revised). It is contended that the aforesaid post was initially held by one Mrs. J. Morrison who retired on her superannuation w.e.f. 28.2.1994. Mrs. Morrison had instituted O.A. No. 1139/86 claiming a



higher pay scale. By an order passed on 5.1.1988, the aforesaid O.A. was allowed on the basis of the principle of equal pay for equal work in the following terms:

"The applicant is entitled to the same pay scale as admissible to other Physical Director/Instructor in other institutions under the Delhi Administration. Her pay scale under the recommendations of the Third Pay Commission and the Fourth Pay Commission should also be refixed after fixing his pay in the appropriate scale as recommended by the Second Pay Commission or UGC for similar posts which should be Rs.400-800/- . The respondents are directed to refix the pay scale of the applicant accordingly and all arrears should also be paid to her from the date pay scales have been revised in respect of Physical Directors/Instructors in other institutions under Delhi Administration or the Central Government. Fixation of pay and payment of arrears should be completed within a period of six months from the receipt of these orders by the respondents."

It is claimed that since the aforesaid scale of Rs.2200-4000 (pre revised) was found payable by the Tribunal for the aforesaid post, applicant is also entitled for the same and cannot be placed in a lower scale. The applicant has sought a direction to the respondents for conferal of the pay scale of Rs.2200-4000 (pre revised) on the applicant which was enjoyed by her predecessor. In their counter reply, the respondents have stated that as per the recruitment rules , Annexure R-1, the post of Physical Instructor is a group 'C' post in the pay scale of Rs.5000-8000 and the pay scale of Rs.8000-13500 which is being claimed by the applicant is for a Group 'A' post and not for a Group 'C' post being held by her.

W2

They have also stated that the recruitment to Group 'A' post is made through the agency of UPSC. According to the respondents, the grant of higher pay scale to the predecessor of the applicant was personal to her on the basis of the Tribunal's judgment dated 5.1.1988 and that judgment has not recommended the upgradation of the post of Physical Instructor in Lady Hardinge Medical College but has recommended to refix the pay scale of the applicant as personal to her. According to the respondents, the post of Physical Instructor held by the applicant as per the recruitment rules is a Group 'C' post for which the revised corresponding pay scale is Rs.5000-8000 and for Group 'A' post the revised corresponding pay scale is Rs.8000-13500. Respondents have also stated that the representation of the applicant is being examined in the light of the recommendations of the Fifth Central Pay Commission as per paragraph 69.44 in respect of an identical post of Physical Training Instructor in Rai Kumari Amrit Kaur College of Nursing, another subordinate office of the Directorate General of Health Services which has been recommended the higher pay scale of Rs.5500-9000 in view of the qualification of degree plus diploma in physical education. According to the respondents, the applicant does not merit the reliefs claimed by her.

2. We have heard the learned counsel of both sides and considered the material on record. The learned counsel of the applicant contended that in the matter of R.C.Mittal vs. U.O.I. and others decided on



10.9.1987 in O.A. No.853/1986 by this Tribunal, the question of non-revision of pay scale of Rs.700-1600 at par with the pay scales of other Physical Directors of Colleges of Delhi Administration was considered. As the applicant therein possessed the same qualifications and had the same experience as Physical Directors in other institutes under Delhi Administration or the Government of India, the principle of equal pay for equal work was upheld. The respondents were directed to refix the pay scale of that applicant as admissible to other Physical Directors in other institutes under Delhi Administration. The learned counsel also placed reliance on order dated 5.1.1988 in the case of Mrs.J.Morrison vs. U.O.I. & others wherein considering the applicant as similarly situated as Shri R.C.Mittal, applicant in O.A.No.853/1986 was held entitled to the same pay scale as admissible to other Physical Directors/Instructors in other institutes under the Delhi Administration. The learned counsel stated that both in Maulana Azad Medical College where Shri R. C.Mittal was working who was the applicant in O.A.No.853/1986 and in Lady Hardinge Medical College respectively where Mrs. J.Morrison was working, the directions of the court in the related O.As were implemented. Accordingly the applicant who succeeded Mrs. J.Morrison after her retirement in 1994 should also ^{be} _{be} held to be entitled to the pay scale which was being enjoyed by Mrs. J.Morrison, her predecessor that is Rs.2200-4000 (pre-revised).

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3. The learned counsel of the respondents stated that as per the recruitment rules, the post of Physical Instructor is a General Central Service Group 'C' Non-gazetted, Non-ministerial post in the pay scale of Rs.425-700 (pre revised) for which the educational qualifications have been prescribed as a Degree of a recognised University or a Diploma in Physical Instructor's course. Applicant's predecessor who had been recruited prior to 1.9.1978 when the institute happened to be a private organisation and was later on taken over by the Government and was accorded the higher pay scale on the basis of the court judgment which was nothing but personal to her. While notifying the post of Physical Instructor after the retirement of Mrs. J.Morrison, the post of Physical Instructor was filled up on the basis of the provision in the recruitment rules for a Group 'C' post. The applicant had accepted the terms and conditions of appointment for which the pay scale of Rs.1400-2600 was specified as the scale for the post of Physical Instructor as per Annexure A-1 whereby ~~she~~ ^b she was issued the offer of appointment and on her acceptance of the terms and conditions she was actually appointed. The learned counsel contended that the benefit given to her predecessor Mrs. J.Morrison on the basis of the court judgment cannot be given to the applicant as the respondents have prescribed a specific pay scale for the post of Physical Instructor in Group 'C' post against which the applicant was recruited.

4. We find that in both the judgements which have been relied upon on behalf of the applicant, the applicants therein had been accorded higher pay scale on the principle of equal pay for equal work. The contention raised therein was that whereas the Physical Directors/Instructors in other institutes under the Delhi Administration or the Government of India were placed in a higher pay scale, the applicants therein had been accorded lower pay scales. Thus the Tribunal directed the respondents to accord the same pay scale to the applicants in those OAs as were available to the Physical Directors/Instructors in other institutes of the Delhi Administration/Government of India. In the present case, despite specific query, we have not been provided any material regarding the pay scales obtaining in various other institutes for the post of Physical Director/Instructor. The recruitment rules for the post of Physical Instructor classified the post as General Central Service Group 'C' Non-gazetted Non-Ministerial post. In the Fifth Central Pay Commission's report in paragraph 69.44, it is specified that "Physical Training Instructor presently in the scale of Rs.1400-2600 may be upgraded to the scale of pay of Rs.1640-2900 in view of the qualifications of degree plus diploma in Physical Education. Both categories will have assured career progression to the scales of pay of Rs.2000-3500 and Rs.2500-4000 respectively." In the CCS (RP) Rules 1997 for Raj Kumari Amrit Kaur College of Nursing which has

(11)

12

been filed by the respondents as Annexure R-3, for the post of Physical Training Instructor existing pay scale is Rs.1400-2600 and its ^b corresponding revised pay scale is indicated as Rs.5500-9000. Whereas the respondents have provided one illustration regarding the revised rules as per recommendations of the Fifth Central Pay Commission for the post of Physical Instructor, the applicant has not provided the comparative scenario obtaining in other institutes of Delhi Administration or Central Government except that the learned counsel stat that the Raj Kumari Amrit Kaur College is a college of nursing and not a medical college.

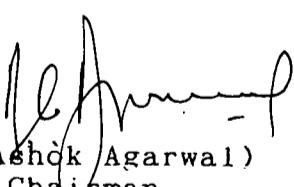
5. In our view, it is the prerogative of the Government to prescribe recruitment rules for specific posts as also the pay scales relating to the posts. The post of Physical Instructor as per the rules has been categorised as Group 'C' post for which the revised pay scale of Rs.5000-9000 on the basis of the pre revised scale of Rs.1400-2600 has been prescribed by the respondents. Categorisation of posts in different grades and prescription of pay scales falls within the jurisdiction of the Government. The pay scales for various posts in different Ministries and departments are recommended by an expert body, namely the Central Pay Commission. The Tribunal does not have expertise available with them nor the data to conduct a comparative study of the duties and responsibilities of various posts and,

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therefore, do not normally interfere with the functions and jurisdiction of the expert body such as the Pay Commission and with the role of the Government. True that in the matters of Sh.R.C. Mittal and Mrs. J.Morrison (supra), the court had taken into consideration the pay scales obtaining in other institutes under the Delhi Administration for the post of Physical Director/Instructor and had recommended a higher pay scale for the applicants in the related cases but in the present case, information as to the pay scales for the post of Physical Director/Instructor in other institutes under the Delhi Administration or the Government of India has not been provided by the applicant. The benefit accorded to the applicants in those cases is not available to the present applicant in view of the recruitment rules relating to the post of Physical Instructor as also the terms and conditions prescribed at the time of appointing the applicant.

6. Having regard the reasons recorded and discussions made above, we do not find any merit in the OA which is dismissed. No costs.


(V.K. Majotra)
Member (A)


(Ashok Agarwal)
Chairman

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