

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA 572/1999

with

OA 2082/1999

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New Delhi this the 23rd day of October, 2000

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

OA 572/1999

1. Deepika Sharma
2. Buddhi Sagar
3. Mrs Ramá Kohli
4. Roy Koshy
5. Mrs. Deenamma Johri
6. Mrs. Raichel P.M.
7. Mrs Indu Bala
8. Mrs Lizyamma Thomas
9. Mrs Rahelamma C.T.
10. Daniel T.T.
11. Valsamma Verghese
12. Mrs Rajeni Kant
13. Mrs Suman Lata
14. Mrs Tara Sharma
15. Mrs Karuna Sharma
16. Roop Lal
17. A.M. Mathew
18. Ritu Chopra
19. Neelam Sharma
20. Valsamma Issac
21. Smt. S.K. Sood
22. Usha Kumari

(Sl. Nos 1 to 22 all are Lab. Assistants of East Zone,
Directorate of Health Services, Delhi Administration.)

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23. Mrs. Sasamma Joseph
24. Mrs Mariyamma Punnoose
25. Mrs Neelam Sharma
26. Mrs Saramma Joseph
27. Mrs. Sunita
28. Mrs Aleyamma Thomas
29. Mrs Jainamma Mathews
30. Miss Neelam
31. Mrs Natasha Wadhawan
32. Mrs Meenu Vij
33. Mrs Raj Kumari
34. Mrs Priti Mehra
35. Mrs Neelam Grewal
36. Mrs S.K.Goswami
37. Mrs Jaswinder Kaur
38. Sh. Ramesh Chand
39. Mrs Paramjeet Kaur
40. Sh. Bhuvendra C.
41. Mrs Basanti Sharma
42. Mrs Shashi Verani
43. Mrs Molly Stephen
44. Mrs Indira Bhaskar
45. Mrs Theruasamma N.D.
46. Mrs Valsamma Lakkra
47. Mrs. Mandhir Kaur
48. Mrs Gurinder Kaur
49. Mrs Laligee Vergheese
50. Sh. Hazari Lal
50.A. Mrs Sita Kumari
50.B. Mrs Rajni Gulati
50.C. Mrs Manju Gambhir

(Sl. Nos 23 to 50C all Lab. Assistants of West Zone,
Directorate of Health Services, Delhi Administration.)

51. Deepika Dutta
52. Cisily John
53. Mrs Alice Devassy
54. Mrs Beena Nair
55. Jessy Mathew
56. Lissyamma Thomas
57. Ajay Masih
58. Sushila Joseph
59. Asha Rafeek
60. Mrs Anita Nagpal
61. Mr. Ramesh Kumar
62. Mrs Renu Bala
63. Mrs Sandhya Bansal
64. Mrs Shashi Chawla
65. Veena Sharma
66. Sushama Mathew
67. Ram Lal Dambal
68. O.P. Sulkha

(Sl.No. 51 to 68 are all Lab. Assistants of the North Zone, Dte. of Health Services, Delhi Administration.)

69. Smt. Saramma Ninan
70. Smt. Usha Daniel
71. Smt. Rosanna Aniyachan
72. Sh. Darshan Kumar
73. Sh. Rameshwar Dass
74. Sh. Shanti Joyis
75. Sh. Suni Babu
76. Sh. Umed Singh
77. Sh. Khayati Dhamija
78. Mrs Rosamma Yovel

... Applicants

(Sl. Nos 69 to 78 are all Lab. Assistants in Din Dayal Upadhyaya Hospital under Dte. of Health Services, Delhi Administration)

(By Advocate Shri B. Lall)

Versus

1. Delhi Administration
through the Chief Secretary,
5, Sham Nath Marg, Delhi-110054
2. Union of India
through the Secretary,
Ministry of Health & Family
Welfare, Nirman Bhawan, New Delhi.
3. The Director General of Health
Services, Ministry of Health and
Family Welfare, Nirman Bhawan,
New Delhi.
4. The Secretary (Medical)
Govt. of National Capital Territory of
Delhi, Department of Medical and
Public Health, 5, Sham Nath Marg,
Delhi-110054
5. The Director of Health Services,
Delhi Administration,
'E' Block, Saraswati Bhawan,
Connaught Place, New Delhi.

... Respondents

(By Advocate Shri Vijay Pandita)

OA 2082/1999

1. Mrs. Baby Kutty
2. Mrs Omane T.
3. Mrs Sapna Jain
4. Mrs Lizy Yasudasan
5. Mrs. Anney Joyson
6. Mrs Maria John
7. Mrs Alexamma Ahraham
8. Mrs Chhaya Bhutani
9. Mrs Saramma Mathew
10. Shri George Mathew
11. Mrs Kamlesh Gupta
12. Mrs Aniamma Lasow
13. Mrs Saramma John
14. Mrs Sani Shibu
15. Mrs Geetha Jeevan
16. Mrs Mesay Sunny

17. Mrs Sadhana Bewal

18. Mrs Disha Bakshi

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(All are Laboratory Assistants of South Zone,
Directorate of Health Services, Delhi Adminis-
tration, 5, Sham Nath Marg, Delhi-110054)

... Applicants

(By Advocate Shri B.Lall)

Versus

1. Delhi Administration,
through the Chief Secretary,
5, Sham Nath Marg, Delhi-110054
2. Union of India
through the Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi.
3. The Director General of Health Services,
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi.
4. The Secretary (Medical),
Govt. of National Capital Territory of
Delhi, Department of Medical and public
Health, 5, Sham Nath Marg, Delhi-54
5. The Director of Health Services,
'E' Block Saraswati Bhawan,
Connaught Place, New Delhi.

... Respondents

(By Advocate Shri Vijay Pandita)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

In OA 572/1999, eighty^{one} applicants who are working
as Lab. Assistants in various Hospitals and Dispensaries under
the Directorate of Health Services and Family Welfare, have
filed this application in which they have claimed pay parity
and revision of their pay scales with Lab. Assistants in the
Directorate of Education in Delhi Administration. Similarly
in OA 2082/1999, eighteen applicants who are also Lab. Assistants

in the Directorate of Health Services, Delhi Administration have claimed ~~the~~ similar reliefs. Learned counsel for both the parties have submitted that the facts and issues raised in these two OAs are similar and they are accordingly being dealt with together by a common order.

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2. For the sake of convenience, the facts in Deepika Sharma and Ors Vs. Delhi Administration through the Chief Secretary and Others (OA 572/1999) have been referred to. The main contention of the applicants is that prior to 3.3.1981 the pay scale of Lab.Assistants in the Directorate of Health Services and in the Directorate of Education, Delhi Administration which are both under Respondents 1, 4 and 5 was the same, namely, the pay scale of Rs.260-430. Thereafter the pay scale of Lab.Assistants in the Directorate of Education, Delhi Administration, was revised from Rs.260-430 to Rs.290-500 w.e.f. 3.3.1981. The pay scale of Lab. Assistants in the Directorate of Education was further revised to Rs.330-530 w.e.f. 23.8.1983. According to the applicants they have taken up this matter with the concerned authorities for revision of their pay on par with the Lab.Assistants in the Directorate of Education, Delhi Administration. One of the applicants similarly situated as the applicants in the present case, namely, Sh. Pawan Kumar Tyagi had filed OA 444/1986 in the Tribunal claiming the revision of pay scale of Rs.290-500 w.e.f. 3.3.1981 to ~~22.8.1983~~ ^{23.8.1983} and Rs.330-530 from 23.8.1983 onwards with all consequential

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benefits. The Tribunal by order dated 6.7.1992 had directed the respondents to fix the scale of the applicants ^{as} ~~and the~~ Lab. (A)

Assistants in the Health Directorate at Rs.290-500 from 1.11.1982 and allow consequential benefits. With regard to the claim for pay scale of Rs. 330-530, it was noted that anomaly has been accepted in the counter filed by the respondents and, therefore, a direction was given to them to take a decision in this regard keeping in view all ^{the} factors within six months. (Annexure A-1).

The applicants have stated that the review application against this order had also been dismissed by order dated 8.10.1993.

The Department of Medical and Public Health, Govt. of NCT of Delhi, implemented the Tribunal's order by order dated 10.1.1994

by giving the revised pay scale to Sh. P. K. Tyagi, Lab. Assistant with all consequential benefits. Their grievance is that these benefits given to Sh. P. K. Tyagi should also have been extended to all the similarly situated Lab. Assistants like them, which have not been done. They have submitted that ^{they} have made representations to the respondents but no reply has been given by the respondents. Hence this OA.

3. Shri B. Lall, learned counsel for the applicants has relied on the observations of the Supreme Court in U.P. State Mineral Development Corporation Limited and Another Vs. Vijay Kumar Upadhyay and Another (1997) (9) SSC 334. He has submitted that as the aforesaid order of the Tribunal dated 6.7.1992 has attained finality, ^{if} the similar benefits ought to have

been extended to other similarly situated persons like the applicants. He has also relied on the Constitution Bench judgement of the Hon'ble Supreme Court in K.C.Sharma & Ors Vs. UOI & Ors (Civil Appeal No.5082 of 1997) (1998(1)SLJ(SC) 54. (15)

In this case the Supreme Court has observed that in the circumstances of the case, the Tribunal should have condoned the delay in filing the application and the appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal, which was affirmed by the Court in Chairman, Railway Board and Ors. Vs. C.R. Rangadhamiah and Ors (Civil Appeals Nos. 4174-4182 of 1995) and connected matters). Learned counsel has submitted that the applicants had also been given assurance by the respondents that their cases would be placed before the Fourth Central Pay Commission and Fifth Central Pay Commission, which have, however, not been done. He has, therefore, submitted that in the circumstances of the case the applicants in both OA 572/1999 and OA 2082/1999 who are similarly situated as Shri P.K.Tyagi in OA 444/1986 should be given the same benefits i.e. revision in pay scale w.e.f. 1.11.1982 in the pay scale of Rs.290-500 (Pre-revised), ^{the 1st} further revision to Rs.1200-2040 w.e.f. 1.1.1986 and further revision to Rs.4000-6000 on the basis of ^{the 1st} Vth Central Pay Commission recommendations w.e.f. 1.1.1996. They have also prayed that they may be given arrears of pay in the revised pay scale w.e.f. 1.11.1982.

4. We have perused the reply filed on behalf of the respondents and heard Sh. Vijay Pandita, learned counsel. Learned

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counsel has submitted that the Delhi Government is not competent to give the revised pay scales without approval of the Central Government. He has drawn our attention to the observations made by the Tribunal in CP filed by the fifteen applicants who are also Lab.Assistants, subsequent to the judgement of the Tribunal in OA 444/1986 in CP 197/1994.

One of the grounds on which the CP was dismissed by order dated 12.1.1995 was that/^{the}Central Government was not impleaded

However, as one of the respondents in OA 444/1986./ that argument will

not assist the respondents in the present cases as we note the

that/NOI through the Secretary, Ministry of Health and

Family Welfare and the Director General of Health Services

have been impleaded as Respondents 2-3 in the present cases.

We have also noted that notices have been issued to these

respondents who have, however, not filed any reply in the

present OAs. Learned counsel has submitted that as the

Central Government had not agreed for fixation of the revised for

pay scale of Lab.Assistants other than/Sh.P.K.Tyagi, the

applicant in OA 444/1986, the reliefs prayed for by the

applicants in the present OAs cannot be granted. He has also

submitted that they have claimed the reliefs/relate which back to

the year 1982 and the OA is, therefore, liable to be dismissed

on the ground of delay and laches, apart from that

under Section 21 of the Administrative Tribunals Act, 1985, he submits that

/the applicants are barred from any claims prior to 1.11.1982.

He has relied on a number of judgements as given in the list

placed on record. He has also submitted that the Recruitment Rules (17)
for Lab. Assistants in Education Department and those in the
Health Department are different and separate and they also belong
to separate cadres. In the circumstances, he has, therefore, prayed
that these applications are highly belated and suffer from delay
and laches and has prayed that the same may, ¹⁸therefore, be
dismissed.

5. We have carefully considered the pleadings and the
submissions made by the learned counsel for the parties.

6. In Sh.P.K.Tyagi's case (Supra) (OA 444/1986), the
Tribunal has noted as follows:-

" The counter of the respondents admitted that
that there was anomaly in the pay scales of Lab.
Assistants in Education Directorate and Lab.
Assistants in the Directorate of Health Services
and for the removal thereof the matter was to
be referred to Delhi Administration for pointing
out to the Fourth Central Pay Commission but the
anomaly continued to exist despite several
representations."

Learned counsel for the respondents has submitted
that the Tribunal's order dated 6.7.1992 was an ex-parte order
but we note that the Tribunal has referred to the statements
made by the respondents in their counter. The findings of fact
by the Tribunal are binding on us. It was further noted in
Paragraph 4 of the judgement that the pay scale of Lab. Assistants
had been discussed and an assurance was given to the employees

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representatives that this would be examined and referred to Delhi Administration for pointing out the anomaly to the Fourth Central Pay Commission and the matter was duly brought to the notice of the Delhi Administration. As the assurance referred to by the respondents has been noted in the Tribunal's order dated 6.7.1992, we are unable to agree with the contention of the learned counsel for the respondents that no such assurance had been given at the relevant time to the Lab. Assistants with regard to anomaly in their pay scale. In the judgement of the Tribunal in Om Prakash Satija Vs. UOI & Ors (1995(29)ATC 1), ¹⁸ it has been stated that a judgement in a case does not give ^a cause of action to another employee. Those observations would not be applicable to the facts of the present case as it is nowhere disputed by the respondents that Sh.P.K.Tyagi, the applicant in OA 444/1986, was not similarly situated as the applicants in the present two applications. Therefore, the contention of the respondents that the benefit given to Sh.P.K.Tyagi will not be extended to other similarly situated persons cannot be accepted in the light of the judgement of the Hon'ble Supreme Court in UP State Mineral Development Corporation Ltd. and Another's case (Supra), relied upon by Shri B.Lall, learned counsel.

7. We are fully aware that in the matters of pay scales, their revision, and connected matters, the Tribunal ^{to} ought not normally interfere, as the same has to be considered

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by an expert body like the Pay Commission. However, in the facts and circumstances of the present case, from the counter affidavit filed by the respondents we are unable to come to the conclusion that Shri P.K.Tyagi and the applicants are not similarly situated persons. The contention of the respondents that without getting ^{the} consent of the Govt.of India to revise the pay scale the benefit of the revised pay scale given to Sh.P.K.Tyagi in pursuance of the Tribunal's order dated 6.7.1992, should be confined only to him cannot be accepted. In other words, since it is not denied that the applicants in the present applications are ~~not~~ similarly situated persons like Sh.P.K.Tyagi, we see no good grounds to deny the revised pay scale of Rs.290-500 to the applicants w.e.f. 1.11.1982. With regard to this date, it is evident that the Tribunal had also taken into account the provisions of Section 21 of the Administrative Tribunals Act, 1985, in giving the benefits to the applicant ^{that} in/case only from 1.11.1982, which is the date from which the present reliefs have also been sought. The judgement of the Hon'ble Supreme Court in M.R.Gupta Vs. Union of India and Ors. ((1995(5)Scale 29)) is also relevant to the facts of the present case as the applicants are claiming proper fixation of pay in accordance with the revision of pay scales. However, Para 8 of the judgement of the Hon'ble Supreme Court in M.R.Gupta's case (Supra) is also relevant which reads as follows:-

" For the aforesaid reasons, this appeal has to

be allowed. We make it clear that the merits of the appellant's claim have to be examined and the only point concluded by this decision is the one decided above. The question of limitation with regard to the consequential and other reliefs including the arrears, if any, has to be considered and decided in accordance with law in due course by the Tribunal. The matter is remitted to the Tribunal for consideration of the application and its decision afresh on merits in accordance with law."

8. The respondents^{have} revised the pay scale/ from 1.11.1982 with all arrears from that date. These OAs have been filed on 10.3.1999 and 15.9.1999, respectively, whereas the order of the Tribunal in OA 444/1986, on which the applicants^{have} relied upon has been pronounced as far back as 6.7.1992, and thereafter implemented by the respondents by their order dated 10.1.1994.

9. It is also relevant to note that in Paragraph 7 of the Tribunal's order dated 6.7.1992, the claim of the applicant Sh.P.K.Tyagi for further revision of pay scale of Rs.330-530 was left open to the respondents to take proper decision in the matter. Shri B.Lall, learned counsel for the applicants has submitted that in furtherance to the recommendations of the IVth Central Pay Commission, applicants were granted the revised pay scale of Rs.1200-2040 w.e.f. 1.1.1986. In the circumstances nothing further survives on this claim.

10. In the result, taking into account the facts mentioned above, the aforesaid judgements of the Supreme Court, and in

particular the observations made in M.R.Gupta's case (supra) quoted above, the claim of the applicants in OA 572/1999 and OA 2082/1999 are allowed subject to what is stated below:-

(2)

- (i) They shall be entitled to the revised pay pay scale of Rs.290-500 w.e.f. 1.11.1982 only on a notional basis for fixation of pay but they shall not be entitled to any consequential arrears of pay arising from the pay revisions except from two months from the date of filing of these two applications, namely, 10.5.99 and 15.11.99, respectively.
- (ii) Necessary action as above shall be taken by the respondents within four months from the date of receipt of a copy of this order.

No order as to costs.

Let a copy of this order be placed in OA 2082/1999.

(V.K.Majotra)
Member (A)

(Smt.Lakshmi Swaminathan)
Member (J)

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Attested

Signature

14.11.2000

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C-IV