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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 901/1998
M.A. NO. 409/2001

New Delhi this the 7th day of August, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

1. Mrs. Sneh Lata Mitter,
Lecturer in Physiotherapy
W/O Dr. Jagdish Mitter,
1007 Faiz Road, Karol Bagh,
New Delhi-110005.
2. Mrs. Sushma Bhagi,
Physiotherapist
W/O Shri R.K.Bhagi,
13/27 Shakti Nagar,
Delhi.
3. Mrs. Vijay Munjal,
Senior Physiotherapist
W/O Shri Ved Prakash,
6/18 West Patel Nagar,
New Delhi-110008. Applicants

(By Shri G.D.Gupta with Shri B.K.Aggarwal, Adv.)

-versus-

1. Union of India through
Secretary (Expenditure),
Ministry of Finance,
North Block, New Delhi.
2. Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi. Respondents

(None present)

O R D E R (ORAL)

Shri S.A.T.Rizvi, Member (A) :

The applicants working respectively as Lecturer in Physiotherapy, Physiotherapist and Senior Physiotherapist seek higher grades of pay on the ground that their claims for higher grades of pay based on their qualifications etc. were not considered by the Fourth Central Pay Commission which had given them mere replacement scales. The contention raised is that had the Fourth Pay

Commission considered the claims of the applicants on merits, i.e., on the basis of their qualifications, experience etc., higher pay grades would have been granted in their case.

2. In support of their claim, the applicants have inter alia relied on the office memorandum dated 28.8.1986 issued by the Ministry of Health and Family Welfare in which a definite recommendation has been made for grant of higher pay grades in favour of Physiotherapists, Senior Physiotherapists and Lecturers in Physiotherapy for the consideration of the Ministry of Finance (Department of Expenditure). We have perused the aforesaid office memorandum and find that the Ministry of Health and Family Welfare has recorded therein a definite finding to the effect that the category of Physiotherapists and Occupational Therapists had been omitted by the Fourth Pay Commission at the time of consideration for grant of revised scales of pay. Accordingly, with the approval of the Health Secretary, that Ministry recommended the following pay grades in favour of Physiotherapists, Senior Physiotherapists and Lecturers in Physiotherapy :

Physiotherapists	:	Rs. 2000-3200
Senior Physiotherapists	:	Rs. 2200-4000
Lecturers in Physiotherapy	:	Rs. 2000-3500

3. Aforesaid recommendation made by the Ministry of Health and Family Welfare did not find acceptance with the Ministry of Finance and, therefore, the Ministry of Health and Family Welfare informed the applicants' association by their letter

of 15.11.1988 that, "It is regretted that it is not possible to agree to the same as the pay scales for the posts referred to above have been determined on the basis of the recommendations of the 4th Central Pay Commission and hence no changes are contemplated therein."

4. Aggrieved by the rejection of their claims, the applicants and some others approached this Tribunal in OA No.2323/1989. The matter was considered by the Tribunal comprehensively and the said OA was disposed of on 8.6.1994 by holding as follows :

"....In that view of the matter, we have no hesitation in holding that the rejection of the recommendation of the Ministry of Health and Family Welfare by Annexure A-2, is liable to be quashed. Having regard to the circumstances, we consider it just and proper to call upon the Government to re-examine the recommendation contained in Annexure A-10 and to take an objective decision on a fair consideration of the recommendation contained in Annexure A-10 and in the light of the observations which we have made during the course of the judgement."

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In the aforesaid judgment the Tribunal had occasion, after a great deal of consideration, to observe as follows :

"....This necessarily takes us to the examination of the 4th Pay Commission's report. In paragraph XV at pages 208 and 209 are contained the recommendations of the 4th Pay Commission in para 1 of its report which deals with the Para Medical Staff. We find on a perusal of the same that the 4th Pay Commission has specifically examined the categories of Para Medical Staff consisting of Radiographers, X-Ray Technicians, Pharmacists, Civilian Nurses, Auxiliary Nurses, Mid Wives, Nursing Sisters and Nursing Advisers etc. None of the four categories of Para Medical Staff with which we are concerned in this case find a place

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either in that paragraph or in any other paragraphs of the report of the 4th Pay Commission. We have, therefore, no hesitation in holding that so far as four categories of Para Medical Staff with which we are concerned in this case, are concerned, they have not been specifically dealt with in the report of the 4th Pay Commission. It is precisely for this reason that four categories of posts with which we are concerned were accorded the replacement scales as recommended in paragraph 8.9 of the report of the 4th Pay Commission...."

Equally relevant in the context of this case is the following observation made by the Tribunal in the aforesaid judgment :

"....If there is parity of scales of pay between the Nursing Sister on the one hand and Physiotherapist and Occupational Therapist on the other in accordance with the 3rd Pay Commission's report, we fail to see how the parity could be disturbed in the absence of there being good reasons for doing so. The 4th Pay Commission does not mention about this aspect of the matter. It is difficult to appreciate how, when a Nursing Sister in the scale of Rs.455-700 was accorded the revised scale of Rs.2000-3200 the Physiotherapist and Occupational Therapist would merit only a revised scale of Rs.1400-2300. This only supports the inference which was drawn by the Ministry of Health and Family Welfare that there is an omission by the 4th Pay Commission of consideration of these four categories of Para Medical Staff in its report which resulted in their being given only the replacement scale...."

5. On a careful consideration of the observations made and the conclusions arrived at by the Tribunal in the aforesaid case, we are left ⁱⁿ ~~with~~ 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. ✓

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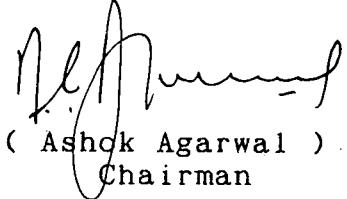
6. In this view of the matter we are disappointed to find that the respondents have in the impugned letter dated 12.10.1994 stated that, "It is not correct to say that the 4th Pay Commission have omitted this category while considering the revised scales of pay for the para medical posts." The entire 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 Fourth Pay Commission did not consider the matter on ~~merits~~ ^{& in doubt and we need not repeat it here.} 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.

7. In the totality of circumstances outlined in the preceding paragraphs, we find no merit in the impugned order dated 12.10.1994 which is accordingly quashed and set aside. The respondents are directed to reconsider the matter in terms of the observations made by us in this order. They are also directed to pass a reasoned and a speaking order within a period of three months from the date of service of this order.

8. Present OA is disposed of in the aforesated terms without any order as to costs.



(S.A.T. Rizvi)
Member (A)



(Ashok Agarwal)
Chairman

/as/