

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2164/1995

(21)

New Delhi this the 25th day of August, 1999.

HON'BLE SHRI R. K. AHOOJA, MEMBER (A)

HON'BLE SHRI SYED KHALID IDRIS NAQVI, MEMBER (J)

Som Nath Srivastava
S/O Shyam Charan Srivastava,
C/O L.S. Chandel,
38-B, Bari More Sarai,
N. Railway Colony,
Delhi-110006.

... Applicant

(By Shri Anis Suhrawardy with Shri S. Mehdi Imam,
Advocates)

-Versus-

1. Union of India through
Chairman, Railway Board,
Ministry of Railways,
Rail Bhawan, New Delhi.
2. The Medical Director,
Northern Railway Central Hospital,
New Delhi-110055.
3. Sr. Divisional Medical Officer (A&G),
Northern Railway Central Hospital,
New Delhi-110055.
4. Dy. Chief Personnel Officer,
HQ Northern Railway,
Baroda House, New Delhi.
5. Financial Adviser & Chief
Accounts Officer (E),
Northern Railway, HQ Office,
Baroda House, New Delhi.
6. Chief Vigilance Officer,
Northern Railway,
HQ Office Vigilance Branch,
Baroda House, New Delhi.
7. General Manager (P),
Northern Railway, HQ Office,
Baroda House, New Delhi.
8. Shyam Babu Verma S/O Deputy Singh Verma,
Pharmacist, Northern Railway,
Health Unit, Basant Lane,
New Delhi.
9. Ashwini Kumar Singh S/O B.P. Singh,
Pharmacist, Northern Railway
Central Hospital,
New Delhi.

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10. Virendra Pratap Singh S/O Megh Nath,
Pharmacist, Northern Railway
Central Hospital,
New Delhi. Respondents

(None for Official Respondents. Respondents 8-10
By Shri S. K. Sawhney, Advocate)

O R D E R (ORAL)

Shri R. K. Ahooja, AM :

The applicant joined the Central Railways, Bombay as Pharmacist in 1962. He came on transfer to the Northern Railways at his own request on 13.6.1978 in the pay scale of Rs.330-480. The applicant submits that the respondents created another pay scale of Rs.330-560 but the same was subject to fulfilment of certain educational and experience qualifications. He submits that respondents 8 to 10 who were allegedly junior to him were granted the higher pay scale of Rs.330-560 but after it was discovered that they did not have the necessary educational qualification the official respondents sought to revert them to the lower pay scale. Respondents 8 to 10 thereafter filed a Writ Petition before the Hon'ble Supreme Court which stayed the operation of the order of reversion. Ultimately, the Writ Petition filed by the respondents 8 to 10 was dismissed by the Supreme Court on 8.2.1994. The review petition filed by the said respondents was also dismissed. However, another O.A. No.570/94 was filed by respondents 8 to 10 against the seniority list issued by the official respondents and the same is still pending.

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2. The applicant submits that later on he went on deputation to the Vigilance Branch under the Northern Railway. In the meanwhile, the official respondents also revised the pay scale of Pharmacist to Rs.455-700 w.e.f. 1.1.1984. He has now come to the Tribunal seeking the following relief :

"(i) direct the Respondents no.2 and 3 to immediately grant promotional grade to the Applicant in the pay scale of Rs.455-700/1400-2600 with effect from 1.1.1984, in the pay scale of Rs.1640-2900 w.e.f. 1.3.1993 till 31.10.1994. The arrears of salary on the said account may also be released with 10% interest per annum (as applicable to fixed deposits) and compound interest thereon;

(ii) award suitable compensation in favour of the applicant;

(iii) award the cost of the application; and

(iv) pass such other and or further order(s) as this Hon'ble Tribunal may deem fit and proper in the light and fact and circumstances stated hereinabove."

3. Counters have been filed by the official respondents as well as by the private respondents.

4. We have heard Shri Anis Suhrawardy for the applicant and Shri S. K. Sawhney for respondents 8 to 10. We are of the view that to resolve the controversy we are not required to go into the question of inter se seniority between the applicant and the respondents 8 to 10. This is because the claim of the applicant has been considered and decided by the official respondents and even certain reliefs have been given adopting the analogy that the

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applicant is junior to respondents 8 to 10 as he came to the Northern Railway Central Hospital on transfer at his own request with bottom seniority. The official respondents in their reply in paragraph 4.28 have stated as follows :

"4.28. That the contents of para 4.28 of the application are wrong and denied. In reply it is stated that the pay of the applicant Shri S.N.Srivastava, Ex-Pharmacist V.I. has been revised in the scale of Rs.455-700/1400-2600 w.e.f. 1.1.1984/ 1.1.1986 under proforma fixation vide Sr.M.S./A&G/CH/NDLS & FA&CAO(E)/BH/NDLS's combined notice No.724-E/SNS/PH/CH dated 20.3.1996 under Rule No.228 of I.R.E.M. Volume-1. For allotting the scale of Rs.1640-2900 (RPS) w.e.f. 1.3.1993 to the applicant, the same was not given as he did not resume his duty in this Hospital as advised to him vide this office notice No.752-E/Pharmacist/CH dated 17.3.1994."

It is thus clear that the official respondents have already granted the pay scale of Rs.455-700 to the applicant w.e.f. 1.1.1984 and the revised pay scale of Rs.1400-2600 w.e.f. 1.1.1986. So the first part of the relief claimed by the applicant has already been met by the respondents.

5. The applicant's next claim is for grant of the pay scale of Rs.1640-2900 w.e.f. 1.3.1993. This claim is based on the restructuring policy of the 3rd respondent issued vide letter dated 8.6.1994. As would be seen from paragraph 4.28 of the reply extracted above, the same has not been granted by the respondents on the plea that the applicant was asked to resume his duty in the Hospital vide letter dated 17.3.1994 but he did not comply and did not re-join

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his duties. Shri Suhrawardy, learned counsel for the applicant submits that the applicant had lien in his parent department, i.e., Northern Railway Central Hospital and even if he could not join, the benefits arising from such lien should have been granted to him. He has also drawn our attention to the reply of the Vigilance Branch dated 26.2.1993 which conveys the information that the applicant had given his willingness to officiate in the higher grade of Rs.1400-2600 but the Headquarter was not in a position to spare him as he was even otherwise working in the higher grade. We notice that the willingness given by the applicant was in regard to the lower pay scale of Rs.1400-2600. The official respondents, however, say that when the higher post in the grade of Rs.1640-2900 was offered to him vide letter dated 17.3.1994, the applicant did not resume his duties in the Hospital though nothing has come on record to show as to why he did not resume his duties. In any case, the learned counsel for the applicant pointed out that the applicant was holding a lien in the Central Hospital and in case any of his juniors were granted higher pay scale he would at least be entitled to national fixation of pay at par with his next junior. The applicant does not have a claim vis-a-vis respondents 8 to 10, since as per Shri Sawhney even they have not been granted the pay scale of Rs.1649-2900. In view of this position, the only direction that can be given is that the official respondents will grant the pay

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scale of Rs.1640-2900 to the applicant for purposes of notional fixation of pay only in case anyone junior to him has been granted this scale.

6. In view of the above discussion, we dispose of this O.A. with the direction that the applicant will be granted the pay scale of Rs.1640-2900 from the date his next junior was given this benefit. However, he will not be entitled to any arrears of pay thereon, but his retiral benefits will be re-fixed on the basis of such revised notional fixation of pay. These directions will be complied with within a period of four months from the date of receipt of a copy of this order. No costs.

Rashan
(R. K. Abooja)

Member (A)

Syed Khalid Idris Naqvi
(Syed Khalid Idris Naqvi)

Member (J)

/as/