

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 2261 /19⁹⁴

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DATE OF DECISION : 13.2.1998

HON'BLE SHRI JUSTICE K. M. AGARWAL, CHAIRMAN

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

Shri A.K.Bhatnagar ... Applicant(s)

-Versus-

Union of India & anr. ... Respondent(s)

Advocates :

Mr./~~Ms.~~ B.K.Agarwal for Applicant(s)

Mr./~~Ms.~~ M.K.Gupta for Respondent(s)

1. Whether to be referred to Reporter? **Yes**

2. Whether to be circulated to other Benches? **No**

[Signature]

(K. M. Agarwal)
Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH.

O.A. No.2261/1994.

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New Delhi, this the 13th day of February, 1998.

HON'BLE MR. JUSTICE K.M.AGARWAL, CHAIRMAN.

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

Shri A.K.Bhatnagar,
s/o Late Shri G.K.Bhatnagar,
Physiotherapist Grade I,
CGHS, Medical Centre,
Parliament House Annexe,
New Delhi.

...Applicant.

(By Advocate Shri B.K.Agarwal)

Versus

1. Union of India through
Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi.

2. Director General,
Health Services,
Nirman Bhavan,
New Delhi.

...Respondents.

(By Advocate Shri M.K.Gupta)

ORDER

JUSTICE K.M.AGARWAL:

By this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant claims higher pay scale of Rs.2375-3500 w.e.f. 1.1.1986, besides claiming the pay scale of Rs.840-1200 for the period between 1.8.1977 to 31.12.1985 on the basis of the rule of equal pay for equal work.

2. Briefly stated, the applicant joined Safdarjung Hospital, New Delhi as a Physiotherapist in 1969 in the pay scale of Rs.455-700. In 1977 on the basis of his application, he was selected and then appointed to the Gazetted post of Senior Physiotherapist in the scale of Rs.650-960 w.e.f. 1.8.1977 for the

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Medical Centre, Parliament House Annexe, New Delhi. The post was and is under the Central Government Health Services, (in short, "CGHS"). As similar Senior Physiotherapists in other Government hospitals under the CGHS were in the higher pay scale of Rs.840-1200, he made representation on 23.3.1978 for similar pay scale. It is alleged that instead of creating parity in the pay scales as claimed, a disparity was created between the posts by redesignating the post held by the applicant as "Physiotherapist Grade I, Group B, Class II, Non-Gazetted" by issuing a corrigendum dated 24.8.1978, Annexure A-6. Thus an insult to the injury was added by turning the applicant from "Gazetted Senior Physiotherapist" into a "Non-Gazetted Physiotherapist Grade I". Successive and continued representations since 15.9.1978 resulted in publication of a notification dated 16.2.1989, Annexure A-11, whereby the Gazetted rank was restored, but dissimilarity in pay scales was not removed. In the meanwhile, the recommendations of the Fourth Pay Commission were implemented w.e.f. 1.1.1986 and the pay scale of Senior Physiotherapist was revised to Rs.2375-3500 from Rs.840-1200. Under these circumstances, the present application was filed for the said reliefs.

3. The claim is resisted by the respondents on various grounds, including on that of limitation.

4. Denial of equal treatment is a continuing wrong, which affords a continuing cause of action. We are, therefore, of the view that the entire claim cannot be thrown out on the ground of limitation and accordingly proceed to examine the claim on merits.

5. The applicant claims equal treatment with Senior Physiotherapists in Dr. Ram Manohar Lohia

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Hospital, Safdarjung Hospital and Kalawati Saran Children Hospital, New Delhi. We have, therefore, first to see if the post of Physiotherapist Grade I held by the applicant can be equated with that of a Senior Physiotherapist in other Hospitals of New Delhi.

6. In paragraphs 4.2 and 4.5 of their counter, the respondents have virtually admitted that the applicant was appointed as a Senior Physiotherapist and that the post was a Gazetted post. Memo No.A.11013/17/76-CGHS I dated 1.6.1977 of the Director General of Health Services, (in short, the "DGHS"), Annexure A-2, shows that the applicant's selection was for the temporary post of Senior Physiotherapist, though the notification dated 1.10.1977 about appointment describes the post as that of 'Physiotherapist Grade I'. In paragraph 4.6 of the counter, it is admitted that "the duties and responsibilities of the posts at Dr. R.M.L. Hospital, Safdarjung Hospital, Kalawati Saran Children Hospital and those prescribed for the post of Physiotherapist Grade I in CGHS are more or less the same." It may, therefore, be safely concluded that the post of Physiotherapist Grade I and that of Senior Physiotherapist are one and the same.

7. The next question is about the qualifications, or that of eligibility conditions. In paragraph 4.14 of the application, it is alleged that "...essential qualification for the post of Lecturer in Physiotherapist & Sr. Physiotherapist is the same but in the case of applicant, (i.e. in the case of Physiotherapist Grade I), there is also desirable qualification in addition to the qualification of Sr. Physiotherapist and the applicant possesses that additional qualification which is desirable." This is

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not denied by the respondents in their return. Further the relevant recruitment rules also support the contention that the educational qualifications for the two posts were similar in nature, even excluding the desirability condition of "Post-graduate training in Physiotherapy from a recognised institution or equivalent" for the post of Physiotherapist Grade I mentioned in column 7 of the schedule to the Central Government Health Scheme, Delhi, Physiotherapist (Grade I) Recruitment Rules, 1981, which did not exist on the date of appointment of the applicant. These Rules are on record as Annxure A-9. The duties and responsibilities of the two posts are also more or less the same as admitted by the respondents in paragraph 4.6 of their counter and also supported by the two letters dated 14.3.1991 and 12.4.1991 consolidatedly filed as Annexure A-10. The difference pointed out for justifying the differential treatment is only in one respect, which is mentioned in paragraph 4.6 of the counter and that is in regard to experience.

8. According to the respondents, "the experience prescribed for appointment to the post of Physiotherapist Grade I" is 8 years, whereas that prescribed for the post of Senior Physiotherapist in Dr. R.M.L. and Safdarjung Hospitals is 10 years. This was also the reason mentioned in the letter No.A.12034/5/92-CGHS. I dated 3.11.1993 issued from the office of the second respondent under the signature of the Dy. Director Admn.(CGHS), which has been filed as Annexure A-1. However, the respondents have not denied that the pay scale of the Senior Physiotherapist in Kalawati Saran Children Hospital, New Delhi is the same as that of other Senior Physiotherapists in Dr. R.M.L. and

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Safdarjung Hospitals, though the experience qualification of the former was only 8 years, as that for the post held by the applicant. No reason is given why a Senior Physiotherapist in Kalawati Saran Children Hospital is given higher pay scale than the one given to the applicant, though in all respects they were similar in nature. The Fourth or the Fifth Pay Commission, an expert body, does not appear to have given any reason justifying the aforesaid differential treatment. In chapter 53 of their report, vol.I, the Fifth Pay Commission has dealt with the Medical and Paramedical Services; and in paragraphs 52.93 to 52.99, they have discussed the cases of "Physiotherapists and Occupational Therapists." In para 52.93 it is said that Physiotherapists and Occupational Therapists cover two distinct branches of Therapy viz. Physiotherapy and Occupational Therapy. In para 52.94 the distribution of establishment is discussed and it is said, "Usually both the categories enter at the level of Rs.1400-2300, with minimum qualifications of 10+2 and a three-year degree or diploma and 6 months internship, with or without PG training. At higher levels the posts of Lecturer PT/OT are in the scale of Rs.2000-3200, and posts of Sr. Lecturer or Senior Physiotherapist/Occupational Therapist are in the scale of Rs.2375-3500." In paragraph 52.95, the demands made by Physiotherapists and Occupational Therapists are mentioned and then in paragraph 52.96 it is concluded that the educational qualification and the nature of duties of Physiotherapists and Occupational Therapists are not comparable to those of MBBS doctors and BDS (Dental Surgeons) and keeping in mind those educational qualifications and nature of duties of PTs/OTs and other relevant factors, the Fifth Pay Commission did not

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recommend parity with medical practitioners. However, they also felt that the present scale of Rs.1400-2300 was low vis-a-vis minimum qualifications and the nature of duties. Accordingly it was recommended 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 pay of Rs.2000-3500, and Senior Physiotherapists/Senior Occupational Therapists in the scale of pay of Rs.2200-4000. To improve promotion prospects a post each of Chief Physiotherapist and Chief Occupational Therapist in the scale of Rs.3000-4500 may be created in hospitals and institutions wherever functionally justified." To sum up, the Pay Commission noticed that at entry level, the pay scale of a Physiotherapist was Rs.1400-2300 "with minimum qualifications of 10+2 and a three-year degree or diploma and 6 months internship, with or without PG training." It further observed, "At higher levels the posts of Lecturer PT/OT are in the scale of Rs.2000-3200, and posts of Sr. Lecturer or Senior Physiotherapist/ Occupational Therapist are in the scale of Rs.2375-3500." (Emphasis given). It is worthy to note that no qualifications or eligibility criteria are mentioned for the higher level posts of Lecturers and Senior Lecturers or Senior Physiotherapist by the Commission. The respondents also could not point out as to what was the difference between the qualifications for the post of a Physiotherapist Grade I and for that of a Senior Physiotherapist, except pointing out that the Senior Physiotherapists in Dr. R.M.L. and Safdarjung Hospitals had 10 years experience at the time of their

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appointments, which could not be held to be eligibility qualification for the post, as similar Senior Physiotherapist in Kalawati Saran Children Hospital had 8 years experience with similar pay scales with those in Dr. R.M.L. and Safdarjung Hospitals. Further on the date of applicant's appointment in the year 1978, no Recruitment Rules were available. In 1981, the Recruitment Rules, Annexure A-9, were brought into force, perhaps to defeat the claim of the applicant, because the number of posts mentioned in column 2 of the schedule to the said Rules, is only 1, which was already held by the applicant on the date of the Rules. In these circumstances, we are of the view that there is no distinction between the post of a Physiotherapist Grade I and that of a Senior Physiotherapist and accordingly the applicant is entitled to the same pay scale as is given to the Senior Physiotherapists in other Government Hospitals under the CGHS.

9. In **UNION OF INDIA & ORS. V. P.V. HARIHARAN & ORS.**, JT 1997(3) S.C. 569, the Supreme court observed:

"... 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 depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being mis-understood and mis-applied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales."

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While considering the present case and coming to the aforesaid conclusions, we have kept in mind the said observations of the Supreme court in **P.V.Hariharan's case.**


10. Now so far as the reliefs claimed in the application are concerned, those for the period before constitution of this Tribunal cannot be given to the applicant as no application under Section 19 of the Administrative Tribunals Act, 1985 was made within the time specified under Section 21(2) of the Act. So far as the subsequent period is concerned, we find that this application was filed on 14.11.1994. Accordingly the claim preceding 14.11.1993, or say 1.10.1993, because the salary for October becomes payable in November and further because salary is calculated monthwise and not datewise, is barred by time in view of Section 21(1)(a) of the Act. He cannot claim additional 6 months' period under clause (b) of Section 21(1), because the claim was rejected in 1989 vide Annexure A-1. The gist is that on the basis of continuing cause of action, the applicant can get relief only with effect from 1.10.1993.

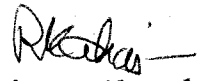
11. During the pendency of the application, the recommendations of the Fifth Pay Commission were accepted by the Central Government. No relief could, therefore, be claimed by the applicant on the basis of these recommendations. However, on the basis of this order, he may be entitled to the benefits arising out of these recommendations as were or are given to the Senior Physiotherapists of other Government Hospitals at New Delhi.

12. In the result, this application partly succeeds and it is hereby partly allowed. The posts of
Grade I
Physiotherapist/and Senior Physiotherapist are declared

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to be of one category and accordingly the applicant is held to be entitled to the same pay scale as was and is given to the Senior Physiotherapists. However, the claim for equal pay for equal work for the period prior to 1.10.1993 is rejected on the ground of limitation, but that for subsequent period is allowed. Accordingly the respondents are directed to revise and refix the pay of the applicant prospectively with effect from 1.10.1993 in the light of the aforesaid conclusions and to pay the arrears within a period of six months from the date of receipt of a copy of this order. No costs.


(K.M. Agarwal)
Chairman


(R.K. Ahooja)
Member (A)