

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2290 of 1994

New Delhi, this the 28th day of September, 1999

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (JUDL)
HON'BLE SHRI S.P. BISWAS, MEMBER (ADMNV)

Shri Shashi Bhushan Singh,
Audiometric Assistant,
Maulana Azad Medical College
Delhi

....Applicant

(By Advocate: Mrs. Avnish Ahlawat)

versus

1. Government of National Capital
Territory of Delhi through
Secretary (Medical & Public Health),
5, Sham Nath Marg,
Delhi.

2. The Dean,
Maulana Azad Medical College,
Delhi

....Respondents

(By Advocate: Shri Anoop Bagai through proxy counsel
Shri Anil Singhal)

O R D E R (ORAL)

BY HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (JUDL)

The applicant in this case is aggrieved by the action taken by the respondents in giving him the revised pay scale of Rs. 1400-2300 with effect from 1.1.86 instead of what he claims should have been Rs. 1640-2900 with effect from the same date. He has also claimed for subsequent revision of pay scale (Rs. 5500-9000) as recommended by the 5th Pay Commission with effect from 1.1.96.

2. The brief facts relevant for considering this case are that the applicant was originally appointed as Audiometric Assistant (in short 'AA') in the E.N.T. Department of Maulana Azad Medical College (in short 'MAMC') with effect from 17.9.76 in the pay scale of

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Rs.425-700. He has submitted that he has been working in the same post without any promotion for the last 18 years i.e. at the time when the O.A. was filed in 1994. Learned counsel for the applicant has submitted that even till today i.e. after more than 23 years, the applicant has not been given a single promotion. The applicant states that the post of AA is an isolated post in MAMC. He has also stated that there is another identical post of AA in Lok Nayak Jaiprakash Hospital (in short 'LNJH') which was originally in the scale of Rs.260-430 which has been revised to the pay scale of Rs.1400-2300 with effect from 1.1.86. The applicant's pay has also been revised with effect from 1.1.86 in the revised pay scale of Rs.1400-2300.

3. Learned counsel for the applicant has also drawn our attention to the orders passed by the Tribunal on 22.5.96 in M.A.3109/96. In this order, the Tribunal had noted the statement filed by the respondents that they have referred the case of the applicant, who is holding an isolated post, to the 5th Pay Commission. However, learned counsel for the applicant submits that inspite of this statement which had been noted by the Tribunal, it appears that the respondents did not actually refer the case of the applicant, who was holding an isolated post, to the 5th Pay Commission for their consideration. This, she submits is based on the fact that there has been no specific recommendation in respect of the applicant for revision of pay scale. After the 5th Pay Commission, it is stated that the applicant, who was in the pay scale of Rs.1400-2300, has been given the revised pay scale of

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Rs.4500-7000 (wrongly stated in the O.A. as 4000-6000).

The applicant submits that the replacement scale for the pay scale of Rs.1400-2300, according to the recommendations of the 5th Pay Commission, is Rs.5500-9000 in the Health Department. ~~She~~ He has submitted that this has also been denied to him arbitrarily and illegally and he was at least entitled for the pay scale of Rs.5500-9000 with effect from 1.1.96. Hence this O.A.

4. The respondents in their reply have submitted that they have correctly fixed the pay of the applicant in the revised pay scale in accordance with the recommendations of the 4th and 5th Pay Commissions. We note that in reply to paragraphs 4.8 to 4.11 of the OA, the respondents have stated that the replacement scale for the pay scale of Rs.425-700, according to the recommendations of the 4th Pay Commission, is Rs.1400-2300 which the applicant states he has been given. However in the reply to the M.A.2098/98 filed by the respondents on 10.2.99, they have stated that before the implementation of the recommendations of the Pay Commission (which in this case refers to the 5th Pay Commission), the applicant was drawing the pay scale of Rs.1200-2040 and thereafter he was given a comparable scale of Rs.4000-6000. The reply filed by the respondents in these paragraphs would, therefore, show that they are taking contrary stands in the reply filed to the OA and in the reply filed to the MA.

5. However we need not dwell^{is} at length on this point that the applicant, who was earlier in the pay scale of Rs.425-700, was given the replacement scale of Rs.1400-2300 (and not Rs.1200-2040). However as the

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respondents have themselves stated that the replacement scale for Rs.1200-2040 was Rs.4000-6000, then obviously the replacement scale for Rs.1400-2300 would be higher, than ~~Rs.4000-6000~~^{Rs.}, which ~~has~~^{ab} been given to the applicant, in accordance with the scales accepted by Government.

6. The Government of India, Ministry of Personnel, Department of Personnel and Training has also issued an Office Memorandum dated 9.8.99 dealing with the recommendations of the 5th Central Pay Commission and its implementation on pay scales and other related matters. While examining the case of the promotional prospects for isolated posts in Groups 'A', 'B' and 'C', the office memorandum has stipulated that to mitigate hardships in cases of acute stagnation in a cadre or in isolated posts, the Government has decided to grant two financial upgradations as recommended by the 5th Pay Commission. The manner in which these two financial upgradations are to be given, has also been provided in the annexure to the OM. Learned counsel for the respondents does not dispute that the Govt. of India, Office Memorandum dated 9.8.99 is also applicable to similarly situated persons working under the Govt. of NCT, Delhi.

7. We note from the facts stated above that the respondents have in implementation of the recommendations of the 4th Pay Commission with regard to isolated post of AA in LNJP Hospital which was earlier in the pay scale of Rs.260-430, granted the revised pay scale of Rs.1400-2300. Similarly in the other isolated post which the applicant is holding as AA in MAMC which was earlier in the pay scale of Rs.425-700, they have given the same revised pay

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scale of Rs.1400-2300. This apparently does not show application of mind and it cannot also be held that the action taken by the respondents is either reasonable or not arbitrary. This is for the reason that what the respondents have done is to equate the pay scale of Rs.260-430 to the scale of Rs.425-700 in giving the same revised pay scale of Rs.1400-2300 in LNJP. Learned counsel for the applicant also states that in other medical departments, there is an intermediary scale of Rs.380-560 which has been revised to Rs.1400-2300 with effect from 1.1.86.

8. Therefore in the facts and circumstances of the case, the applicant would be entitled to a higher pay scale than what he has been granted i.e. Rs.1400-2300. At the same time, we are unable to agree with the learned counsel for the applicant that this Tribunal can direct the respondents to straightaway give the applicant the revised pay scale of Rs.1640-2900, which admittedly was the revised pay scale for those persons who were ~~were~~ earlier holding the pay scale of Rs.455-700 and not Rs.425-700. The observations of the Supreme Court in Union of India & another vs. P.V.Hariharan & another, (1997 SCC L&S 838) are very relevant here. However, it is also evident that the respondents ought to have considered the case of the applicant in the Anomalies Committee to take a decision to grant him a higher pay scale, that is higher than Rs.1400-2300.

9. In view of the facts and circumstances of the case and the observations made above, the respondents are directed:-

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(i) to take a decision regarding grant of an appropriate pay scale to the applicant, after taking into account all the relevant factors. The applicant shall be entitled to such revision notionally with effect from 1.1.86, with arrears of pay with effect from one year prior to the date of filing of this OA i.e. 15.11.93.

(ii) respondents are also directed to consider the case of the applicant for promotion, taking into account the DOP&T office memorandum dated 9.8.99 and other relevant instructions on the subject.

(iii) respondents to refer the case of the applicant to the Anomalies/^{other} Committee following the 5th Pay Commission for suitable revision of the applicant's pay scale as claimed by him in the revised pay scale of Rs.5500-9000.

10. The above action shall be taken by the respondents within three months from the date of receipt of a copy of this order, with intimation to the applicant. Parties to bear their own costs.


(S.P. Biswas)
Member (Admnv)


(Smt. Lakshmi Swaminathan)
Member (Judl)

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