

Central Administrative Tribunal
Principal Bench, N. Delhi

(b)

D.A. No. 1671/94

New Delhi, this the 9th Day of May, 1995.

HON'BLE SHRI J.P. SHARMA, MEMBER (J)
HON'BLE SHRI K.MUTHUKUMAR, MEMBER (A)

1. Dr. S.P.Singh,
Medical Officer,
Nehru Homoeopathic Medical College & Hospital,
B Block, Defence Colony,
New Delhi.
2. Dr. A.S.Kasana
Medical Officer,
Nehru Homoeopathic Medical College & Hospital,
B Block Defence Colony,
New Delhi.

Applicants

(Shri K.B.S.Rajan, Advocate)

Versus

1. The Govt. of National Capital Territory, Delhi
through its Secretary, Ministry of Health
No. 5, Sham Nath Marg,
Delhi.
2. The Principal,
Nehru Homoeopathic Medical College & Hospital,
B Block, Defence Colony,
New Delhi.
3. The Union of India through
the Secretary,
Ministry of Health & Fly Welfare,
Nirman Bhawan,
New Delhi.

Respondents

(By Shri Amrish Mathur, Advocate)

JUDGEMENT (ORAL)

(delivered by Hon'ble Shri J.P.Sharma, Member (J))

Both the applicants are Homoeopathic Doctors and
are serving in the Nehru Homoeopathic Medical College &
Hospital. They filed this application on 17th August, 1994.

They made the first representation in the year 1989 (7) regarding the fact that the 4th Pay Commission, whose recommendations were accepted by the Govt. and implemented from 1.1.1986, has granted them the pay scale of Rs. 2000-3500/- while they aspire for the grant of the scale of Rs. 2200-4000/-. Some of the Homeopathic Doctors in N.D.M.C. & M.C.D. of Delhi Administration on their representation have been granted that scale of pay. The applicants have also asserted that in C.G.H.S. controlled by the Ministry of Health, Homeopathic Doctors are also getting the pay scale of Rs. 2200-4000/-.

In view of this, the applicants made certain representations and their case was also taken up by Delhi Administration and in a letter, addressed on their representation, dated 12th September, 1991 to the Director, Government of India, Ministry of Health & Family Welfare, it was recommended that the orders of the Government of India may also be extended to Medical Practitioner (Homeo) working under Delhi Administration at the earliest. The relief claimed by the applicants is at para No. 8 of the application which is as follows:-

- (a) to hold that the impugned Annexure AI whereby the claim of the applicant for revised pay scale (2200-4000) for the post of Medical Officer (H) was rejected by the respondents is bad in law and hence to be quashed and set aside.
- (b) to direct the respondents to afford the revised pay scale of Rs. 2200- 4000 to the applicant w.e.f. 1.1.1986 as provided for in the case of the counterparts in the C.G.H.S., M.C.D. & N.D.M.C.

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(c) to afford the applicants the consequential benefit that are to accrue, such as pay scale of Rs. 3000-4500/- as per the norms contained in the recommendations of Tikku Committee.

(d) To afford the applicant the arrears of pay and allowances from 1.1.1986 onwards arisen on account of the fixation of pay in the revised scale of Rs. 2200-4000.

(e) to pay interest @ 12% for the arrears, as it is due to the inaction/delayed action and final rejection of the respondents that the applicant could not enjoy his legitimate entitlement.

(f) the Hon'ble Tribunal may pass such other order or orders as the Tribunal may deem fit to meet the ends of justice.

(g) The Hon'ble Tribunal may also be pleased to award cost in favour of the applicants and against the respondents.

A notice was directed to be issued to the respondents. Pleadings in this case are complete except that respondent No.3 has not filed any reply to the original application.

We heard Shri K.B.S.Rajan counsel for the applicant at length and Shri Amresh Mathur for the respondents. The main issue in this case is whether the Tribunal can, at this stage, refix the pay scales of the applicants w.e.f. 1.1.1986. The counsel for the applicant fervently argued that since the matter of non-consideration of parity of the scales of the applicants alongwith other Homeopathic Doctors in MCD & NDNC on merit by the Delhi Administration has not been decided, so the cause of action has arisen to assail the grievance only in 1994 before the Tribunal. The

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applicants have been given the replacement scales of the earlier scale of Rs. 650-1200/- which corresponds to the scale of Rs. 2000-3500/-. However, it appears that there has been certain recommendations on representations by Doctors, working under Delhi Administration, and on that basis the pay scales of the Homeopathic Doctors of M.C.D. & N.D.M.C. has been finally fixed at Rs. 2200-4000/-. Basically, if the applicants are aggrieved by any such inequality in award of the pay scales, they cannot assail the same at the time when already 5th Pay Commission is in session. The 5th Pay Commission has been created as an expert body for fixation of pay scales of all the central government employees including the present applicants and the recommendation has to be submitted to the Government who will take the final decision thereon. In the catena of decision, it has been held by Hon'ble Supreme Court that when an expert body is already considering the matter of fixation of pay, the court or Tribunal should not tinker with the comparative scales and posts of different organizations of Govt. of India at par. The applicants for revision of pay scales from 1.1.1986 came only in 1994. Infact, the departmental remedy can be exhausted even

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in non-statutory matters but section 20 of the A.T. Act, 1985 applies only to the statutory representation. The contention of the learned counsel of the applicant is that had the applicants come at that time then their petition could have been thrown out on the basis that the departmental remedies have not been exhausted. They cannot subscribe to this apprehension what could have happened and what could not have happened, we cannot visualise at this stage for a grievance arising with effect from 1.1.1986, for which the applicants cannot come in the year 1994.

The learned counsel for the applicants also pressed that it is a recurring cause of action of discrimination in award of pay scales. However, when we referred to the learned counsel for the applicant regarding the relief prayed for in para (b) of this application about fixation of pay w.e.f. 1.1.1986 with consequential benefits, learned counsel pressed in his arguments that the last relief prayed for is to mould the relief in any manner the Tribunal may deem fit. In view of this, we find that all these reliefs from (a) to (e) are not within limitation as provided under section 21 of the A.T. Act. No M.A. has been moved to condone the delay, nor there is oral request for the same.

The applicants' case is already under the consideration of the V Pay Commission and at this stage it shall not be possible to

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decide the equivalence of pay and post with reference to other Doctors (Homeo) in other organizations either of Govt. of N.C.T. of Delhi or Central Government.

We are fortified in our view by the authority of the Hon'ble Supreme Court in the case of U.P. State V/s. J.P. Chaurasia reported in AIR 1989 SCC page 10 and in the case of Umesh Gupta V/s. UOI reported in 1989 SC page 29. In that cases the Hon'ble High Court considered the Pay scales of the Additional Secretary of the Allahabad High Court but the Hon'ble Supreme Court struck down the same on the points that when the expert body is seized of the matter then the Hon'ble High Court cannot tinker with the same. It is for the expert body to decide the conclusion of pay scales and posts.

We have given a very sympathetic consideration to the case of the applicants knowing well, as alleged by the applicants, that their counterparts discharging the same duties coming with the same process of selection, have been fixed on a higher scale of pay than the applicants. But the law helps those who are vigilant and not those who are continuously hibernating for years together.

In view of this, we do not find that this application can be considered on merit and the impugned order only says that while the matter is already under consideration with the 5th Pay Commission.

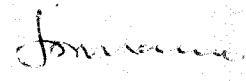
In view of the above facts and circumstances, we do not find any logic in interfering in the impugned order at this stage but give the liberty to the applicants to assail the surviving grievance, if any, after the acceptance of the recommendation to be submitted by the 5th Pay Commission by the Govt.7....

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Learned counsel has also relied upon an order
passed by the Hon'ble High Court, ^{of Delhi} but that cannot be taken
to be a precedent as certain interim directions have been
passed in some cases.

The application is, therefore, dismissed accordingly
leaving the parties to bear their own costs.


(K. MUTHUKUMAR)
MEMBER(A)


(J.P. SHARMA)
MEMBER(J)

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