

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 204/2000

New Delhi this the 13th day of September, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Shri Khema Nand
S/o Late Shri Hark Dev
R/O House No.898, Sector 12,
R.K.Puram, New Delhi-110022.

... Applicant

(By Shri C.Hari Shankar, Advocate)

-versus-

1. Union of India
Through the Secretary
Ministry of Health
Nirman Bhawan
New Delhi.
 2. Directorate General of Health Services
Through the Director General
Ministry of Health
Nirman Bhawan
New Delhi.
 3. Dr.Ram Manohar Lohia Hospital
Through the Medical Superintendent
Kharak Singh Marg
New Delhi-110 001.
 4. Deputy Director Admn.(H)
Directorate General of Health Services
Ministry of Health
Nirman Bhawan
New Delhi-110 001.
- ... Respondents

(Shri Vinod Kumar, counsel proxy for
Shri Rajinder Nischal, counsel)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

By the present OA, applicant claims directions to the Directorate General of Health Services, respondent No.2 herein and Dr.Ram Manohar Lohia Hospital, respondent No.3 herein to refix his pay as Senior Technical Assistant (Dental) as per the revised pay scales prescribed in G.S.R. 369 (E) issued by the Department of Expenditure, Ministry of Finance with

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effect from 1.1.1996. He further claims arrears of pay that would become due to him on the basis of the grant of the aforesaid prayer. He further prays for refixation of his pension on the basis of his refixed pay as per G.S.R. 369 (E).

2. Facts leading to the filing of the present OA are few and are as under.

Applicant who was earlier working as Technician in the aforesaid 3rd respondent hospital was promoted as Senior Dental Technician vide order dated 12.1.1982 on temporary basis. On 24.10.1988, he was promoted to the post of Senior Technical Assistant (Dental). Aforesaid promotion was on ad hoc basis. Aforesaid post of Senior Technical Assistant (Dental) carried the scale of Rs.1640-2900. On 30.11.1996, applicant superannuated. Based on his last pay drawn at Rs.2360/- per month, his pension was fixed at Rs.1180/- per month.

3. Central Civil Services (Revised Pay) Rules, 1997, (for short, the Rules) were notified on 30.9.1997. The pay scale of Rs.1640-2900 was enhanced to Rs.5500-9000 in terms of the recommendations of the Fifth Pay Commission which were brought into effect from 1.1.1996. Applicant accordingly moved respondents 2 & 3 for grant of enhanced pay in terms of the recommendations of the Fifth Pay Commission with effect from 1.1.1996. He also prayed for refixation of his pension based on the aforesaid revised pay scale. Since no favourable response was

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received from respondents 2 & 3, present OA has been instituted.

4. By way of defence, it has, inter alia, been contended that the applicant has been appointed to the post of Senior Technical Assistant (Dental) on ad hoc basis. Aforesaid ad hoc appointment was neither extended nor the approval of the competent authority for its continuance was sought till the date of his superannuation. In the circumstances, the 3rd respondent moved the 2nd respondent for grant of ex post facto extension so as to enable him to finalise his pension papers. In the circumstances, it is contended that the applicant is not entitled to the benefits which are now claimed in the present OA.

5. In our judgement, if one has regard to the Rules, applicant will be entitled to the reliefs which he has claimed in the present OA. Categories of persons to whom the Rules are made applicable have been specified in sub-rule (1) of Rule 2 and the categories of persons to whom the Rules are made inapplicable have been specified in sub-rule (2) of Rule 2. Rule 2 of the Rules reads as under:-

Categories of Government servants to whom the rules apply:- (1) Save as otherwise provided by or under these rules, these rules shall apply to persons appointed to civil services and posts in connection with the affairs of the Union whose pay is debitable to the Civil Estimates as also to persons serving in the Indian Audit and Accounts Department.

(2) These rules shall not apply to:-

(a) persons appointed to the Central Civil Services and posts in Groups 'A', 'B', 'C' and 'D' under the administrative

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control of the Administrator of the Union territory of Chandigarh;

- (b) persons locally recruited for service in Diplomatic, Consular or other Indian establishments in foreign countries.
- (c) persons not in whole-time employment;
- (d) persons paid out of contingencies;
- (e) persons paid otherwise than on a monthly basis including those paid only on a piece-rate basis.
- (f) persons employed on contract except where the contract provides otherwise;
- (g) persons re-employed in Government service after retirement.
- (h) any other class or category of persons whom the President may, by order, specifically exclude from the operation of all or any of the provisions contained in these rules."

Rule 2 (1) thus provides that the Rules are applicable to all persons ^{appointed} to civil services and posts in connection with the affairs of the Union whose pay is debitable to the Civil Estimates. Applicant squarely falls within the list of category of persons appointed to civil services and posts in connection with the affairs of the Union. His pay is also debitable to the Civil Estimates.

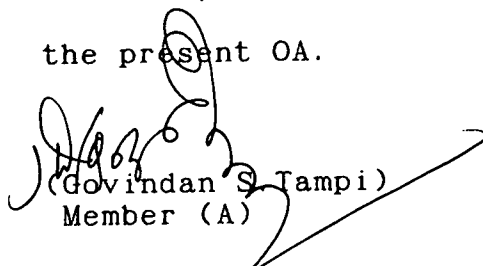
6. Persons who have been excluded from the application of Rules are provided in Rule (2) (a) to (h). Applicant, it is clear, does not fall in any of the category of persons who have been excluded from the application of the Rules.

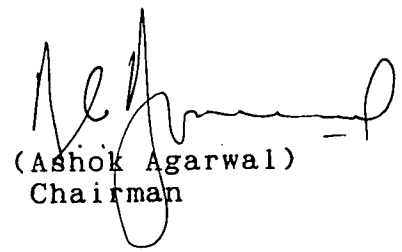
7. If one has regard to the aforesaid Rule ~~as also the exclusive clause contained in sub-rule (2),~~

the applicant would squarely be covered by the aforesaid Rules. Once this finding is given, applicant would become entitled to the enhanced pay scale in terms of the recommendations of the Fifth Pay Commission with effect from 1.1.1996 even though his ad hoc service may or may not have been extended till the date of his superannuation. Similarly he would also become entitled to the enhanced pension based on the last pay he would become entitled to draw based on the recommendations of the Fifth Pay Commission.

8. Present OA in the circumstances is allowed. Respondents are accordingly directed to fix the pay of the applicant in terms of the recommendations of the Fifth Pay Commission and grant him enhanced pay scale with effect from 1.1.1996 and pay him the difference of salary till the date of his superannuation on 30.11.1996. Respondents are further directed to refix the pensionary benefits based on the enhanced pay scale and to pay him the difference till date and continue to pay him pension at the enhanced rate hereafter.

9. Aforesaid directions be carried out within a period of three months from the date of service of this order. Respondents will pay the applicant, a sum of Rs.1,000/- (one thousand only) by way of cost of the present OA.


(Govindan S. Tampi)
Member (A)
sns


(Ashok Agarwal)
Chairman