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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 2323/89

New Delhi this the 8th day of June, 1994.

Shri Justice V.S. Malimath, Chairman.

Shri P.T. Thiruvengadam, Member(A).

1. R.K. Sharma,
Occupational Therapist,
Secretary,
Physiotherapy and O.T. Association,
136, Sunlight Colony-II,
Sidhartha Enclave,
Hari Nagar Ashram,
New Delhi.
2. Mrs Vijay Anand,
Lecturer in Occupational Therapy,
W/o Shri R.K. Anand,
F-494, Vikas Puri,
New Delhi.
3. Mrs. Sujata Malik,
Senior Occupational Therapist,
W/o Dr. S.C. Malik,
24, Kotla Road,
New Delhi.
4. Mrs. Sneh Lata Mitter,
Lecturer in Physiotherapy,
W/o Dr. Jagdish Mitter,
1007, Faiz Road,
Karolbagh,
New Delhi.
4. Mrs. Sushma Bhagi,
Physiotherapist,
W/o Shri R.K. Bhagi,
13/27, Shakti Nagar,
Delhi.
6. Mrs. Vijay Munjal,
Senior Physiotherapist,
W/o Mr. Ved Prakash,
6/18, West Patel Nagar,
New Delhi.

...Petitioners.

By Advocate Shri S.C. Gupta, Sr. Counsel with Shri B.K. Aggarwal,
Counsel.

1. Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi.
2. Secretary,
Ministry of Finance,
Department of Expenditure,
North Block,
New Delhi.

...Respondents.

By Advocate Shri M.L. Verma.

ORDER (ORAL)

Shri Justice V.S. Malimath.

✓ The petitioners in this case are the Physiotherapy and Occu-

pational Therapist Association, a Lecturer in Occupational Therapy, a Senior Occupational Therapist, a Lecturer in Physiotherapy, a Physiotherapy and a Senior Physiotherapist respectively. The first petitioner, association, represents the Physiotherapists, Occupational Therapists, Lecturers in Physiotherapy, Lecturers in Occupational Therapists, Grade-I, Senior Physiotherapists and Senior Occupational Therapists. They have brought a grievance before the Tribunal in regard to the according of appropriate scales of pay w.e.f. 1.1.1986 to the respective categories of posts. The posts described above are all regarded as forming part of Para Medical Staff. In accordance with the recommendations of the 3rd Pay Commission, Physiotherapists and Occupational Therapists were given the pay scale of Rs. 455-700, the Lecturers in Physiotherapy and Occupational Therapy and the Physiotherapists, Grade-I were given the pay scale of Rs.650-960 and the Senior Physiotherapists and Senior Occupational Therapists were given the pay scale of Rs.840-1200. All these four categories of Para Medical Staff pressed for much higher scales of pay being accorded to them by making a representation in that behalf through their associations before the 4th Pay Commission. On consideration of the recommendations of the 4th Pay Commission's report, the Central Government accorded the pay scale of Rs.1400-2300 to Physiotherapist/Occupational Therapist and the scale of Rs.2000-3200 to Lecturers in Physiotherapy/Occupational Therapy and Physiotherapist Grade-I and the pay scale of Rs.2375-3500 was accorded to Senior Physiotherapist and Senior Occupational Therapist. These are scales which can be regarded as replacement scales as recommended by the 4th Pay Commission. The report of the 4th Pay Commission does not specifically deal with these four categories of Para Medical Staff. Hence, in accordance with the recommendations contained in paragraph 8.9 of the report where a particular post is not covered by a specific recommendation of the Commission, the holders of such posts shall be accorded

the corresponding scales of pay recommended by them in Chapter 8. In the light of this recommendation, the aforesaid scales were given to the holders of the four categories of posts described earlier. The holders of these four categories of posts were, however, not satisfied and they were all making representations to the Government for much higher scales of pay being accorded to them and pleading that the 4th Pay Commission has, by not dealing with their case specifically, affected their valuable rights for securing just and reasonable emoluments for the services that they are rendering. At this stage, it would be useful to say that so far as the 3rd Pay Commission is concerned, it did in terms deal with these categories of Para Medical Staff unlike the report of the 4th Pay Commission.

2. The representations submitted by the association and other aggrieved party did receive attention of the Government. The matter was examined and the Ministry of Health and Family Welfare issued an official memo dated 28.8.1986 copy of which is produced at Annexure A-10. For the sake of convenience, we extract the same as follows:

"No.Z.28011/1/86-PCC/E.IIJ

Government of India

Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi.

28th August, 1986

Office Memorandum

Subject:Fourth Central Pay Commission- Comments on recommendation made in the Report.

...

The undersigned is directed to refer to d.o. letter No. F.7(1)-IC/86, dated the

24th July, 1986 and in continuation of this Ministry's Office Memorandum of even number, dated the 20th August, 1986 on the above noted subject.

The Fourth Pay Commission has recommended suitable revision of scales of pay of various categories of posts and in general for the para-medical staff in accordance with their qualifications etc. as prescribed for the relevant posts. A study of the Report reveals that there is no mention of the category of Physiotherapists and Occupational Therapists. It appears that the category as whole has been committed by the Commission at the time of consideration of the revised scales of pay. This Ministry recommends for the following scales of pay for these categories of posts:

	Rs.
1. Physiotherapists/Occupational Therapists.	2000-3200
2. Lecturers in Physiotherapy/Occupational Therapy; and	2000-3500
3. Senior Physiotherapists/Senior Occupational Therapists	2200-4000

The above recommendations have the approval of Health Secretary.

Sd/-

(Ravi Datt)

Under Secretary to the Govt. of India.
Ministry of Finance,
Dept. of Expenditure,
Implementation Cell,
(Attn: Shri A. Rangachari, Addl. Secy.),
Room No. 242-B, Vigyan Bhawan Annex, New Delhi".

It is clear from the recommendation of the Ministry of Health and Family Welfare that substantial improvement was recommended in according the pay scales. Physiotherapists and Occupational Therapists were recommended the scale of Rs.2000-3200 in place

of the one granted, namely, Rs.1400-2300. The Lecturers were recommended the scale of Rs.2000-3500 in place of the one granted, namely, Rs.2000-3200. Though there is an omission of the scale of pay of Physio-therapist Grade-I, it being the solitary post was also accorded the pay scale of Rs.2000-3200 after the recommendation of the 4th Pay Commission. Hence, it is reasonable to understand the recommendation made as per Annexure A-10 as having the effect of recommending the scale of Rs.2000-3500 for Physiotherapist, Grade-I. So far as Senior Physiotherapists/Senior Occupational Therapists who were given the scale of Rs.2375-3500/were concerned, they were recommended the scale of Rs.2200-4000. The petitioners were informed by letter dated 13.7.87 copy of which has been produced, that these scales have been recommended by the Ministry of Health and Family Welfare and further decision of the Government of India for the acceptance of the proposed revised pay scales is awaited. As the said recommendations were not accepted as communicated by letter dated 15.11.1988, Annexure A-2, the petitioners have approached this Tribunal praying for quashing of the said communication, Annexure A-2 as also the order, Annexure A-1 by which the revised scales of pay were accorded in the context of the 4th Pay Commission to which we have adverted to earlier. The petitioners have further prayed for a direction to the respondents to treat the petitioners and other staff of the same categories at par with other medical staff in other similarly situated institutions and for further direction to grant them the same scales of pay as applicable to other categories of staff as recommended by the Ministry of Health, Respondent No. 1, as per

Annexure A-10.

3. The principal contention of Shri Gupta, learned senior counsel appearing for the petitioners, is that the action of the respondents in denying the petitioners the scales of pay as recommended by Annexure A-10, by the Ministry of Health and Family Welfare, is arbitrary and violative of Articles 14 and 16 of the Constitution. It was contended that the Ministry of Finance which did not agree with the recommendation of the Ministry of Health and Family Welfare did so without comprehending the real nature of the recommendation of the 4th Pay Commission and the exercise done by the Ministry of Health and Family Welfare in making the recommendations as per Annexure A-10. The sole reason given in Annexure A-2 for not accepting the recommendation of a responsible body like Ministry of Health and Family Welfare is that the Ministry of Finance did not agree with the recommendation on the ground that the 4th Pay Commission having made their recommendations prescribing particular scales of pay to the categories of posts with which we are concerned, there is no justification from deviating from those recommendations. Similar is the stand taken in the reply filed by the respondents as can be seen from the averments made in paragraphs 4.4 to 4.6. For the sake of convenience, the same are extracted as follows:

"4.4. That the Fourth Central Pay Commission has specifically stated in para 8.9 of its report that the revised pay scales recommended by them in Chapter 8 shall apply to all posts other than those for which specific recommendations have been made by them in Chapters on the concerned Ministries. The details regarding the categories of posts represented by the applicants were available with the Pay

Commission and, therefore, it is not correct to say that the Commission has not covered these categories. They have given appropriate replacement scales accordingly.

4.5. That further the commission has considered the category of Staff Nurses in the pre-revised scales of Rs.425-640/425-700 and taking into account the nature and responsibility of work attached to these posts, recommended that they may be placed in the revised scale of Rs.1400-2600. The Commission has made no such specific recommendation in respect of Physio/Occupational Therapists. Hence, any comparison between the pay scales of posts of Physio/Occupational Therapists and Staff Nurses, does not arise.

4(6) and 4(8). That it is fact that the Ministry of Health and Family Welfare recommended the revision of scales of pay (A-10) to the Ministry of Finance on the assumption that these categories as a whole, had been omitted by IV Pay Commission. However, it was, later on, found that it is not correct to say that the Commission had not covered these categories as already indicated in reply to para 4(4) above".

4. The only reason pleaded in the reply which is also consistent with Annexure A-2, is that the Pay Commission has applied its mind and made specific recommendation. So far as these four categories of Para Medical Staff are concerned, there is no scope for deviating from those recommendations as made by the Ministry of Health and Family Welfare. We also asked a question pointedly to Shri Verma, learned counsel for the respondents, as to whether the Government has any other reason other than the one that the Pay Commission has made the recommendation for rejecting the recommendations contained in Annexure A-10. He submitted that that is the only reason which persuaded the Government not to accept the recommendation of the Ministry of Health and Family Welfare. Shri

Gupta, learned senior counsel appearing for the petitioners, however, contended that the recommendation contained in Annexure A-10 has been rejected on thoroughly/ untenable grounds. Shri Gupta urged that the recommendation made has not been properly and carefully scrutinised and that the 4th Pay Commission report has also not been carefully analysed in this behalf. He submitted that a bare reading of the 4th Pay Commission's report would justify the inference that the cases of four categories of Para Medical Staff with which we are concerned were not specifically examined and considered by the 4th Pay Commission. This necessarily takes us to the examination of the 4th Pay Commission's report. In paragraph XV at pages 208 and 209 are contained the recommendations of the 4th Pay Commission in part 1 of its report which deals with Para Medical Staff. We find on a perusal of the same that the 4th Pay Commission has specifically examined the categories of Para Medical Staff consisting of Radiographers, X-ray Technicians, Pharmacists, Civilian Nurses, Auxiliary Nurses, Mid Wives, Nursing Sisters and Nursing Advisers etc. None of the four categories of Para Medical Staff with which we are concerned in this case find a place either in that paragraph or in any other paragraphs of the report of the 4th Pay Commission. We have, therefore, no hesitation in holding that so far as four categories of Para Medical Staff with which we are concerned in this case, are concerned, they have not been specifically dealt with in the report of the 4th Pay Commission. It is precisely for this reason that four categories of posts with which we are concerned were accorded the replacement

scales as recommended in paragraph 8.9 of the report of the 4th Pay Commission. For the sake of convenience, we shall extract the same as follows:

"8.9. Due to reduction in the number of pay scales, some of the existing scales of pay with different minimum or maximum pay and different rates of increment have been broad-banded and replaced by a single scale. We have tried to ensure that the existing employees do not suffer because of this. In some cases, the introduction of the rationalised pay scales requires re-adjustment to maintain the existing relativities. We have examined such cases in the chapters on the concerned ministries and made our recommendations. In those chapters, we have also dealt with cases where we have found it necessary to recommend a higher pay scale for a post or posts. The revised scales of pay recommended by us in this chapter shall apply to all posts other than those for which specific recommendations have been made by us elsewhere".

5. What were accorded to the four categories of Para Medical Staff with which we are concerned are the replacement scales recommended in Chapter 8 of the 4th Pay Commission's report precisely on the ground that there are no specific recommendations dealing with these four categories of Para Medical Staff. It is in this background that the Ministry of Health and Family Welfare, having regard to the representations made by the petitioners, on being satisfied that there is justification for their grievance made the recommendations as per Annexure A-10. It is observed in the said recommendation:

"...A study of the report reveals that there is no mention of the category of Physiotherapists and Occupational Therapists".

This statement is quite accurate as the report does not at all specifically deal with these categories of posts. It is in this background the recommendation *W* says that there has been an omission in specifically

dealing with these categories of posts. It is in that light that the Ministry of Welfare independently evaluated and made a recommendation for according higher scales of pay by Annexure A-10 dated 28.8.1986. Obviously, the concurrence of the Ministry of Finance was necessary. The recommendation was not rejected on the ground that on merits there is no substance in the recommendation made by the Ministry of Health and Family Welfare. The recommendation was rejected on the ground that the 4th Pay Commission having already made a recommendation in this behalf, there is no scope for examining the case of these four categories of posts. We have already pointed out that the recommendation made as per Annexure A-10 is right inasmuch as there is no independent or specific consideration of these four categories of Para Medical Staff by the 4th Pay Commission. If there is an omission, it would not be fair to deny particular categories of posts the appropriate scales of pay which they merit. It is in this background that the Ministry of Health and Family Welfare after proper evaluation of the duties, responsibilities, functions and qualifications, etc., made the recommendation as per Annexure A-10. The rejection of the said recommendation was on untenable ground, namely, the 4th Pay Commission has already considered their cases. The Ministry of Finance did not examine the aspect consider specifically that there is an omission to/ these four categories of posts. In our opinion, there is justification for this inference. Firstly, it is necessary to point out that these four categories of posts were specifically dealt with in the 3rd Pay Commission's report whereas there is no specific dealing in

the 4th Pay Commission's report. It is only the replacement scales that were accorded to the petitioners in the absence of the specific recommendations of the 4th Pay Commission. We would also like to advert in this behalf to the scale of pay that was accorded to the Nursing Sisters in accordance with the recommendation of the 3rd Pay Commission. They were accorded the pay scale of Rs.455-700. That is precisely the scale of pay which was accorded to the Physiotherapist and Occupational Therapist. The 4th Pay Commission's report specifically deals with the case of Nursing Sister and recommends the according of higher scale of pay of Rs.650-900. If there is parity of scales of pay between the Nursing Sister on the one hand and Physiotherapist and Occupational Therapist on the other in accordance with the 3rd Pay Commission's report, we fail to see how the parity could be disturbed in the absence of there being good reasons for doing it so. The 4th Pay Commission does not mention about this aspect of the matter. It is difficult to appreciate how, when a Nursing Sister in the scale of Rs.455-700 was accorded the revised scale of Rs.2000-3200 the Physiotherapist and Occupational Therapist would merit only a revised scale of Rs.1400-2300. This only supports the inference which was drawn by the Ministry of Health and Family Welfare that there is an omission by the 4th Pay Commission of consideration of these four categories of Para Medical Staff in its report which resulted in there being given only the replacement scales. It is for this reason that the Ministry of Health and Family Welfare made a recommendation as per Annexure A-10. Turning

down that recommendation, in our opinion, was on untenable grounds and irrelevant considerations. We have already pointed out that it is not the case of the respondents even in this case that having regard to the nature of duties, functions and qualifications, these four categories did not merit the scales of pay as recommended by the Ministry of Health and Family Welfare. In that view of the matter, we have no hesitation in holding that the rejection of the recommendation of the Ministry of Health and Family Welfare by Annexure A-2 on untenable and irrelevant grounds is arbitrary. Hence, the impugned notification, Annexure A-2, is liable to be quashed. Having regard to the circumstances, we consider it just and proper to call upon the Government to re-examine the recommendation contained in Annexure A-10 and to take an objective decision on a fair consideration of the recommendation contained in Annexure A-10 and in the light of the observations which we have made during the course of the judgement.

6. For the reasons stated above, this petition is allowed in part and Annexure A-2 dated 15.11.1988 is quashed and the respondents are directed to take a fresh decision on the recommendation of the Ministry of Health and Family Welfare, Annexure A-10 dated 28.8.1986, in the matter of granting the revised scales of pay w.e.f. 1.1.1986 and granting of consequential benefits flowing from the said decision, within a period of four months from the date of receipt of a copy of this order. No costs.

P.T. Thiruvengadam
(P.T. Thiruvengadam)
Member(A)

'SRD'
090694

V.S. Malimath
(V.S. Malimath)
Chairman