

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

(6)

CCP 346/92 in
O.A. 746/86

Date of decision: 15.4.93

Prem Ballabh & Ors. ...Petitioners.
Versus

Shri R.L. Misra,
Secretary,
Ministry of Health
and Family Welfare,
Nirman Bhavan,
New Delhi & Ors.

...Respondents.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER(A).

For the Petitioners. ... Shri K.L. Bhatia,
Counsel.

For the Respondents. ... Shri P.P. Khurana,
Counsel.

JUDGEMENT (ORAL)
(By Hon'ble Mr. Justice V.S. Malimath, Chairman)

The complaint in this case is that the direction of the Tribunal in O.A. 746/86 has been violated. The case of the petitioners is that the Tribunal has directed the respondents to refer the representation of the petitioners regarding fixation of proper pay scales to an expert body and to take a decision in the light of such representation. The case of the petitioners is that the petitioners having made the representation, the same was not referred for decision by the expert body. The respondents have taken the stand in the reply that on receipt of the representation, the case of the petitioners was examined in the Ministry of Health and Family Welfare by responsible officers of the department and they came to the conclusion that no prima facie case of inequality of pay scales has been made out. In the light of that view, they did

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not consider it necessary to refer the matter to an expert body. Thus, they rejected the representation of the petitioners without referring the case to an expert body. The question for examination is as to whether it was mandatory on the part of the respondents to refer the representation of the petitioners to an expert body for deciding the question of fixation of proper pay scales to the petitioners. This takes us to the examination of the relevant directions issued by the Tribunal. For the sake of convenience, we shall extract the same as follows:

"That the applicants shall make a representation through proper channel to the respondents and the Ministry of Health and Family Welfare shall look into the genuine grievances and inequality of pay scales alleged by the applicants, if any, and on that basis may refer the matter to an expert body the representation of the applicants shall be disposed of within a period of six month from the receipt of this order. In the circumstances, the parties are left to bear their own costs. If the applicants are still aggrieved, they can file the fresh application on different cause of action".

2. On a careful reading of the directions issued by the Tribunal, it is clear that the first step to be taken is by the petitioners of making a representation through proper channel. After the receipt of the representation, the second step has to be taken by the Ministry of Health and Family Welfare which has been directed to look into the genuineness of the grievance of inequality of pay scales as alleged by the petitioners, if any. It is

on the basis of the opinion that the Ministry would form that they may refer the matter to the expert body. The last part of the direction is that it is in the light of the report of the expert body that the application has to be disposed of. The clear effect of the direction is that it should look into the genuineness of grievance about inequality of pay scales as alleged by the petitioners, if any. The expression 'if any' is very significant. It shows that the Tribunal did not apply its mind and did not form any opinion on the question as to whether the grievance of the petitioners regarding inequality of pay scales is genuine or not. That question was left to be examined by the Ministry of Health and Family Welfare. In other words, the first scrutiny was required to be made by the Ministry of Health and Family Welfare to examine if the grievance of the petitioners regarding inequality of pay scales is really genuine meriting reference to an expert body. The next direction is that it is on that basis that the Ministry may refer the matter to the expert body. The use of the word 'may' is also significant. The expression 'may' has been used for the reason that if the Ministry of Health and Family Welfare did not find that there is even *prima facie* case, the question of referring the case to the expert body did not arise. We, therefore, agree with the contention of Shri Khurana, learned counsel for the respondents, that the obligation to refer the matter to the expert body was cast on the Ministry of Health and Family Welfare on its being

satisfied on examination of the representation of the petitioners that their claim in regard to inequality of pay scales is genuine meriting reference to the expert body. That part of the responsibility they have discharged by examining the case by the officers of the highest level. They have come to the conclusion that there is no *prima facie* case in regard to the claim made by the petitioners in regard to inequality of pay scales. That opinion appears to have been formed *bonafide*. We are not concerned with the question as to whether the opinion is right or not. We are only concerned with the question whether the opinion formed is a *bonafide* one. That being the position, there was no obligation to refer the matter to an expert body for further examination, they having formed the opinion that *prima facie* case in regard to the inequality not having been made out by the petitioners. Hence, there is no case made out for taking action under the Contempt of Courts Act.

3. We would, however, like to mention that in the operative portion of the judgement, there is a clear direction that if the petitioners are still aggrieved, they can seek redressal by filing a fresh application on the original side. That right they can still exercise if the decision of the government saying that there is no *prima facie* case for referring the matter to the expert body is liable to

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be assailed by the petitioners. They will be entitled to do so by filing a fresh O.A. as indicated in the judgement. Without prejudice to that right of the petitioners, we drop these proceedings.

B.N. Dhandiyal
(B.N. Dhandiyal)
Member (A)

'SRD'

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