

Central Administrative Tribunal
Principal Bench, Delhi

Regn. Nos. OA-269/87 &
OA-312/87

Date: 10.11.1987

Dr. (Mrs.) Vimla Mehra
Shri A.K. Sur Applicants

Versus

Union of India & Ors.

.... Respondents

For the Applicants

.... Shri Manoj Arora, Advocate.

For the Respondents

.... Smt. Raj Kumari Chopra

CORAM: Hon'ble Shri S.P. Mukerji, Administrative Member.

JUDGEMENT

Since common questions of facts, law and relief are involved in the aforesaid two applications filed under Section 19 of the Administrative Tribunals Act, they are being disposed of by a common judgement as follows. The applicants are in the Specialist Grade I of doctors and their grievance is about the manner in which their pay in Specialist Grade II has been fixed by the impugned orders, dated 9.3.86 (Annexure A-7 in the first case No.OA-269/87) and dated 11th March, 1986 (Annexure-5 in the second case No.OA-312/87). By these impugned orders though their revised pay in Specialist Grade II has been stepped up notionally w.e.f. 1st June, 1973 in the revised scale of Rs.1100-1800, they have been allowed arrears of pay and allowances in the revised pay-scale only w.e.f. 1st April, 1982. They have prayed that the impugned orders should be modified and they be allowed arrears of pay with interest and other benefits w.e.f. 1.6.1973.

2. The relevant facts of the case can be summarised as follows.

Before the revision of pay-scales on the recommendations of the Third Pay Commission, the General Duty Officers (GDOs) in the Central Health Services were drawing ^{pay in the} pay-scale of Rs.450-1250 and the doctors in the next higher grade of Specialist (II) were

....2....

in the pay-scale of Rs.600-1300. On the basis of the recommendations of the Third Pay Commission, the pay-scales of GDOs were stepped up to Rs.700-1300 in the junior scale of Rs.1100-1600 in the senior scale and it was decided that the pay of a junior scale GDO on promotion to the senior scale will be fixed in accordance with the 'concordance table'. The pay-scale of Specialist (II) was revised from Rs.600-1300 to Rs.1100-1800. It appears that by the application of the 'concordance table', the pay of a GDO on promotion to the senior scale of Rs.1100-1600 became higher than the pay of another senior GDO who was in the scale of Rs.1100-1600. In order to remove the anomaly, it was decided that in such a situation the pay of the senior GDO could be stepped up to the level of pay which his junior would get on promotion to the senior scale in accordance with the 'concordance table'. The stepping up of the pay for the senior scale GDOs was given effect to from 1.6.1973. By such stepping up of the pay of the GDOs, it transpired that the pay of such GDOs became higher than the revised pay of certain Specialist Grade II in the next higher level in the scale of Rs.1100-1800. The applicants in the two cases before us fall in this category. The pay of the first applicant, Dr.(Mrs.) Vimla Mehra, was Rs.880/- in the unrevised scale of Rs.600-1300 and her pay in the revised scale of Rs.1100-1800 came to Rs.1200/- per month. Similarly, the pay of Dr. A.K. Sur, the applicant in the second case, was Rs.800 in the unrevised scale of Rs.600-1300 and his pay was also fixed at Rs.1200/- in the revised scale of Rs.1100-1800. As against this, the pay of a GDO, Dr. K.K. Puri, which was Rs.820/- in the scale of Rs.450-1250, was fixed at Rs.1450/- in the scale of Rs.1100-1600 because of the benefit of the concordance table. ^{Thirty six} Specialist doctors represented against this anomaly and sought stepping up of their pay to that of the GDOs. The pay of 36 specialist doctors was ^{on 1.6.73.} stepped up. Some more Specialist doctors, including the applicants,

also represented but in the meantime, the subject matter of pay fixation was transferred from the Ministry of Finance to the Deptt. of Personnel & Administrative Reforms, who decided that even though the pay of Specialist Grade II doctors should be stepped up notionally w.e.f. 1.6.1973 as in the case of the GDOs, the actual monetary benefit, i.e., ar-rears should be allowed only from 1.4.1982 and thus the impugned orders were passed. It was also decided that the orders granting stepping up of pay w.e.f. 1.6.1973 to the 26 Specialists should be cancelled while the stepping up was allowed w.e.f. 1.6.1973 to the remaining 9 Specialists who had either died or retired.

3. The applicants have argued that since they were admittedly working in a grade superior to that of GDOs, their pay should be stepped up not notionally but actually from 1.6.1973 to remove the anomaly which has been ^{conceded} accepted by the respondents themselves. They have referred to the judgments of the Calcutta High Court in Civil Writ No.16146/80, in which one of the Specialists Grade II was allowed stepping up of pay from 1.6.1973 with arrears of pay and allowances right up to the date of retirement. The respondents have opposed the applications on the ground that the stepping up of pay of Specialists Grade II was allowed as a concession and in 1985 a decision was taken to give this benefit notionally from 1.6.1973 but actually from 1.4.1982 as a special case. They have also indicated that by cancelling the orders of stepping up of pay w.e.f. 1.6.73 issued earlier in favour of 27 doctors they have removed the element of discrimination amongst the doctors of Specialist Grade II level. They have also referred to the decision of the Calcutta Bench of the Administrative Tribunal in OA-79/86 dated 24.6.1986 in which a similar request of another Specialist Grade II doctor for stepping up of pay w.e.f. 1st June, 1973, was deemed to have been adequately met when an order dated 16th June, 1986, similar to the impugned orders dated 9.3.1986 and 11.3.86, ^{of these two cases} was produced before that Bench. Since the order of 16.6.1986 which was similar to the impugned orders in these cases was not under challenge, that judgment of the Calcutta Bench of the Tribunal is not relevant to the 'ratio decidendi' in these cases before us.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The respondents have clearly admitted that when a senior officer gets lesser pay than a junior officer on revision of pay-scale through 'concordance table' at the level of GDO, the pay of the senior officer has to be stepped up. The stepping up is actual and from the date the junior officer starts getting the higher pay. In the case of the GDOs, stepping up of the pay of senior officers ^{allowed} has admittedly been ~~made~~ w.e.f. 1.6.1973.

5. The respondents have also conceded that ^{on} revision of pay-scales, if the pay of a Specialist Grade II doctor is lower than that of the pay of a GDO, the pay of the former has to be stepped up to the level of the latter. In both the impugned orders, dated 9.3.1986 and 11.3.1986, the stepping up has been allowed in this manner. The departure between the manner in which the stepping up was done intra-GDOs on the one hand and intra-Specialists Grade II on the other, is this. Whereas amongst the GDOs the stepping up takes effect from 1.6.1973 in actual terms, amongst the Specialist Grade II, the stepping up has been allowed notionally from 1.6.1973 and actually from 1.4.1982. No reason has been given as to why there is such a departure in case of Specialist Grade II and how the date of 1.4.1982 for actual stepping up of pay has been determined.

6. I strongly feel that having two standards of pay fixation for two different levels of doctors belonging to the same Central Health Service is discriminatory and violative of Articles 14 and 16 of the Constitution of India. Nothing has been indicated nor can be visualised by a rational mind to justify such a discrimination, especially when the respondents have accepted the principle of stepping up of pay for both the levels.

7. Nothing has been indicated by the respondents to justify the fixing of 1.4.1982 as the cut-off date for giving or denying arrears of pay. This also is violative of Article 14 of the Constitution of India. Between GDOs and Specialist Grade II doctors, both having been recognised as being entitled to the benefit of stepping up of pay, denying the latter the benefit of arrears between 1.6.1973 and 30.3.1982, while allowing the same to the GDOs can be nothing short of rank discrimination. In D.S. Nakra and Others Vs. Union of India, 1983(1) SLJ, 131, quoting from their earlier judgement, the Supreme Court observed as follows:-

"4. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is substantially the same."

In the same judgement the Supreme Court made further observations as follows:-

"Thus the fundamental principle is that Art.14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question."

The Supreme Court further observed as follows:-

"There is nothing immutable about the choosing of an event as an eligibility criteria subsequent to a specified date. If the event is certain but its occurrence at a point of time is considered wholly irrelevant and arbitrarily selected having no rationale for selecting it and having an undesirable effect of dividing homogeneous class and of introducing the discrimination, the same can be easily severed and set aside."

xxxx xxxx xxxx xxxx xxxx xxxx

"49. The Court held that the Central Government cannot pick out a date from a hat and that is what it seems to have done in saying that a period prior to that date would not be deemed to be approved by the Central Government within the second proviso. In case before us, the eligibility criteria for being eligible for liberalised pension scheme has been picked out from where it is difficult to gather and no rationale is discernible nor one was attempted at the hearing. The ratio of the decision would squarely apply to the facts of this case."

8. Since in the instant two cases there is no rational basis for fixing a date of 1.4.1982 and there is no nexus between this date and the objective of removing the anomaly in pay fixation, we have no doubt in our mind that fixing this date has been quite arbitrary and has to be struck down. If it is not struck down, we will let the anomaly survive inasmuch as between 1.6.1973 and 1.4.1982, senior Grade II doctors would have got less pay than the GDOs in the lower grade. Since the objective of the stepping up of pay is to remove such an anomaly from an introduction of arbitrary date of 1.4.1982, not only does it not subserve the objective in view but violates it.

9. In the facts and circumstances, we allow both the applications and modify para.1 and set aside the penultimate paras of the impugned order No.A-26014/7/85-CHS-V, dated 9.3.1986 in the first case and No.A-26014/142/78-CHS-V dated 11th March, 1986 in the second case and direct that the applicants should be allowed arrears of pay on the basis of the stepping up ~~of~~ ^{of} their pay w.e.f. 1.6.1973 instead of 1.4.1982. In the circumstances, there will be no order as to costs. A copy of this order may be placed in both the aforesaid two files.

*S21-
(0.11.87)*
(S.P. Mukerji)