

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.403/1987

DATE OF DECISION: 22.05.1992.

A.C. VERMA

...APPLICANT

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM:-

THE HON'BLE MR. P.K. KARTHA, VICE-CHAIRMAN (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI G.D. GUPTA, COUNSEL.

FOR THE RESPONDENTS

SHRI P.P. KHURANA, COUNSEL.

1. Whether Reporters of Local Papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*

(I.K. Rasgotra)
(I.K. RASGOTRA)

MEMBER(A)

(P.K. Kartha)
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VICE-CHAIRMAN

(10)

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(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

The short issue raised in this Original Application is whether the applicant who is working as Senior Psychologist ^{Rs.550-900} in the Safdarjung Hospital is entitled to the same scale of pay which is allotted to the Junior Psychologist in Dr. Ram Manohar Lohia Hospital (RML Hospital for short) viz. Rs.700-1300 in the pre-revised terms.

2. The brief facts of the case are that the applicant was appointed as Senior Psychologist (Rs.550-900 pre-revised) in Safdarjung Hospital in 1978 after being selected through Union Public Service Commission (UPSC). He was given five advance increments at the time of his appointment in view of his having experience spread over ^{a period of} 10 years, as he had worked as Research Fellow in Psychology from November, 1966 to December, 1969 under the Cooperative Test Development Project sponsored by the N.C.E.R.T., New Delhi and in various other Reserach and Clinical jobs. After joining Safdarjung Hospital the applicant became aware that

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the Junior Psychologist in RML Hospital was placed in the scale of Rs.700-1300. He made a representation to the Director General of Health Services on 2.12.1978 enclosing a comparative chart showing the broad similarity in qualifications, experience and duties attached to the post. He contends that the Director General Health consequent to his representation made certain enquiries to collect information vide letter dated 17.1.1979. These were answered by Safdarjung Hospital on 17.4.1979. The matter thereafter ^{is} stated to have been referred to the Ministry of Health and Family Welfare who on 30.4.1983 asked the D.G. health services to furnish the duties attached to the said two posts. It is the case of the applicant that according to the information so collected and placed at Annexure 'D' (page 27 of the paperbook) the duties and responsibilities of the posts of Senior Psychologist in Safdarjung Hospital are not only the same as that of Junior Psychologist in RML Hospital but in some respects are higher than the duties of the Junior Psychologist. Thereafter the applicant pursued his representation vide reminder dated 2.11.1983 when vide memo dated 8.11.1983 (page 33 of the paper book) he was advised by the Medical Superintendent, Safdarjung Hospital that:-

"his case was referred to D.G.H.S. who have intimated that all the proposals regarding revision of pay scales should be made to the Fourth Pay Commission. He, therefore, directed to give a fresh representation to this office at an early date for onward transmission to the appropriate authority."

The applicant, however, protested against the course being adopted by the respondents vide his representation dated 5.12.1983 and contended that the anomaly in allotment of scale of pay to him was unnecessarily being linked with the Fourth Central Pay Commission.

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Nevertheless, the Ministry of Health referred the matter vide its letter dated 27.12.1985 to the Fourth Central Pay Commission. After the Fourth Central Pay Commission Report was published, the applicant again wrote to the Director General, Health Services on 22.8.1986 to intimate him the result of the reference made to the Pay Commission. The applicant also submits that he had also made an individual representation to the Fourth Central Pay Commission on 2.11.1983 (page 40 of the paperbook) which was acknowledged by the Pay Commission on 10.11.1983. The Fourth Central Pay Commission, however, did not make any specific recommendation in regard to the anomaly referred to by the applicant and by the Ministry of Health and Family Welfare. He, therefore, represented to the Director General, Health Services on 21.10.1986 to refer his case to the Ministry of Finance, Department of Expenditure. Failing to get redressal of his grievance he has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985.

3. By way of relief the applicant prays that non-allotment of the scale of Rs.700-1300 to him, as given to the Junior Psychologist in RML Hospital be declared wholly illegal, arbitrary, void, discriminatory, unconstitutional, malafide, violative of Articles 14 and 16 of the Constitution and is liable to be set aside.

4. The learned counsel for the applicant Shri G.D. Gupta, relied heavily on the doctrine of 'equal pay for equal work' on the basis of the broad equivalence of duties and responsibilities and the recruitment qualification of the applicant with those of the Junior Psychologist in RML Hospital.

5. Shri P.P. Khurana, learned counsel for the respondents submitted that the cause of action in this case arose in 1978 when the applicant was allotted the scale of pay of Rs.550-900 whereas he filed this

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O.A. on 9.10.1987. Prima facie, therefore, the learned counsel submitted that the Application is highly belated and barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. The learned counsel however submitted that the applicant has based his case on the inter-departmental correspondence to get over the limitation. The inter-departmental correspondence, however, cannot be utilised for this purpose as this does not give any cause of action to the applicant. None of the inter-departmental correspondence referred to is a direct communication to the applicant. Even the letter of 30.4.1983 from the Ministry of Health and Family Welfare asking for duties and responsibilities of the two posts is addressed to D.G.H.S. and not to the applicant. The case, therefore, deserves to be dismissed for lack of jurisdiction. On the merits of the case the learned counsel submitted that the matter was referred to the Fourth Central Pay Commission not only by the Ministry of Health and Family Welfare but also by the applicant individually as admitted by himself. Despite this the Fourth Central Pay Commission did not make any specific recommendation in regard to the so-called anomaly referred to by the applicant and the Fourth Central Pay Commission allotted only the normal replacement scales to the two posts. Since an Expert Body had already examined the matter as implied from the non-specific recommendation of the Fourth Central Pay Commission the applicant's case has no merit, warranting judicial interference. The learned counsel also referred to the Recruitment Rules prescribed for the Senior Psychologist in Safdarjung Hospital and Junior Psychologist in RML Hospital (page 29 & 30 of the paperbook) and submitted that essential and desirable qualifications prescribed for the post under the recruitment Rules are as under:-

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Educational & other Qualifications required for direct recruits

Ram Manohar Lohia Hospital

Safdarjung Hospital

Essential

Essential

MA Psych. and Diploma in Medical
Clinical Psych. or Ph.D. in C. Psych.
For about 2 years. Professional
experience in the field of
C. Psycho.

(i) Second Class Master's Degree in
Psychology of a Recognized
University or equivalent.

(ii) Diploma in Medical and Social
Psychology from a recognised
Instt. or equivalent. Qualifications
releaxable at the discretion
of the Union Public Service
Commission in the case of candidates
otherwise well qualified.

The learned counsel urged that essential qualifications as prescribed in the Recruitment Rules in the case of Junior Psychologist in RML Hospital and in the case of Sr. Psychologist in Safdarjung Hospital are distinctly different. Leaving aside the other minor variations two years professional experience in the field of C. Psych. in the case of Junior Psychologist in RML Hospital is a clear plus point which is lacking in the case of Safdarjung Hospital. The learned counsel, therefore, maintained that the allotment of higher scale of pay in the case of RML Hospital is justified and merited by the higher qualifications. The latter contention of the learned counsel for the respondents was sought to be met by Shri G.D. Gupta, learned counsel for the applicant by emphasizing that in the case of Safdarjung Hospital the degree in Psychology is essential to be in the second class which is not so in the case of RML hospital.

6. We have heard the learned counsel for both parties and perused the record very carefully.

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In the **State of U.P. & Ors. Vs. J.P. Chaurasia & Ors.** 1989 (1) SCC 121 a question was raised whether Bench Secretaries in the High Court of Allahabad were entitled to pay scale admissible to Section Officers whose pay scales were higher than the petitioners, in accordance with the doctrine of 'equal pay for equal work'. Their Lordships observed that "the principle of 'equal pay for equal work' has no mechanical application in every case of similar work. It is to be read into Article 14 of the Constitution. Article 14 permits reasonable classification founded on different bases. It is now well established that the classification can be based on some qualities or characteristics of persons grouped together and not in others who are left out. Those qualities or characteristics must ofcourse have a reasonable relation to the objectives to be achieved. In service matters merit or experience could be the proper basis for classification to promote efficiency in administration." Admittedly in the present case the experience provided in the Recruitment Rules for the RML Hospital is an essential qualification and a similar provision does not exist in the Recruitment Rules for the Safdarjung Hospital. If on the basis of experience a differentiation had been made in the scales of pay, allotted to the Psychologists in Safdarjung Hospital and in the RML Hospital, no violation of Article 14 can be said to be involved. It was further held by the Supreme Court in **J.P. Chaurasia** (supra):-

"18. The first question regarding entitlement to the pay scale admissible to Section Officers should not detain us longer. The answer to the question depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of

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the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the court should normally accept it. The court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration."(Emphasis supplied)

In a more or less identical plane in **K. Vasudevan Nair & Ors. etc. etc. Vs. Union of India & Ors. JT 1990 (4) SC 58** the Hon'ble Supreme Court while dealing with the case of the claim ^{of} equivalence of Section Officers of the Audit and Accounts Department with the Section Officers in the Central Secretariat held:-

"16.....It is not possible for us to determine the question on the basis of the assertions made in the writ petition and the counter filed by the respondents. The pay revision by the Government was based on the recommendations of the Third Pay Commission which was an expert body. The extent of material and expertise before the Pay Commission is obvious from Para 22 Part-I of the report which is as under:

'We devoted 98 days for taking oral evidence of service associations, 69 days for discussions with officials (including representatives of State Governments) and 31 days for taking evidence

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from non-official witnesses. We held internal meetings on 235 days to discuss various issues and finalise our recommendations."

Accordingly, it is not possible for the Tribunal to determine equivalence for the purpose of allotment of pay scale when Expert Bodies like Third Central Pay Commission and Fourth Central Pay Commission have already gone into the matter in detail and in depth. We are not, therefore, persuaded to accept that there is a case for judicial interference in the matter of allotment of higher pay scales to the Senior Psychologists in Safdarjung Hospital. More so, because the matter had been referred by the Government to the Fourth Central Pay Commission as well as by the applicant himself, yet the Fourth Central Pay Commission did not make any specific recommendation.

We, however, observe that despite the differential in experience, as pointed out above, the alleged anomaly was recommended for consideration by the Ministry of Health and Family Welfare to the Fourth Central Pay Commission on the premise that the qualifications and mode of recruitment of the posts of Senior Psychologist at Safdarjung Hospital and Junior Psychologist at RML Hospital are the same and that they considered it desirable to remove the anomaly. We are, therefore, of the opinion that the respondents may consider granting of higher scale of pay to the Senior Psychologists of Safdarjung Hospital at par with the Junior Psychologist in the RML Hospital, if on their reckoning the duties and responsibilities, prescribed qualifications and the required expertise are identical, as early as possible but preferably within 4 months from the date of communication of this order and direct that the final

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decision taken may be communicated to the applicant.

The application is disposed of on the above lines.

There will be no order as to costs.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

P.K. Kartha
(P.K. KARTHA)
VICE-CHAIRMAN

SKK
210592

May 22, 1992.