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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

C.P.No. 139/95

IN

D.A.No. 2323/89

New Delhi: dated this the 25th day of April, 1997.

HON'BLE MR.S.R.ADIGE MEMBER(A).

HON'BLE DR.A.VEDAVALLI MEMBER(J).

1. Dr. R.K.Sharma,
Occupational Therapist,
Secretary,
Physiotherapy & O.T.Association,
136, Sunlight Colony-II,
Sidhartha Enclave,
Hari Nagar Ashram,
New Delhi.
2. Mrs. Sujata Malik,
Senior Occupational Therapist,
W/o Dr. S.C.Malik,
24, Kotla Road,
New Delhi.
3. Mrs. Sneha Lata Mitter,
Lecturer in Physiotherapy,
W/o Dr. Jagdish Mitter,
1007, Faiz Road,
Karol Bagh,
New Delhi.
4. Mrs. Susham Bhagi,
Physiotherapist,
W/o Shri R.K.Bhagi,
13/27, Shakti Nagar,
Delhi.
5. Mrs. Vijay Munjal,
Senior Physiotherapist,
W/o Mr. Ved Prakash,
6/18, West Patel Nagar,
New Delhi

..... Applicants.

(By Advocate: Shri B.K. Agarwal)

Versus

1. Sh. C. Ramachandran,
Secretary (Expenditure),
Ministry of Finance,
North Block,
New Delhi: 110.001.
2. Sh. P.P. Chauhan,
Secretary,
Ministry of Health & Family Welfare,
Nimman Bhavan,
New Delhi.

.... Respondents.

(By Advocate: Shri K.C.D.Gangwani)

JUDGMENT

BY HON'BLE MR. S. R. ADIGE, MEMBER (A).

Applicants allege contumacious disobedience of the Tribunal's directions contained in its judgment dated 8.6.94 in O.A. No. 2323/89 R.K. Sharma & others Vs. Secretary, Ministry of Health & Family Welfare & another.

2. In that OA applicants who are Physiotherapists/ Occupational Therapists, Lecturers in Physiotherapy, and Occupational Therapy and Senior Physiotherapists/ Sr. Occupation Therapists and are members of the Physio-Occupational Therapists Association, Delhi had contended that while the III Pay Commission had recommended higher pay scales for various categories of physiotherapists because of the nature of their duties and responsibilities, the IV Pay Commission omitted ~~the~~ any separate mention of their category and equated them with general category of staff who had less qualification and no specialisation, so much so that even nurses were placed in higher pay scales compared to applicants. It was pointed out that Respondent No. 2 (Secretary, Ministry of Health) took up their case and in letter dated 28.8.86 (Annexure-A10) addressed to Respondent No. 1 (Secretary Ministry of Finance) made specific proposals regarding grant of higher pay scale to applicants, but those recommendations were arbitrarily rejected by letter dated 15.11.88 (Annexure-A2).

3. After completion of pleadings and hearing both parties that OA was disposed of by impugned judgment dated 8.6.94. That judgment noted that the

Health Ministry's recommendations were not rejected on merits, but on the ground that the IVth Pay Commission having already made recommendations in this regard, there was no scope for examining the case of these categories of posts. This the Tribunal felt was arbitrary. To quote from that judgment

"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-A2 on untenable and irrelevant grounds is arbitrary. Hence, the impugned notification, Annexure-A2 is liable to be quashed. Having regard to the circumstances, we consider it just and proper to call upon the Govt. to re-examine the recommendations contained in Annexure-A10 and to take an objective decision on a fair consideration of the recommendation contained in Annexure-A10 and in the light of the observations which we have made during the course of the judgment.

6. For the reasons stated above, the petition is allowed in part and Annexure-A2 dated 15.11.88 is quashed and the respondents are directed to take a fresh decision on the recommendation of the Ministry of Health and Family Welfare, Annexure-A10 dated 28.8.86, in the matter of granting the revised scales of pay w.e.f. 1.1.86 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."

4. Pursuant to that judgment, Health Ministry has informed applicants as in letter dated 12.10.94 (Annexure-CP 1).

5. Applicants assert that this a mere reiteration of respondents' old stand that there has been no objective decision on behalf/reconsideration of the recommendations contained in letter dated 15.11.88 and respondents have thereby wilfully, wantonly and contumaciously disobeyed the Tribunal's directions which make them liable for action under the Contempt

of Courts Act.

6. In this connection, we note that after the C.P. was filed, applicants have filed amended memo of parties, impleading Shri C. Ramachandran presently Secretary (Expenditure), Ministry of Finance and Shri P.P. Chauhan, Secretary, Ministry of Health and Family Welfare, both of whom have filed reply affidavits.

7. While Shri Ramachandran and Shri Chauhan assert that the contents of letter dated 12.10.94 amount to full and complete compliance of the Tribunal's judgment dated 8.6.94 for the reasons contained in their affidavits, applicants reiterate that nowhere has it been stated that respondents have given fresh thought to the recommendations of Health Ministry contained in their letter dated 15.11.88, and their affidavits are merely a repetition of the old pleas taken in the OA which were rejected by judgment dated 8.6.94.

8. We have heard Shri B.K. Agarwal for the applicants and Shri K.C. D. Gangwani for respondents. We have also perused the materials on record and given the matter our careful consideration.

9. The direction in the Tribunal's judgment dated 8.6.94 to the respondents was to re-examine the recommendations contained in Health Ministry's letter dated 28.6.86 and to take an objective decision on a fair consideration of those recommendations in the light of the observations contained in the judgment. In this connection, Shri Ramachandran has stated in his affidavit that whenever a High Powered Pay Commission is set up,

it may recommend continuation of the old relativities or establishment of new ones. The 4th Pay Commission in its report based on merits recommended continuance of old relativities in a number of cases and in all such cases their recommendations were contained in Chapter 8 of Part I of their Report and whenever it considered it necessary to establish new relativities it made specific recommendations in the relevant chapters. In the case of the applicant, Shri Ramchandran states that the 4th Pay Commission recommended continuance of the existing relativities. Physio Therapists/ Occupational Therapists were in the erstwhile scale of Rs.455-700. The Commission recommended a single revised scale of Rs.1400-2300 for all posts in the prerevised scale of Rs.425-640, 425-700 and 530-610. Pointing out how the Physio Therapists/ Occupational Therapists could not compare themselves with Nurses, Shri Ramachandran has stated that while the former were in one level viz. Rs.425-700, Nursing Sisters were themselves in 3 scales viz. Rs. 455-700; 470-750, and 550-700. Accordingly the 4th Pay Commission recommended Rs.1400-2600 for the basic level of Nurses; Rs.1640-2900 for the next level of Nursing Sisters; and Rs.2000-3200 for the next level. Similarly Lecturer in physiotherapy/Occupational Therapy have been placed in normal replacement scale prescribed for Rs.650-960 viz. Rs.2000-3200, as against Lecturer in National Sugar Institute with whom comparisons have been made who even were in the prescribed scale of Rs.650-1200. The factors that weighed in giving the Physicist in Safdarjung Hospital a scale higher than for the Sr. Therapist have also been recounted.

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10. The direction in the judgment dated 8.6.94 to the respondents was to fairly consider the Health Ministry's recommendations contained in their letter dated 28.8.86 and take an objective decision in the matter keeping in view the observations contained in that judgment. That cannot be construed to mean a direction to respondents that they were to accept the scales recommended in Health Ministry's letter dated 28.8.86. From a perusal of Shri Ramchandran's affidavit, it cannot be said that respondents have not fairly considered those recommendations and arrived at an objective decision. From that affidavit it is clear that the difficulty faced by respondents in agreeing to the recommendations contained in Health Ministry's letter dated 28.8.86 was that it would upset the relativities between posts of Physiotherapists/ Occupational Therapists etc. on the one hand, and the other posts in the medical and other hierarchies on the other which the 4th Pay Commission did not intend to disturb, when it recommended that applicants be placed in the general replacement scale instead of one particular to them. Furthermore the reasons why applicants could not compare themselves with certain other categories with whom comparisons were sought, were also explained. Thus in our view there are adequate materials to show that respondents have acted in good faith and have attempted to fairly consider the recommendations contained in Health Ministry's letter dated 28.8.86 and arrive at an objective decision thereon.

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11. Action for initiating Contempt proceedings would arise only where there has been a flagrant, deliberate and wanton disobedience of the Tribunal's directions. In the present case, we see no such contumacy on the part of respondents. If applicants are dissatisfied with the respondents' decision as communicated to them in letter dated 12.10.94 it is open to them to challenge the same in the manner prescribed by law. The present contempt application is not the proper instrument for the purpose. In this connection, the Kerala High Court in V.G.NarainKutty Vs. Flag Officer Commanding-in- Chief (1987 Cr.L.J 51 08) relying upon Hon'ble Supreme Court's case A. Nakara Vs. UOI (1985) 3 SCC 392 has held that the objective of initiating contempt proceedings is not to enforce private rights but to help maintain respect and decorum for the judicial process. Applying the ratio of that judgment to the facts of the present case, we hold that no action for initiating contempt action against respondents is made out.

12. The C.P. is accordingly rejected and notices to alleged contemnors are discharged.

A Vedavalli
(DR.A. VEDAVALLI)
MEMBER(J).

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(S.R. ADIGE)
MEMBER(A).