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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA No.2456 of 1990

New Delhi, this the 5th day of December, 1995.

HON'BLE DR R.K.SAXENA, MEMBER(J)
HON'BLE MR K.MUTHUKUMAR, MEMBER(A)

1. Dr.Girish Chandra Gaur,
Senior Technical Asstt.
Ayurveda.
2. Dr.Chhote Lal,
Research Assistant,
Ayurveda.
3. Dr.Anil Kumar Singh Bhadoria,
Research Assistant,
Ayurveda.
4. Dr.M.Jalis Subhani,
Research Assistant(Unani). ... Applicants.
(Through Mr B.Shetye alongwith Mr B.B.Raval,Advocates)

versus

1. Union of India
through the Secretary to the
Government of India,
Ministry of Health &
Family Welfare,
Nirman Bhawan,
New Delhi.
2. The Director(ISM)
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi. ... Respondents.
(through Mr N.S.Mehta, Advocate).

O R D E R

(delivered by Hon'ble Dr R.K.Saxena, Member(J)

These applicants have approached the Tribunal to seek directions to the respondents to place all of them in the pay-scale of Rs.2200-4000 w.e.f. 1.1.1986 with appropriate fitment and adjustment. The direction for payment of non-practising allowance @ Rs.600/- P.M. and for making payment of arrears has also been sought for.

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The facts of the case are that all the four applicants are graduates in medicine (Ayurveda & Unani) and are working in the Ministry of Health and Family Welfare. Dr. Girish Chandra Goer, petitioner No. 1 is holding the degree of M.D. in the Indian System of Medicine, Ayurveda and was appointed as Senior Technical Assistant in the scale of Rs. 550-900, which is at present equivalent to Rs. 1640-2900. Dr. Chhote Lal, applicant No. 2 was appointed as Research Assistant in the Ayurvedic Pharmacopoeia Committee in the scale of Rs. 425-700 which is at present Rs. 1400-2300. The 3rd applicant Dr. Anil Kumar Singh Bhadoria was appointed as Research Assistant in Ayurvedic Pharmacopoeia Committee in the same scale as was given to applicant No. 2. Dr. M. Jalis Subhani is the 4th applicant, who was appointed as Research Assistant (Unani) in the Unani Pharmacopoeia Committee in the scale of Rs. 1400-2300. This applicant No. 4 holds a degree ^{of} B.Sc. All the applicants had experience between 2 to 9 years at the time of filing of the O.A.

The contention of the applicants is that the **Commission** 4th Pay ^{had} considered the point of equalisation of pay of the physicians representing the Indian System of Medicines ^{where} ~~and~~ it was pointed out to the Commission that the entrance qualification and the duration of their degree course was comparable to MBBS course. The observations of the 4th Pay Commission, therefore, was that Indian System of Medicine (for short IMS) / Homeopathy physicians possessing degree qualifications were at a disadvantageous position as compared to allopathic doctors.

The reason given was that the allopathic doctors were included in the central health service. The recommendation of the Commissioner, therefore, was that the posts in the existing scale of Rs.650-1200 may be given the scale of Rs.200-4000 if the incumbents are degree-holders in Ayurveda, Sidha, Unani and homeopathic systems of medicines. It was also recommended that the method of recruitment of ISM/ Homeopathy degree physicians should be brought on the central health service pattern. The applicants, therefore, claim that they should have been also placed in the scale of Rs.200-4000. It has been asserted by them that they are degree-holders in IMS and they had made representations but with no fruitful result. It is also pleaded by the applicants that Radiologist, Technicians, Nurses were given the scale of Rs.1400-2600 and 1640-2900 and the veterinary doctors had also been granted the scale of Rs.2000-3500 but the petitioners were discriminated against.

The claim of the petitioners is that they are entitled for non-practising allowance which was extended to medical officers who had degree in medicines but it was denied to them.

The case convassed by the applicants ^{not to be} is that the Research Assistants in Ayurveda have no promotional avenue and they are working on the same posts for the last 10 years. Their basic qualification was BAMS. According to them, ^{the doctors} in the modern system of medicines get a Class-I post straightway in the pre-revised scale of Rs.700-1300 but the case of the

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applicants has been ignored altogether. The representations made by them remained un-attended. The Government of India passed an order on 17.2.1989 on the basis of the 4th Pay Commission Report, whereby the pay-scales of physicians of Indian System of Medicines and Homeopathic Medicine were revised to Rs.2200-4000, and by this revision the benefit^q was given not only to the Degree Holders but even to the Diploma Holders. Here again, the petitioners have been discriminated against because they were degree-holders yet they were denied the pay-scale of Rs.2200-400 whereas the diploma holders in the Indian System of Medicines were given the same. It is also the case of the applicants that the revision of pay-scale of the applicants was recommended by the National Insustitute of Ayurveda, Jaipur and by the 4th Pay Commission but nothing has been done. It is for this reason that they have approached the Tribunal seeking the reliefs detailed above.

The respondents have contested the case on several grounds. It is contended that the 4th Pay Commission had recommended the higher pay-scale of Rs.2200-4000 to physicians and Medical Officers but no such recommendation was made for the post of incumbents of lower level. It is denied that promotional avenues are not available to the Research Assistants. They are in the feeder category of promotion to the post of Senior Technical Assistant(Ayurveda), who, in turn can be promoted as Research Officer(Ayurveda). Similarly, the post of Research Assistant(Unani) is made the feeder

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~~grade~~ for the promotion to Research Officer(Unani).

It is also averred that the recommendation made by the Pay Commission about considering the case of Degree Holders in ^{the} ~~a~~ respective system of medicines, the decision was taken that the Degree-holders with same experience shall be given the pay-scale of Rs.2200-4000⁰ if they were in the pay-scale of Rs.650-1200. The distinction between Degree-holders and Diploma Holders was done away with because they were appointed from the same recruitment process. In this way, all physicians were placed in one and the same grade of Rs.2200-4000. It is also averred that the applicants ² ~~did~~ not hold the post of Physician and as such, ² ~~they~~ ^{were} ~~was~~ not entitled to non-practising allowance.

The respondents have also come with the plea that determination of pay scale is the work of the Executive after taking into consideration several factors in addition to recruitment qualifications, ² ~~and~~, duties and responsibilities of the posts etc. The pay-scales ² ~~can~~ not be determined solely with reference to academic or professional qualifications. It is re-asserted that the applicants are neither physicians nor can they claim the grade, which has been awarded to physicians.

The applicants filed rejoinder, reiterating the facts, which were given in the O.A. We have heard the learned counsel for the parties and have perused the record.

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The applicants want the pay-scales equivalent to the physicians employed in the Indian System of Medicines. The argument, which has been advanced on behalf of the learned counsel for the applicants is that they are degree-holders in Ayurvedic and Unani systems. The applicant No.1 is M.D. in Ayurveda and was working as Senior Technical Assistant. Applicants No.2 and 3 are degree-holders in Ayurveda and working as Research Assistants in Ayurvedic Pharmacopoeia Committee whereas applicant No.4 is B.Sc and was working as Research Assistant in Unani pharmacopoeia. Because they were holding degrees, they want to be equated with physicians for entitlement of their salary on the principle of equal pay for equal work. In this connection, the reference of the recommendation of the 4th Pay Commission has been made. The extract of the recommendation is given in para 4.2 and 4.5 of the O.A. What appears from the reading of this extract of the report of Pay Commission is that associations representing indigenous system of medicines, had agitated their grievance for increase of the pay-grade equal to the Medical Officers of ISM. It was mentioned that Allopathic doctors were given the grade of Rs.650-1200 which was revised to Rs.700-1300 after those doctors were brought under C.H.S. The Pay Commission, therefore, compared the case of the physicians of ISM/Homeopathy vis-a-vis the allopathic doctors. Therefore, the recommendation was made that the existing scale of Rs.650-1200 of the incumbents, who were degree-holders in Ayurvedic, Sidha, Unani ^{which was} be raised to Rs.2200-4000 given to the allopathic doctors. In this way, the 4th Pay Commission had made a

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comparison of physicians or medical officers working in different system of medicines. It was nowhere mentioned by the Pay Commission that ^{the case} other category of employees such as that of the applicants, was comparable in the same way. It may be emphasised that the applicants are appointed only either as Senior Technical Assistant or Research Assistant in Ayurvedic or Unani pharamacopoeia. They had never been treated even as Research Officer. The service rules of the Research Officers in Ayurvedic and Unani and of Senior Technical Assistants and Research Assistants have been brought on record. They indicate that Senior Technical Assistants and Research Assistants are eligible for promotion to the post of Research Officers who had been treated equivalent to the status of physicians or medical officer in different systems of medicines. In this way, a class has been formed of Senior Technical Assistant and Research Assistant in Ayurvedic and Unani System on one hand and the Research Officers on the other. No doubt, the qualifications prescribed for the posts of Senior Technical Assistant and Research Assistant is ~~preferably~~ ^h degree in a particular branch. Similarly, the degree is needed for the post of Research Officer. The question arises ² ~~is~~ whether mere equivalence in educational qualification will be a sufficient parameter for equal pay-scales. In this connection, the reference may be had of the decision of the Supreme Court in the case of The Secretary, Finance Department & others vs. The West Bengal Registration Service Association & ors, 1992(1)SCALE 432. Their Lordships of Hon^{ble} Supreme

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Court, while deciding this question, also considered the earlier decisions rendered in Parbat Kiran Maithani & ors. vs. Union of India and anr AIR 1977 SC 1553 and State of U.P. and others vs. J.P. Chaurasia and others AIR 1979 SC 19. In this case of West Bengal Registration Service Association, the educational qualification held by the sub-registrars was raised to degree in law from a recognised University and experience of three years at Bar. Thus, the educational qualification was the same as required for Munsiffs but their Lordships of Supreme Court found a ^Qword of difference in the nature of the duties and responsibilities of a Munsiff and a sub-registrar. Their equivalence in educational qualification was not held to be a good ground for raising the pay-scale.

In order to highlight the point that the applicants are physicians, reliance has been placed on the decision Hunter vs. Clare 1 Q.B 635(1989). The definition of physician, which was given in Medical Act, 1858 was in controversy. Hunter, the appellant had passed qualifying examination in all the Branches and thereafter he described himself as MD - a physician. The question then arose ^{about} ~~as to~~ the meaning with which the description "physician" was used; whether it was used in general and in colloquial sense as being equivalent to the expression "medical men", or whether it was used in a more definite sense which would import to most people that he had a medical degree of one of the universities or a diploma entitling him to call himself as a physician. The interpretation, which

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was accepted by the Court was the latter. This ^{is based} interpretation ~~on~~ the two different senses, which were prevalent in that country and, therefore, it would not be proper to attach the same meaning here. Simply because the Research Officer in the present case before us has been given a status equivalent to that of a Physician, it will not make the applicants entitled to call themselves physicians and to put forward a claim for equivalent pay-scale of physician/Medical Officer.

Their Lordships of Supreme Court in the West Bengal Registration Association's case(supra) have laid down certain parametres. It was held that equation of posts and determination of pay-scales was the primary function of the Executive and not of the judiciary, and, therefore, the Courts should not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commission etc. The factors which may have to be kept in view for job evaluation may include - (i) the work programme of his department, (ii) the nature of contribution expected of the employee, (iii) the extent and nature of his responsibility and accountability in the discharge of his diverse duties and functions, (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties, (v) the extent of powers vested in him, (vi) the extent of his dependence on superiors for the exercise of his powers, (vii) the need to co-ordinate with other departments etc. In view of this, it becomes necessary that all these aspects should be considered while deciding the equation of pay-scale with other service

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or for raising the particular low scale to a higher scale. As is maintained by their Lordships of Supreme Court, this is the function of expert bodies like the Pay Commission. We have no men and material to evaluate all these points and, therefore, it is not possible to do this exercise here.

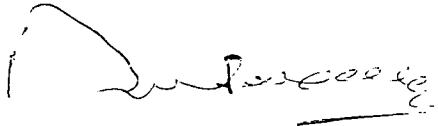
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Their Lordships further observed that ordinarily a pay structure is evolved keeping in mind several facts, namely; (i) method of recruitment, (ii) level at which recruitment is made, (iii) hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, and (x) employers capacity to pay. Again, we find that there is no material before us to judge the matter through this angle. At present, the Pay Commission is working about the revision of pay scales of various categories and cadres of central government employees. In view of this fact, the applicant should have approached and can approach the Pay Commission for the purpose.

On the consideration of the facts and ^{quite case 2} circumstances and the law, which has been ^{laid down} held in West Bengal Association's case (supra), we come to the conclusion that the Tribunal is not a proper forum for seeking equivalence of pay by the applicants ^{to 15472} the physicians/Medical Officers.

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This work is required to be done by the expert bodies, like the Pay Commission, which is currently working on the evaluation of the pay-scales. The applicants should approach the Pay Commission. The O.A. is therefore, decided accordingly. No costs.


(K.Muthukumar)
M(A)


(Dr R.K.Saxena)
M(J)

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