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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./Txx. NO. 1205 /1991 Decided on : 18.7.95

Smt. Veena Rani Nigam ... Applicant(s)

By Sr. Advocate Sh.G.S.Mathur with Sh.B.S.Mainee,
~~xxx~~ Shri R.L.Bhardwaj, Advocates)

versus

Union of India & ors. ... Respondent(s)

(By Shri M.L.Verma, Advocate)

CORAM

THE HON'BLE SHRI JUSTICE S.C.MATHUR, CHAIRMAN.

THE HON'BLE SHRI K.MUTHUKUMAR, MEMBER(A)

1. To be referred to the Reporter or not ? Yes
2. Whether to be circulated to other Benches No
of the Tribunal ?


(S.C.MATHUR)
CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA-No.1205/91

NEW DELHI THIS THE 18th DAY OF JULY, 1995.

HON'BLE MR.JUSTICE S.C.MATHUR, CHAIRMAN
HON'BLE MR.K.MUTHUKUMAR, MEMBER(A)

Smt.Veena Rani Nigam
Wife of Dr.M.C.Nigam
R/o Flat No.5-A Block No.245
Panchkuin Road,
New Delhi-1

...

Applicant

(By Senior Advocate Shri G.S.Mathur
with Shri R.L.Bhardwaj, Counsel and
Shri B.S.Mainee, Counsel)

vs.

1. Union of India
Not only through Secretary
Ministry of Health and
Family Welfare,
Nirman Bhavan,
Maulana Azad Road
New Delhi-110001.
2. Director General of Health Services,
Nirman Bhavan,
Ministry of Health and Family Welfare,
Maulana Azad Road,
New Delhi-110001.
3. The Principal and Medical Superintendent
(formerly known as Member Secretary)
Lady Harding Medical College &
Kalawati Saran Children's
Hospital,
New Delhi.

RESPONDENTS

(By Advocate Shri M.L.Verma)

ORDER

JUSTICE S.C.MATHUR:

Invoking the principle of 'equal pay for equal work', Smt.Veena Rani Nigam, Clinical Psychologist in Kalawati Saran Children's Hospital, New Delhi (KSCH) has approached the Tribunal for a direction to the respondents to place her in the pay scale of Rs.3000-4500 in place of the scale of Rs.2000-3500 in which she is presently working.

2. According to the averments made in the application, the applicant possesses the academic qualification of Master of Arts in Psychology with diploma in Clinical Psychology(DM&SP). At the time she was appointed to the post in question, she possessed

one year's experience in Clinical Psychology. This experience she had gained after acquiring the Post Graduate diploma. The qualifications possessed by her made her eligible for appointment to the post in question and she was actually appointed to the said post on 6.11.1967. At that time, the pay scale of the post was Rs.320-800. In the year 1973, the scale was revised to Rs.650-1200. On the basis of the recommendations of the Fourth Pay Commission, the pay scale was further revised to Rs.2000-3500. By the time of filing of the OA, the applicant had reached the maximum of this scale. In KSCH the post of Clinical Psychologist is a Class II Group 'B' Gazetted post. The post is under the Directorate General of Health Services. The post exists in other institutions also which too are under the Directorate General of Health Services. In those institutions, the post is classified as Group 'A' and carries the pay scale of Rs.3000-4500. The applicant alleges that the duties discharged by her are identical to the duties performed by the holders of the posts in other institutions and, therefore, there is no rational basis for denying her the pay scale of Rs.3000-4500. The applicant states that as a part of her duty she teaches the students also and the Assistant Professors, who also teach, draw salary in the scale of Rs.3000-4500. It is asserted by the applicant that when she pressed her claim for being placed in the scale of Rs.3000-4500 enquiries were made from various institutions where the post of Clinical Psychologist existed and those enquiries revealed that the applicant was identically placed as Clinical Psychologists in other institutions. She has placed on record the ~~said~~ correspondence to

substantiate her claim. In para 4.D, she has enumerated her duties as follows:-

- (a) Psycho-Therapy
- (b) Testing
- (c) Teaching and
- (d) Research
- (e) Management of the Department.

The duties performed by her alleged counterparts in other institutions are enumerated in para 4.P as follows:

- 1. Psychodiagnostic and Psychometry of Patients
- 2. Psychotherapy & Counselling of patients.
- 3. Psychological Assessment of Patients
- 4. Teaching under-graduate & Post Graduate Students.
- 5. Research and Thesis related to Psychology.

In the same paragraph, the prescribed qualification for the post in question in other institutions is mentioned as " MA in Psychology, DM & SP/M.Phi.in Clinical Psychology."

3. In the OA, the respondents are arrayed as follows:

- 1. Union of India through Secretary, Ministry of Health and Family Welfare
- 2. Director General of Health Services
- 3. Principal and Medical Superintendent Lady Harding Medical College & Kalawati Saran Children's Hospital, New Delhi.

The reply purported to be on behalf of all the respondents has been filed which is signed by the Principal & Medical Superintendent, Kalawati Saran Children's Hospital, New Delhi. This reply is as vague as it could be. It does not reply to any of the factual statements made by the applicant in her OA although information of those facts should

be available with the respondents. In para 4.C of the OA, the applicant has stated:

"That the applicant's post is a group 'B' post."

In para 4.B, the applicant has enumerated her duties. The reply to these paragraphs is " is a matter of record and need no reply subject to Preliminary Objections." The respondents have avoided even to admit that the applicant is holder of a Group 'B' post. They have not indicated the basis on which the posts are grouped as Group 'A' & Group 'B'. Respondent No.3 has not taken the responsibility of indicating the actual duties performed by the applicant. In the preliminary objections, the following authorities have been cited and it has been stated that the dispute raised by the applicant is beyond the jurisdiction of the courts and that the jurisdiction lies in expert bodies like the Pay Commission. In support of this preliminary objection, reference has been made to the following authorities:

- (1) Suman Kumar Vasudeva Vs.U.O.I
(1988(7) ATC 342)
- (2) M.G.Patel Vs. State of Gujarat
(1988(7) ATC 436 &437) (wrong)
- (3) Supreme Court Employees' Welfare Association Vs. Union of India
(AIR 1990 SC 334)
- (4) K.Vasudevan Nair Vs. U.O.I
AIR 1990 SC 2295)

4. In view of the fact that the factual averments made by the applicant have not been specifically denied on behalf of the respondents, we will have to treat them as correct. Accordingly, we will have to accept that the applicant is the holder of Group 'B' post and she is discharging the duties alleged by her in Para 4.D. Even by making these assumptions in favour of the applicant her position is not improved in view of the law laid down by their Lordships

of the Supreme Court.

5. There is no evidence on record to show that the quality and volume of work handled by the applicant is identical to the quality and volume of work handled by her counterparts in other institutions.

In Mew Ram Kanojia Vs. All India Institute of Medical Sciences & ors. (A.T.R. 1989(2) S.C.17), it was held by their Lordships of the Supreme Court thus:

" The petitioner's contention that Speech Therapists have been granted higher scale of pay in other Institutions, namely, Rohtak Medical College, National Institute for Hearing Handicapped, Hyderabad, Safdarjung Hospital, and P.G.I. Chandigarh cannot be taken into consideration as the petitioner has failed to place any material showing the duties and functions performed by the Speech Therapist in the aforesaid Institutions or the qualifications prescribed for the same. Merely because Speech Therapists performing similar duties and functions in other Institutions are paid higher pay scale is no good ground to accept the petitioner's claim for equal pay. There may be difference in educational qualifications, quality and volume of work required to be performed by the Hearing Therapists in other Institutions. In the absence of any material placed before the Court it is not possible to record findings that the petitioner is denied equality before law."

(Emphasis supplied)

It appears that after the applicant had been appointed to the post in question, there had been atleast four Pay Commissions. The applicant had opportunity to press her claim before the said Pay Commissions. During the pendency of the present application, the 5th Pay Commission has started functioning. The applicant does not appear to have approached the said Commission. The Pay Commission is an expert body and is better qualified to go into the question of identity of work. It was observed by their Lordships of the Supreme Court in **State of West Bengal & others vs. Hari Narayan Bhowal and others ((1994) 27 ATC 524)** as follows:

" In public services, nature of work in two services or in the same service, the nature

of the work of the two groups may be more or less same. But merely on that ground they are not entitled to the same scale of pay. It is well known that scales of pay are fixed by expert bodies like the Pay Commissions, which consist of persons having specialized knowledge of the subject. Such Commissions while fixing the scales of pay or revising the same, have to go in depth, not only into the nature of work by members of the same service and members of different services but also various other factors before the scales of pay are fixed. One of the primary concerns of such Pay Commissions is to remove any anomaly and to see that members of different services get scales of pay and other emoluments not only according to the nature of work but also according to educational qualifications, responsibilities of the posts and experience etc. As such, before any direction is issued by the court, the claimants have to establish that there was no reasonable basis to treat them separately in matter of payment of wages or salary."

6. If we compare the duties which the applicant alleges she is performing with the duties which her counterparts in other institutions are performing, we may not be able to say that the duties are identical or different. In the duties of other incumbents in other institutions medical terms have been used with which we are not familiar. Accordingly, the applicant's claim can be better appreciated by experts than by courts or tribunals.

7. The applicant has relied upon certain correspondence for pressing her claim. Amongst the correspondence placed on record / letters dated 25.9.90 and 10.10.90 written by Deputy Medical Superintendent, Kalawati Saran Chindren's Hospital to the Deputy Director Admn. (M) Medical, Directorate General of Health Services. In the first letter, it has been

stated that there is clear disparity in the pay scales which is required to be removed. In this letter, there is no indication of the quality of work performed by the applicant and the volume thereof. Same is the position of the other letter. Be that as it may, they are mere recommendations from the institution where the applicant is working. From the first letter, it appears that she applied for the post of Clinical Psychologist in some other institution where the scale of pay was Rs.3000-4500. KSCH apprehended that the applicant may be selected and go there resulting in loss of her services to KSCH. It may be that the Deputy Medical Superintendent made the recommendations to retain the services of the applicant.

8. In view of the above, the application lacks merit and is hereby dismissed but without any order as to costs.


(K. MUTHUKUMAR)
MEMBER(A)

SNS


(S.C. MATHUR)
CHAIRMAN