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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2495/2004

New Delhi this the 1 st day of February , 2006

Hon'ble Mrs. Meera Chhibber, Member (J)

Shri Triloki Nath,
S/O Shri Shanu Ram
L.U 37, Pitampura, Delhi-110034

..Applicant

(By Advocate Shri Ashwani Bhardwaj)

VERSUS

1. The Govt. of NCT of Delhi through
Secretary (Health) Secretariat I. P.Estate,
New Delhi.
2. The Principal Secretary,
Department of Health and Family Welfare,
Govt. of NCT of Delhi.
3. The Secretary to Govt. of India,
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi.

..Respondents.

(By Advocate Shri Ajesh Luthra)

O R D E R

By this OA, applicant has sought the following reliefs:

“(1) Issue order for grant of NPA by directing the respondent to release it w.e.f. 4.12.1975 when I was appointed as Biochemist in LNJP Hospital upto 31.10.2003 when I retired from GB Pant Hospital, New Delhi.



(2) Quash order no. F-5/59/93/H&FW/3616 dated 21.09.04, passed by the Principal Secretary, H&FW, GNCT, Delhi.

(3) Issue orders for grant of NPA for calculating the retirement benefits i.e. gratuity, pension, commutation, encashment of leave etc.”.

2. It is submitted by applicant that he joined LNJP Hospital as a Biochemist in the scale of Rs. 650-1200 w.e.f. 4.12.1975 but no NPA was given to him even though his predecessor Ms. S. Janah who was holding the same post and pay scale was granted NPA. He has also submitted that even Ms Pratibha Jain who was appointed as Biochemist in Guru Nanak Eye Centre under Govt. of NCT of Delhi from 1986 to 1990 and was allowed to draw NPA as Biochemist. He was also selected as Junior Biochemist in ESI Hospital and there also he was offered NPA. He, therefore, cannot be discriminated against while posted as Bio-chemist in Govt. of NCT of Delhi.

3. Applicant has submitted that even Dr. Jalabhai who was appointed as Assistant Professor in 1993 in the scale of Rs. 10,000-15,000 with same qualifications and in the same pay scale as that of Sr. Bio-chemist, was given NPA while same was denied to applicant without any justification.

4. In 2001, applicant sought NPA as granted to Dr. Jalabhai and Ms. Pratibha Jain. Even legal department of NCT had recommended that NPA be granted to applicant but no final decision was taken. In the meantime, he retired in October, 2003. Being aggrieved he filed OA 879/2004 which was



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disposed of on 12.4.2004 directing the respondents to treat the OA as supplementary representation and to dispose of applicant's claim within two months.

5. Ultimately the claim was rejected vide order dated 21.9.2004 on the ground that there is no provision to grant NPA to Biochemist either under NCT of Delhi or Govt. of India and by stating that case of Dr. Jalabhai is different, therefore, his request cannot be acceded to. It is this order which has been challenged in the present OA.

6. Respondents on the other hand have opposed this OA. They have submitted that the post of Bio-chemist is a non-medical post and hence NPA is not allowed for this post. Even the present incumbent Sh. V.K. Malhora, Sr. Bio-chemist is not being paid NPA. That as the case of Ms. Pratibha Jain is very old hence her personal service record are not traceable however, she was having qualifications of MBBS and MD and as per Accounts Branch of Guru Nanak Eye Centre, she was paid NPA. Dr Jalabhai was given NPA as the condition existed in his appointment letter which was issued by the Govt., of India, Ministry of Health & Family Welfare, whereas there was no such condition in respect of Shri Triloki Nath. They have thus prayed that OA may be dismissed.

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7. I have heard both the counsel and perused the pleadings as well as original records produced by the respondents. It is correct that initially law department had recommended that NPA may be given to applicant since it was being given to Dr. Jalabhai but when the matter was examined further and respondents verified the facts from Guru Nanak Eye Centre with regard to Ms. Pratibha Jain and Ministry of Health with regard to Dr. Jalabhai, they replied on the basis of which following decision was taken:

“Ministry of Health clarified that there is no provision for grant of NPA to the Bio-chemists working under the Ministry without the degree of MBBS/MD. With regard to Dr. Jalabhai it was stated that he was appointed as Assistant Professor (Physiology) . He belonged to CHS cadre and in his appointment letter itself, it was stated, he would be entitled to NPA whereas in applicant's appointment letter, no NPA was granted to him right from the beginning which was accepted by him so he cannot take this issue later on Moreover no Bio-chemist working in Govt. of India and not possessing MBBS/MD qualifications are in receipt of NPA, therefore, it cannot be granted to Triloki Nath.

8. As far as Guru Nanak Eye Centre is concerned, they explained that Ms. Pratibha Jain had worked in the centre from 1986 to 1990 and at this distant time, all old records are not traceable. However, from the available records it is seen she was holding qualification of MBBS/MD while working as Bio-chemist as such was paid NPA. It was thus after examining the case from all angles that the claim of applicant was rejected by Govt. of NCT of Delhi as it was not found at par with Dr. Jalabhai or Ms. Pratibha Jain.



9. On perusal of records, two things emerge out clearly

(1) NPA is not being given to Bio-chemists either by Ministry of Health, Govt. of India or in Govt. of NCT of Delhi

(2) Applicant is claiming parity with Dr. Jalabhai but he cannot be stated to be similarly situated because Dr. Jalabhai belonged to CHS cadre under the Ministry of Health and was appointed as Assistant Professor while applicant was appointed as Bio-chemist under Govt. of NCT of Delhi. Moreover, in his letter of appointment itself, it was mentioned that he would be allowed NPA while no such NPA was allowed to applicant.

10. Counsel for the respondents had raised objection to the maintainability of OA on the ground of being barred by limitation, by submitting that applicant did not raise the issue in 1975, when he was appointed but raised the issue only when he was about to retire. Therefore, OA maybe dismissed.

11. Limitation is prescribed in service matters in the Administrative Tribunals Act, so that if any person has any valid grievance, it may be redressed immediately by looking into the records. If people raise grievance after over decades it becomes very difficult sometimes for the department to defend the case properly because such old records are not even traceable and

courts are not able to adjudicate the issue in correct perspective. Therefore, we would agree with the respondents' counsel to the extent that litigation resorted too after such a long delay should not be encouraged. However, this case cannot be dismissed on the ground of limitation alone, because initially law department had also recommended that NPA be allowed to applicant at par with Dr. Jalabhai. Thereafter matter was under consideration. Even this court had given directions to the respondents, to consider his claim in OA No. 879/2004. His claim was finally rejected on 21.9.2004 and the present OA was filed within 1 year from the said date challenging order dated 21.9.2004, therefore, the objection of limitation is rejected.

12. Coming to the merit of case, the only ground on which applicant has sought NPA is, that it was being given to Dr. Jalabhai, Ms. Pratibha Jain and Ms. S. Janah and by denying the same to applicant, he is being discriminated against.

13. At this juncture, it would be relevant to quote how discrimination has been explained by the Hon'ble Supreme Court. Discrimination in other words means petitioner is denied equality in law but the question is whether right to equality can be sought in a negative manner. In case of State of Bihar Vs. Kameshwar Prasad and Ors. reported in 2000 (9) SCC 94 Hon'ble Supreme Court held equality before law is a positive concept and



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cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly judgment passed in favour of one individual does not entitle others to claim similar benefits.

14. The above judgment clearly shows even if a judgment is given earlier which is contrary to rules, others cannot claim the same benefit on the ground of discrimination. It is rules which can give right to any individual and not mere comparison with A,B or C.

15. In the instant case, applicant was appointed as back as in 1975 and as per his appointment letter no NPA was granted to him. In case applicant felt aggrieved that his predecessor was given NPA, while the same was being denied to him, he ought to have raised the issue at that time, so that respondents could have examined the matter. Not having done so, all these years, applicant in fact cannot be allowed now to raise this issue because after such a long delay, respondents do not have such old records, therefore, it is very difficult at this stage to know why and under what circumstances was Ms. S. Janah granted NPA. It is not even known what were her qualifications. Therefore, at this stage after over 30 years applicant cannot be allowed to seek parity with Ms. S. Janah we do not even know what the

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relevant rules before 1975. I had repeatedly asked counsel for the applicant to show the relevant rules under which he can claim NPA, but he could not produce any such rules, therefore, I have to proceed by assuming that there is no rule, on the basis of which applicant can state he is entitled to get NPA.

16. Respondents, on the other hand have explained, that Ms. Pratibha Jain was being given NPA while she was posted as Bio-chemist in Guru Nanak Eye Centre but she possessed MBBS/MD qualifications as explained by Guru Nanak Eye Centre where as applicant is admittedly having M.Sc. qualification which cannot be equated with MBBS/MD by any stretch of imagination. This clearly shows applicant cannot claim any parity with her because their basic qualifications are different as such cannot be stated to be similarly situated. Moreover in the letter written by Govt. of India it is clarified that NPA is being given only to medical posts with MBBS/MD degrees.

17. Applicant cannot draw any parity even with Dr. Jalabhai because he was appointed as Assistant Professor. He belonged to CHS cadre and in his appointment letter itself NPA was allowed whereas applicant was appointed as Bio chemist in Govt. of Delhi. There was no NPA granted to him right from day one thus they are also not identically situated. It is thus clear that applicant cannot claim parity with Dr. Jalabhai as they are not on same



pedastal which is the basic requirement for proving discrimination. Since Dr. Jalabhai belonged to different cadre, was holding different post, mere common pay scale or qualifications cannot be the criterion for seeking parity.

18. Moreover having accepted the terms of his appointment applicant had acquiesced to the situation, therefore, it is not even open to him to rake up this issue later. In 2005 (7) SCC 524 in the case of Kalaptarn Vidya Srivasthe Vs. S.B.Gupta and Anr. Hon'ble Supreme Court held having accepted the terms and conditions as mentioned in appointment letter, respondents could not be permitted to turn around and challenge the terms of appointment later on. This judgment fully covers the facts of the present case.

19. It is well settled by now that mandamus can be issued only if petitioner is able to show that any of his right has been violated or he has been denied something illegally. Question of denying illegally will arise, only if petitioner is able to show at the Ist. instance that he is entitled to get something in law. In this case, since applicant has not been able to show us any rule from where his right emanates, no mandamus can be issued in his favour.

20. Counsel for the applicant strenuously argued that even law department had recommended his case but mere recommendation at one level while case

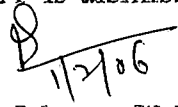


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is under examination, does not give any right to the applicant to get that recommendation enforced. What is important is, what was the ultimate decision taken by competent authority after examining the matter. Ultimately the claim has been rejected by the competent authority.

21. It is also pertinent to note that at present also, no Bio-chemist is being given NPA either by Ministry of Health, Govt. of India or by Govt. of NCT of Delhi so if any direction is given in favour of applicant today, it would create further problems for the department as all other Bio-chemists will also claim the same benefit. Therefore, we do not wish to set a wrong precedent.

22. In view of above discussion, OA is dismissed. No order as to costs.


(Mrs. Meera Chhibber)
Member (J)

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