

**Central Administrative Tribunal
Principal Bench**

R.A.No.182/2005

IN

O.A.No.2046/2004

New Delhi, this the 29th day of May 2006

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri N.D. Dayal, Member (A)

Dr. (Mrs.) Ila. Sharma & others ..Applicants
(By Advocate: Shri S.K. Sinha)

Versus

Union of India & others ..Respondents
(By Advocate: Ms. Geeta Luthra)

O R D E R

Shri Shanker Raju, Member (J)

The original respondents filed MA-126/2005, which was converted into RA, being RA-182/2005, vide Tribunal's order dated 4.7.2005

RA-182/2005

The present RA, which has been filed under Rule 16 of the CAT (Procedure) Rules, 1987 assails an order passed on 3.3.2005 by the Tribunal in OA-2046/2004 where the claim of the applicants - part-time doctors for grant of consolidated salary of Rs.8000/- from 1.1.1996 was allowed.

2. Ms. Geeta Luthra, learned counsel for original respondents contended that on 3.3.2005 when the matter was proceeded ex-parte, junior counsel was not well and had not come to the Tribunal. In the interest of justice and to prevent miscarriage of justice, it is contended that order ^{dt.} 3.3.2005 be recalled.

3. In our considered view, the ex-parte order issued was on account of absence of respondents' counsel, as the above OA after completion of pleadings was admitted on 21.2.2005 and was for the first time listed for hearing on 3.3.2005. To prevent miscarriage of justice and in the interest of both the parties and also to enable the respondents to bring the full facts of the case, RA-182/2005 is allowed. Order dated 3.3.2005 is recalled, though vehemently opposed by the learned counsel for the original applicants.

4. With the consent of both the parties, the matter is heard on merit.

5. Applicants, who are part-time doctors in Employees State Insurance Corporation, were appointed in the year 1988 with a consolidated salary of Rs.5000/-. Earlier the applicants approached the Tribunal by filing OA-2635/99 wherein the following directions were issued on 12.12.2001:-

"7. As regards, the enhancement of their remuneration is concerned, the respondents have taken a decision in 1998 and have already enhanced their consolidated wages from Rs.2500/- to Rs.5000/- w.e.f. 9.7.98. We are still of the considered view that this consolidated salary is not sufficient in view of the services rendered by the applicants as Doctors at par with the regular Doctors. The applicants are also performing almost identical work with those of regular Doctors. In view of this matter and keeping in view the other factors and inflation and the fact that the applicants have been continuing as part-time doctors, we dispose of this OA with direction to the respondents to consider the enhancement of remuneration of the applicants keeping in mind the general economic conditions and the principles of "equal pay for equal work". The above directions should be complied within the period of three months from the date of receipt of a copy of this order. No costs."

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6. The aforesaid was challenged before the High Court of Delhi in CW-3587/2002. An order passed on 21.1.2003 disposed of the writ petition with the following directions:-

"We are unable to persuade ourselves to agree with learned counsel for the petitioners. A bare reading of the afore-extracted order of the Tribunal makes it clear that the Tribunal has merely asked the petitioners to consider the case of the respondents for enhancement in their fixed remuneration, having regard to the general economic conditions as also the principle of equal pay for equal work. In the said direction, we do not read any direction by the Tribunal to the petitioners to pay the same remuneration as is being paid to regular doctors, on the ground that they are performing the same work, as was being performed by the regular doctors, as is sought to be pleaded by learned counsel for the petitioners. We do not find any infirmity in the impugned directions. It is also pertinent to note that vide order dated 30 May 2002, it was directed that the admission of the writ petition shall not stand in the way of the petitioner Union of India in considering implementation of the directions given by the Tribunal, without in any way being influenced by the observations made in the aforementioned order.

The writ petition, being devoid of any merit, is accordingly dismissed and the rule is discharged."

7. In the light of the above, what has been contended by the learned counsel for original respondents that the part-time doctors are not performing the same functions and duties, and their recruitment being different in the rules, equal pay for equal work cannot be resorted to. Learned counsel further stated that while in judicial review, the Tribunal should not assume the role of an expert body being forbidden territory to grant equal pay for equal work. What has been accorded to the applicants vide impugned order dated 23.7.2003 a consolidated salary of Rs.8000/- is not on the premise of equal pay for equal work or at par with the regular doctors to

keep in light the price index and other economic reasons.

8. Learned counsel would also contend that earlier when the Tribunal disposed of the request, what has been contested is equal pay for equal work as a consideration for grant of enhancement of remuneration and the High Court in its order dated 21.1.2003 clarified as to performing of same work by the applicants at par with regular doctors not being the ambit of the directions. Learned counsel further states that having not established in any manner as to equality in all respects even one factor, which is different would lead to non-grant of equal wages and in the matter of equal pay for equal work retrospective grant of enhanced pay would not be admissible under the law.

9. Following cases have been relied upon by Ms. Geeta Luthra, learned counsel to substantiate her plea:-

- (i) **Dr. C. Girijambal vs. Govt. of Andhara Pradesh, (1981) 2 SCC 155**
- (ii) **State of West Bengal & others etc. vs. Monirujjaman Mullick & others etc., JT 1996 (7) SC 49 = 1996 (10) SCC 56**
- (iii) **Union of India & others vs. Makhan chandra Roy, AIR 1997 SC 2391**
- (iv) **Union of India & another vs. P.V. Hariharan & another, (1997) 3 SCC 568**

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(v) Vice Chancellor, G.B. Pant University of Agriculture and Technology & another vs. Dr. Kewala Nand & others, (1998) 7 SCC 492

10. On the other hand, Shri S.K. Sinha, learned counsel for original applicants stated that there has been a direction by the Tribunal earlier to consider enhancement or remuneration on the principle of equal pay for equal work and as similar doctors in 5th Central Pay Commission's recommendations had been accorded benefit w.e.f. 1.1.1996, the applicants herein are also entitled and they have rightly been accorded by the Tribunal the consolidated salary of minimum of the scale of regular employees w.e.f. 1.1.1996.

11. Learned counsel would also contend that the applicants are performing the identical duties and there is no error in the order dated 3.3.2005 passed by the Tribunal or any mistake in law.

12. We have carefully considered the rival contentions of the parties and perused the material on record.

13. When there is a mistake, it is graceful by way of a review in dispensation of justice by the Tribunal to admit and to rectify the same. However, in the matter of equal pay for equal work, the principle as discerned is that the equal pay for equal work would have to be the prerogative of the expert body and the Government. In the matter of equal pay for equal work when all the factors are identical, which not only includes all functional requirements, duties and qualifications. When duties and qualifications are not equal as per the

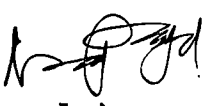
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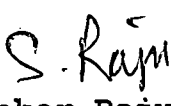
decision of the Apex Court in **Deb Narayan Shyam & others vs. State of West Bengal & others**, 2005 (2) SLJ (SC) 264, equal pay for equal work in case where duties and qualifications differ would not apply. However, the question is whether the duties are equal or not is to be left to the prerogative of the Government on the basis of the charter of duties and functions and duties assigned to the part-time doctors and regular doctors. The Tribunal in the reviewed order, on the premise that both perform identical duties, applying the principle of equal pay for equal work, directed grant of pay scale w.e.f. 1.1.1996 to the part-time doctors who are equal in all respects situated with regular doctors and as the recommendations of 5th CPC are applicable to regular doctors in the matter of consolidated salary would *mutatis mutandis* extend to the part-time doctors w.e.f. 1.1.1996, is not the correct position of law. At best, the Tribunal would have directed consideration for grant of an enhanced salary to the applicants from a date earlier to what has been allowed to them by the respondents.

14. One thing, which may not lose significance of, is that the respondents in their wisdom while complying with the directions, ordered increase remuneration for part-time doctors by raising their consolidated salary to Rs.8000/-, which is incidentally a minimum of the pay scale of a regular doctor, as prescribed by the 5th CPC. This leaves no doubt that in a manner, as far as discharge of duties is concerned and entitlement of the applicants for increased salary, this factor had heavily weighed. Now taking a summersault would not be congenial

to the good administration and being a model employer, it is the duty of the respondents to explore and consider this aspect of the matter that the applicants having been performing the identical duties since 1988 at par with regular doctors and thereafter to record reasons while disposing of the claim for retrospective application of consolidated salary of Rs.8000/- to the applicants w.e.f. 1.1.1986.

15. In the result, OA stands disposed of with a direction to the respondents to consider grant of enhanced consolidated wages of Rs.8000/- to the applicants w.e.f. 1.1.1996, by passing a detailed and speaking order within a period of three months from the date of receipt of a copy of this order. No costs.


(N.D. Dayal)
Member (A)


(Shanker Raju)
Member (J)

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