

34

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA-930/2004

With

OA-931/2004

New Delhi this the 12th day of September, 2006.

**HON'BLE MR. JUSTICE B. PANIGRAHI, CHAIRMAN
HON'BLE MRS. CHITRA CHOPRA, MEMBER(A)**

OA-930/2004

Dr. Shivashankar Govind Rao Bhasme,
Sr. Divisional Medical Officer (Dental)
Northern Railway,
Central Railway Hospital,
Basant Lane,
New Delhi

Residential Address:

Flat No. 243/1-B,
Railway Officers' Flats,
Punchkuain Road,
New Delhi

...Applicant

VERSUS

Union of India, through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Secretary,
Railway Board,
Rail Bhawan,
New Delhi.

3. The General Manager,
Western Railway,
Ajmer.

4. The Director General,

Railway Health Services,
Railway Board,
Rail Bhawan,
New Delhi.

.....Respondents.

OA No. 931/2004

Dr. Shivashankar Govind Rao Bhasme,
Sr. Divisional Medical Officer (Dental)
Northern Railway,
Central Railway Hospital,
Basant Lane,
New Delhi

ce

Residential Address:

Flat No.243/1-B,
Railway Officers' Flats,
Punchkuain Road,
New Delhi

...Applicant

VERSUS

Union of India, through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Secretary,
Railway Board,
Rail Bhawan,
New Delhi.
3. The General Manager,
Western Railway,
Ajmer.
4. The Director General,
Railway Health Services,
Railway Board,
Rail Bhawan,
New Delhi.

.....Respondents.

Advocates: Shri G.D.Bhandari for applicant in both OAs.
Shri H.K.Gangwani for respondents in both OAs.

ORDER**Hon'ble Mrs. Chitra Chopra, Member(A):**

As the facts involved are identical and issues raised are common, both these cases are being disposed off by this common order.

OA No.930/2004

In this OA, the main relief sought by the applicant is in respect of re-assignment of seniority in pursuance of Respondent's order dated 12.01.2004 (Annexure A-1).

2. The factual background leading to the OA is briefly as under:
 - i) The applicant was appointed as Dental Surgeon Class-II in the pay scale of Rs.650-1200/- through UPSC on 11.12.1975. Some adhoc

AMOs (Assistant Medical Officer) appointed in the late 1970s and early 1980s being aggrieved by their services not having been regularised approached the Hon'ble Supreme Court. The Hon'ble Supreme Court in the case of Dr.A.K.Jain & Ors. Vs. Union of India & Ors., decided on 24.9.1987 directed that all such adhoc appointees shall be regularised in consultation with the UPSC and that they shall be paid the same salaries and allowances as AMOs/ADMOs in the revised scale w.e.f. 1.1.1986. This resulted in an anomalous situation. These doctors who were regularised consequent upon the order of the Hon'ble Supreme Court were granted the pay scale of Rs.700-1600/- notionally from the date they had joined the adhoc service and upto 1.1.1986 and payment of arrears from 1.1.1986. While the applicant though appointed through UPSC on regular basis was granted pay scale of Rs.650-1200/-.

3. The applicant kept on representing and agitating his case for grant of pay scale of Rs.700-1600/- but his grievance remained unredressed. The applicant had also been representing for promotion as DMO (Dental) in the scale of R.1300-1700/-. However, this was not agreed to as the applicant was in the pay scale of Rs.650-1200/-.

4. The applicant filed OA No.838/92 in the Jodhpur Bench of this Tribunal which was later on transferred to Jaipur Bench of the Tribunal. The Tribunal vide order dated 4.5.1994 (Annexure-A7), rejected the applicant's claim holding that

“ A Scheduled Caste person may be eligible for promotion on the basis of reservation against a roster point to the next higher scale but it is illogical to accept that he would be eligible for promotion to a scale next higher than the one which is immediately higher. In other words, the

applicant would not be eligible for promotion from the scale Rs.650-1200/- to scale Rs.1300-1700/- on the basis of reservation when there was an intermediate scale Rs.700-1600/- in existence. After the implementation of the recommendations of the Fourth Pay Commission, the incumbents of both the scale Rs.650-1200/- and Rs.700-1600/- were granted the revised scale Rs.2200-4000 (Annx.A-25). Thus, it was only from 1.1.86. that the applicant and the incumbents of scale Rs.700-1600 were made equal. Before that date the applicant would not be eligible for promotion directly from scale Rs.650-1200 to scale Rs.1300-1700, bypassing the scale Rs.700-1600."

5. The applicant went in Appeal (Civil Appeal No.4697 of 1995) before the Hon'ble Supreme Court which was dismissed by the Hon'ble Supreme Court on 22.2.1996 (Annexure A-8) observing as under:-

"We have heard the appellant in person and the learned counsel for the respondents. In our opinion, the view taken by the Tribunal does not suffer from any error, which may call for interference by this Court. The appeal is, therefore, dismissed. No order as to costs."

6. The applicant still kept on representing to the competent authority who ultimately accepted his request and issued the following order dated 15.12.2003(Annexure A-1) which is as under:-

"Ministry of Railways have decided that the pay of Dr.S.G.Bhasme may be fixed in grade Rs.700-1600 on notional basis with effect from 24.11.1982 upto 01.01.1986. Dr. Bhasme will be entitled to arrears of pay as due and admissible with effect from 01.01.1986 onwards."

7. In implementation of the above order of Ministry of Railways dated 15.12.2003, the Northern Railway vide their order dated 12.01.2004 (Annexure A-1 (Colly.)) directed pay fixation/refixation of pay and granted arrears of pay to Dr. Bhasme.

8. Learned counsel for the respondents Shri H.K.Gangwani in counter affidavit made factual submissions which are already in the background of

this OA. The main emphasis supplied by Shri Gangwani is that the applicant having got the maximum relief is not entitled to any further relief. The issues raised by him (viz. the applicant) have also been settled vide order dated 4.5.1994 passed by the Jaipur Bench of this Tribunal in OA No.838/92. Hence the instant OA is barred by constructive res-judicata. He has also submitted in reply to paras 4.27-431 of the OA that the applicant had submitted a representation in August, 2003 (Annexure R-IV) that the pay anomaly may be corrected either (i) by granting him the grade of Rs.700-1600 initially from the date of his appointment in 1975 or (ii) by granting him this grade from the date his immediate juniors who initially was working on adhoc basis and was granted the grade of Rs.700-1600 on the basis of the Hon'ble Supreme Court's judgment. He requested in his aforesaid representation that his pay from that date may be notionally fixed in the grade Rs.700-1600/- upto 1.1.1986. The representation made by Dr. Bhasme was considered and it was decided to grant him initial fixation of pay in grade Rs.700-1600 from the date his junior was appointed on adhoc basis after his appointment through UPSC. His such a junior is Dr. Anil R. Shelar who was allowed initial fixation of pay in grade Rs.700-1600 w.e.f. 24.11.1982. Thus, the applicant had been allowed fixation of initial pay in scale Rs.700-1600 with reference to his junior who was appointed to the Railways subsequent to him so as to set right an anomalous situation. Thus, the learned counsel for the respondents vehemently opposed any further relief at this stage.

9. After hearing the rival contentions of both the parties and perusing the material placed on record, we are of the considered opinion that the applicant Dr. Bhasme has, in all fairness, been given the due relief for

which he had been representing for by the respondents. In so far as his request for re-assignment of his seniority consequent upon the pay fixation, there appears to be no ground whatsoever for any further relief at this stage. When the pay refixation order is already issued on 12.01.2004, any relief claimed in pursuance of that order is untenable and hence cannot be allowed. The order of pay fixation was issued by the Ministry of Railways on 15.12.2003. The applicant cannot now challenge the order dated 15.12.2003 issued by the competent authority as he had acquiesced in the said order and had accepted the pay fixation and would have also drawn all the arrears in terms of the said order. The applicant has also retired on 31.3.2004. This OA accordingly fails.

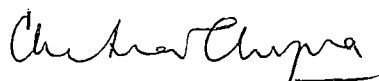
O.A.NO.931/2004

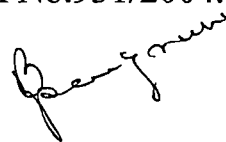
10. The factual background leading to this OA is identical. The main relief sought by the applicant in this OA is in respect of grant of scale of Rs.700-1600 from the date of appointment i.e. 11.12.1975 instead of **w.e.f. 24.11.1982** as has been given to him in the impugned order dated 12.01.2004. Although as has been observed above in the OA-930/2004, the applicant has been given the relief which he had initially sought for, he is now praying for grant of pay scale of Rs.700-1600/- from the date of his initial appointment with benefits of replacement scales and the resultant arrears of pay and allowances. This would obviously give him enhanced pension. As the applicant had already acquiesced in the order of pay fixation/refixation dated 15.12.2003 and 12.01.2004, no question of further refixation at this stage would normally arise. However, as a matter of indulgence to the applicant being a retired employee, we feel that he may be given only notional pay fixation in the scale of Rs.700-1600/- from the date

of his initial appointment i.e. 11.11.1975. Be it noted that no arrears of pay and allowances nor any interest etc. would be allowed.

11. In view of the above, OA-930/2004 is accordingly dismissed and OA-931/2004 is partly allowed to the extent that the applicant may be given only notional pay fixation in the scale of Rs.700-1600 from the date of his initial appointment i.e. dated 11.12.75. However, he would not get any arrears of pay and allowances nor any interest etc. No costs.

12. Let a copy of this order be kept in the file of OA No.931/2004.


(CHITRA CHOPRA)
MEMBER (A)


(B.PANIGRAHI)
CHAIRMAN

/usha/