

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. 257/1992

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New Delhi this the 2nd Day of April 1997.

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)
Hon'ble Shri S.P. Biswas, Member (A)

Dr. Laxmi Ahuja,
Assistant Professor (Biochemistry)
Lady Hardinge Medical College,
New Delhi.

(By Advocate: Shri Ajit Puddiserry)

Vs

1. Union of India through
the Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi.
2. The Director General of Health Services,
Nirman Bhawan,
New Delhi.

(By Advocate: Mrs. Raj Kumari Chopra)

O R D E R

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

This petition has come up for final hearing on regular board. The applicant who was appointed as Lecturer in the Department of Biochemistry of the Lady Hardinge Medical College and Associated Hospital, claims that she be declared an Assistant Professor as the post of Lecturer was upgraded and she may be granted equal pay and status for equal work as compared to other Assistant Professors whose post as Lecturer has been in similar manner upgraded as Assistant Professor w.e.f. 1.1.1 1983. She is also seeking a direction that she may be given the grade of Assistant Professor w.e.f. 1.1.1983 in the scale of Rs. 1100-1300 and further her pay may be fixed at the revised scale of Rs. 3000-5000

as per the recommendations of the Fourth Pay Commission w.e.f. 1.1.1986 and arrears and other allowances admissible and accrue to her be also given to her. She is also praying for a direction to the respondents to redesignate the post being held by her as Assistant Professor as per the directions of the respondents in letter dated 28.1.1983.

2. The applicant was appointed on the post of Lecturer on 13.11.1976 on regular basis in the pay scale of Rs. 700-1300 after fully qualifying for the post. She was holding M.Sc with Ph.D in Biochemistry and she has been performing her duties and responsibilities to the satisfaction of the respondents. She complains that although she is performing the same duties as other lecturers in the grade of Rs. 1100-1800 but she is retained in the lower scale of Rs. 700-1300 since the respondents upgraded the post of other Lecturers to Assistant Professors retaining her post (an isolated case) as Lecturer in lower scale of Rs. 700-1300. The respondent No. 1 issued the sanction of the President for redesignating the post of Officers holding the post and working as Lecturer in the Medical Faculty in the pay of Rs. 700-1300 as Assistant Professors in the scale of Rs. 1100-1300 on 20.1.1993. The case of the respondents is that this benefit is available only to the Lecturers of Medical stream and not available to the Lecturers in the non-medical streams, notwithstanding the fact that so far as the mode of appointment or the qualification or the status is concerned, there is hardly any difference between Lecturers (Medical) or Lecturers (Non-medical).

Yet the principle of equal pay for equal wages had not been complied with in the case of Lecturers of the Department of Biochemistry.

3. The Fourth Pay Commission made reference to non-teaching staff of All India Institute of Hygiene Public Health, Jawaharlal Nehru Institute, Post-graduate in Medical Education Research Institute and Lady Hardings Medical College and Hospital, and observed that the role of the two categories of lecturers are not only comparable but also complimentary and one cannot be said to be less important than the other and the Fourth Pay Commission, therefore, recommended that the pay scales of the non-medical teaching staff and that of the medical teaching staff of all the Medical Teaching Institutions under the control of the Central Government should be the same. While the recommendations of the Fourth Pay Commission were implemented on medical side, they were not implemented so far as the other side to which the applicant belongs is concerned. The respondents have resisted the claim of the applicant stating that the coinditions of services of the applicant are not comparable to the medical personnel holding the post of Lecturer. It is pertinent to note that the applicant is holding an isolated post and non else will be affected by whatever order is likely to be passed by this court, in this OA.

4. Regarding the pay scale, the contention is that the Fourth Pay Commission has made recommendations and there appears to be no ground for depriving the applicant from the same. Recruitment rules are different

or the post is transferrable or that the service rules are different, all these cannot be the grounds for depriving equal pay to those who performs similar duties and functions. The principle for equal pay for equal work derive its sap and support from Article 14 and 16 with Article 39(d) of the Constitution of India and not from any other service rule. It may be that the service rules are different but the work, the duties, the qualifications and the condition are almost identical. Obviously, there is no reason why equal pay should be deprived from the persons though belonging to other certain sections of the same institution performing similar duties which was the function of the recommendations of the Fourth Pay Commission.

5. The petitioner had approached this Court on an earlier occasion by an OA 585/88 and this Court disposed of the same OA by an order dated 1.8.1991 stating therein that the applicant's claim for equal pay for equal wages stand on a sound footing and the respondents were directed to deal with the representation of the petitioner in this regard within a fixed period of time. Para 4 and the said decision is relevant and quoted herebelow:

"From the pleadings of the parties and the reply given in the written statement, it appears that the functions, duties and responsibilities are not substantially different and the applicant's claim for equal pay for equal wages stands on a sound footing. However, in the absence of entire material before us, we cannot finally express any opinion and leave it to the Government to consider this matter more so in the light of the opinion of the expert bodies like Pay Commission.

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Accordingly, the respondents are directed to consider the claim of the applicant for equal pay and equal wages alongwith the other lecturers of Lady Hardinge on medical side keeping in view the recommendations of the 4th Pay Commission. Let a decision in this behalf be given within a period of four months from the date of the communication of this order."

The said Court also relied upon two decisions of the Hon'ble Supreme Court to buttress the claim of the applicant and the same was accepted by this Court to record and finding that the petitioner was entitled to equal pay for equal wages.

In the case of Mewa Ram Kanojia Vs. All India Institute of Medical Sciences and Another, reported in 1989 (2) SCC Pg. 235, the prayer was for equal pay and equal wages which came for consideration, but it was not accepted as the classification of the post was different in educational qualifications. In the said case, the petitioner was a Hearing Therapist. He claimed pay scales admissible to Senior Speech Therapist. His case was based on the allegation that he was discharging the same duties and functions as that of Senior Speech Therapist. It was found that the principle cannot be invoked as the qualifications, nature of duties are dissimilar in one way or the other.

The case of Dr. Ms. O.Z. Hussain Vs. Union of India (W.P. No. 1018/1989) decided by the Supreme Court on 15.11.89 is also relevant. In the said case, the President of the National Council of Bio-medical Scientists like the applicant filed this application and it was prayed that Group-A scientists of the Ministry of Health and Family Welfare are being discriminated and they have not been given promotional chances and there is stagnation in the service. The Supreme Court issued certain directions which were to be complied with within 4 months regarding framing of the Rules etc. One of the directions was that the Government shall examine the tenability of the claim of equal pay scales for this category of officers within four months from today.

In pursuance to the directions of this Court dated 1.8.1991, the petitioner made a representation and the respondents were directed to examine the same. The respondents replied to the petitioner on 30.12.1991. In the said communication the respondents, after taking note of the fact of the decision of this Court on 1.8.1991 in OA 585/88 and claiming that they have fully considered the case of the petitioner in accordance with the rules and in accordance with the recommendations of the Fourth Pay Commission, reiterated the same grounds as stated by them in reply to the original OA. It was stated that the petitioner was recruited as Lecturer in the pay scale of Rs. 700-1300 and she has no claim for upgraded post of

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Assistant Professor and since she has accepted the same, the petitioner cannot complain at this juncture for a higher pay scale granted to the upgraded Medical Lecturers.

6. It is pertinent to note that the respondents even though their letter dated 30.12.1991 is said to have been issued in the light of the judgement of this Court dated 1.8.1991, did not consider whether the relief of upgradation given to the Medical Lecturers when their posts were upgraded as Assistant Professors w.e.f. 1.1.1983, was to be granted to the petitioner as well. They also did not consider the effect of the findings of the previous Court that the petitioner is entitled to equal pay for equal wages. They also did not consider that the Fourth Pay Commission which recommended the upgraded scale to non-medical Lecturers as well. It is under these circumstances, the petitioner had filed the present OA for relief as stated above.


7. The respondents have filed the reply and urged mostly the same grounds as stated by them in the previous OA as well as those contained in the letter of the respondents dated 30.12.1991. One of the defences for non grant of the benefit of upgradation to the petitioner is that unlike the Medical Assistant Professors, the petitioner does not attend to patients when Fourth Pay Commission made appropriate recommendations, they were aware of these facts. This ground has no leg to stand for the reason that in the discipline of Biochemistry, the question of attending the patients does not arise at all. The second ground raised by the respondents in their reply is that the advertisement against which the petitioner applied and appointed was the post of Lecturer in the scale of Rs. 700-1300 and since she has

voluntarily and knowingly accepted the post in the year 1976, she has no legal claim now neither to the upgradation of the post of Lecturer to that of Assistant Professor and she has also no claim, therefore, to the scale of Rs. 1100-1600 which is the grade given to Assistant Professors till 1.1.1986 and to the revised pay scale of Rs. 300-5000. After the recommendations of the Fourth Pay Commission this ground also cannot survive.

8. The third ground raised by the respondents in their reply is that the Lecturers are recruited fresh and they are promoted to the post of Assistant Professors only after obtaining three years experience. This ground as well has no leg to stand, for the reason that the upgradation in the present case has come after the petitioner happened to be holding the post of lecturer for six years. Therefore, assuming independently her claim to be upgraded to the post of Assistant Professor can be granted only after testing the incumbent's eligibility against the prescribed essential qualifications under the recruitment rules, yet the petitioner has become eligible to the upgraded post as she had the experience of six years at the time when the post was upgraded. The last ground that has been taken by the respondents in their reply is that in any case the petitioner has been given the benefit of the recommendations of the Fourth Pay Commission. It is true that the said benefit has been given w.e.f. 1989 but her claim in this petition is that the said benefit should have been given w.e.f. 1983 and thereafter the revised pay scale w.e.f. 1.1.1986, when these benefits were granted to her colleagues in the medical stream.



9. We have given anxious thought to the rival contention from both the parties and looked into the material for us and we are of the opinion that the findings of this Court given in the decision dated 1.8.1991 is undisturbed and has become final for want of any appeal to any competent superior Court by the respondents, and it is not open to the respondents now to reagitate the issue and in view of the fact that the respondents did not revert to these findings dated 1.8.1991 in their reply to the representation of the petitioner dated 30.12.1991. The facts and circumstances of the OA bring out a clear case of hostile discrimination against the petitioner and hence he is entitled to the benefit of upgradation of post of Lecturer to that of the Assistant Professor w.e.f. 1.1.1983 the date on which the similarly placed other categories viz., the Medical Lecturers posts were upgraded and given the benefit of higher scale of Rs. 1100-1600. The petitioner is also entitled to the revised pay scale as given to her colleagues w.e.f. 1.1.1986 viz., the revised scale of Rs. 3000-5000. In the circumstances the following directions are being issued:

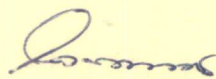
1. On the basis of the unassailed findings of the previous Court dated 1.8.1991, we also hold that the petitioner is entitled to the equal pay for equal wages and upgradation of the post of Lecturer she was holding from the year 1986 to that of the Assistant Professor
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post of Medical Lecturers were upgraded to that of Assistant Professor in the scale of Rs. 1100-1600.

2. The respondents shall grant the arrears of pay deducting the amount actual paid to her in the lower scale of Lecturer between 1983 - 1986.
3. The petitioner is also entitled to the arrears of pay on the basis of the revised pay scale of Rs. 3000-5000 and the arrears shall be calculated and paid to the petitioner after deducting the actual amount paid to her from 1.1.1986 till the post of petitioner was actually upgraded to the post of Assistant Professor in the year 1989.
4. The respondents shall pass appropriate orders to upgrade the post of Lecturer, the petitioner was holding as Assistant Professor w.e.f. 1.1.1983 and grant all other consequential benefits.

10. With these terms the OA is allowed and no order as to costs.



(S.P. Biswas)
Member(A)



(Dr. Jose P. Verghese)
Vice Chairman (J)

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