

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1945/93

New Delhi this the 25th Day of November, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Sh. C.J. Roy, Member (J)

Mrs. Lalita Mehra,
W/o Ashvini Kamal Mehra,
c/o Mrs. Raj Kumari Chopra,
CAT Bar Association,
Faridkot House, Copernicus Marg,
New Delhi-110 001.

...Applicant

(By Advocate Mrs. Raj Kumari Chopra)

Versus

1. The Director General,
Employees State Insurance Corporation,
New Delhi.

2. The Director (Medical) Delhi
ESI Scheme, Hospital Complex,
Basaidarapur, New Delhi.

3. The Medical Superintendent,
ESI Hospital, Basaidarapur,
New Delhi.

...Respondents

(By Advocate Sh. G.R. Nayyar)

ORDER(ORAL)

Hon'ble Mr. N.V. Krishnan:-

The applicant, a Laboratory Technician under the respondents is aggrieved by the fact that, unilaterally, her designation has been changed to that of Laboratory Assistant and that she is also not being paid the proper pay scale.

2. It is stated that the applicant was given an offer of appointment to the post of Laboratory Technician in the pay scale of Rs.110-200 by the Annexure A-2 order dated 24.7.64. This was accepted by her and the Annexure A-3 order dated 22.08.64 appointing her on probation as Laboratory Technician was issued. As late as 16.8.78, the applicant was designated as a Laboratory Technician when she was allowed to cross the efficiency bar (Annexure A-5). Thereafter, it is stated that the designation was changed to Laboratory

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Assistant. The applicant has also a grievance that, right from the beginning, the relevant pay scale has not been given to her.

3. In this regard, it is stated that similarly situated persons had filed writ petition No.410/74 in the High Court of Delhi, which was received on transfer and registered as T-747/86 - Vir Bhan Thakar and Others vs. Director (Medical) Employees State Insurance Scheme and Others. This was disposed of by the judgement dated 25.4.88 (Annexure A-1) with the direction that the pay of the petitioner\$ shall be fixed in the pay scale of Rs.130-300 (with a higher start of Rs.150/- for Graduates) from 1.4.62 or the actual date of their appointment, whichever is later, and they shall be paid the arrears of salary and increments in the said scale for the period upto 31st December, 1972.

4. It is further stated that another group of applicants, viz. Smt. Urmil Sharma & Others filed OA-1404/1989, which was disposed of on 25.10.91. In their case they prayed for a direction to the respondents to treat and designate them as Laboratory Technician from the respective dates of their appointment and to further direct them to apply the ratio of the judgement in T-747/86. The respondents had taken an objection therein that the case of those applicants were not identical to that of Vir Bhan Thakar and Others, inasmuch as the applicants in Smt. Urmil Sharma & Others were directly appointed in the Employees State Insurance Corporation while Vir Bhan Thakar and others had come on deputation from Delhi Administration. A plea of

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limitation was also taken. The plea of limitation was negated. The Bench allowed that application with the following directions:-

"The respondents are directed to refix the pay and allowances of the applicants in the post of Laboratory Technician on the same basis as that of S/Shri Vir Bhan Thakar and Others pursuant to the judgement of this Tribunal dated 23.4.1988 in TA-747/86 with effect from their respective dates of initial appointment as Laboratory Technicians. They shall also release to the applicant difference in the pay and allowances from their respective date of initial appointment as Laboratory Technicians to the date of disbursement, togetherwith simple interest at the rate of 12% per annum. The applicants should also be entitled to all consequential benefits."

5. The applicants seek implementation of this judgement in their case also. It is stated that the applicant submitted a representation (Annexure A-6) which does not carry a date, in which a reference is made to the earlier reply given by the respondents to her on 17.6.92 stating that it was not possible to take any decision on the applicant's representation based on the aforesaid judgement at that stage.

6. She has, therefore, filed this application on 13.9.93, seeking the following directions:-

"1) to direct the respondents to treat and designate the applicant as Laboratory Technician from the date of her appointment;

ii) to direct the respondent to apply the ratio of the judgement in T-747/86 to the present applicant forthwith;

iii) to direct the respondents to give the applicant arrears of pay and all consequential benefits;"

7. The respondents were permitted to file their belated reply. It is stated therein that two judgements of this Tribunal viz. Vir Bhan Thakar's case and Urmil Sharma's case are under challenge in OA-703/92, in which the present

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applicant is respondent No.9. It is also stated that in the earlier judgements the decision the Supreme Court regarding 'equal pay for equal work' has not been considered.

8. When the matter was taken up for final hearing, we directed the respondents to produce the letter dated 17.6.92, referred to in the representation of the applicant at page 24 (Annexure A-6). That record was produced. That reply reads as follows:-

"Reference representation dated 23.3.92 of Smt. Lalita Mehra, Lab Tech. forwarded by the IMO Incharge, ESI Dispy. K.G. II, Delhi vide endorsement no.37(30)/89-K.G.II/276 dated 25.3.92, on the subject noted above.

In this connection, Smt. Lalita Mehra, Lab Tech. may please be informed that in the above said court case, the CAT has granted stay consequent to the filing of an another Petition by a Lab Tech. of this Directorate and as such it would not be possible to take any decision on her above said representation of dated 23.3.92 at this stage. Her representation would be considered by this Directorate in due course after further directions/judgement of the CAT."

9. The learned counsel clarified that the other petition referred to in the above reply is OA-703/92 , which is still stated to be pending.

10. The first question is about the limitation. We are of the view that in the circumstances mentioned above, the question of limitation does not arise at all because the respondents themselves have indicated that they would pass an order in due course after further directions/ judgement of the Tribunal in OA-703/92. In the circumstances the plea of limitation does not arise.

11. To our question whether the applicant is senior to Urmila, one of the applicants in OA-1404/89, as claimed by her, the learned counsel for the respondents

admitted that the applicant was senior. He also had to admit that the case of the applicant is no different from the case already decided in OA-1404/89 - Urmil Sharma & Others. In view of these averments, we are of the view that the judgement in that case would clearly apply for the disposal of this case.

12. The learned counsel for the applicant also prays for costs on the ground that though orders have been passed in similar matters, the respondents did not give the benefit to her on their own but have compelled the applicant to file an OA. We have considered this matter. We are of the view that, in the circumstances of the case, the parties will have to bear their own costs.

13. In the light of the foregoing discussion the applicants are entitled to the reliefs to the extent granted to the applicants in OA-1404/89 - Urmil Sharma & Others vs. Union of India.

14. Before that order is passed we have to advert to one more prayer in the O.A. The applicant has made a claim regarding her seniority. She has sought a direction to quash the impugned seniority list dated 27.2.92 in so far as it mixes up the seniority of the Laboratory Technicians Grade I and Laboratory Technicians working in the office of the Respondent No.2. In this connection the learned counsel refers us to the judgement dated 25.10.91 in OA-2548.89 disposing of OA-2548/89 and CCP-188/90 in that OA.

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15. We are of the view that this matter is quite different from the main relief regarding the pay scale applicable to the posts of Laboratory Technician, which is the main issue that has been heard in this OA. In the circumstances, we are not going into the merits of this claim and we make it clear that it is open to the applicant to file a separate OA in regard to the seniority list and the promotions made on the basis of that seniority list.

16. In the circumstance, the respondents are directed to refix the pay and allowances of the applicant in the post of Laboratory Technician on the same basis as that of S/Shri Vir Bhan Thakar and Others pursuant to the judgement of this Tribunal dated 23.4.1988 in TA-747/86 with effect from their respective dates of initial appointment as Laboratory Technicians. They shall also release to the applicant difference in the pay and allowances from their respective date of initial appointment as Laboratory Technicians to the date of disbursement, togetherwith simple interest at the rate of 12% per annum. The applicants should also be entitled to all consequential benefits.

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(C.J. Roy)
Member(J)

'Sanju'

N.V. Krishnan
(N.V. Krishnan)
Vice-Chairman(A)
29/11/94