

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

PRESENT:

HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A

Allahabad this the 22nd day of January, 2009

ORIGINAL APPLICATION NO. 1062 OF 2004

Dr. Smt. Rita Shukla, W/o Dr. Shailendra Kumar Shukla, R/o Professor Niwas-2, Medical College Campus, Allahabad

...Applicant.

By Advocate : Shri. S.C. Srivastava & S. Upadhyay.

Versus

1. Indian Council of Medical Research, Ansari Nagar, Post Box 4506, New Delhi, through its Director General.
2. Director General, Indian Council of Medical Research, Ansari Nagar, Post Box 4506, New Delhi.
3. Union of India through its Secretary, Ministry of Finance, India Government, New Delhi.
4. Administrative Officer, Office of Director General, Indian Council of Medical Research, Ansari Road, New Delhi.
5. Principal Moti Lal Nehru Medical College, Lucknow.
6. Professor and Head of the Department, Obst. And Gynecology, M.L.N. Medical College, Allahabad.'

...Respondents.

By Advocate : S.P. Sharma and H. N. Pandey.

With

ORIGINAL APPLICATION NO. 1273 OF 2004

Dr. Beena Gupta, W/o Dr. R.C. Gupta, R/o 8/8 Mayor Road, Allahabad.

...Applicant.

By Advocate : Shri. S.C. Srivastava & S. Upadhyay.

Versus

1. Indian Council of Medical Research, Ansari Nagar, Post Box 4506, New Delhi, through its Director General.



2. Director General, Indian Council of Medical Research, Ansari Nagar, Post Box 4506, New Delhi.
3. Union of India through its Secretary, Ministry of Finance, India Government, New Delhi.
4. Administrative Officer, Office of Director General, Indian Council of Medical Research, Ansari Road, New Delhi.
5. Principal Moti Lal Nehru Medical College, Lucknow.
6. Professor and Head of the Department, Obst. And Gynecology, M.L.N. Medical College, Allahabad.'

...Respondents.

By Advocate : S.P. Sharma and H. N. Pandey.

With

ORIGINAL APPLICATION NO. 1274 OF 2004

Dr. Km. Nishi Agarwal, D/o Sri Ram Krishna Prasad Agrawal, R/o 276/89, Muir Road, FF-3, Man Lalita Apartment, District Allahabad

...Applicant.

By Advocate : Shri. S.C. Srivastava & S. Upadhyay.

Versus

1. Indian Council of Medical Research, Ansari Nagar, Post Box 4506, New Delhi, through its Director General.
2. Director General, Indian Council of Medical Research, Ansari Nagar, Post Box 4506, New Delhi.
3. Union of India through its Secretary, Ministry of Finance, India Government, New Delhi.
4. Administrative Officer, Office of Director General, Indian Council of Medical Research, Ansari Road, New Delhi.
5. Principal Moti Lal Nehru Medical College, Lucknow.
6. Professor and Head of the Department, Obst. And Gynecology, M.L.N. Medical College, Allahabad.'

...Respondents.

By Advocate : S.P. Sharma and H. N. Pandey.

O R D E R

O.A 1062/04, 1273/04 and 1274/04 are similar and identical cases they have been connected together and heard and common order is being passed in all three O.As. O.A. no. 1062/04 -Dr. Rita Shukla Vs. ICMR and others is taken as a leading case.



Information in OA 1062/04

2. The applicant was appointed as Social Worker vide letter dated 24/12/1986 issued by Head of Department of Obsteritis and Gynecology and M.L.N. Medical College, Allahabad for ICMR which is project of the Central Government. This project is being funded by the Ministry of Health and Family Welfare and is continuing for a long period of time. The applicant was allowed all benefits provided to persons working in the Medical College and was also given the benefit of Revised Pay scale according to IVth and Vth Pay Commission. 40% Fitment benefit was allowed to the applicant w.e.f. 1.4.1998, but suddenly without notice this benefit was withdrawn vide order-dated 18.5.2004. Aggrieved by this, the applicant has filed the present O.A. The relief(s) sought by the applicant are:

- (i) the order dated 5.5.2004 passed by the Ministry of Health and Family Welfare directing that 40% Fitment is not applicable to the employees of ICMR as well as order dated 18.5.2004 be quashed;
- (ii) respondents may be directed to regularize the service of the applicant.

3. During the course of arguments, counsel for the applicant invited attention to the judgment of Hon'ble Jabalpur High Court in Writ Petition No. 4948 of 2005 dated 6.9.2005 regarding following six directions being given in the matter of payment of 40% fitment to the employees of ICMR.

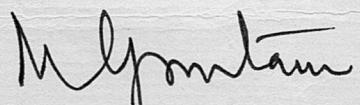
- (i) No recovery shall be made against the petitioner.
- (ii) The petitioner shall be given an opportunity of hearing with regard to the alleged withdrawn of benefit of 40% fitment by the respondents.
- (iii) The respondents after affording an opportunity of being heard to the petitioner shall pass a reasoned order within a period of 3 months from the date of receipt of order.

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- (iv) On an adverse order being passed against the petitioner they would be at liberty to agitate the matter further before an appropriate forum.
- (v) Till the decision the objection petitioners would not be entitled to receive the benefit of 40% fitment.
- (vi) The petitioner if so desire, shall sent their authorized representative for putting forth their stand.

Also relevant is the judgment of Madras High Court dated 25.5.2006 wherein directions have been given to ICMR the respondent-authority to consider regularization of its employees from the date of initial appointment. In the light of the above two judgments, there seems to be no reason to pass separate orders. As per judgment of Jabalpur High Court, no recovery shall be made and after the petitioners have been heard, reasoned order is to be passed by the respondents within three months. Until such decisions, petitioners would not be entitled to 40% fitment. Directions given by Jabalpur High Court may be followed in this O.A. as the facts of the case are identical and similar. O.A. is thus, disposed of subject to above-mentioned directions. No. costs.

4. Copy of this order may be placed in all the connected cases.



(Mrs. Manjulika Gautam)

Member-A

Girish/-