

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 9 DAY OF 2 2009)

Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mr. D.C. Lakha Member (A)

Original Application No.267 OF 2004
(U/S 19, Administrative Tribunal Act, 1985)

Brij Mohan Singh Gautam, aged about 47 years, S/o Shri Ram Autar Singh, R/o House No, 543, Awas Vikas Colony, Fatehpur (UP).

..... *Applicant*

Versus

1. Union of India through the Secretary, Ministry of Labour, Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. The Director General (Labour Welfare), Ministry of Labour, Jaisalmer House, Man Singh Road, New Delhi.
3. The Welfare Commissioner, Office of the Welfare & Cess Commissioner, 555-A/2, Mumfordganj, Allahabad-211002

..... *Respondents*

Present for Applicant : *Shri Rakesh Verma*

Present for Respondents : *Shri R. K. Srivastava*

ORDER

Delivered by Hon'ble Mr. A.K. Gaur, Member-J.

By means of this Original Application, the applicant has claimed following main relief/s :-

(i) *To issue a writ order or direction in the nature of Certiorari quashing impugned order dated 05.03.2003 passed by the Respondent No. 3 (Annexure-A-I)*

(ii). *To issue a writ, order or direction in the nature of Mandamus directing the respondent no. 3 to implement*

✓

the recommendation of the 5th pay commission Report with regard to restructuring/upgradation of the post of Pharmacist creating 3 grades and further it may be directed that the pay scale of Pharmacist be modified as per Annexure-a-XII read with Annexure-A-XI and Annexure-A-XV and to place the petitioner in the pay scale of Rs. 1640-2900 and then in Rs. 5500-9000 and to accord benefit of Assured Carrier Progression Scheme.

2. The applicant having all the prescribed qualifications of Pharmacist and having Diploma in Pharmacy in the year 1977 from U.P. Pharmacy Council, Lucknow, was selected and appointed as Pharmacist Gr. I at medical Unit, Jaunpur (UP) in pay scale of Rs. 330-560/- vide appointment letter dated 14.12.1978 (Annexure-A-VIII of O.A) and joined his duties with effect from 13.01.1979 and has been continuing as such until now. At present the applicant is posted in Static-cum-Mobile Medical Unit, at Amroha, Jyotiba Phule Nagar, U.P. and has already put in more than 24 years of regular service. According to the applicant, at the time of his initial appointment, there was only one grade of pharmacist which carried the then pay scale of Rs. 330-560/-, which has been revised after enforcement of the 4th as well as 5th Pay Commission with effect from 01.01.1986 and 01.01.1996 as under:-

Grade	3 rd Pay Commission	4 th Pay Commission	5 th Pay Commission
Pharmacist	Rs. 330-560	Rs. 1640-2900	Rs. 5500-9000

3. Learned counsel for the applicant invited our attention to para 11.82 of 4th Pay Commission Report (Swamy's compilation 1986 edition) (Annexure-A-X of O.A) , which relates to Para Medical Staff under which the applicant comes, the recommendation in respect of the Pharmacist

✓

has been given to the effect that the Ministry may examine, for improving the promotional prospects, the desirability of a few higher level posts in the pay scale of Rs. 1640-2900/- . The aforesaid recommendation was duly accepted by the Govt. of India, and other ministries like Ministry of Defence and Railways, also implemented the same, whereas the respondent No.1 has not yet implemented the same in an arbitrary manner. In fact in the Ministry of Labour, there was no post of Pharmacist carrying the pay scale of Rs. 425-640 or 425-700/- and sanctioned post of Pharmacist carrying the pay scale of Rs. 330-560/- . It is submitted that the pay scale of Rs. 1350-2200/- and its replacement in the new pay scale of Rs. 4500-7000/-, as given, infact is the pay scale of Pharmacist Gr. III in other Central Govt. Department as would be evident from para 83.274 of the 5th Pay Commission Report (Annexure-A-XI of O.A), as accepted by the Govt. of India. It is also brought to our notice that in the accepted report of the 5th Pay commission in paragraph No. 74.23 , the Directorate General of Labour Welfare and Office of the Welfare Commissioner, has made it clear that Pharmacist and Dresser - cum-Attendant in the Directorate General of Labour Welfare should be given improved scale of pay and their pay may be placed in the replacement scale of pay recommended by the Commission in the Chapter of "Para Medical Staff" A copy of the aforesaid recommendation as accepted by the Govt. of India has been annexed as Annexure-A-XII of O.A. A copy of the 5th Pay Commission Report containing the chapter of pharmacist in paragraph No. 52.90 (Para Medical Staff) accepting the recommendation has also been enclosed as Annexure-A-XIII of O.A. The modified grade structure in existence is being reproduced hereinunder:-

Pharmacist Gr. I	Rs. 1640-2900
Pharmacist Gr. II	Rs. 1600-2660
Pharmacist Gr. III	Rs. 1400-2300

W

4. Learned counsel for the applicant also invited our attention to copy of Part 'c' of CCS (Revised Pay) Rules, 1997 (Annexure-A-XIV of O.A) wherein at Sl. No. 145, the pay scale of Rs. 1350-2200/- was recommended in paragraph no. 63.291 of the 5th Pay Commission Report allowing 3 grade structure creating upgradation of the post.

5. Learned counsel for the applicant further submitted that anomaly has arisen after the 5th Pay Commission, which recommended restructuring of the post of Pharmacist providing higher promotional avenues which has duly been accepted by the Govt. of India and implemented by the other Ministries like Ministry of Defence and Railways but the respondent No. 1 has not implemented it till today on account of which the applicant is suffering a lot. Learned counsel would further contend that in case the restructuring would have been done, the applicant would have got the replacement in the pay scale of Rs. 5500-9000 keeping in view the recommendation of the 5th Pay Commission which held that the grade structure in respect of the Pharmacist should be provided.

6. For redressal of his grievance, the applicant preferred so many representations and when nothing was done, he filed O.A. No. 1281 of 2002 (Brij Mohan Singh Gautam Vs. Union of India and others), which was disposed of vide judgment and order dated 19.11.2002 giving direction to the respondents therein to decide the representation by a reasoned and speaking order, which has been decided by the Welfare Commissioner/respondent No. 3 vide order dated 05.03.2005 (Annexure A-I of O.A). Aggrieved the applicant filed the present Original Application on the ground that the order dated 05.03.2005 is totally illegal, arbitrary

and misleading. Learned counsel for the applicant submitted that the contention of the respondents in paragraph no.1 of the aforesaid order dated 05.03.2003 is totally misleading as in the Ministry of Labour, at the time of recruitment there was only one grade namely Gr. I carrying the pay scale of Rs. 330-560/- for the post of Pharmacist. Apart from the above, one more pay scale was Rs. 330-480/- which was meant for those candidate, who were unqualified Pharmacist. Learned counsel further submitted that the applicant is covered with the pay scale of 330-560/- being fully qualified Pharmacist, as is prescribed in the recruitment rule/Annexure-A-VI.

7. Learned counsel for the applicant further submitted that for granting higher pay scale of Rs. 1640-2900/-, the recommendation was duly accepted by the Govt. of India (Annexure-A-XVII of O.A.) thus, there appears to be no reason as to why the applicant should not be provided the pay scale of Rs. 1640-2900/- and replacement in the new pay scales, accordingly. The recommendations with regard to restructuring/upgradation although has duly been accepted by the Govt. of India, and have been duly implemented in the other ministries. According to the applicant there is no justification for not implementing the recommendations with regard to the restructuring/up-gradation by the respondents in as much as that the recruitment rules pertaining to Ministry of Railways and Defence, etc., the prescribed qualification of Pharmacist as well as other nature of duties are one and the same.

8. On notice, the respondents filed Counter Affidavit. Learned counsel for the respondents raised a preliminary objection regarding maintainability of O.A on the ground of delay and submitted that the

✓

applicant joined the post of compounder w.e.f. 13.01.1979(F/N) and more than 20 years have elapsed after the recommendation of 4th Pay Commission, therefore, mere passing an order by the competent authority on the representation dated 21.06.2000 preferred by the applicant at such a belated stage and that too in compliance of the direction of this Tribunal. The applicant slept over his right for a long period and suddenly woke up from slumber after a lapse of more than two decades, the OA deserves to be dismissed on the ground of delay & laches.

9. Learned counsel for the respondents would contend that there was no post of Pharmacist Grade-I and the applicant was appointed vide order dated 14.12.1978 on the post of Compounder /Pharmacist in pay scale of Rs. 330-560 /-. Learned counsel for the respondents further submitted that the recruitment rules of the Respondents Department differ from that of other Ministries and Department and cannot be equated with Ministry of Railways/Defence/Health & Family Welfare. As the recommendations of 4th Pay Commission for granting pay scale of Rs. 1640-2900/- was merely a recommendation and the same was not accepted by the Ministry of Labour, and the pay of the applicant has rightly been fixed by the respondents. The pay of the applicant has rightly been replaced and fixed in pay scale of Rs. 1350-2200. According to the respondents, as per the recommendations of 5th CPC, the applicant has also been given the replacement scale and fixed in pay scale of Rs. 4500-7000/-. The applicant has also been allowed the benefit of first Assured Career Progression Scheme, and has been given pay scale of Rs. 5000-150-8000/-.

✓

10. Applicant has filed Rejoinder Affidavit. In para 7 of Rejoinder Affidavit, it has been stated that the recommendations of 4th as well as 5th Central Pay Commission regarding upgradation of the post of Pharmacists has been accepted by the Ministry of Railways and Defence and also by other Ministries. Learned counsel for the applicant further submitted that the action of the respondents in not accepting the recommendation of Pay Commission with regard to up-gradation of the post of Pharmacists is totally discriminatory and arbitrary.

11. Learned counsel for the respondents submitted that the applicant initially was appointed as 'Compounder', which was subsequently changed to the post of 'Pharmacist' and due to clerical mistake 'Pharmacist Gr. I' was published in the letter relied on by the applicant. Learned counsel for the respondents also submitted that the wages of the employees of Ministry of Railway or Defence Ministry cannot be drawn from M/o Labour or vice-versa. Similarly each Ministry has its own recruitment rules and it cannot be imposed equally to the employees of all the Ministries. So far as the recommendations of 4th CPC for granting a few higher level posts , it was simply a recommendation, which was not accepted by the Ministry of Labour on functional basis.

12. Learned counsel for the applicant filed Suppl. Rejoinder Affidavit placing certain document in support of his contentions. Learned counsel for applicant invited our attention to Annexure SRA-II, which is copy of 5th CPC report accepted by the Government of India and submitted that the recommendation of 5th CPC with regard to certain posts, which has been left out without allotment of revised pay scale in the report is to the effect that such posts are to be allowed 'commensurate revised pay'

scales' as applicable for the post with similar entry qualifications, duties and responsibilities duly retaining the horizontal and vertical relativities organizations. Learned counsel further invited our attention to Chapter 168, 168.3 w.e.f. 01.01.1996 containing the recommendations of 5th CPC allowing parity to the Para Medical Staff has also been accepted by the Government of India and submitted that once the recommendations of the Pay Commission has ben accepted by the Cabinet , the respondents have no authority not to follow the same. Learned counsel for the applicant further invited our attention to the letter dated 12.02.2008/Annexure 2 of Suppl. Affidavit and submitted that the respondents in the said letter have admitted that there was post of Pharmacist Gr. I in the pay scale of Rs. 330-560 and that the Pharmacist Gr. I was taken into strength of Bidi Workers Welfare Fund. Learned counsel for the applicant would further contend that the amended recruitment rules will not be applicable to the applicant inasmuch as he was appointed w.e.f. 14.12.1978 under the earlier recruitment rules in which entry grade of Pharmacist Gr. I was Rs. 330-560, which has been replaced by the 4th CPC in pay scale Rs. 1640-2900 and by 5th CPC in pay scale Rs. 5500-9000/- . In support of his contention learned counsel for the applicant placed reliance on a decision rendered by the Hon'ble Apex Court reported in **1982 SCC (L&S) 119 – Randhir Singh Vs. U.O.I & Ors** and submitted that the applicant is entitled for party in respect of pay scale at par with the Pharmacist working with the Ministry of Defence & Railways on the principles of 'Equal Pay for Equal Work' .

13. We have heard Sri Rakesh Verma, learned counsel for the applicant and Sri R.K. Srivastava, learned counsel appearing for the

✓

respondents and perused the pleadings on record as well as the Written Arguments filed by the learned counsel for the applicant.

14. Learned counsel for the applicant submitted that as per Para 11.82 of 4th Pay Commission Report (Annexure A-10 of O.A.) which relates to Para Medical Staff under which the applicant comes, the recommendation in respect of pharmacist in pay scale Rs. 1640- 2900/- has been accepted by the Government of India and other Ministries and as such the applicant is also entitled for the same scale. Para 11.81 and 11.82 of 4th Pay Commission Report ((Page-41 of O.A) is reproduced below:-

“Para 11.81-There are about 2,400 posts of Pharmacist in the Central Government (excluding railways). Pharmacists are recruited in the pay scale of Rs. 330-560 with a selection grade of Rs. 425-640.

Para 11.82- Associations representing the above categories of posts have represented that there are no opportunities of promotion available to them. Considering the recruitment qualifications and the duties and responsibilities of the posts, we recommend that pharmacists and radiographers including X-ray Technicians in the scale of Rs. 330-560 may be given the scale of Rs. 1350-2200 and those in the scales of Rs. 425-640 and Rs. 425-700 may be given the scale of Rs. 1400-2600. For improving the promotion prospects, we recommend that ministry may examine the desirability of a few higher level posts in the pay scale of Rs. 1640-2900 ”

(Underlined to lay emphasis)

15. Learned counsel for the applicant further submitted that as per Para 83.274 of 5th Pay Commission Report (Annexure A-11 of O.A.) the pay scale of Rs.1350 – 2200/- and its replacement in new pay scale of

Rs.4500-7000/- is the pay scale of Pharmacist Grade-III. Para 83.274 of 4th Pay Commission Report (page 42 of O.A) is reproduced below:-

"83.274 - After carefully considering the suggestions of the Ministry and demands of the Pharmacists, we recommend the following:-

Designation	Pay Scale (Rs.)	
	Existing	Proposed
Pharmacist Grade-III	1350-2200	1400-2300
Pharmacist Grade-II	1400-2600	1600-2660
Pharmacist Grade-I	1640-2900	1640-2900
Chief Pharmacist		2000-3500

16. While recommending the Pay Scale of Rs.350-560/- for the fully qualified pharmacist, in Para 125 the 3rd Central Pay Commission have observed as follows:-

"We may reiterate that a fully qualified pharmacist, irrespective of his existing scale, should be allotted the pay scale of Rs.330-560/-"

In the body of Paragraph no.125 the expression "Fully Qualified" has been explained as follows:-

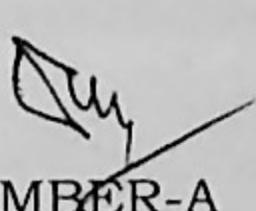
"By "Fully Qualified" we mean those persons possessing the qualification mentioned in section 31 and 32 of the Pharmacy Act, 1948."

17. A perusal of the appointment letter of the applicant would reveal that the applicant being a diploma holder in Pharmacy under the Pharmacy Act, 1948 was possessing all the qualifications and appointed as pharmacist in the pay scale of Rs.330-560/-. As per Para 83.274 of 4th Pay Commission Report (quoted above), the post of Pharmacist in pay scale of Rs. 330-560 was designated as 'Pharmacist Gr. III' and the

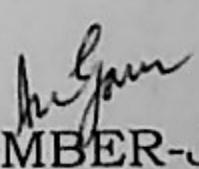
✓

corresponding scale of Pharmacist in pay scale of Rs.330-560/- was recommended in Pay Scale of Rs.1350-2200/- and its replacement by the 5th Pay Commission in Pay Scale of Rs. 4500-7000. As the applicant was in the pay scale of Rs. 330-560/-, according to the recommendations of 4th Pay Commission, his pay was fixed in pay scale of Rs. 1350-2200 shown against the Pharmacist Gr. III. The recommendation of 4th CPC in para 11.82 would further reveal that desirability of a few higher level posts in the pay scale of Rs. 1640-2900 is recommendatory in nature and not mandatory, therefore, the plea of the applicant that recommendation of 4th CPC has been accepted by other Ministries cannot be accepted. The recommendation of 5th CPC for granting of few level higher post in pay scale Rs. 1640-2900/- is also recommendatory and acceptance of it by the other Ministries or M/o Defence and Railways (as claimed by the applicant) does not entitle the applicant to claim such pay scale because the M/o Labour under which the applicant is working, has not accepted the said recommendation. The appointment letter dated 14.12.1978 also clearly shows that the applicant was appointed as Compounder (Pharmacist) in pay scale of Rs. 330-560/-, therefore, he has been correctly given replacement in pay scale of Rs. 1350-2200 and after the recommendation of 5th CPC, his pay has been fixed in pay scale of Rs. 4500-7000.

18. In view of the observations made above, we do not find good ground for interference with the impugned order dated 05.3.2003. Accordingly the O.A is dismissed with no order as to costs.



MEMBER-A



MEMBER-J

/Anand/