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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.367 OF 1987.

Decided on 13th July, 1989.

1. D.R. Chatterjee, S/o Late K.B.Chatterjee,
Pharmacist, Office of the Medical Officer I/C,
R.N.T. Hospital, P.O.Kondagaon, District-Baster, M.P.
2. S.K.Kirtania, S/o Late Kamdeb Kirtania,
Pharmacist, Office of the Zonal Administrator,
Dandakaranya Project, Malkangiri, Dist-Koraput
Orissa.
3. H.D.Chanda, s/o Sri Haripada Chanda,
Pharmacist, Office of the Central Medical
Store, Dandakaranya Project, P.O.Malkangiri,
District-Koraput, Orissa.
4. Shyamoli Kundu, W/o Balaram Kundu,
Pharmacist, Zonal Hospital,
P.O.Malkangiri, District-Koraput,
Orissa.
5. S.C. Mandal, S/o Late Juraram Mandal,
Pharmacist, M.P.V.-60, P.O.Venkatapalam,
Via- Malkangiri, District-Koraput, Orissa.
6. A.C.Mandal, S/o G.B.Mandal, Pharmacist,
Static Dispensary, P.O.Dharampura,
District- Baster, M.P.
7. S.K.Pal, S/o Late Suresh Chandra Pal,
Pharmacist, Zonal Hospital,
Dandakaranya Project, P.O.Malkangiri,
District- Koraput, Orissa.
8. D.L.Samadder, S/o Prafulla Kumar Samadder,
Pharmacist, M.V.-73, P.O.Gompakonda,
Via- Malkangiri, District-Koraput,
Orissa.

..... Applicants

Versus.

1. Union of India, through the Secretary, Ministry of Home Affairs, Rehabilitation Wing, Jaisalmer House, Mansingh Road, New Delhi-110 011.
2. Chief Administrator, Dandakaranya Development Authority, At & P.O.- Koraput, District-Koraput, Orissa.

.... Respondents

For Applicants - M/s. B. Pal, D.B.Das, and O.N. Ghosh

For Respondents - Mr. A.B. Mishra, Senior Standing Counsel (Central).

C O R A M :

THE HONOURABLE MR. B.R. PATEL, VICE- CHAIRMAN

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes.
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes.

J U D G M E N T.

B.R. PATEL, VICE-CHAIRMAN. In this application filed under section 19 of the Administrative Tribunals Act, 1985 the applicants, eight in number, who were working as Pharmacists under the Dandakaranya Development Authority (for short, the D.D.A.) have asked for grant of pay scale of Rs.1350-2200/- with effect from 1.1.1986 as has been recommended by the Fourth Central Pay Commission for Pharmacists. They have further prayed that consequential benefit of arrears of pay from 1.1.1986 should be given to them.

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2. The respondents have maintained in their counter affidavit that the applicants were given a pay scale of Rs.1200-1800/- as recommended by the Fourth Central Pay Commission for Group - C & B posts ~~xxx~~ in part-A of the First Schedule (Rules 3 and 4) as has been notified vide Notification No.F.15(1)/IC/86 dated 13.9.1986 issued by the Ministry of Finance (Department of Expenditure), Government of India, a copy of which is placed at Annexure-R/5 and as the applicants were getting a pay scale of Rs.330-480/- as per the circular of the Chief Medical Officer, Headquarters, Kondagaon, Baster (M.P.) bearing No. 1/8/76/CMO/REC/81/887-918 dated 18.1.1982, a copy of which is placed at Annexure-A/1. In view of the fact that the applicants have accepted the pay scale of Rs. 330-480/- from the dates of their appointment as Pharmacists till they filed this application in 1987, their claim for a higher pay scale is misconceived and should be rejected.

3. I have heard Mr. B.Pal, learned counsel for the applicants and Mr. A.B.Misra, learned Senior Standing Counsel for the Central Government. Mr. Pal has contended that the Third Central Pay Commission recommended a pay scale of Rs.330-560/- for Pharmacists. In this connection, he drew my attention to paragraph- 125 of the report of the Third Central Pay Commission, 1973 as extracted at Annexure-R/3. While recommending the pay scale of Rs.330-560/- for the fully qualified

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Pharmacists, the Pay Commission have observed as follows :

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

In the body of paragraph-125, the ✓ "fully qualified" expression has been explained as follows :

" By "fully qualified" we mean those persons possessing the qualifications mentioned in Sections 31 and 32 of the Pharmacy Act, 1948, "

The corresponding pay scale recommended by the Fourth Central Pay Commission has been mentioned in the notification dated 13.9.1986 vide Annexure-R/5. In Part-B of this notification, according to Mr. Pal, there is a specific mention of Pharmacists under Para-Medical Staff for whom a pay scale of Rs.1350-2200/- has been recommended and as such, the general recommendation relating to Group- C & B will not apply to the case of the applicants. He has further submitted that the applicants do not claim any benefit under the Third Central Pay Commission report but they depend on this recommendation for fixation of their pay under the report of the Fourth Central Pay Commission and since the recommendation of the Fourth Central Pay Commission for the Pharmacists is the pay scale of Rs.1350-2200/-, this pay scale should be given to them with effect from 1.1.1986 i.e. the date fixed by the Government of India for implementation

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of the recommendations of the Fourth Central Pay Commission. Mr. Pal has invited my attention to Annexure-R/2 which is an extract of Indian Pharmacy Act, 1948 (hereinafter referred to as the 'Act') as modified upto the 1.11.1966 prescribing the qualifications for Pharmacists. In this extract, copies of Sections 31 and 32 of the Act have been furnished. He has contended that the applicants come under section 31(c) which says that a person will have his name entered in the 1st Register if he satisfies that he has passed an examination recognised as adequate by the State Government for Compounders or Dispensaries. This position has been clarified in Annexure-R/3 which is an extract of the relevant portion of the Third Central Pay Commission report. Mr. Pal has further contended that the applicants have got the qualifications as prescribed by the Recruitment Rules for the post of a Pharmacist, a copy of which has been placed at Annexure-R/1. In column-7 meant for educational qualifications required for direct recruits, the essential qualification prescribed runs as follows :

" Essential : "

Should have certificate of passing Pharmacist Course or training or examination and possess the qualifications mentioned in sub-section (c) of Section 31 or Section 32 of the Pharmacy Act, 1948. "

In view of the fact that the applicants had the prescribed qualifications as per the Recruitment Rules, it is unjust to deprive them of the pay scale prescribed for the post as per the recommendation of the Third Central Pay Commission.

Amritpal Singh

In other words, Mr. Pal has urged that giving the applicants the pay scale of Rs.330-480/- was against the Recruitment Rules as well as the recommendations of the Fourth Central Pay Commission.

4. While drawing my attention to Annexure-A/1 which is a circular dated 18.1.1982 Mr. Misra contended that the scale of Rs.330-560/- was specifically mentioned to be given to only Pharmacy Diploma holders and as the applicants do not have the Pharmacy Diploma, they could not have been given this pay scale in terms of the circular which invited applications for the posts. He has further contended that the applicants cannot now say that the circular dated 18.1.1982 is wrong. He has also drawn my attention to para-2(a) of the counter affidavit which says that as the applicants have never claimed a pay scale of Rs.330-560/- till the implementation of the Fourth Central Pay Commission report, they cannot be given the pay scale of Rs.1350-2200/- as recommended by the ^{Fourth} Pay Commission. He has further said that the applicants have since been surrendered to the Central Surplus Cell and relieved of their duties in the D.D.A. and the burden of their arrear pay cannot be passed on to the new employer. He has also contended that higher pay scale of Rs.330-560/- is justified on the ground of higher educational qualification as has been held by the Hon'ble Supreme Court in AIR 1974 SC 1 (State of Jammu and Kashmir v. Trilokinath Khosa and others) wherein the Supreme Court while dealing with the matter of classification of Assistant Engineers between the

Degree holders and the Diploma holders for promotion to the rank of Executive Engineers under the Jammu and Kashmir Engineering Service Recruitment Rules, 1970, held that such classification is not to be raised on unreal or unreasonable basis. The classification was made with a view to achieving administrative efficiency in the Engineering Services. If this be the object, the classification was clearly correlated to it for higher educational qualifications are atleast presumptive evidence for a higher mental equipment. I respectfully agree with the law declared by the Hon'ble Supreme Court in that case. However, the present case is distinguishable from that case as has been indicated in the following paragraph.

5. There is no denying the fact that the applicants had the qualification prescribed in the recruitment rules and as the recruitment has been done under these rules, they ought to be given the pay scale prescribed for the post. The circular (Annexure- A/1) is dated 18.1.1982 i.e. long after the report of the Third Central Pay Commission came into effect from 1.1.1973. As the Third Central Pay Commission recommended a pay scale of Rs.330-560/- for the fully qualified Pharmacists and the applicants were fully qualified in terms of paragraph-125 of Chapter-XVI of the Third Central Pay Commission, the extract of which is at Annexure-R/3, they ought to have been given the pay scale of Rs.330-560/- on their appointment as Pharmacists. However, I agree with Mr. A.B. Misra that the claim for

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this scale of pay is barred by limitation under section 21 of the Administrative Tribunals Act, 1985. As stated above, Mr. Pal does not claim benefit of this scale of pay under the report of the Third Central Pay Commission. All that he has asked for is that the applicants should be given the Pharmacist's pay scale as has been recommended by the Fourth Central Pay Commission. I do not agree with Mr. A.B. Misra that only because the applicants accepted the pay scale given by the D.D.A. in 1982, they will be deprived of the pay scale specifically recommended by the Fourth Central Pay Commission for Pharmacists. It is inequitous to condemn for all time a man to the consequences of a wrong deed in which he once acquiesced. At the risk of repetition I may say that the Fourth Central Pay Commission has specifically recommended the pay scale of Rs.1350-2200/- for Pharmacists and this recommendation should apply to the applicants and not the general recommendation for Group- C & B posts vide Annexure-R/5. In certain circumstances, higher pay can be given for higher qualifications but when a particular level of qualification has been prescribed in the Recruitment Rules, there is no escape from giving the benefit of the Recruitment Rules to all those who have got the prescribed qualification. The facts of the case of State of Jammu and Kashmir v. Trilokinath Khosa and others (supra) before the Hon'ble Supreme Court are different from the facts of the present case. We are concerned here with a question of giving effect to the recommendation of the Fourt Central Pay Commission.

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6. In view of what has been stated above, I hold that the applicants should be given a pay scale of Rs.1350-2200/- as recommended by the Fourth Central Pay Commission and accepted by Government of India with effect from 1.1.1986. The arrears should be calculated taking into account the pay they have already drawn and they should be given the balance within three months from the date of receipt of a copy of this judgment.

7. In the result, the application is allowed, but in the circumstances of the case, parties to bear their own costs.

Ramcharan 13.7.89

VICE - CHAIRMAN.



Central Administrative Tribunal,
Cuttack Bench, Cuttack,
The 13th July, 1989/ Jena/SPA.