

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 507/1989 199
XXX No.

DATE OF DECISION 18.2.91

T.M Chandrasekharan Applicant (s)

Shri M.Girijavallabhan Advocate for the Applicant (s)

Versus

The Union of India represented by Respondent (s)
the Secretary, Ministry of Defence, New Delhi and another

Shri A.A.Abul Hassan,ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. N.Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 18.8.89 the applicant who has been working as a Compounder(Qualified) in the Civilian Medical Inspection Room at the Naval Base, Cochin under the Southern Naval Command has prayed that the impugned order dated 23.1.89(Annexure-F) declaring that Compounders are not eligible for the revised pay scale of Rs.1350-2200 which is available only to those who are categorised as Pharmacists, should be set aside and the applicant who is a Diploma holder in Pharmacy and is a registered Pharmacist should be declared to be a para-medical staff entitled to the revised scale of Rs.1350-2200 corresponding to the pre-revised scale of Rs.330-560. He has also prayed that he should be designated as a Pharmacist under the Pharmacy Act. The brief facts of the case are as follows.

2. The applicant holds a Diploma in Pharmacy and is registered as a Qualified Pharmacist under the Pharmacy Council of Kerala. He is also registered

with the Employment Exchange, Irinjalakuda as a Pharmacist. According to him his name was sponsored by the Employment Exchange to the Southern Naval Command for looking after the duties of a Pharmacist as the original incumbent being unqualified, cannot under the rules be permitted to continue to discharge the duties of a Pharmacist. Accordingly the applicant as a registered Pharmacist was appointed to that post of Compounder(Qualified)on a casual basis from 1.9.84 to 28.11.1984 in the pay scale of Rs.330-560. His continuance in casual employment was extended and he was ultimately absorbed in the regular cadre as a Compounder(Qualified) with effect from 25th June 1985. The applicant has also produced at Annex.A a copyof the order by which the services of the previous incumbent Shri Vasu who was not a registered Pharmacist were terminated as not eligible to continue as a Compounder beyond 31st August 1984. In accordance with the Recruitment Rules for the post of Compounder(Qualified) the candidate has to possess a Matriculation or equivalent qualification and also the professional qualifications prescribed under clause (c) of sections 31 and 32 of the Pharmacy Act 1948. The pay scale prescribed for the post for a candidate holding these qualifications was Rs.330-560 and for the 'Pharmacists' holding the qualifications covered by clause (d) of section 31 of the Pharmacy Act, the pay scale was Rs.330-480. It is admitted by the respondents that the applicant possesses the prescribed qualifications for the pay scale of Rs.330-560 and he was given the same pay scale and absorbed with effect from 25th June 1985. The applicant's grievance is that when on the basis of the recommendations of the Fourth Pay Commission the pay scales were revised he was given the lower pay scale of Rs.1200-2040 corresponding to the general pay scale of Rs.330-560, while the para-medical staff including the Pharmacists who were getting Rs.330-560 were given the higher pay scale of Rs.1350-2200 with effect from 1.1.86. His case is that as a registered Pharmacist holding the post of a Qualified Compounder in the scale of Rs.330-560 he comes within the category of para-medical staff as a Pharmacist and thus entitled to the higher revised pay scale. He was granted the lower pay scale of Rs.1200-2040 because the pay scale in the list(Ext.R1)of para-medical categories of staff who were given

of Rs.1350-2200, against the pre-revised scale of Rs.330-560 while the post of Pharmacist was mentioned, the post of Compounder(Qualified) did not figure. The applicant's contention is that no revised pay scale for Compounder (Qualified) as such was mentioned and therefore, as a Compounder who is for all intents and purposes a Pharmacist also, he should have been given the special revised pay scale of Rs.1350-2200 available to the para-medical staff corresponding to the pre-revised scale of Rs.330-560 instead of the general revised pay scale of Rs.1200-2040 granted to workshop hands, office staff, teaching staff and other general ^{in the pre-revised scale of Rs.330-560} categories. His representation along with that of a Nurse in the Medical Inspection Department who was also not given the revised pay scale of para-medical staff was taken up by the second respondent, i.e, the Flag Officer Commanding-in-Chief, Southern Naval Command with the Chief of Naval Staff at Annexure-E. The second respondent specifically recommended that the higher pay scales should be available to the Nurse(Medical) and also Compounder(Qualified) as they 'certainly' belonged to the category of para-medical staff. The first respondent, i.e, the Ministry of Defence while accepting the recommendation in regard to the Nurse, did not consider his post of Compounder(Qualified) to belong to the para-medical category. The applicant has challenged the rejection of his representation ~~and~~ denying him the revised pay scale of a Pharmacist, as violative of Articles 14 and 16 of the Constitution. His contention is that in accordance with the Pharmacy Act, 1948 and the Kerala Pharmacy Rules, 1961 only a registered Pharmacist could legally compound and dispense medicines and therefore as a Qualified Compounder holding a Diploma in Pharmacy, he is entitled to the revised pay scale of the para-medical staff, while discharging the duties of a Compounder.

3. The respondents while accepting the factual position as indicated above have stated that the Compounder's post not being listed in the catalogue of para-medical staff at Ext.R1, the revised pay scale of Rs. 1350-2200 available to the para-medical staff ^{in the pre-revised scale of Rs.330-560} cannot be allowed to the applicant as a Compounder. They have explained that the post of Nurse (Medical) which was also not mentioned in the catalogue of para-medical staff was held by the first respondent ^{to be in para-medical category} since the post of Nurse

(Medical) in the pre-revised scale of Rs.425-700 could also be manned by a Senior Nurse in the same pay scale and the post of Senior Nurse ^{listed} is in the category of para-medical staff at Ext.R1 ^{Thus}. The Nurse(Medical) was also granted the ^{special} revised pay scale available to the para-medical staff. Against the applicant they have stated that as the applicant was appointed as a Compounder(Qualified) and not as a Pharmacist he could not be granted the revised pay scale of the para-medical staff. They have argued that the "mere fact that the applicant is a registered Pharmacist will not confer on him any right for the pay scale of a post against which he has not been appointed".

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The only issue before us is whether the post of Compounder(Qualified) can be held to be in the category of para-medical staff in which the post of Pharmacist ^{is} ~~are~~ included. The applicant's claim is that professionally he is a registered Pharmacist a fact which has been accepted by the respondents. Functionally also as a Compounder dispensing medicines on doctor's prescription he claims that as a Compounder he is doing nothing but the work of a Pharmacist. In the **New Lexicon Webster's Dictionary of the English Language (Deluxe Encyclopedic Edition)** the word 'Compounder' does not figure. But the word 'Pharmacist' has been described as "a person skilled or engaged in pharmacy". The word 'Pharmacy' is explained to mean "the art or profession of preparing and dispensing medicinal drugs". Accordingly the word 'Pharmacist' means a person skilled or engaged in the art or profession of preparing and dispensing medicinal drugs. This is exactly what the applicant as a Compounder(Qualified) is doing. Therefore, we have no doubt in our mind that as Compounder(Qualified) the applicant is professionally and functionally nothing more or less than a Pharmacist. As a matter of fact it appears to us that the word 'Compounder' which does not figure either in the Webster's Dictionary or in the Concise Oxford Dictionary, is only a popular designation ^{for} a Pharmacist.

5. ^{aforsaid} We are reassured in our conclusion from the prescribed qualifications and the scale of pay given in the Recruitment Rules for the ^{Q Compounder} post as given in the Schedule to Annexure-B. The scale of pay has been prescribed as follows.

"1. Rs.330-10-380-12-500-EB-560. For those possessing qualification mentioned in section 31 and section 32 of the Pharmacy Act, 1948 but excluding those covered by clause (d) of section 31 of the said Act.
2. Rs.330-8-370-10-400-EB-10-480. For Pharmacists covered by clause (d) of Pharmacy Act, 1948 or possessing qualification for registration specified in that clause."
(emphasis added)

The educational and other qualifications prescribed in the same Schedule are as follows.

"Matriculation or equivalent.

A qualification entitling registration under clause (c) of section 31 or section 32 of the Pharmacy Act 1948."

The repeated references to the Pharmacy Act and the fact that a Pharmacist covered by clause (d) of that Act ~~was~~ given the lower pay scale of Rs.330-480 as against the higher pay scale of Rs.330-560 granted to the applicant who possessed the superior qualifications prescribed in sections 31 and 32 of the Pharmacy Act goes to show that the applicant is also a Pharmacist.

6. It may be necessary to refer to section 42 of the Pharmacy Act as amended by the Amendment Act of 1976 which came into force from 1st September 1976. Sub-section (1) of section 42 of the Pharmacy Act reads as follows.

"(1) On or after such date as the State Government may by notification in the Official Gazette appoint in this behalf, no person other than a registered pharmacist shall compound, prepare, mix, or dispense any medicine on the prescription of the medical practitioner.

Provided that this sub-section shall not apply to the dispensing by a medical practitioner of medicine for his own patients, or with the general or special sanction of the State Government, for the patients of another medical practitioner.

Provided further that where no such date is appointed by the Government of a State, this sub-section shall take effect in that State on the expiry of a period of eight years from the commencement of the Pharmacy (Amendment)Act, 1976
(emphasis added)

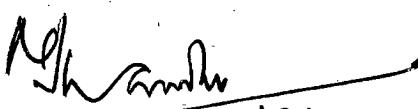
From Annexure-A it appears that the applicant's predecessor who was not a registered Pharmacist was discharged on 31st August 1984 and replaced by the applicant as a registered Pharmacist with effect from 1st September 1984. This was necessary because under the proviso to sub-section 42(1) of the Pharmacy Act, as quoted above, no person other than a registered Pharmacist could compound, prepare or mix any medicine on the prescription of a medical practitioner after 1.9.84 i.e. eight years after 1.9.76. Thus in law after 1st September 1984 all Compounders have to be registered Pharmacists like the applicant. In this context the designation of the applicant as a Compounder cannot take away his rights and responsibilities under the Pharmacy Act of those of a Pharmacist.

7. The respondents' argument for interpreting the unlisted post of Nurse(Medical) as a para-medical staff applies with equal force of logic to the post of Compounder also. The respondents have argued that since the unlisted post of Nurse(Medical) can be held by a Senior Nurse which is a listed post, the post of Nurse(Medical) also can be interpreted to be included in the category of the ^{listed} para-medical staff. By the same logic the unlisted post of Compounder which under section 42 of the Pharmacy Act has to be held by a Pharmacist(listed as para-medical) and no other person, has to be interpreted to be in the category of para-medical staff because the post of Pharmacists is listed in the para-medical category at Ext.R1.

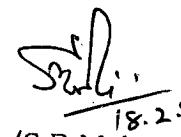
8. The learned counsel for the respondents was directed by us on 12.10.90 to clarify in the next hearing (a) whether there is any post viz. Pharmacist as distinct from that of Compounder(Qualified) and (b) any reason why Compounders are not given the revised pay scale of Pharmacists. No clarification could be given by the learned counsel who however indicated during oral arguments that in the Southern Command there is no post of Pharmacist as such. Therefore, we are forced to conclude that the functions of the Pharmacists are being discharged by the Compounders(Qualified). It is unthinkable that in the Southern Command a Pharmacist who is to dispense medicine is not required. The posts of

Pharmacists are not in existence in the Southern Command only because they have popularly been designated as 'Compounders' dispensing medicines under the Pharmacy Act as registered Pharmacists.

9. In the conspectus of facts and circumstances and law as discussed above, we allow the application declaring the applicant as Compounder(Qualified) to be a Pharmacist being entitled to the revised pay scale of Rs.1350-2200 corresponding to the unrevised pay scale of Rs.330-560 of Pharmacists. We direct the respondents that the applicant's pay in the revised pay scale of Rs.1350-2200 should be fixed with effect from 1.1.86 and arrears of pay and allowances disbursed to him within a period of three months from the date of communication of this order. There will be no order as to costs.


(N.Dharmadan)
Judicial Member

18.2.91


18.2.91
(S.P.Mukerji)
Vice Chairman

n.j.j