

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 220 1990

DATE OF DECISION 28.8.1991

P. Pookoya Applicant (s)

M/s KK Usha & NO Premachandran Advocate for the Applicant (s)

Versus

UOI rep. by Secy. to Govt., Respondent (s)
Min. of Home Affairs, New Delhi & 2 others

Mr. NN Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM:

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

and

The Hon'ble Mr. A.V. Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
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

(Mr. A.V. Haridasan, Judicial Member)

In this application dated 10th January, 1990,
the applicant who is working as Ayurvedic Pharmacist
in the Government Ayurvedic Dispensary, Andrott Island
in the Union Territory of Lakshadweep has prayed for
the following reliefs:

a) to declare that the applicant is entitled

to pay on scale of 330-560 from December
1980 subsequently revised as 1200-2040.

b) to issue a direction to the respondents
to grant the applicant the scale of pay
of 330-560 from December, 1980 subsequently
revised as 1200-2040.

2. The applicant was appointed as Ayurvedic Pharmacist under the Administrator, Union Territory of Lakshadweep, the second respondent vide his proceedings dated 3.9.1974 in the scale of pay of Rs.330-8-370-10-450-E8-10-480. As per the Recruitment Rules at Annexure-A the qualification prescribed for Ayurvedic Pharmacist is SSLC and training in Ayurvedic Pharmacy from a recognised institution for at least 10 months. The applicant has passed SSLC Examination and having undergone the training in Pharmacy, he was awarded a certificate dated 3.12.1981 by the Government of Kerala, Department of Indigenous Medicine to the effect that he has undergone the Ayurvedic Pharmacist training and has passed the examination conducted in November-December, 1980. The qualification for Allopathic Pharmacist as per the Recruitment Rules dated 20.3.1963 was SSLC with one year's training in Pharmacy from a recognised hospital. Under the Central Civil Services (Revised Pay) Amendment Rules, 1975 which came into force on the 1st January, 1973, two scales of pay were provided for pharmacists. The scale of Rs.330-10-380-E8-12-500-E8-15-560 was provided for qualified pharmacists possessing qualification mentioned in Section 31 and 32 of the Pharmacy Act, 1948 and the scale of Rs.330-8-370-10-400-E8-10-480 was provided for unqualified

pharmacists i.e. those covered by clause(d) of Section 31 of the Pharmacy Act, 1948 or possessing registerable qualification under that clause. On implementation of these amended rules, qualified Allopathic Pharmacists were given the scale of Rs.330-560. Even the assistant to Homeopathic Physician which is a post parallel to Ayurvedic Pharmacist the scale of pay of Rs.330-560 was given. But the applicant though has obtained the certificate on successful completion of the 10 months training was only given the scale of Rs.330-480. The applicant made several representations to the respondents requesting that the scale of pay of Rs.330-560 may be given to him as he is a qualified Pharmacist. The scale of pay of Rs.330-480 was revised to Rs.1200-1800 and Rs.330-560 was revised to Rs.1200-2040. The second respondent sent a communication to the first respondent (Annexure-D) recommending that the scale of pay of Ayurvedic Pharmacist working under him may be revised on a par with the other Pharmacists in the Union Territory. But as the matter rested there, the applicant made further representations to the first respondent on 7.3.1988 and 23.1.1989. In reply to these representations the applicant received a communication dated 17.2.1989, Annexure-F from the third respondent informing him that he was given the revised pay scale of Rs.1200-1800 corresponding to the pre-revised scale of pay of

Rs.330-480 which is the scale for Ayurvedic Pharmacists according to the Recruitment Rules, that there was no provision in the Recruitment Rules for Ayurvedic Pharmacists to pay salary in the scale of Rs.330-560 for the qualified Pharmacists and Rs.330-480 to the unqualified Pharmacists, and that the question of revision of pay scale of Ayurvedic Pharmacists to Rs.1200-2040 was pending consideration by the Ministry. Though this communication was received by the applicant in February, 1989, since no further information was received, the applicant has filed this application praying that the respondents may be directed to extent the pay scale of Rs.330-560 to the Ayurvedic Pharmacists under the Union Territory of Lakshadweep. It has been averred in the application that, as the qualified Pharmacists in Allopathy and Homeopathy are given the higher scale of pay, the refusal to give the same scale of pay to him, who is also a qualified Pharmacist though in Ayurveda amounts to hostile discrimination which is violative of Article 14 and 16 of the Constitution of India.

3. The respondents in the reply statement have contended that the applicant who was recruited as an Ayurvedic Pharmacist in the scale of Rs.330-480 in terms of the Recruitment Rules, Annexure-A, which prescribes entirely different qualification from that of Pharmacists, Allopathy is not entitled to claim the higher scale of Rs.330-560 awarded to the qualified Pharmacists in Allopathy. They

have further contended that the matter of equating the pay scale of Ayurvedic Pharmacist with that of the Allopathic Pharmacist is pending consideration by the Ministry, and that the application at this stage is liable to be dismissed.

4. We have heard the arguments of the counsel on either side and have also carefully perused the documents produced.

5. The facts which are not in dispute are that the applicant was recruited as Ayurvedic Pharmacist in the pay scale of Rs.330-480 (pre-revised), that during that period there was only one scale for Pharmacists whether qualified or unqualified in Allopathy also, and that this scale also was Rs.330-480. When the 4th Pay Commission Report was implemented, two scales were namely given to Pharmacists Rs.330-480 to unqualified Pharmacists and Rs.330-560 to qualified Pharmacists. These two scales were implemented only in the case of Allopathic Pharmacists. Assistants to Homeo Physician also were given the higher scale of Rs.330-560. The justification for not extending the benefit of higher scale of Rs.330-560 to the qualified Ayurvedic Pharmacist is that the Ayurvedic Pharmacists were recruited under entirely different Recruitment Rules from the Recruitment Rules of Allopathic Pharmacists, and that the 4th Pay

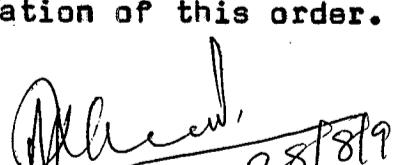
Commission did not suggest two different scales for qualified and unqualified Pharmacists in Ayurveda. The learned counsel for the applicant invited our attention to Annexure-C, the extract from the notification of Ministry of Finance dated 31st January, 1975 in implementation of the 4th Pay Commission report wherein two scales are seen provided for Pharmacists and argued that no distinction is seen made in this notification between Ayurvedic Pharmacists and Allopathic Pharmacists. But Pharmacists mentioned in Annexure-C refers to Pharmacists in the Medical and Public Health Department and not to Ayurvedic Pharmacists. In the Recruitment Rules in respect of Pharmacists of Allopathy the post is described as Pharmacists only, whereas in Annexure-A the Recruitment Rules relating to Ayurvedic Pharmacists the post is referred as "Ayurvedic Pharmacists". So the post of "Pharmacist" and "Ayurvedic Pharmacists" are considered distinct and separate. Since the extract of notification of the Ministry of Finance at Annexure-C refers only to Pharmacists, the applicant cannot on the basis of that claim that Ayurvedic Pharmacists are also entitled to the two scales provided there. Ayurvedic Pharmacists and Pharmacists are recruited under entirely different sets of Recruitment Rules; their qualifications are

also different. But we notice that just as there are qualified and unqualified Pharmacists in Allopathy there are qualified and unqualified Pharmacists in Ayurveda also. The applicant in his representation had mentioned that one Mr.Hassinar, an Ayurvedic Pharmacist has not passed the examination after the training while he has passed, and that both of them are being paid the same scale of pay. The learned counsel for the applicant argued that it is unfair to treat unqualified Pharmacist and qualified Pharmacist in Ayurveda equally while their counter-parts in other systems are treated differently. We find that there is substance in this argument. The second respondent has on 30th September, 1987 addressed the Secretary, Government of India, Ministry of Health and Family Welfare recommending that the scale of pay of Rs.1200-2040 should be extended to the qualified Pharmacists in Ayurveda as that scale has been given to the qualified Pharmacists in Allopathy and Homeopathy and as the duties and responsibilities attached to all the Pharmacists, Allopathy, ~~and~~ Homeopathy and Ayurveda are similar and equal. From Annexure-F communication received by the applicant from the Director of Medical Health Services, Kavaratti, it is seen that the question of revision of pay scale of Ayurvedic Pharmacists to Rs.1200-2040 is pending ^{of} consideration of the Ministry and the ~~the~~ orders are awaited. From Annexure-R2(c), the letter from the Ministry of Health and Family Welfare to the Administrator, we find that the proposal for revision of the pay scale of Ayurvedic Pharmacists was under active consideration by the Government.

Since there are Pharmacists qualified and unqualified in the Ayurvedic system and since the qualified Pharmacists and unqualified Pharmacists in Allopathy are getting two different scales of pay, and as the duties and responsibilities of Ayurvedic Pharmacists and Allopathic Pharmacists as conceded by the second respondent in Annexure-D are said to be similar and equal, we are of the view that the question of revising the scale of pay of the qualified Pharmacists in Ayurveda to on a par with Rs.1200-2040 $\frac{1}{2}$ that of the qualified Pharmacists in the other system has to be considered favourably.

Since this is a policy matter to be decided by the Government, we can only suggest that the decision in the above matter should be taken without further delay.

6. In the conspectus of facts and circumstances the application is disposed of directing the respondents to take a decision regarding the extension of the revised pay scale of qualified Pharmacists and unqualified Pharmacists to the Pharmacists in the Ayurveda also, in the light of the observations made above within a period of three months from the date of communication of this order. There is no order as to costs.


(A.V.HARIDASAN)
JUDICIAL MEMBER


(S.P.MUKERJI)
VICE CHAIRMAN

26-8-92
(16)

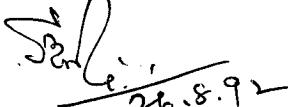
CCP-113/92 in OA-220/90

Mrs Seemanthini for petitioner (by proxy)
Mr PK Madhusoodhanan for SCGSC

Issue notice to Shri Godbole, Secretary to the Ministry of Home Affairs, New Delhi and Shri Satheesh Chandra, Administrator, UT of Lakshadweep, Kavaratti on the CCP directing them to either appear in person or through counsel before us on 21.9.92 to show cause why action under the Contempt of Courts' Act be not initiated against them for non-compliance of the judgement of this Tribunal in OA-220/90 dated 28.8.1991.

Mr
21.9.92


(AV Haridasan)
J.M.


SP Mukerji
V.C.
26.8.92

26-8-92

21-9-92 (22) Ms. Karthika for petitioner
Mr. NN Sugunapalan for
respondent

At the request of the learned
Counsel for the respondents, list for
further direction on 23.10.92

Mr


(AV H)


(SPM)

21.9.92

23.10.92

(29)

Mrs. Seemanthini

Mr. Madhu re. Sugunapalan

Heard the learned counsel for both the parties.

The respondents have since taken decision as directed by us in para 6 of our judgment in O.A. 220/90. The decision has been appended as Annexure R.1 to the reply to the CPC. The respondents have appologised for the delay in taking the decision. The learned counsel for the

contd...

Court filed on
on 18/9/92

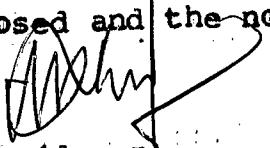
Statement filed
by Respondents
on 18/9/92

Affidavit filed
by Res. on 18/9/92
20/10/92

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contd from/p/p.

applicant is not happy about the decision. Since the
applicant has always ^{got} the liberty to challenge his rights
in accordance with law and if so advised, we do not
see any further justification in pursuing the C.P(C)
which is closed and the notice discharged.


(AV Haridasan)
J.M.

S.R.
(SP Mukerji)
23.10.92 V.C.

F.D.
A2
26/10/92
mscl