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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 13/92

Transfer Application No:

DATE OF DECISION: 16-1-95

R.P. Puniyani Petitioner

--- Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri. J.G. Sawant Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S. Deshpande, Vice-chairman

The Hon'ble Shri M.R. Kolhatkar, Member (A)

1. To be referred to the Reporter or not ? ☒
2. Whether it needs to be circulated to other Benches of the Tribunal ? ☒

M.R. Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A)

(57)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. 13/92

Shri. R.P. Puniyani .. Applicant

Vs.

Union of India & Ors. .. Respondents

CORAM : 1. Hon'ble Shri. Justice M.S.Deshpande, V.C
2. Hon'ble Shri. M.R. Kolhatkar, Member (A)

APPEARANCES

1. Applicant in person
2. Shri. J.G. Sawant, Counsel
for respondents

JUDGMENT

DATED :

X Per Shri. M.R.Kolhatkar, Member (A) X

16-1-95

the
This is second round of litigation so far
as the present applicant in this plaint is
concerned. He had initially filed O.A. 45/87
before this Bench, which was decided on 15.6.1988.
In that O.A certain directions were issued and
in terms of the directions, the Railway Board had
given a personal hearing to the applicant and
given a reply dated 15.2.1989 which appears at
page 69 of the O.A.

2. In our judgment in O.A. 45/87, we had noted
that the applicant had filed the O.A in a
representative capacity on behalf of all Physio-
therapists and Senior Physiotherapists working in
Railway Hospitals all over the country.

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3. Another O.A., No. 1292/90 was filed in the principal bench at New Delhi and it was decided on 3.7.1990, also by means of directions and in terms of those directions, the Railway Board had given reply to the New Delhi based colleague of the applicant, Smt. Indu Raji, by reply dated 21.10.1991, at page 65.

4. Very briefly, the directions of this Tribunal were to consider the claim of the applicant for equality in the pay scales of Sr. Physiotherapists working in the Railways on the one hand and the C.G.H.S on the other. The second direction was to consider the grievance of the applicant that some anomaly in the pay scale had crept in since the implementation of the recommendation of the 2nd Pay Commission, 1957-59. Thirdly, the Railways were to consider the claim of the applicant for the status of Group 'B' Officers. The reply of the Railway Board is briefly to the effect that the duties of a physiotherapist in the Central Government hospital are of more varied nature, as compared to those in case of Railways, the former also have a and much heavier workload. Regarding the point about 2nd Pay Commission, the reply was that on the basis of realistic assessment of various factors the posts borne on same pre-revised pay scales are given different revised pay scales. Regarding reclassification, the reply was that Railways has always been following a separate classification system compared to the rest of the Central Department.

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5. C.P. 26/89 in O.A. 45/87 was also decided on 30.5.89 by rejection.

6. So far as O.A. 1292/90 was concerned, the direction was to consider the question of providing promotional opportunities to the applicants. CCP 30/91 in this O.A. was also decided by dismissal on 26.9.91.

7. The present application was filed on 3.1.1992. The reliefs claimed are again presented as described in O.A. 45/87 in a rambling manner. But as we can make out, the main reliefs claimed are three. The first relief is that of reconsideration of the matter of pay scales for the physiotherapists and Sr. physiotherapists in the Railways right from the time of 2nd Pay Commission. The second relief claimed is to pay N.P.A to Railway physiotherapists/Sr. physiotherapists as per Railway Board's letter dated 2.3.1962 and the third relief is that of payment of advance increments to those Physiotherapists and Sr. Physiotherapists who possess higher post-graduate Diploma and Post graduate degree ^{qualifications} /i.e. more than the prescribed recruitment qualifications, with effect from date of sanction of similar benefits for all other categories of Medical Staffs.

8. So far as the pay scales are concerned, it may be possible to appreciate the demand by means of a tabular statement.

| Pay Commission | <u>Pay Scale</u> <u>R a i l w a y s</u> | | <u>Pay Scale</u> <u>Other Central Govt.</u> <u>Organisations for</u> |
|-------------------|--|-----------------------------------|--|
| | <u>Physio- therapists</u> | <u>Sr. Physio- therapists</u> | <u>Senior Physiothera- pists</u> |
| IInd | 260-500 | 325-575 | 325 - 800 |
| IIIrd | 455-700 | 650-960 | 650 - 1200 |
| IVth | 1400-2300 | 2000-3200 | 2000 - 3500 |

9. The prayers of the applicant have been opposed by the respondents. They have referred to both the O.As, in Bombay Bench as well as Principal Bench, New Delhi. Considering the fact of CPs having been dismissed in those respective O.As and the reply having been given and therefore the matter having been concluded, the respondents have contended that the O.A is hit by the principles of res-judicata or principles analogous there to. They^{have} stated: "in view of the facts and circumstances stated above, it is submitted that the applicant has filed the present application raising the same points and arguments as in the earlier OA 45/87 filed by him. The same is therefore liable to be rejected as barred by the principle of Res-judicata. It is submitted that the same points were considered both by the Bombay Bench and Principal Bench of this Hon'ble Tribunal. Both the Benches have already held, there was no case for establishing parity between various posts in the Railway Hospitals and other Hospitals. They also held that the directions given by this Hon'ble Tribunal in judgment dt. 15.6.88 were fully complied with. The two decisions have finally disposed of the cases filed by the applicant before the Bombay Bench and by his other colleagues before the Principal Bench of this Hon'ble Tribunal."

10. The applicant had argued the matter in person without any legal assistance. The main case of the applicant is that there is a discrimination between

the Physiotherapists in Railways and Physiotherapists in other Central organisations who possess similar qualifications and who perform similar functions and discharge similar responsibilities and therefore this action of fixing different pay scales is violative of guaranty of equality under Articles 14 & 16 of the Constitution read with directive principles of State policy relating to equal pay for equal work. Keeping in view the relevant judgments of the Supreme Court and the facts of the case, it could have taken a different view that the one taken in O.A. 45/87 or O.A. 1292/90 which was decided subsequently and which quoted from OA 45/87. However, since the matter was decided and the CPs were also dismissed and the applicant did not also challenge the reply of the Railways immediately, the judgments of the Bombay Bench of Tribunal as well as of Principal Bench have become final. We are therefore unable to grant relief to the applicant as claimed by him in relation to pay scale. However, we feel that to the extent the prayers of the applicant were confined only to the parity in the pay scale which fact we have confirmed by reference to prayer in O.A. 45/87 the applicant is atleast entitled to relief in respect of two remaining matters which are not dealt with in our judgment. We are, therefore, inclined to dispose of this O.A by mentioning certain observations relating to the pay scale and issuing certain directions relating to non-practising allowance and advance increments.

11. So far as pay scales are concerned, it has come on record that the Estimates Committee of Parliament (1983-84) in its 53rd Report had made following recommendations :

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"The committee feel that an entrant to government service should have at least three promotions during his entire career. This principle should be applicable to physiotherapists also. They further desire that the physiotherapists should be given an independent and appropriate status".

12. The reply of the government was that the IVth pay commission was seized of the matter. The applicant, however, has pointed-out that the Railway Board were not able to produce any correspondence regarding any recommendations having been made by the Railway Board in respect of Physiotherapists to the IVth Central Pay Commission. It is, therefore, clear that inspite of the direction of the Estimates Committee of the Parliament and the assurance of the Railway Board, the action on the demand of Physiotherapises in respect of revision of pay scales remained unattended, which is deplorable. ○ We therefore advise that at this stage when the Vth Pay Commission is appointed and seized of the various issues relating to pay scales of Central Government employees, the Railway Board would do well to make specific recommendations to the Vth Pay Commission regarding pay scales of Physiotherapists ~~and~~ Sr. Physiotherapists.

12. So far as the question of non-practicing allowance is concerned, here again the Estimates Committee had made recommendation and the Railway Board has taken shelter behind the IVth Pay Commission. Nothing was said in O.A. 45/87, however regarding non-practising allowance. The contention of the applicant is that in terms of Railway Board's letter dated 2.3.62, the position of non-practicing allowance is as below :

"Specialises like Anaesthetists, Radiologists, Dentists, Ophthalmologists, Pathologists etc. who by the very nature of their profession are not likely to have any general practice.

- Rs.125 per month for those drawing pay upto and inclusive of Rs.500 per month
- Rs.175 per month for those drawing pay above Rs.500 per month. "

13. The applicants claim that they are also medical officers and specialists and they are entitled to non-practicing allowance. Although this specific prayer has been made by the applicant, there is no specific reply given by the respondents in respect of this prayer. We are therefore of the view that the respondents should consider the claim of the applicants for non-practising allowance and dispose of the same after giving them hearing by means of a speaking order.

14. So far as the demand for grant of advance increment is concerned, the contention of the applicants is as below :

"After second pay commission, four categories of employees (i.e. Medical officers, dentists, nurses & Physiotherapists) amongst all the medical staffs, were possessing higher qualifications (i.e. more than the prescribed recruitment qualifications).

The respondents sanctioned the former 3 categories of Staff (i.e. Medical Officers, dentists and nurses) advance increments as under :

2 increments for possessing degree qualification in Nursing, to Nurses.

2 increments for possessing Post-graduate diploma in medicine, surgery or dentistry to medical and dental officers; and

4 increments for possessing post-graduate degree in medicine, surgery or dentistry, to medical and dental officers

But discriminated and did not sanction similar benefit of advance increments for the category of physiotherapists, even though they were/are possessing higher qualifications (i.e. more than the prescribed recruitment qualifications) and working for the same employer under the same roof".

R 15. It is difficult for us to understand how when the benefit of advance increment is being sanctioned by the respondents even to the nursing staff, then why that benefit has been denied by the respondents to the Physiotherapists. It has come out on record that earlier, the Physiotherapists in Railways were categorised alongwith the nursing staff and later-on they are equated with paramedical staff. When the nursing staff can be given benefit of government orders relating to two advance increments, it is not clear as to why the same is denied to the applicants who claim to possess higher qualifications than the nursing staff.

16. We, therefore, dispose of this O.A by passing the following order :

O R D E R

1. The Respondents are advised to make specific recommendation relating to the pay scales of the Physiotherapists/Sr. Physiotherapists in Railways to the Fifth Central Pay Commission keeping in view the grievance of the applicants that some anomaly has crept in in their pay scale since Second Pay Commission.
2. The applicants are at liberty to make a detailed representation to the respondents within a fortnight of receipt of order on the twin issues of non-practising allowance and demand of advance increment and the respondents are directed to give personal hearing and dispose of the representation within three months of receipt of the representation by means of a speaking order. No orders as to costs.

M.R. Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A)

M.S. Deshpande
(M.S. DESHPANDE)
VICE-CHAIRMAN

m.p. no. 427/95
for extension of
time filed on
16.6.95
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(15)

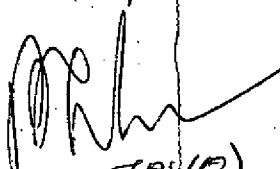
37) 16.6.1995


None for the applicant.
Shri S.C. Dhawan, counsel
for the Respondents.

In view of the decision
rendered by the Tribunal vide dated
16.1.1995, the applicant has made
representation to the Respondents,
which is under consideration.
In the circumstances, the
Respondents has filed a m.p.
No. 427/95 seeking extension of
time.

Accordingly, 4 months time
granted for the purpose.

m.p. No. 427/95 disposed
of.


(P.P. SRIVASTAVA)
MCA


(B.S. HEGDE)
M(J).

OS

16/6/95
Order/Judgement despatched
to Applicant/Respondent(s)
on 5/7



R.P. No 63/95
by circulation

MB
18.7.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Petition No.63/95
in
Original Application No.13/92

Rameshlal Pyarelal Puniyani .. Review Petitioner

-versus-

Union of India & Ors. .. Respondents

Coram: Hon'ble Shri Justice M.S.Deshpande,
Vice-Chairman

Hon'ble Shri M.R.Kolhatkar,
Member(A)

Tribunal's order on Review
Petition by circulation
(Per M.R.Kolhatkar, Member(A))

Date: 24/7/95

This is an R.P. against our judgment dt.16-1-95 in O.A.13/92. As in the O.A. the R.P. has been filed in person. It is contended by the applicant, firstly, that a statement relating to pay scales of Physiotherapists and Sr.Physiotherapists which appears in para 8 of the judgment is incomplete. Nothing turns on the completeness of the statement and this ground is not valid.

2. The applicant has referred to certain remarks alleged to have been made by one of us (Vice-Chairman). As this is a unanimous division bench judgment we are unable to take notice of such allegations. The Review Petitioner has also alleged that the Tribunal has not made any attempt to identify the nature of the disputes. Our judgment is self containing and contains the reasons for the judgment. The review petitioner has also stated that relief has been granted which was not sought. The Tribunal is within its right to mould the relief according to the nature

of the pleadings and the case law brought to their notice.

3. Having considered various grounds raised by the review petitioner we are satisfied that this is not a fit case for review and in particular no grounds relatable to Rules under Order 47 of CPC have been made out. Under the circumstances we reject the review petition. We do so by circulation as is permissible under the rules.

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

M.S. Deshpande

(M.S. DESHPANDE)
Vice-Chairman

M