

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA. NO. 326/93

Dated this the 21st day of July 2000.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

Mrs. Sheila Rajan,
R/o Prakash Park-'B'-9,
Lullanagar, Pune.

...Applicant

By Advocate Shri G.K.Masand

V/S.

1. Union of India through
the Secretary,
Ministry of Defence,
South Block, New Delhi.

2. Director General,
Armed Forces Medical Services,
Ministry of Defence, 'M' Block,
DHQ PO, New Delhi.

3. Commandant,
Armed Forces Medical College,
Pune.

... Respondents

By Advocate Shri V.S.Masurkar

O R D E R

{Per: Shri D.S.Baweja, Member (A)}

The applicant was appointed as Speech Therapist in the Armed Forces Medical College (AFMC) Pune on 15.11.1971 in Group 'C' cadre. It is the case of the applicant that though as per the appointment order dated 15.11.1971, she was required to work only as Speech Therapist, but in actual practice she was also

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made to render services as an Audiologist without being paid additional emoluments for the same. The applicant had protracted correspondence on this issue with the concerned authorities but of no avail. The applicant filed OA.NO.299/1990 seeking upgradation of her post taking into consideration the duties performed as Speech Therapist as well as Audiologist. The Bench while deciding this OA. as per order dated 2.4.1992 observed as under in reference to prayer for payment of additional emoluments for additional work :-

" So far as the extra work is concerned, obviously that may be taken into account and it is still open for the applicant to claim extra emoluments and remuneration in respect of the same for which there is a provision under FR exists."

The applicant in pursuance of the order dated 2.4.1992 made a representation dated 8.6.1992. This was followed by representations dated 21.9.1992 and 31.10.1992. The representations of the applicant have been rejected as per the order dated 6.1.1993. Thereafter, the present OA. has been filed on 2.4.1993. The applicant has sought the following reliefs taking into account the amendment allowed subsequently filing of the OA. :-

- (a) To set aside the order dated 6.1.1993.
- (b) To direct respondents to consider granting to the applicant such number of additional increments from such date as may appear just and proper by the Tribunal for doing the extra work of audiology in addition to the duties of Speech Therapist.

2. The grounds in support of her case advanced by the applicant are as under :-

(a) The posts of Speech Therapist and Audiologist are two distinct posts as per the Medical Council of India. The applicant was specifically appointed as Speech Therapist in 1971 as per the appointment order but she was made to work as Audiologist and therefore entitled for higher pay scale and the emoluments for performing duties of two posts.

(b) The respondents were themselves convinced that the applicant was performing duties which called for a higher scale of pay for the post and initiated the proposal for upgradation of the post of Speech Therapist.

3. The respondents through the written statement have resisted the claim of the applicant. The respondents submit that the charter of duties for Speech Therapist has been laid down as per para 568-580 taking into account the various aspects. The applicant is performing her duties accordingly during the normal working hours. The Speech therapy and Audiology are part of inter-related duties of Speech Therapist so far as AFMC is concerned as per the Standing order. Accordingly the contention of the applicant that she was made to do the duties of Audiologist as extra work is not tenable. Therefore, her claim for additional emoluments does not arise. The respondents also oppose the application stating that the same is barred by limitation.

4. The applicant has filed rejoinder reply while rebutting the submissions of the respondents. She has reiterated her contentions taken in the OA.

5. The respondents have filed additional statement in reply to rejoinder reiterating their contentions.

6. We have heard Shri G.K.Masand, the learned counsel for the applicant and Shri V.S.Masurkar, the learned counsel for the respondents.

7. The core of the case of the applicant as reflected by the averments made in the OA. and documentary evidence brought on the record is that the post of Speech Therapist is distinguishable from that of Audiology and separate incumbents are required to be posted as Speech Therapist and Audiologist. Since the applicant is also qualified as Audiologist, she contends that she has been made to perform the duties of Audiologist since appointment in 1971 also on regular basis inspite of her clear posting as Speech Therapist only. Accordingly, the applicant pleads that she deserves to be compensated for performing the duties of two posts by way of additional emoluments by granting additional increments. The respondents have contested this claim stating that the duties of the Speech Therapist are inter-related with that of the Audiology for clinical requirements. Accordingly the respondents submit that the Charter of duties has been laid down

and the applicant is performing duties accordingly within the stipulated duty hours. After careful evaluation of the rival averments and the material on the record, we are of the view that claim of the applicant has no merit in view of the reasons discussed hereafter.

8. On going through the charter of duties brought on the record at R-2, it is noted that para 567 states that there is Speech Therapy and Audiology Centre under the ENT Department and Head of Department will be assisted by the Speech Therapist of the Department. Further, para 578 provides that the Speech Therapist will impart training in audiology and Speech Therapy to the Nursing Assistants. Para 576 lays down that the Speech Therapist will keep herself/himself abreast of the recent advances in the Speech Therapy and audiology. These provisions in the duty list of the Speech Therapist in the AFMC indicate that the same involves some work connected with audiology. This confirms the respondents' contention that Speech Therapy & audiology are inter-related. Further, as stated by the respondents, in terms of FR-11 and para 580 of the Charter of duties, the Speech Therapist is required to carry out any such other duties as may be assigned from time to time by the Head of Department. The applicant has not challenged the Charter of duties at any time in her representations. In the present OA, also the Charter of duties has not been challenged. This shows that applicant had accepted the charter of duties and has been working accordingly which also included some inter-related work of audiology.

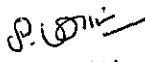
9. The applicant has not furnished the specific details of the additional work performed as Audiologist in terms of hours of work and whether the said work as Audiologist was performed during the normal duty hours or beyond the duty hours. The applicant has not averred that whether she had made claim anytime in terms of the additional hours of work for payment of additional emoluments. We find from the documents on the record and the averments made in the OA. that the applicant has just been representing in general statements. For seeking additional emoluments for the additional work claimed to have been performed over and above the normal duty hours, then the same has to be quantified in terms of the hours of work. There must be prior sanction of the competent authority for performing the additional work for which the additional emoluments/renumeration is to be claimed. Payment of additional emoluments is to be then claimed as per the extant rules if permissible. The applicant claims that since her appointment in 1971 as Speech Therapist, she is performing the additional duties of Audiologist. The applicant has not stated that at any time since 1971 she claimed additional emoluments for the additional work and the same was rejected by the respondents. Absence of such details signifies that the applicant was not working beyond duty hours and claiming that she was performing the duties of the two posts. *is without any substance*

10. The applicant in the OA. had first sought the relief of directing the respondents to pay the applicant extra emoluments/renumeration for carrying out extra work from November, 1971 onwards at the rate of Rs.4000/- per month.

However, subsequently, the applicant has amended the claim and has now sought the grant of such number of additional increments from such date as may be considered just and fair by the Tribunal. The applicant has, however, not cited any rules under which the claim of grant of additional increments has been made. The counsel for the applicant during the hearing was also asked to indicate the relevant rules but he fairly conceded that he is not aware of any rule to support the claim of the applicant but contended that the Tribunal may direct grant increments on the merits of the applicant's case as she had performed additional work as Audiologist. The claim for any relief for additional renumeration for additional work if performed has to be within the ambit of rules. It is not the scope of the judicial review to first assess the additional work done and then to decide the quantum of the renumeration for the same.

11. The respondents have taken the plea that the money claim is barred by limitation. The objection of the respondents would have been sustainable if the present OA. was filed making the claim of the additional emoluments for the first time. However, keeping in view the directions in the earlier OA.No.299/1990 as extracted in para 1 above, we are unable to endorse the stand of the respondents . The present OA. has been filed after the applicant represented in the matter in terms of the direction in OA.No. 299/90 and her claim was rejected as per the letter dated 6.1.1993. Any way, since we have recorded our findings above that the applicant has no case on merits, this issue does not deserve to dealt with further.

12. In the result of the above, we do not find any merit in the OA. and the same is dismissed accordingly.


(S.L.JAIN)

MEMBER (J)


(D.S.BAWEJA)

MEMBER (A)

mrj.