

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 705/94

DATE OF DECISION: 31<sup>st</sup> January 2000

Mrs. Shelia Rajan

Applicant.

Shri G.K.Masand

Advocate for  
Applicant

Versus

Union of India and others

Respondents.

Shri R.K.Shetty

Advocate for  
Respondent(s)

**CORAM**

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

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

(1) To be referred to the Reporter or not?  Yes

(2) Whether it needs to be circulated to No. other Benches of the Tribunal?

(3) Library.

Yes

*S.L.Jain*  
(S.L.Jain)  
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO705/94

the 31<sup>st</sup> day of JANUARY 2000

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

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

Mrs. Shelia Rajan  
Residing at  
Prakash Park 'B'  
Flat No.9,  
147 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,  
New Delhi.

3. The Commandant,  
Armed Forces Medical College,  
Sholapur Road, Pune.

... Respondents.

By Advocate Shri R.K.Shetty.

O R D E R

{Per Shri S.L.Jain Member(J)}

This is an application under Section 19 of the  
Administrative Tribunals Act 1985 seeking the following reliefs:

(a) That this Hon'ble Tribunal will be pleased to direct  
the respondents to upgrade the post of Speech  
Therapist in Armed Forces Medical College , Pune, to  
Group 'B' Gazetted from November 1971 to June 1976,  
whereafter from July 1976 onwards to Group 'A'  
Gazetted post.

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- (b) That costs of the application be awarded to the applicant and
- (c) That as such and further reliefs as are expedient be granted in favour of the applicant.

2. The applicant had filed OA No.299/90 before the Central Administrative Tribunal, Mumbai Bench which was decided vide order dated 2.4.1992. In the aforesaid OA the applicant had prayed the following reliefs:

- "(a) Upgrading the post of Speech Therapist to group 'A' as it is already done in other Central Government establishments all over the country.
- (b) Revise the applicant's pay scale according to Group 'B' Gazetted with retrospective effect from November 1971 to November 1981 and from December 1981 onwards as Group 'A' Gazetted."

3. The said OA was disposed of with the observations mentioned as under:

" As far as pay scale is concerned the same depends on the upgradation. In case upgradation is done she can claim a particular pay scale. But while claiming the particular pay scale various other factors are to be

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considered i.e. duties, functions and responsibilities of Speech Therapist in this particular department are equal to that performed in other departments and at present we have no such material from which it can be decided, may it be the party has chosen to keep this matter alive and that is why all the material has not been placed on record. In case the applicant ultimately succeeds and she gets her post upgraded it will be open for her to take up the matter."

4. The applicant preferred C.P. 162/93 which was decided vide order dated 18.3.1994. In the said C.P. the observations mentioned are as under:

"At this stage the learned counsel for the applicant urged that in view of the fact that the ban was not applied to other posts and retrospective effect had been given to the upgradation of certain posts and even those in gazetted cadre, there was discrimination and the applicant could not have been discriminated due to the existence of the alleged ban. That may be a point which can be agitated by the applicant, but it cannot be done by the present CP. At the most it may furnish a fresh cause of action for the applicant on the basis of which he may be entitled to seek remedy subject to the question of limitation. We therefore, grant liberty to the applicant to pursue the remedy which may be available to her on the basis of a fresh cause of action though we are dismissing the C.P."

J.S.

5. The applicant was directly recruited as Speech Therapist, Group 'C' post in the Department of ENT in Armed Forces Medical College, Pune, in the scale Rs. 270-10-290-15-410-EB-15-485 + allowances. According to her she conducted regular out patient department duties during the working hours carrying out necessary investigations, treatments, rehabilitation where required and certain other works. She represented her case on 28.8.1981 for upgradation of the post of Speech Therapist. Respondent No.1 has made certain querries, in reply to which it was mentioned that various hospitals have already adopted the particular scale i.e. Rs.620-30-740-35-880-EB-40-960. But in the institute in which the applicant was working is having the same old pay scale which was revised as per the recommendation of IIIrd Pay Commission to Rs.470-750. As the applicant did not get any reply to her representation she made further representation on 23.8.1988 which was recommended by Commander, Armed Forces Medical College, Pune. with a recommendation that the applicant may be included in Para Military staff pointing out that similar other persons elsewhere are holding Group 'B' gazetted post. The IVth Pay Commission did not include the Speech Therapist in Para Medical category and the department also did not take into consideration that she was asked to do additional duties and was asked to train Nursing Assistants of Armed Forces in Speech Therapy for six months and other extra works were also taken. Having failed to get any relief from the department regarding upgradation or any remuneration in respect of extra duties, she decided to move the Tribunal. Meanwhile from December 1981 the post of Speech Therapist was treated as Group 'A' gazetted post. Hence she filed the earlier OA.

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6. A stated above the earlier OA was in respect of same duties, functions and responsibilities of Speech Therapist in the applicant's department and in other department. The CP has been filed for discrimination. These are two new additional grounds for filing this OA.

7. On perusal of the OA we find that regarding discrimination the applicant has pleaded in para 11 of the OA the case of Junior Stenographers, Animal Supervisor, Demonstrators, in the Armed Forces Medical College, Pune.

8. The respondents have explained the said discrimination. Regarding Animal Supervisor they have stated that the case was only referred for upgradation and no upgradation was made.

9. Regarding the case of Junior Stenographers, it is mentioned that it was in view of cadre restructure in view of IVth Pay Commission and not due to upgradation of post. It is further mentioned that OA 792/89 was filed before the Tribunal and the case was ordered to be considered.

10. Regarding Demonstrator, the respondents had replied that in view of IVth Pay Commission and judgement of the Principal Bench, the matter was considered, but it was not a case of upgradation.

11. This being the situation on merits we are not inclined to hold that there was any discrimination in not upgrading the post of Speech Therapist on account of ban enforced.

*D.Y.*

12. As stated above the relief in earlier OA 299/90 and the present OA is one and the same. The ground agitated in CP are observed to be fresh cause of action. But it is not finding for the reason that it is mentioned " at most it may be a fresh cause of action for the applicant on the basis of which he may entitle to seek remedy subject to the question of limitation. We therefore, grant liberty to the applicant to persue the remedy which may be available to her on the basis of fresh casue of action though we are dismissing the C.P. Thus question of limitation was kept open.

13. The applicant filed M.P.717/94 which was decided and delay was condoned.

14. Now the questiuon is whether the applicant who has filed eqarlier OA 299/90 without alleging the duties, functions and responsibilities of Speech Therapist and without alleging the discrimination which was before the decision of filing the OA, whether it can be permitted to agitate the said ground in the present OA. It is not a matter where the applicant can claim that she has no knowledge of her duties, functions and responsibilities and functions of other Armed Forces hospital. As the said fact was not properly pleaded, she, cannot be permitted to agitate the same in the present OA.

15. Regarding the case of discrimination, as stated above we do not find any discrimination by the respondents in the upgradation of the post.

AMJ/

16. The case of the applicant is barred by principles of constructive res-judicata as it is mentioned in Section 11 Explanation 4 of Civil Procedure Code which is as under:

" Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit."

17. If the applicant whether by ignorance of the fact or intentionally, whatsoever may be the reason has failed to agitate the matter in respect of discrimination, it is deemed that the said matter had been a matter directly and substantially in issue. Hence the applicant is precluded from raising the said question in view of principle of constructive res-judicata and the observations in C.P. will not help her in any way because it is not the finding, only an observation.

18. We find that the earlier OA was between the applicant and the respondents who are also parties in the present OA, which means the matter is being agitated between the same parties and are litigating under the same title in which earlier OA was decided. Hence the applicant is not entitled to raise the said plea.

19. The learned counsel for the respondents relied on AIR 1986 CAT 203 V.K. Mehra V/s Secretary, Ministry of Information and Broadcasting, New Delhi for the proposition that the Tribunal has no power to entertain a grievance arising prior to 1.11.1982

or to condone delay in such a case. We agree to the said proposition of law. As the matter is being decided on question of principle of constructive res-judicata, hence we are not examining into the merits of the case.

20. The learned counsel for the respondents further relied on AIR 1990 SC 1251 Mallikarjuna Rao V/s State of A.P. for the proposition that the Tribunal cannot indirectly require executive to exercise its rule-making power, which goes to the extent regarding creation of cadre, upgradation of post etc. We agree to the said proposition of law.

21. The learned counsel for the respondents relied on 1984 SCC (L & S) 329 Delhi Veterinary Association V/s Union of India and others for the proposition that work of refixation of pay scale pertains to the Pay Commission. Even though Court prima facie finds justification in petitioner's grievance regarding discrimination of pay and claim for equal pay for equal work, Court should not take up that question in isolation and undertake to refix the pay scale of the petitioners when the Pay Commission would be taking up the same matter soon having regard to all the relevant factors. Petitioner directed to make representation before Pay Commission . We agree to the said proposition of law.

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22. The learned counsel for the applicant relied on AIR 1989 SC 1256 Mewa Ram Kanojia V/s All India Institute of Medical Science and others for the proposition that different treatment to persons belonging to same class on the basis of educational qualifications. Different pay scale regarding Hearing Therapist and Audiologist in All India Institute of Medical Sciences. Justified view of difference in educational qualifications for two posts. In our considered view the said authority is also does not help the applicant. Hence the applicant is not entitled to any relief.

23. In the result the OA is liable to be dismissed and is dismissed accordingly. No order as to costs.

*S.L.Jain*  
(S.L.Jain)  
Member(J)

*D.S.Baweja*  
(D.S.Baweja)  
Member(A)

NS