

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 987/94

4.11.99

Date of Decision:

Mrs. Sheila Rajan

.. Applicant

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri R.K. Shetty

.. Advocate for
Respondent(s)

CORAM:

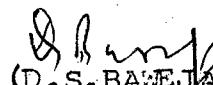
The Hon'ble Shri D.S. Baweja, Member (A)

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

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

(2) Whether it needs to be circulated to
other Benches of the Tribunal ? ✓

(3) Library ✓


(D.S. BAWEJA)

MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.987/94

Dated this the 4th day of November 1999.

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',
147, Lullanagar,
Pune.

...Applicant

V/S.

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

2. The Director General
Medical Services (Army),
Ministry of Defence,
'L' Block, DHQ PO New Delhi.

3. The Commandant,
Command Hospital
(Southern Command),
Pune.

4. The Commandant,
Military Hospital,
Kirkee, Pune.

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

...Respondents

By Advocate Shri R.K.Shetty

(R)

O R D E R

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

The applicant was appointed as Speech Therapist in Armed Forces Medical College (AFMC) Pune on 15.11.1971. Though the applicant was appointed in 1971, but charter of duties of Speech Therapist were issued only in 1978 and then revised in 1989. The applicant states that as a Speech Therapist, her duty was to render professional services only to civilian patients referred from ENT civil out Patient Department (OPD) just like other staff members of the ENT Department of AFMC as per S.Nos.568 to 580 of the charter of duties. However, since appointment of the applicant in 1971, she has been made to undertake the work for three OPDs namely (i) ENT, AFMC civil OPD, (ii) ENT Military OPD of command Hospital and (iii) ENT Military OPD of Military Hospital, Kirkee, Pune. As the workload was unmanageable, the applicant brought the matter to the attention of the Head of Department from time and again. However, no notice was taken of applicant's problem and the respondents continued to extract extra work using pressure tactics. In 1976 the applicant was entrusted the additional job of training of the Nursing Assistants of the Armed Forces in the ENT Department of AFMC in speech and hearing therapy. Inspite of the assurance having been given even after the trained Nursing Assistants were posted in the Command Hospital and the Military Hospital, the service Hospitals continued to refer the patients to the applicant. It is the case of the applicant that it was not at all her duty to treat the service patients from the Command/Military Hospitals

and for carrying out the additional work she is entitled for extra renumeration/emoluments from 1971 till 28.2.1992 when she has been compulsorily retired. The applicant has also stated that she had also to carry out the work of Audiologist in addition to Speech Therapist as there was no separate post of Audiologist. The applicant had filed OA.No.299/90 seeking direction to the respondents to upgrade the post of Speech Therapist to Group 'B' from 1971 to 1981 and thereafter in Group 'A' on the plea of the higher responsibilities being shouldered by the applicant and the fact that in other Departments with similar responsibilities as ^hshouldered by the applicant are in Group 'B' and Group 'A' scales. She also raised the issue of renumeration for the additional work done. This OA. was dismissed as being hit by delay and laches as per the order dated 2.4.1992 but with the direction that the proposal for the upgradation may be processed when the ban is lifted. As regards the claim of extra renumeration for the extra work, the Bench observed as under :-

"... 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 renumeration in respect of the same for which there is provision under 'FR' exists."

The applicant submits that in pursuance of the above referred observations, she submitted representation on 8.6.1992 followed by representations dated 21.9.1992, 31.10.1992 and 1.11.1993 for claim of extra emoluments for extra work carried out both as Audiologist and Speech Therapist. The claim was rejected by the Respondent No.5, i.e. Director General, Armed Forces Medical Services, Ministry of Defence, New Delhi as per the letters dated

6.1.1993 and 18.11.1993. Being aggrieved by this OA, the present OA. has been filed on 2.9.1994 for her claim of renumeration for the additional work as Speech Therapist. For the renumeration for additional work as Audiologist, the applicant has filed a separate OA.NO. 326/1993.

2. The applicant with the above back ground has sought the following reliefs : -

(a) to set aside letters dated 6.1.1993 and 18.11.1993.

(b) direct respondents to pay the applicant additional renumeration of Rs.5000/- per month for carrying out the extra work from November, 1971 till the time she was in service.

3. The respondents have contested the claim of the applicant through the written statement. At the out set, it is stated that respondents No. 2,3 & 4 have no control whatsoever over the applicant and therefore have no locus standi in this matter and they have been made as party respondents just to harrass them without cause. The respondents have also submitted that in OA.NO. 326/93, the applicant has challenged the same order dated 6.1.1993 as in the present OA. and claiming renumeration of Rs.4000/- per month from 1971 onwards for the additional work performed and advancing the same grounds. The only difference is that the applicant has increased the claim of renumeration from Rs.4000/- to Rs.5000/- in the present OA. In view of this, the respondents plead that the present OA. deserves to be dismissed summarily as being not maintainable.

On merits, the respondents contend that charter of the duties for the Speech Therapist have been laid down as per Annexure E of the OA. and the applicant has performed duties accordingly. The respondents further add that serial No. 580 of the duty list covers the duties said to have been performed extra as per IV (6) of the OA. The respondents deny that the applicant had performed the duties mentioned by her in para IV (6) of the OA. over and above the laid down working of 36 hours per week. The applicant has not produced any proof of as to how the additional duties and responsibilities were performed in addition to normal duties to be performed in the working of 36 hours per week. In view of these submissions, the respondents' case is that the claim of the applicant is frivolous and the present OA. is devoid of merits also.

4. The applicant has filed rejoinder reply rebutting the averments of the respondents. The applicant further contends that the statement of the respondents that respondents No. 2,3,4 have not availed her professional services is totally false. As regards the OA.NO. 326/93, the applicant contends that this OA. is not based on the same grounds as in the present OA. which has been filed claiming the renumeration for the extra work performed as Speech Therapist and OA.NO. 329/93 has been filed for claiming the renumeration of the extra work as Audiologist. The applicant also refutes the contention of the respondents with regard to the working hours and submits that she had worked for more than 36 hrs. as brought out in her letters dated 30.9.1989 and 12.3.1992.

5. We have heard applicant in person and Shri R.K.Shetty on behalf of the respondents. The material brought on the record has been carefully gone into.

6. Before we deliberate on the merits of the reliefs prayed for, we will deal with the technical objection raised by the respondents in opposing the application. The respondents have contended that the relief prayed for in the earlier OA.NO.326/93 filed by the applicant is the same in the present OA. and therefore the present OA. is not maintainable. The applicant has controverted this submission stating that OA.326/93 has been filed claiming renumeration/emoluments for the extra work performed as an Audiologist while in the present OA. the claim pertains to extra work performed as a Speech Therapist. On going through the averments made in the present OA. in para 2, we find that applicant has specifically brought out the scope of the relief covered by the present OA. in para IV (2). In the light of the submissions of the applicant, we are unable to find any substance in this objection of the respondents.

7. On merits, we note that the main ground on which the applicant has built her case in claiming the additional emoluments for the extra work performed as a Speech Therapist since ✓ appointment in 1971 is that though she was appointed as Speech Therapist for the Armed Forces Medical College only but she was made to carry out the work for the patients referred to

by the Command Hospital and the MILItary Hospital, Kirkee which are independent establishments. The respondents have contested the stand of the applicant pointing out that the applicant has not performed an additional work over and above the duty of 36 hours per week. Further, as per the respondents, the charter of duties as brought on the record at Annexure-'E', under item 580, the applicant was required to carry out such other duties as assigned by the Head of Department. Respondents while admitting the reference of the patients from the services Hospitals to the applicant for speech therapy, as required, submit that this did not involve any extra work and was within the charter of duties. After careful considerations of the rival contentions and the material brought on the record, we come to the conclusion that the claim of the applicant lacks merit on the following considerations :-

(a) As per item 580 of the charter of duties at Annexure-'E', Head of Department can assign any other duties. If the patients from the Services Hospital, i.e. Command Hospital and Military Hospital were referred to the applicant with the approval of her Head of Department, within the normal working hours of the applicant, then such a work cannot be termed as an extra over the assigned duties as claimed by the applicant. We are therefore inclined to accept the contention of the respondents.

(b) The applicant is at pains in OA. to plead her case that she has been made to perform extra work by referring patients from the services Hospital which was not as per the charter of her duties referred to earlier. As pointed out by the respondents, we find that just making general statements with regard to performance of extra work from 1971 onwards, no details of the additional hours worked have been furnished. On this submission of the respondents, the applicant in the rejoinder reply has controverted that the details of the extra work done have been furnished in her representation dated 12.3.1992 and letter dated 30.9.1989. However, we do not find these documents on the record. If the applicant was made to perform the additional work of the patients referred to by the Services Hospital, then the extra work has to be translated into the additional hours of work performed by the applicant over and above the duty hours of 36 hours per week. Any work carried out within the prescribed duty hours cannot be termed as additional work. Any extra work performed has to be quantified into the extra hours put in beyond the rostered hours. Further, the applicant has not cited any rules

under which she is entitled for the additional renumeration as claimed and rates applicable for the additional hours of work. There is also no averment that the applicant has been claiming the payment for the additional work from 1971 onwards and the respondents had rejected such a claim. In the absence of any details of the actual hours of additional work, the matter cannot be gone into merits.

(c) The claim of the additional renumeration of Rs.5000/- per month from 1971 onwards is vague and does not indicate the basis on which it has been arrived at in the absence of the hours of additional work performed. This will be obvious from the fact that the applicant was initially appointed in the scale of Rs.270-485 in 1971 which was revised to Rs.470-750. The applicant claims the scale of her post as Rs.620-960 with the scale, the total emolument would be in the range of Rs.400-700 but applicant claims additional renumeration for the extra work for the same period of Rs.5000/-per month i.e. several time of her total monthly pay.

8. The respondents have taken the plea that the present application is not maintainable before the Tribunal as the cause of action arose in 1971 much prior to 3 years of the setting up of the Tribunal. We would have accepted the contention of the respondents but for the fact that the Bench had made observations in the earlier order dated 2.4.1992 in OA.299/90 extracted earlier in para 1 above that the applicant could make representation for her grievance with regard to her claim for extra renumeration for the additional work performed. The applicant has averred that the present OA. has been filed after her representation had been rejected by the respondents in terms of direction in the orders dated 6.1.1993 and 18.11.1993. In view of these facts, we are not inclined to subscribe to the contention of the respondents. However, we may observe that the claim for payment from 1971 onwards which is purely a monetary claim is hit by delay and laches and the limitation and is not maintainable. If there was merit in the OA. then the benefit could be restricted as the applicant is claiming the extra renumeration till she has been compulsorily retired in 1992. Any way, since we have recorded findings that the applicant's claim is without merits, this issue does not deserve to be dwelt further.

9. The applicant has cited judgement in the case of Mewa Ram Kanojia vs. All India Institute of Medical Sciences, AIR 1989 SC

1255, We find that the judgement deals with the issue of "equal pay for equal work" and is not relevant to the present controversy which concerns the payment for the additional work claimed to have been performed by the applicant.

10. In the light of the above, the OA. is without merits and is accordingly dismissed with no order as to costs.

S.L.JAIN

(S.L.JAIN)

MEMBER (J)

D.S.BAWAL

(D.S.BAWAL)

MEMBER (A)

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