

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NOs. 7/95, 415/95 & 420/95

Dated this the 22nd day of June 2000.

CORAM : Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member (A)

1. Dr.Prabhakar D.Kasodekar,
Medical Officer.
2. Dr.Mahendra Jaysinh Kathwadia,
Asstt. Medical Officer.
3. Dr.(Smt.) Hemlataben Manilal Patel,
Asstt. Medical Officer.

All are working at Government Dispensary,
Dapada Post : Silvassa,
Dadra & Nagar Haveli.
Pin - 396 230.

...Applicants

By Advocate Shri D.V.Gangal

V/S.

1. Union of India through
the Secretary to the
Government of India,
Ministry of Personnel,
PG & Training,
Dept. of Personnel & Training,
New Delhi.
2. Secretary to the Govt.of India,
Ministry of Health & Family Welfare,
New Delhi.
3. The Administrator,
Daman & Diu & Dadra & Nagar Haveli,
Silvassa- 396 230.
4. The Secretary (Family Welfare)
& Development Commissioner,
DD & Dadra & Nagar Haveli,
Silvassa - 396 230.

5. Chief Medical Officer,
Dadra and Nagar Haveli,
Silvassa - 396 230.

... Respondents

By Advocate Shri R.R.Shetty
for Shri R.K.Shetty

O R D E R

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

All the three OAs. have been heard together and are being disposed of by a common order as the applicants are similarly placed, reliefs prayed for are identical and the same question of law is involved.

2. Brief particulars of the OAs. are as under :-

OA.NO. 7/95

Applicant in this OA.possessing qualification of GFAM (Bombay),an integrated Degree Course in Allopathy and Ayurvedic Medicine was appointed as a Medical Officer Class III in the Union Territory of Dadra & Nagar Haveli in the scale of Rs.250-380 as per the order dated 31.8.1972. He joined the service on 16.9.1972. Later on the scale of pay was revised to Rs.425-700 on the recommendations of the 3rd Pay Commission from 1.1.1973. This scale was equated to that of Rs.1400-2300 as per the recommendations of the 4th Pay Commission from 1.1.1986.' The applicant submits that one doctor named Dr.Surendra R.Shastri possessing the same qualification as that of the applicant was

recruitted in 1967 as Medical Officer Class II Gazetted in the scale of Rs.280-735 with special pay of Rs.75/- while the applicant was appointed in a lower scale as Medical Officer Class-III. Further, as per order dated 19.6.1980, the designation of Medical Officer Class III was changed to that of Assistant Medical Officer without giving any reasons. The applicant has further stated that in the beginning the scales of pay of Gujarat Government were adopted by the Union Territory Administration but subsequently w.e.f. 6.3.1970, Central pay scales were granted. While granting the Central pay scales, only equation of pay scales was considered without any reference to the qualification, duties and responsibilities attached to the post. As a result, anomolous situation in the pay scales of Medical Officers practising in Indian System of Medicine arose. The 3rd Pay Commission recommended the scale of Rs.650-1200 for the Ayurvedic doctors also at par with the doctors with MBBS degree but the Administration of Dadra, & Nagar Haveli did not implement the recommendations of the 3rd Pay Commission in respect of practitioners of Indian System of Medicine. As per the 4th Pay Commission, the scale of Rs.2200-4000 in replacement of Rs.650-1200 was recommended. Since the scale of Rs.650-1200 was denied to the doctors practising Indian System of medicine on the recommendation of 3rd Pay Commission, they were deprived of the benefit of the scale of Rs.2200-4000 as per the 4th Pay Commission. It is the case of the applicant that he is Graduate in Ayurvedic Medicine which is equivalent in qualification and the duties and responsibilities allotted to the Medical Officers Class II with MBBS qualification. Hence, based on the

recommendations of the 3rd & 4th Pay Commissions, the applicant is entitled for the grant of pay scale of Rs.650-1200 from 1.1.1973 and Rs.2200-4000 from 1.1.1986 as per the 4th Pay Commission recommendations on the basis of doctrine of 'equal pay for equal work'. The applicant states that he has made repeated representations to the Administration but no action has been taken to allow the appropriate pay scales as recommended by the Pay Commissions. Feeling aggrieved, he has filed the present OA. on 16.12.1995 seeking the following reliefs :-

(a) to quash the Notification dated 19.6.1980 revising the designation of Medical Officer Class III as Assistant Medical Officer.

(b) direct the respondents to refix the pay of the applicant in the pay scales at various stages as under :-

From 16.9.1972- Rs.280-735

1.1.1973- Rs.650-1200

1.1.1986- Rs.2000-3500

Rs.2200-4000

OA.NO.415/95

In this case, the applicant is Bachelor of Ayurved in Medicine & Surgery and was appointed as Medical Officer Class III in the Union Territory of Dadra & Nagar Haveli as per appointment order dated 26.12.1979 in the scale of Rs.425-700. He joined in the service on 31.12.1979. The

averments made and the grounds taken are more or less the same as in OA.NO.7/95. The reliefs sought are as under :-

(a) direct respondents to grant scale of Rs.650-1200 from 1.1.1973 and Rs.2200-4000 from 1.1.1986.

(b) to direct respondents to grant fixation of the pay as per the scales of pay in item (a) above and make the payment of arrears from the date of appointment.

(c) to set aside the order dated 19.6.1980 through which the change in designation from Medical Officer Class III to that of Assistant Medical Officer has been effected.

OA.NO.420/95

In this case also the applicant is a Bachelor of Ayurved in Medicine & Surgery and was appointed as Medical Officer Class III as per letter dated 10.5.1982 in the pay scale of Rs.425-700. He joined on duty on 1.6.1982. The averments made and the grounds taken for seeking the reliefs are the same as in OA.NO.7/95. In this case, the applicant has sought the grant of scale of Rs.2200-4000 from 1.1.1986 with grant of arrears of the pay on fixation of pay. Here also the order dated 19.6.1980 changing the designation of Medical Officer Class III as Assistant Medical Officer has also been challenged and prayed for setting aside the same.

3. Respondents have filed the written statement in all the three OAs. wherein the averments made are more or less the same. The respondents have taken a preliminary objection in case of OA.NO.7/95 and OA.NO.415/95 that the same are not maintainable as the cause of action relates to a period beyond the period of three years from the setting up of the Tribunal and therefore the matter is beyond the jurisdiction of the Tribunal. In all the three OAs. the respondents have taken a plea of OAs. being barred by limitation. Taking these two objections, the respondents have contended that the OAs. deserve to be dismissed.

On merits, the respondents have submitted that the applicants had been recruited initially as Medical Officer Class III in the scale of Rs.250-480 in respect of OA.NO. 7/95 and in the scale of Rs.425-700 in respect of OA.NOs. 415/95 & 420/95. The Medical Officers having a MBBS degree were recruited Gazetted Cadre as Class II in the scale of Rs.325-800 before the 3rd Pay Commission and as per the recommendations of the 3rd Pay Commission they were allowed Rs.650-1200. It is stated further that the duties of the Medical Officer Class III are distinguishable from that of Medical Officer and they are not similar to that of Medical Officer Class II. In view of this, the applicants were not allowed the scale of Rs.650-1200 based on the recommendations of the 3rd Pay Commission and therefore the relief prayed for by the applicants seeking higher scale is not sustainable. It is further clarified that the scale of Rs.2200-4000 which has been allowed as per the Central Government

Notification dated 23.3.1990 w.e.f. 1.1.1986 in respect of those in possession of degree in Ayurvedic System of Medicine is applicable only for Group 'A' posts and since the applicants were recruited in Group 'C', this pay scale is not applicable to them.

4. The applicant in OA.NO. 7/95 has filed a rejoinder reply for the written statement of the respondents controverting the submissions of the respondents and reiterating the stand taken in the OA. However, no rejoinder reply filed in the other two OAs.

5. The applicant in OA.NO.7/95 has filed subsequently an amendment application No. 571/95 on 4.8.1995 which was allowed. The averments made in the amendment application are more or less the same which have already been covered in the other two OAs. which were filed subsequently.

6. We have heard the arguments of Shri D.V.Gangal, learned counsel for the applicants in all the three OAs. and Shri R.R.Shetty on behalf of Shri R.K.Shetty, learned counsel for the respondents.

7. Learned counsel for the respondents at the out set of the hearing brought out that during the pendency of the OAs., recommendations of the 5th Pay Commission had been received and the doctors practicing in Indian System of Medicine have been allowed the same pay scale as allowed to MBBS doctors from

1.1.1996. This was confirmed by the counsel for the applicants. The applicants in all the three OAs. have placed material on the record to establish that the applicants are having a qualification in Indian System of Medicine which is equivalent to that of MBBS and they are performing the same duties as by the MBBS doctors and therefore are entitled to the same pay scales. Since the grievance of the applicants has since been settled with the implementation of the 5th Pay Commission recommendations, the agitated matter does not require to be gone into on merits for the entitlement of the same pay scales at par with the MBBS doctors. The only grievance that remains is with regard to the retrospective grant of higher pay scales based on recommendations of the 3rd and 4th Pay Commissions as claimed by the applicants in the three OAs.

8. As indicated above, the respondents have raised serious objections with regard to the maintainability of three OAs. on two counts, viz.(a) OA.NOs. 7/95 and 415/95 being beyond the jurisdiction of the Tribunal and (b) all the three OAs. are hit by limitation.

9. As regards the first contention of jurisdiction, considering the facts of the case, we are inclined to endorse the stand of the respondents. In OA.NO.7/95 the applicant was appointed in service on 16.9.1972 and has claimed the scale of Rs.280-735 from that date on par with one Dr.Surendra R.Shastri

who possessing the same qualification as that of applicant was allowed this scale as Medical Officer Class II on being appointed in 1967. Thereafter, the scale of Rs.650-1200 has been claimed from 1.1.1973 based on 3rd Pay Commission recommendations and scale of Rs.2000-3500 and Rs.2200-4000 from 1.1.1986 as per 4th Pay Commission. From this, it will be seen that the claim of pay scales from 16.9.1972 and 1.1.1973 are hit by the provisions of Rule 21(2)(a) of the Administrative Tribunals Act, 1985. As per the provisions in this Section, any grievance arising by an order passed in a period beyond three years before setting up of the Tribunal is not within the jurisdiction of the Tribunal. Therefore, OA.NO.7/95 for the claims made for scales of pay made from 16.9.1972 and 1.1.1973 is not maintainable before the Tribunal as being beyond its jurisdiction. Similarly in the case of OA.NO.415/95 the applicant was appointed on 31.12.1979 and has claimed the grant of scale of Rs.650-1200 from the date of appointment and therefore this OA. with this relief is also beyond the jurisdiction of the Tribunal.

10. The second objection raised by the respondents is that of limitation. We find a considerable merit in this plea. As per the details furnished earlier, the cause of action arose in respect of OA.NO.7/95 on 16.9.1972 and 1.1.1973, and in respect of OA.NOs.415/95 & 420/95, the cause of action arose on 26.12.1979 and 10.5.1982 respectively. The applicant in OA.NO.7/95 has brought certain documents on the record to show that he has been agitating the matter for grant of pay scale at par with that of the Medical Officer Class II. However, in

respect of the other two OAs., no such representations have been made and the reference has been made only to representation made by their colleague who is the applicant in OA.NO.7/95. In all the 3 OAs. applicants have filed a delay condonation application. In this application, at the out set, the applicants have taken the plea that for proposition of fixation/fitment of pay scales on the basis of "equal pay for equal work", there is no period of limitation for filing an OA. We are unable to accept this contention of the applicants. The grant of a particular pay scale on the basis of "equal pay for equal work" or on the recommendations of a Pay Commission is not a case of fixation of pay which is a continuing cause of action. The grant of particular pay scale is a question which is to be decided first and thereafter only the question of pay fixation in that pay scale will arise. Therefore, the applicants cannot challenge the matter with regard to grant of pay scale at any time on the plea that provisions of limitation do not apply to such an issue. The applicants in all the three OAs. have not stated any substantial reasons as to why the delay has been caused in filing the OAs. In all the 3 OAs. the applicants have just given the dates of the various events with regard to the implementation of the various Pay Commissions' recommendations. The delay condonation application is nothing but a reiteration of the reliefs prayed for. These applications are nothing but to comply with the extant provisions of the Act without any cogent reasons as to why the legal remedy is being sought after a period of 22 years in respect of OA.NO.7/95 and 18 and 13 years in respect of OA.Nos. 415/95 & 420/95. The delay has to be explained from the cause of

action when it first arose to the applicant, and not with respect to the submission of the repeated representations. As held by the Hon'ble Supreme Court in the case of Administrator of Daman & Diu vs. R.D.Valand, 1995 (8) SLR 617 (S), repeated representations do not stop the limitation and Tribunal is bound to consider the question of limitation. The delay cannot be over-looked while making adjudication which involves a claim of relief retrospectively. In the present case, in all the 3 OAs., we find that the applications have been filed after considerable time with no cogent reasons for delay and therefore we have no hesitation to hold that all the three OAs. are barred by limitation.

11. Apart from the OAs. being barred by limitation and beyond the jurisdiction of the Tribunal, the grant of pay scale retrospectively cannot be allowed even if respondents have accepted the contention of the applicants that they are entitled for the same pay scales as applicable to the doctors with MBBS degree. In this connection, we refer to the judgement of Hon'ble Supreme Court in case of Delhi Veterinary Association vs. Union of India & Ors., 1984 (2) SLR 144. In this case, based on the recommendations of the 3rd Pay Commission, the Veterinary Assistant Surgeons under the Delhi Administration were allowed the scale of Rs.425-750 while the Veterinary Assistants in the Union Territory of Chandigarh were given a scale of Rs.850-1700 and in the Union Territories of Arunachal Pradesh and Mizoram the scale of Rs.550-900 was allowed. However, from 2.11.1977 petitioners were allowed the scale of Rs.550-900. The

petitioners, however, filed a Writ Petition seeking the scale of Rs.650-1200 as allowed to the Assistant Surgeons of Union Territory of Chandigarh. The Hon'ble Supreme Court did not go into the merits of their claim even though it is observed that on prima facie their grievance appears to be legitimate in view of the fact that the 4th Pay Commission had already been set up by that time. In view of this, the direction was given that the 4th Pay Commission will consider the claim of the applicants in all respects. The petitioners, however, urged before the Hon'ble Supreme Court that 4th Pay Commission would be not making any recommendations with regard to pay scale as claimed by them in respect of period between 1973 and the date on which the new pay scale based on the recommendations of the 4th Pay Commission will come into force and therefore Court should consider whether the petitioners are entitled to any retrospective benefits for the said period. The Hon'ble Supreme Court rejected this claim of the petitioner stating that having regard to long delay after fixation of their pay scale earlier from 1.1.1973, no relief can be granted in respect of the earlier period. In the present case, the situation is the same. The applicants have filed the OAs. when the 5th Pay Commission had already been set up. In fact, the respondents in all the 3 OAs. have taken a plea that the matter with regard to pay scale has already been referred to 5th Pay Commission and therefore the OAs. are premature. During the pendency of OAs., the recommendations of the 5th Pay Commission have been received and the applicants have been allowed the pay scale at par with that of MBBS doctors. The only controversy left now as indicated earlier, is with regard to

retrospective grant of higher pay scale as prayed for. We have deliberated earlier and recorded findings that the applicants have approached the Tribunal by filing the present OAs. after considerable lapse of time. Keeping in view the law laid down by the Hon'ble Supreme Court in the case of Delhi Veterinary Association, we are unable to accept the contention of the applicants to grant any relief for the entitlement of the pay scales retrospectively from various dates.

12. The learned counsel for the applicants during arguments, however, contended that in the earlier OAs., the pay scales from retrospective dates have been allowed by the Tribunal with reference to Pay Commission recommendations. In this connection, cited orders of the Tribunal are (1) OA.NO.53/89, Chandrakan D.Godse vs. Union of India & Ors. decided on 7.12.1993 (2) Miss.Khatija V.Thanawalla vs. Union of India & Ors., Tr.A.Nos.125/86 & 126/86 decided on 24.8.1987 (3) J.V.Joshi vs. Union of India & Ors., OA.NO.759/88 decided on 22.7.1994, (4) A.D.Pathak vs. Union of India, OA.NO.283/88 decided on 11.1.1993.

We have carefully gone through these orders. In view of our deliberations above and the law laid down by the Hon'ble Supreme Court in the case of Delhi Veterinary Association, we are of the considered opinion that what is held in these orders cited will not hold good.

13. The learned counsel for the respondents cited the following judgements during the arguments to support his contention that it is not within the scope of the judicial review to lay down the equation of pay scales and also to grant higher pay scales retrospectively involving additional expenditure for the State Government :-

(a) Vice Chancellor G.B.Pant University of Agriculture & Technology vs. Dr.Kewala Nand & Ors.

1998 SCC (L&S) 1832.

(b) Sita Devi & Ors. vs. State of Haryana

JT 1996 (7) SC 438.

(c) State of Haryana & Ors. vs. Rai Chand Jain & Ors.

(1997) SCC 167.

(d) Union of India & Ors. vs. P.V.Hariharan & Ors.

JT 1997 (3) SC 569.

Since the respondents have already granted the higher pay scales to the applicants as claimed w.e.f. 1.1.1996 and in view of our observations with regard to the grant of higher pay scale retrospectively, it is not considered necessary to review these judgements.

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14. Before parting with the case, we would like to mention that applicant's counsel has now filed M.P.No.391/2000 on 20th June,2000 along with copies of relevant extracts of Pay Commission Report. We have perused the same.

We have already held that we have no jurisdiction to grant relief from 1973, since the cause of action will be more than 3 years prior to the constitution of this Tribunal. Further, we have pointed out that the claim is barred by limitation and delay. Then, we have further pointed out that applicants have already been given relief on the basis of Vth Pay Commission Report and on the basis of the law declared by the Apex Court, the applicant cannot be given retrospective benefit of Vth Pay Commission Report from either 1.1.1973 or 1.1.1986. They are entitled to the benefit of Vth Pay Commission only from 1.1.1996 and not earlier. Hence, nothing more to be said about M.P.391/2000. Hence, posting this case for further arguments on this point will not arise. M.P.391/2000 is ordered to be kept in the file.

15. In the result of the above, we do not find merit in all the three OAs. and they are dismissed accordingly with no order as to costs.

(D.S.BAWEJA)

MEMBER (A)

(R.G.VAIDYANATHA)

VICE CHAIRMAN

mrj.