

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 1091/1995 with MP-659/96.

Date of Decision: 30-06-97

Shri P.D.Divekar

Petitioner/s

Shri D.V.Gangal

Advocate for the
Petitioner/s

V/s.

Union of India & 6 Ors.

Respondent/s

Shri V.S.Masurkar

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri **B.S.Hegde, Member (J).**

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 ? ☒

abp.

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG.NO.6,PRESCOT RD,4TH FLR,

MUMBAI - 400 001.

ORIGINAL APPLICATION NO.1091/95.
with M.P.659/96.

DATED THIS 30th DAY OF JUNE, 1997.

CORAM : Hon'ble Shri B. S. Hegde, Member (J).

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

Shri P.D.Divekar,
Retired Physiotherapist
working under
Medical Superintendent C.Rly,
Hospital Bhusawal and residing
at Raka Apartments, Near T.V.Tower,
Bhusawal - 425 201.

... Applicant

By Advocate Shri D.V.Gangal.

V/s.

1. The Union of India, through
The Secretary, Ministry of Railways,
Railway Board, RAIL BHAVAN,
New Delhi.
2. The General Manager,
Central Railway,
V.T., Bombay - 400 001.
3. The Chief Medical Officer,
Central Railway Bombay V.T.,
Bombay - 400 001.
4. The Divisional Railway Manager,
Central Railway,
Bhusawal - 425 201.
5. The Medical Superintendent,
Central Railway Hospital,
Bhusawal - 425 201.
6. The Secretary, Union Public Service
Commission,
Dhampur, House,
New Delhi.
7. The Secretary,
Ministry of Finance,
Department of Expenditure,
North Block, New Delhi.

... Respondents.

By Advocate Shri V.S.Masurkar.

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I ORDER I

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

The applicant in this OA was working as Physiotherapist in the grade Rs.2000 - 3200 at Bhusawal and retired on Superannuation from Railway Service on 30/6/90. He has filed this OA for following reliefs:-

- (a) That this Honorable Tribunal may be graviously pleased to call for the records of the case from the Respondents and after examining the same issue a Writ of Certiorari and quash the orders by which finance ministry turned down the 1981 proposal for upgradation restructuring.
- (b) To Issue a Writ of Certiorari and quash and set aside orders Annexures A1 to A-12.
- (c) To issue a writ of Mandamus commanding the Respondents to upgrade/restructure the post of Sr.Physiotherapist in the scale of Rs.650 - 1200 - 2200 - 4000 from 1/1/1973 and 1/1/1986 respectively.
- (d) To hold and declare that the applicant deserves to be granted the benefit of pay fixation and arrears in the scale of Rs.650-1200 - 2200-4000 from 1/1/73 and 1/1/1981 respectively.
- (e) To hold and declare that the cadre of Physiotherapist be restuctured retrospectively from 1/1/1973 making the post of Senior Physiotherapist as group 'B' from 1/1/1973 and Group 'A' from 1/1/1986.
- (f) To hold and declare that the applicant is eligible to be granted Productivity linked bonus for the year 1991-92.
- (g) To hold and declare that the amount of Rs.2045/- vide D.D.No.308941 dt. 18/1/94 be refunded to the applicant.
- (h) To hold and declare that the applicant is entitled all the consequential benefits of arrears of Pay and Pension as a result of upgradation and restructuring benefit from 1/1/1973 & 1/1/1986.
- (i) Grant Costs and interest and grant any other further benefit relief as this Honourable Court deems it fit and proper and for which act of kindness, the applicant as in duty bound shall ever pray.

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2. The applicant has also filed MP-100/96 for condonation of delay and MP-659/96 for bringing spot points on record alongwith documents.

3. The respondents have opposed the OA on the preliminary ground that the OA is barred by limitation. Applicant retired on 30/6/1990 and the OA has been filed on 17/7/1995 i.e. 5 years after retiring for the restructuring benefits. However, the applicant is challenging the decisions of the respondents taken from the years 1981 to 1991. Secondly, it is contended that the OA is barred by principles analogous to res-judicata in as much as this Bench of Tribunal as well as Principal Bench of the Tribunal have already dealt with the basic matter of revision of pay scales of physiotherapists.

4. On the point of res-judicata, we note that in OA-45/87 in R.P.Puniyani v/s. Union of India decided on 15/6/1988, this bench of the Tribunal had directed the Railway Administration to undertake a comparative evaluation and if they find that the duties and responsibilities of Senior Physiotherapists in the Railways are equal in every respect to those of similar officials in the Central Government Health Service or in Civilian Defence hospitals then to give to the former the same pay scale as that of the latter without going into other irrelevant considerations.

5. In OA-1292/90 which was disposed of by Principal Bench on 3/7/90 (Smt.Indu Raji v/s. Union of India), the respondents were directed to review the position of the cadre in question in totality, with a view to providing suitable positions for the career progression of senior Physiotherapists in railway hospitals in the interest of promoting administrative efficiency, if indeed, no promotional avenues exist at present. CCP-30/91 in the above OA was also discharged by Principal Bench on 26/9/91.

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6. OA No.13/92, in the case of R.P.Puniyani v/s. Union of India decided on 16/1/95, by a bench of which one of us was a Member was disposed of by passing the following order:-

"The respondents were advised to make specific - recommendations 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."

We note that RP-63/95 in the above has also been dismissed on 24/7/95. We are inclined to agree therefore that the present OA is barred both by limitation as well as principles of res-judicata.

7. It is argued in the MP-100/96, that the non-grant of higher scales to the physiotherapists by the Railway Ministry at the instance of Finance Ministry is derogatory to the Sovereign Status of the Union of India. We find no substance in this contention. It is well settled that the affairs of the Union of India are conducted within the frame work of

(i) Government of India - Allocation of Business (Rules).

(ii) Government of India - Transaction of Business (Rules).

The role of Finance Ministry is purely advisory and a mere recital in any communication that the Finance Ministry has not agreed to a proposal does not mean that the decision is that of the Finance Ministry. It is always open to the Executive department of the Government of India to take up the matter to the Cabinet to settle the difference of opinion between two departments. The question of derogation of Sovereignty of the Executive Department of the Government of India does not therefore arise.

8. Incidentally, we notice that in the fifth central pay commission report, vol - II, page- 1399 (Nabhi's Edition)

6. On 13/12/52, in the case of R.I. Punjani v/s Union of India decided on 16/1/53, by a bench of which one of us was a Member was disposed of by passing the following order:-

"The respondents were advised to make specific recommendations relating to the pay scales of the - Physiotherapists/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."

We note that RP-63/52 in the above has also been

dismissed on 24/1/53. We are inclined to agree to the fact that the present OA is barred both by limitation as well as principles of res-judicata.

7. It is argued in the M-100/56, that the non-grant of higher scales to the physiotherapists by the Railway Ministry

at the instance of Finance Ministry is derogatory to the Sovereign Status of the Union of India. We find no substance in this contention. It is well settled that the affairs of the Union of India are conducted within the frame work of

(i) Government of India - Allocation of Business (Rules).

(ii) Government of India - Transaction of Business (Rules).

The role of Finance Ministry is purely advisory and a mere receipt in any communication that the Finance Ministry has not agreed to a proposal does not mean that the decision is that of the Finance Ministry. It is always open to the Executive Department of the Government of India to take up the matter to the Cabinet to settle the difference of opinion between two departments. The question of derogation of sovereignty of the Executive Department of the Government of India does not therefore arise.

8. Incidentally, we notice that in the fifth central pay commission report, Vol - II, page-1359 (Lahiri's Edition)

April-1997., in para - 83.285, the following recommendations relating to Physiotherapists occur.

*83.285 - The Physiotherapists are recruited with the qualification of 10+2 or Higher Secondary and Diploma in Physiotherapy (3 years). The following three grade structure is recommended;

Existing Designation	Existing Pay Scale(₹)	Revised Designation	Proposed Pay Scale(₹)
Physiotherapist Grade II	1400-2300	Physiotherapist Grade III	1640-2900
Physiotherapist Grade I	2000-3200	Physiotherapist Grade II	2000-3200
-	-	Physiotherapist Grade I	2500-4000
-	-	Chief Physiotherapist(*)	2200-4000

If the number of posts is not adequate, these pay scales be granted to Physiotherapists under ACP scheme.

(*) Chief Physiotherapist if justified on functional considerations in big hospitals only. The post be filled on promotion failing which by direct recruitment, with essential qualification of a degree in physiotherapy in both cases. //

9. From this it is evident that revised designations and revised pay scales have been recommended and it is for the Government to take a decision in the matter as per rules.

10. In the light of the discussion above we find no merit in the OA which we dismiss with no orders as to costs.

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

B. S. Hegde
(B. S. HEGDE)
MEMBER (J)

abp.