

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.583 of 1989 AND
M.A.NO.898 of 1992

DATE OF JUDGMENT: 26th April, 1993

BETWEEN:

Smt. V.Krishna Kumari .. Applicant

AND

1. The Secretary to Govt. of India,
Ministry of Health & Family Welfare,
New Delhi.
2. The Deputy Director,
Central Government Health Scheme,
Bakaram,
Hyderabad-500048. .. Respondents

APPEARANCE:

COUNSEL FOR THE APPLICANT: Mr. C.V.Kanyaka Prasad, Advocate

COUNSEL FOR THE RESPONDENTS: Mr. N.R.Devaraj, Sr. CGSC

CORAM:

Hon'ble Shri Justice V.Neeladri Rao, Vice Chairman

Hon'ble Shri P.T.Thiruvengadam, Member (Admn.)

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI V.NEELADRI RAO, VICE CHAIRMAN

The applicant was called for interview for the post of Store Keeper under the Central Government Health Scheme (CGHS) and she was appointed and posted to Dispensary No.9, CGHS at Alwal as per the order dated 4.12.1982. The pay scale of the Pharmasist and Store Keeper, CGHS was Rs.330-560 upto 31.12.1985. The 4th Pay Commission recommended the pay scale of Rs.1200-2040 for the pre-revised scales of Rs.330-560. But for Pharmacists, the scale recommended was Rs.1350-2200. Then, the Ministry of Health and Family Welfare, Government of India by the proceedings dated 9.6.1988 decided that all persons who possessed diploma/^{degree} ~~diploma~~ in Pharmacy and ^{were} ~~was~~ registered under Section 31 ~~or~~ 32 of the Pharmacy Act, 1948 and were initially appointed as Pharmacists in CGHS and ~~were~~ subsequently designated as Store Keepers for the sake of convenience may be redesignated as Pharmacists and allowed revised pay scale of Rs.1350-2200 ~~as~~ as recommended by the 4th Pay Commission. By the same proceedings, it was further decided that similar persons who were appointed as Store Keeper/~~Store Keeper-cum-Clerk~~ and possessed diploma/degree in Pharmacy and ^{were} ~~was~~ registered as Pharmacist under Section 31 or 32 of the Pharmacy Act, 1948 may also be redesignated as Pharmacists and allowed the revised scale of pay as Pharmacists as recommended by the 4th Pay Commission. In pursuance of the said proceedings, the applicant who was originally

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appointed as Store Keeper and has also possessed diploma in Pharmacy and registered as Pharmacist under Sections 31~~1~~²/32 of the Pharmacy Act, 1948, was redesignated as Pharmacist and given the revised scale of pay of Rs.1350-2200.

Thereafter, by the proceedings dated 24.7.1989, the 2nd respondent transferred the applicant who is referred to as Pharmacist, from the CGHS Dispensary No.13, Tarnaka, Secunderabad to the CGHS Dispensary No.3, Secunderabad. The same is assailed in this OA. The reliefs claimed in this OA are, (a) to direct the respondents not to designate the applicant as Pharmacist but to treat her only as Store Keeper, (b) to place her as Store Keeper in the combined seniority list and assign her rank over and above the Pharmacists who were appointed as Store Keepers subsequent to the appointment of the applicant as Store Keeper in the combined seniority list dated 8.6.1989, (c) to set-aside the order of the 2nd respondent dated 24.7.1989 transferring her as Pharmacist by declaring it as arbitrary, discriminatory and violative of Article 14 of the Constitution; and (d) to declare the action of the 2nd respondent placing her at Sl.No.50 in the combined seniority list as unjust, illegal and opposed to the principles of natural justice.

2. Before advertng to the various contentions in regard to the reliefs claimed, it is necessary to refer to some other facts which are relevant. The applicant was confirmed in the post of Store Keeper in the pay scale of Rs.1350-2200 by the proceedings dated 21.12.1987 issued by

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the Deputy Director, CGHS (2nd respondent.). It is also stated for the applicant and it is not disputed for the respondents that the senior-most Pharmacists were entrusted with the duties of Store Keeper.

3. The avenue of promotion by 31.12.1985 for the ~~pharmacists and vacancies of~~ Store Keepers was Assistant Superintendent of Stores or Superintendent of Stores (ASS or SS) and five out of the combined seniority ^{list} of the Store Keepers, CGHS, Pharmacists were considered for each ~~of the vacancy~~ in the posts of ASS or SS. It was urged for the applicant ^{as} ~~under: 3a~~ ^{onerous and responsible} that the duties of the Store Keeper are more ~~risky~~ than the duties ~~to~~ discharged by the Pharmacists and the qualifications for the post of Store Keeper are higher than the qualifications required for the post of Pharmacist. As Senior Pharmacists alone were entrusted with the duties of the Store Keeper, all the Pharmacists who were appointed as Store Keepers have to be given ranking below those who were working or who were appointed as Store Keepers. The Store Keeper cannot be transferred to the post of mere Pharmacist and in any case the Store Keeper cannot be transferred as Pharmacist to a place where his/her junior is working as Store Keeper. It is not open to the respondents to alter designation of the Store Keeper without his/her consent.

4. It is not in dispute that the scale of pay of Pharmacist/Store Keeper in CGHS was the same upto 1.1.1986 ie., the date from which the scales recommended by the 4th

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Pay Commission had come into effect. The 4th Pay Commission besides recommending the new scale for the old scales in general, had also recommended some special scales to some of the categories. While the old pay scale of the Pharmacist was only Rs.330-560 and the general corresponding scale under the 4th pay commission was Rs.1200-2040, ~~but~~ the pay of the Pharmacist was specifically recommended as 1350-2200. But there was no such special scale for the Store Keeper, CGHS. Probably realising the anomaly in the scales of Store Keeper, CGHS when compared with that of Pharmacist even when there was no change in the requisite qualifications, the Central Government decided to redesignate the post of those Store Keepers who were having the requisite qualifications as Pharmacists ~~*****~~ and to allow the pay of Pharmacist to such Store Keepers, CGHS also. The right of the Government to redesignate, ^{or to reorganise} ~~or to~~ upgrade ^{or to amalgamate or} the post cannot be challenged so long as there is no reduction in the pay scale and the chances of promotion are not affected. Even the Store Keeper was eligible for promotion only to the post of ASS or SS and the combined seniority of the Store Keepers and Pharmacists was prepared for consideration of the above promotions. Even after redesignation as Pharmacist, the one who was earlier designated as Store Keeper continues to be eligible for promotion to the post of ASS or SS. There is no change in the seniority after designation. The pay scale to which the employee who was earlier redesignated as Store Keeper i.e., erstwhile Store Keeper is more than the corresponding pay recommended by the 4th Pay Commission, on being designated as Pharmacist.

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Hence, in this case the applicant is not affected when she is designated as Pharmacist. In such ^{or} case there is no need for the Central Government to obtain the consent of the employee. It is ^{right of} prerogative of the ^{employer to re-designate or} employee ~~so long as~~ ^{and go with so long as} the employee is not adversely affected in regard to the conditions of service.

5. When once the erstwhile Store Keeper is designated as Pharmacist, he/she has to be treated as any other Pharmacist and could be transferred to the post where the original pharmacist was performing his/her duties. Hence, there is no illegality in the impugned order.

6. Merely because a senior Pharmacist is appointed as Store Keeper, it cannot be stated that the Pharmacist who was posted as Store Keeper has to be placed below the employees ~~who~~ appointed as Store Keeper or working as Store Keeper in the seniority list, for a combined seniority list of Pharmacists and Store Keepers was already prepared for consideration for promotion to the post of ^{before pharmacist was appointed as Store Keeper.} ASS or SS. The question of ranking in the seniority list is relevant only for the purpose of consideration for promotion. Otherwise, it ~~is~~ has no significance at all. Even if a ^{or} separate seniority list ~~is~~ prepared for the Store Keepers and the Pharmacists, they are of no importance for consideration for promotion to the post of ASS or SS as it is only a combined seniority list of the Store Keepers and Pharmacists that had to be looked into for consideration

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for promotion to the post of ASS or SS. Hence the contention that the applicant should be shown as senior to Smt. Bhanumati, ^{who was} ~~who was deputed as~~ Pharmacist ^{and} posted as Store Keeper after the applicant was appointed as Store Keeper, CGHS is not tenable. // The respondents referred to a notification dated 18.9.1979 to contend that the qualifications for the post of Pharmacist Grade-I/Store Keeper/Pharmacist-cum-Clerk under the CGHS (Group 'C' Allopathy) ^{over saw} But the learned counsel for the applicant referred to the order dated 12.10.1990 in Registered No. 34-287/89 of Patna Bench of the Central Administrative Tribunal to urge that the minimum qualifications required for the post of Store Keeper are more than the minimum qualifications prescribed for the post of Pharmacist. But it had to be emphasised that in the order dated 12.10.1990 of the Patna Bench, the designation was specifically referred to as Store Keeper (Medical Stores) while in the proceedings calling for the interview of the applicant, the post was referred to as Store Keeper, CGHS. Further, the Additional Director, CGHS, Hyderabad filed an affidavit on 23.4.1993 to the effect that the notification dated 18.9.1979 in regard to the minimum qualifications for the post of Pharmacist Grade-I/Store Keeper/Pharmacist-cum-Clerk have not undergone any amendments and that the rules in regard to the qualifications required for the post of Pharmacist and Store Keeper are one and the same. Shri N.R.Devaraj, learned Senior Standing Counsel for the Respondents submitted that he was instructed to state that the post of Store Keeper (Medical Stores) is different from

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the post of Store Keeper, CGHS ^{she} ~~but the~~ learned counsel for the applicant has not drawn our attention to any proceedings except the order dated 12.10.1990 of the Patna Bench wherein it was noted that the minimum qualifications for the post of Store Keeper (Medical Stores) are more than the minimum qualifications prescribed for the Pharmacists. Ofcourse, the said order dated 12.10.1990 also discloses that the Government decided that the post of Store Keeper (Medical Stores) also has to be designated as Pharmacist, if the incumbent is a degree holder or a diploma holder in Pharmacy and if he/she ^{was} registered as a Pharmacist under Sections 31^{or}/32 of the Pharmacy Act and such an employee has to be given the pay scale of Rs.1350-2200 recommended by the 4th Pay Commission for the post of Pharmacist. But if we read the affidavit of the Additional Director, CGHS, Hyderabad and the observations in regard to the qualifications for the post of Store Keeper (Medical Stores) as referred to in the order dated 12.10.1992 of Patna Bench, it appears that the qualifications for the post of Store Keeper (Medical Stores) ~~are~~ are higher than the qualifications required for the post of Store Keeper, CGHS. ^{We} do not feel it necessary to further advert to the same for the disposal of this OA for admittedly the pay scale for the Store Keeper, CGHS and the Pharmacist was the same upto 31.12.1985 and the combined seniority list of those two categories was prepared for consideration for promotion to the post of ASS or SS and those circumstances are sufficient to hold that by giving the designation of Pharmacist to the Store Keeper, latter is not aggrieved.

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7. For the reasons stated above, the O.A. is liable to be dismissed.

8. The applicant filed M.A.No.898/92 praying for the following reliefs:-

i) to direct the respondents to pay him the pay scale of Rs.1400-2300 from 1.1.1986, the date on which the Sub-Committee of the Pay Commission recommendations were implemented with all subsequent attendant increments and the respondents are obliged to pay at the same rate as per the Judgment of the Central Administrative Tribunal, Patna Bench in OA 287/89 dated 12.10.1990 which is binding on the respondents; and

ii) to direct the respondents to produce the relevant recruitment rules for the posts of Store Keeper at the time of recruitment of the applicant to the post of Store Keeper (in the year 1982, December) with all subsequent amendments, if any, uptodate, and IVth Pay Commission Sub Committee report dated 15.9.1986 regarding the pay scales for the posts of Store Keeper.

✓ 9. While discussing the various contentions raised in the OA, we held that it is open to the Central Government to ^{amalgamate} upgrade the post, and it does not depend upon the consent of the employees so long as they are not adversely affected ~~even~~ in regard to the pay scale or chances of promotion. In the view we had taken in the OA, the applicant is not entitled to the reliefs claimed in this M.A.

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To

1. The Secretary to Govt.of India,
Ministry of Health & Family Welfare, New Delhi.
2. The Deputy Director, Central Government Health Scheme,
Bakaram, Hyderabad-48.
3. One copy to Mr.C.V.Kanyaka Prasad, Advocate,
6-1-107/12, Padmarao Nagar, Secunderabad.
4. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

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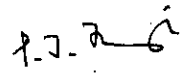
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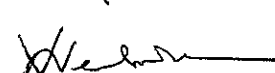
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10. The learned counsel for the applicant submitted that he has reliably learnt that the ^{5th} Pay Commission is going to recommend the pay scale to the Store Keeper, CGHS which is more than the pay scale that is going to be recommended for Pharmacist and hence the applicant may be permitted to continue to work as Store Keeper and draw the pay in the scale of Rs.1200-2040. But the additional affidavit filed by the Additional Director, CGHS, Hyderabad discloses that there are no posts of Store Keeper at CGHS, Hyderabad. Hence, the question of allowing the applicant to work in the post of Store Keeper does not arise.

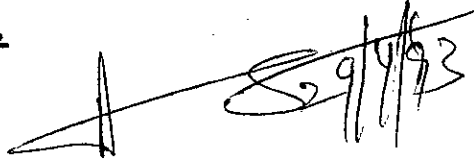
Ofcourse, if the 5th Pay Commission is going to recommend ^{for} the scale higher than the pay scale recommended ^{for} to the Pharmacist, then it is open to the applicant to agitate that she may be redesignated as Store Keeper and then the same has to be considered on merits by the Central Government. It is needless to say that if the applicant is going to be aggrieved by the order on such representation, she is free to move the Tribunal. Subject to the above, the M.A. and the O.A. are dismissed. No costs.

(Dictated in the open Court).


(P.T.THIRUVENGADAM)
Member(Admn.)


(V.NEELADRI RAO)
Vice Chairman

Dated: 26th April, 1993.


Deputy Registrar (5)

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. R. BALASUBRAMANIAN :
MEMBER (ADMN)

AND

THE HON'BLE MR. T. CHANDRASEKHAR
REDDY : MEMBER (JUDL)

DATED: 26-4-1993

ORDER/JUDGMENT

R.P./ C.P/M.A.No.

in

O.A.No.

583/89
MA 898/92

T.A.No.

(W.P.No

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions

Dismissed as withdrawn.

Dismissed

Dismissed for default.

Ordered/Rejected.

No order as to costs.

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