

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH: HYDERABAD

D.A. NO. 642 of 1989

T.A. NO.

DATE OF DECISION 14-9-89.

Smt. G.S. Pushpalatha

Petitioner

Sri M.V. Subbaiah

Advocate for the
Petitioner (s)

Versus

Union of India & others

Respondent

Sri N. Bhaskara Rao, Addl. CGSC

Advocate for the
Respondent (s) 1-4

Mr. M. Subrahmanyam

Advocate for R-6

CORAM

The Hon'ble Mr. D. Surya Rao, Member (J1)

The Hon'ble ~~Ms.~~ Usha Savara, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. whether their Lordship, wish to see the fair copy of the Judgment?
4. whether it needs to be circulated to other Benches of the Tribunal?
5. Remarks of Vice-Chairman on columns 1, 2, 4, (To be submitted to Hon'ble Vice-Chairman where he is not on the Bench)

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(JUDGMENT OF THE TRIBUNAL PREPARED BY HON'BLE SHRI D. SURYA RAO,
MEMBER(J)).

The applicant herein has been working as a Store-keeper in the Central Government Health Scheme (CGHS) at Dispensary No.9, Alwal, Secunderabad. The applicant contends that she was appointed by the third Respondent on 17-5-1979 on adhoc basis as a Grade-I Pharmacist. She was posted to CGHS Dispensary No.3, Regimental Bazar, Secunderabad. Ten days thereafter, she was transferred and posted as Pharmacist-cum-Storekeeper at the newly opened CGHS Dispensary No.9, Alwal. Two months later, two pharmacists were appointed in Alwal Dispensary. Ever since then, the applicant is working in the Alwal Dispensary as a storekeeper with a break of about one year during which period she was on maternity leave. It is stated that the Second Respondent confirmed the services of various incumbents working against particular posts, and in June 1989 drew up a combined seniority list of Storekeepers and Pharmacists. The applicant states that she was entitled to be declared as a permanent storekeeper as she has worked throughout her service against the sanctioned post of storekeeper. She contends that the post of storekeeper is higher

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than that of Pharmacist and as such she is entitled to be designated and confirmed as a permanent store-keeper. The third Respondent posted the 6th Respondent as storekeeper at the Alwal dispensary in the place of the applicant and thereupon the applicant has made a representation that the 6th Respondent has less service as storekeeper than the applicant. It is stated that thereafter, the third Respondent arbitrarily and capriciously ordered the posting of three pharmacists as storekeepers, till orders are received from the 2nd Respondent. It is stated that they are five years juniors to the applicant and have never worked as storekeeper. It is further stated that on 17-8-89, the third Respondent, purporting to make a stock verification of the stores of the dispensary, alongwith a Vigilance Officer, came to the stores and took the key. He, thereafter, refused to give the key to the applicant and wrote a letter saying that he himself would lookafter the stores till further orders of the 2nd Respondent. He also enclosed a letter dated 16-8-89 from the 2nd Respondent transferring the applicant temporarily to CGHS Dispensary No.13, Tarnaka. It is contended that these orders of the transfer are capricious and upset the seniority of storekeepers and pharmacists.

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The applicant has, therefore, filed this application to set aside the order of the third Respondent dated 16-8-89 transferring the applicant from the post of storekeeper, CGHS Dispensary No.9, Alwal to CGHS Dispensary No.13, Tarnaka; to set aside the orders of the 4th Respondent dated 17-8-89 relieving the applicant from the post of Storekeeper at Dispensary No.9 at Alwal; to give a direction to the 2nd and 3rd Respondents not to reversion or demote the applicant from the present post of storekeeper; to declare that the applicant is entitled to be declared in the seniority list as a storekeeper; to set aside the transfer orders and posting her as pharmacist; to categorise her as storekeeper and to give her rightful place in the seniority list as storekeeper. She also seeks a direction that she should not be disturbed from the post of storekeeper at CGHS Dispensary No.9, Alwal and for future promotion.

2. On behalf of the Respondents 1 to 4, a counter has been filed stating that by order dated 17-5-89, the applicant was transferred temporarily to CGHS Dispensary No.13, Tarnaka to work there as pharmacist. It is contended that such a posting is not a posting under Respondent No.7 as contended by the applicant in the O.A. It is stated that by the same order,

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the Respondent No.7 was transferred to CGHS Dispensary, Secunderabad. It is ~~agreed that~~ ^{agreed that} further stated that in 1979 the applicant was originally appointed as Pharmacist ~~in~~ ⁱⁿ 1979, ~~as~~ ^{as} ~~the~~ ^{the} ~~also~~ ^{also} ~~state~~ ^{state} unit in CGHS Hyderabad. ~~It is stated that~~ even prior to the IV Pay Commission's recommendations, a separate post of storekeeper was in existence in all the dispensaries. On 17-5-89, by transferring the applicant as pharmacist to Tarnaka, the 6th Respondent was appointed to take charge of the stores from the applicant. The applicant did not comply with the orders and instead disobeyed the orders. It is admitted that the applicant, though appointed in service in 1979 as pharmacist, was directed to look after the stores. After receipt of the orders dated 17-5-89, the applicant made a representation dated 25-5-89. ~~Her representation clearly~~ It was clarified and she was again asked to hand over the charge to the 6th Respondent. It is stated that ~~after the IV Pay Commission's recommendations~~ as a matter of policy senior pharmacists are entrusted to handle the stores. The applicant is one of the ~~junior pharmacists and is junior to Respondent No.6, she cannot object if the 6th respondent is promoted as a storekeeper.~~ junior pharmacists and is junior to Respondent No.6, she cannot object if the 6th respondent is promoted as a storekeeper. It is further stated that as a matter of policy, after the recommendations of the IV Pay Commission, senior pharmacists are entrusted to handle the stores. It is further stated that the post of pharmacist ~~and~~ ^{and} storekeeper ~~was~~ ^{were} in identical scale of pay prior to IV Pay Commission scales and the post of storekeeper ~~is not a higher post.~~ ^{is not a higher post.} It is stated that though the

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6th respondent was earlier posted to Alwal, Incharge of stores, the applicant managed not to hand over the charge to her then. It is further contended that the applicant ^{put} ~~she~~ being incharge of the stores is temporary and cannot give her a right for confirmation as storekeeper.

It is further ^{also unknown} stated that the original appointment of the applicant being as pharmacist, the applicant is bound to work as pharmacist and disburse medicines at the counter and such a posting is neither a reversion ^{has it} nor resulted in reduction of her pay and allowances.

The appointment as pharmacist is an independent posting and she need not work under the Respondent No. 6 & 7, as averred. It is further stated that in accordance with the policy to post a senior pharmacist as incharge of stores, the 6th Respondent who is far senior to the applicant, ^{though} has been posted thereto. The applicant though was put incharge of ~~the~~ stores, ^{she} was never designated as storekeeper at any time and cannot claim a right to be appointed or confirmed in that post.

It is contended that the Respondent No. 3 who is incharge of the functioning of all the dispensaries, is entitled to inspect the dispensary and he has taken the charge from the applicant after checking the items of stores in the presence of the SMO and the 4th Respondent. No separate handing over or taking over charge was considered necessary. It is further contended that the transfer of the applicant to Tarnaka was consequent upon a oral representation made by the applicant.

3. Heard the learned counsel for the applicant Shri M.V.Subbaiah and Shri N.Bhaskara Rao, the learned Standing Counsel for the Central Government, on behalf of the Respondents 1 to 4 and Shri M.Subramanyam, the learned counsel for the Respondent No.6.

4. The first contention raised by the learned counsel for the applicant is that the post of storekeeper is a higher post than that of pharmacist and the applicant being posted as a pharmacist amounts to a demotion. It is further contended that the applicant, though recruited as pharmacist, was ever since 10 days after her initial appointment, working only as a storekeeper and as such she is entitled to confirmation as storekeeper and consequently be posted only as a storekeeper. For the purpose of this contention, we have called for the rules relating to the appointment to the post of storekeeper and ~~pharmacist~~ pharmacist. The relevant rules are "the Central Government Health Scheme Delhi Allopathy (Pharmacist Gr.I/Storekeeper/Pharmacist-cum-clerks Recruitment) Rules, 1979. In the schedule to the said Rules, the post of pharmacist Gr.I, Storekeeper and pharmacist-cum-clerk constitute one category and they are classified as Central Government Group-C non-gazetted non-ministerial posts. The scale of pay is identical

for all the three posts, viz. Rs.330-560. Identical qualifications are prescribed for all the three posts. Thus, it is clear that under the rules, the posts of storekeeper and pharmacist Grade-I are identical and the contention of the applicant that the post of storekeeper is a higher post is wholly untenable. It is brought to our notice during the course of arguments, by the Central Government's counsel that pursuant to the IV Pay Commission's recommendations, the post of storekeeper was given a lower scale of Rs.1200-2040 as against an higher scale of Rs.1350-2200 to Pharmacists. Though different scales were prescribed by the pay commission for store-keepers and pharmacists, it is stated that by an order of the Govt. of India, Ministry of Health, No.Z.28026/1/88-CGHS.2/CGHS(P) dt. 9-6-88, ^{directed} it was ordered that all persons who possesses diploma/ degree in Pharmacy and are registered u/s 31 or 32 of the Pharmacy Act 1948 and appointed as pharmacists initially but subsequently designated as storekeepers may be re-designated as pharmacists and allowed the revised scale of Rs.1350-2200 as recommended by the IV Pay Commission. It was, similarly directed that persons appointed as storekeepers/storekeeper-cum-clerk who possesses the above mentioned qualifications also be re-designated as pharmacists and allowed the revised payscale of pharmacists as recommended by the IV Pay Commission. Thus, it is contended for the Central Government that whatever be the post to which a

person might be appointed formally, namely, pharmacist or storekeeper, both prior to the Pay Commission's recommendations and after the said recommendations, the two posts are identical posts and carry the same scale of pay. Under the rules also they are identical posts. It is further contended that as a matter of convenience, pharmacists are being posted as storekeepers and vice versa. The practice, however, was to post seniors to be incharge of stores. It is contended that though the applicant has been posted as storekeeper, and has been working as such for a long period, it would not give her right to continue only as storekeeper and that for administrative convenience and interest she can be posted as pharmacist. In any event, since the initial appointment of the applicant was as pharmacist, she has no legal right to claim that she should be posted only as storekeeper. We see considerable force in the contention put forth on behalf of the respondents. The rules do not make any distinction between the posts of storekeeper and pharmacist. The qualifications are identical. Both categories of posts have to be registered as pharmacists under Section 31 or 32 of the Pharmacy Act, 1948. Consequently, posting of the applicant as a pharmacist despite her having worked for a considerable period as storekeeper, does not ^{vitiate} her with any civil

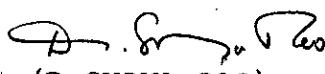
consequences. She continues to draw the same pay and her seniority is no way disturbed. The common seniority list for pharmacists and storekeepers has been prepared for CGHS Hyderabad based upon the date of initial entry into the service. It is not contended nor can be contended that preparation of such a seniority list based upon the date of initial entry, is illegal. All that is stated is that separate lists are to be prepared for storekeepers and pharmacists. We are unable to accept this contention since under the rules, they form one common category.

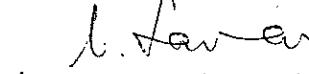
5. The learned counsel for the applicant has sought to rely on various decisions cited namely 1987(1) ATLT P.22 (Punjab Bench), AIR 1981 SC P.41, AIR 1983 SC P.769 and AIR 1967 SC P.1301. These are the decisions rendered relating to inter-se seniority when recruitment is made from two different sources. It has been held that continuous officiation in the higher post would give certain rights to the employees even if the appointment was ~~xx~~ adhoc or temporary. These decisions are not applicable to the present case wherein storekeepers ~~xx~~ and pharmacists form

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one common category with common rules and common qualifications. The practice has been to post pharmacists as storekeepers and vice-versa. That such a practice exists is clear from the fact that the applicant as such who is recruited as pharmacist ^{herself} was posted to be incharge of stores. In such circumstances, the decisions ~~sewah~~ cited can be of no avail for the applicant to claim a right to be appointed only as storekeeper and a right for preparation of a separate seniority list for storekeepers as though that is a distinct category.

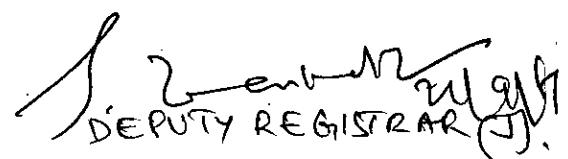
It appears that this case hasbeen filed by the applicant with a view to continue only as storekeeper and not to be posted as pharmacist despite her having been recruited as a pharmacist, and to avoid the transfer as pharmacist. We see no illegality in the respondents having transferred and posted her as pharmacist. For the reasons given above, we find no merits in the O.A. and it is accordingly dismissed and in the circumstances there will be no order as to costs.


(D. SURYA RAO)
MEMBER (J)


(MS. USHA SAVARA)
MEMBER (A)

Dated: 15 th September 1989.

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DEPUTY REGISTRAR (J)

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