

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

DATE OF ORDER : 26/10/201

OA 224/96

Rajendra Singh Saiwal son of Shri Dhanna Lal Saiwal by caste Saiwal resident of Plot No. 3-J/16 Jawahan Nagar, Jaipur now a days working on the post of Medical Store Keeper, Post & Telegraph Dispensary No. 2, Jaipur.

OA 282/96

Krishna Kumar Vijay son of Shri S.L. Vijay by caste Vijay resident of Behind Head Post Office, Posts and Telegraph Dispensary, Ajmer, working on the post of Medical Store Keeper, P & T Dispensary, Ajmer.

....Applicants.

**Versus**

1. Union of India through the Secretary to the Government, Department of Posts, Ministry of Communications, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Post Master General, Rajasthan Southern Region, Ajmer.

....Respondents.

Mr. S.K. Jain, Counsel for the applicant.

Mr. Bhanwar Bagri, Counsel for the respondents.

CORAM

Hon'ble Mr. S.K. Agarwal, Member (Judicial)

Hon'ble Mr. A.P. Nagrath, Member (Administrative)

ORDER

PER HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

The controversy involved in these two OAs being same, these are being disposed of by this common order.

2. Applicant, in OA 224/96, was recruited as Medical Store Keeper in the pay scale of Rs.330-560, initially on ad hoc basis and was regularised in 1977. Applicant of OA 282/96 was initially recruited on ad hoc basis as Medical Store Keeper and was regularised w.e.f. 25.8.75. After introduction of 4th Pay Commission pay scales, the applicants have been placed in the pay scale of Rs.1200-2040. They are aggrieved with this and have filed these OAs with the prayer that the respondents be directed to place them in the pay scale of Rs.1350-2200 w.e.f. January, 1990.

3. The respondents have raised preliminary objection on the ground that the applicants have claimed relief over an order of the year 1990 by filing these OAs in 1996 and thus these are hit by limitation. This argument of the respondents is unacceptable as the law is clear on this point that on the matter of pay scale or the pay being received by an employee, there cannot be a limitation so long as he continues to receive wrong pay or is placed in a wrong pay scale. Every month he receives his pay, the fresh cause of action arises. In that view, the ground of limitation raised by the respondents is rejected.

4. The applicants have built up their cases primarily on the foundation that as per recruitment rules of 1971, Medical Store Keepers were in scale Rs.130-300 and it was a promotional post for qualified Pharmacists. As per the then prevailing recruitment rules, 50% of the posts of Medical Store Keepers were filled up by direct recruitment and the remaining 50% by promotion of qualified Pharmacists with at least 3 years service in the grade of Pharmacist. The educational qualifications for direct recruitment were; A) B.Pharm or B.Sc. with one year experience of doing store accounting or pharmacy work, B) D.Pharm with 5 years experience may be considered with qualifications at (A) are not available. In supersession of the earlier rules, the recruitment rules were issued again in 1982 regulating the method of recruitment of Pharmacists/Medical Store Keepers in the Post & Telegraph Department. These were called Post & Telegraph Department (Pharmacists/Medical Store Keepers) Recruitment Rules, 1982. As per these recruitment rules, the pay scale of Pharmacists and Medical Store



Keepers was indicated as Rs.330-560 and the 100% posts became direct recruitment posts, for which the prescribed qualifications were Matriculation or equivalent examination and registration as a Pharmacist u/s 31 or 32 of the Pharmacy Act, 1948, but excluding clause (d) of Section 31 of the said Act. Contention of the applicants is that all along the Medical Store Keepers either enjoyed a higher status as compared to Pharmacists or as per rules of 1982 the Pharmacists were brought at par with them. But on implementation of 4th Pay Commission pay scales, Pharmacists have been placed in scale Rs.1350-2200, whereas the Medical Store Keepers are being denied the same scale and have been placed in the pay scale of Rs.1200-2040.

5. The learned counsel for the applicants referred to number of documents attached with the OAs and the rejoinder to state that in various Circles of the country Medical Store Keepers have been placed in the scale of Rs.1350-2200 but the same is being denied to the applicants by the Rajasthan Circle. The learned counsel also referred to an order dated 15.9.97, by which one Shri Satya Narain Bundela has been appointed on the post of Medical Store Keeper and has been given the pay scale of Rs.1350-2200 by the Chief Post Master General, Rajasthan Circle itself. The learned counsel contended that in view of Medical Store Keepers of other Circles enjoying the scale of Rs.1350-2200 and the Chief Post Master General, Rajasthan Circle, himself having appointed the Medical Store Keeper in the pay scale of Rs.1350-2200, the action of the respondents in denying the same pay scale to the applicants is discriminatory.

6. The learned counsel for the respondents stated at the bar that the matter relating to the pay scale of the Medical Store Keepers has been referred to the Departmental Anomalies Committee and the matter is under consideration.

7. We are not concerned with the recommendations or the outcome and the deliberations of the Anomalies Committee. Whatever the recommendations are and whatever the decision of the Government on those recommendations is a question of future. We are presently concerned with the controversy raised before us and i.e. whether the applicants have correctly been placed in the scale of Rs.1200-2040.

8. We find that in OA 224/96 a copy of the communication dated 24.2.88, at Ann.R/1, and a copy of the letter dated 9.6.88, at Ann.R/2,



have been placed on record. As per Ann.R/1 revised pay scales of the para-medical staff of Post & Telegraph Dispensaries have been indicated. For Medical Store Keepers two grades have been mentioned. While before the revision, the Medical Store Keeper and the ~~xxxxxx~~ Pharmacists were in the same scale of Rs.330-560 but on revision, Medical Store Keepers with B.Sc. and non-technical qualifications have been placed in scale of Rs.1200-1800 and those with Diploma in Pharmacy have been placed in the scale of Rs.1350-2200. It is not clear from the OAs and the respondents' reply as to from where the pay scale of Rs.1200-2040 has emerged because we find the applicant have been placed in the pay scale of Rs.1200-2040 and, their prayer has been that they be placed in the scale of Rs.1350-2200. Neither the applicants nor the respondents have thrown any light as to how the scale of Rs.1200-2040 has been put into effect for the category of Medical Store Keepers. However, we do not wish to dwell further on this aspect as this is not the issue before us. The issue before us is whether the applicants have a right to be placed in the pay scale of Rs.1350-2200. The letter dated 9.6.88 (Ann.R/2) clarifies the position in this respect. Para-2 of this letter is reproduced below : -

"2. Similarly, persons who were appointed as Store-Keepers/ Store Keeper-cum-Clerk but possess diploma/degree in Pharmacy and registered as Pharmacist under Section 31 or 32 of the Pharmacy Act, 1948 may also be re-designated as Pharmacist and allowed the revised scale of pay of Pharmacist recommended by the IVth Pay Commission."

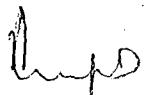
It is clear from this letter that while implementing the recommendations of the 4th Pay Commission the Government have placed the qualified Pharmacists in scale higher than that of Medical Store Keepers. While doing so, such of the Medical Store Keepers who possess diploma/degree in Pharmacy and are registered as Pharmacist u/s 31 or 32 of Pharmacy Act, 1948 have been decided to be redesignated as Pharmacist and are allowed revised scale of pay of Pharmacist i.e. Rs.1350-2200. It is not the case of the applicants that they do possess these requisite qualifications i.e. diploma/degree in Pharmacy and are registered as Pharmacist u/s 31 or 32 of the Pharmacy Act, 1948. If that is the case, we do not find any ground to grant any relief to the applicants. The law is clear on this point and the Hon'ble Apex Court has held that it is not for the courts/Tribunals to decide the pay scales of the employees as this matter falls squarely



within the jurisdiction of the executives or the expert bodies like the Pay Commission. The respondents have placed on record a copy of the decision of the Central Administrative Tribunal, Cuttack Bench, dated 29.9.95 in OAs 483 and 484/94. By this order, the Tribunal has held that the Courts/Tribunals have no experties on the matter which should be left open to executive authorities in regard to fixation of pay. There is a suggestion in the order that the matter be referred to the 5th Pay Commission with regard to the petitioners and similarly circumstanced employees. We find ourselves in respectful agreement with this order of the Tribunal and the suggestion made therein.

9. It is no doubt correct that initially when the applicants joined service they enjoyed the status higher than that of Pharmacists and the Pharmacists could become Medical Store Keepers on promotion. After a lapse of 15 years or so, the things have reversed and Pharmacists have been placed in the higher pay scales in comparision to the Medical Store Keepers. Of course, Medical Store Keepers possessing the qualifications as required for Pharmacists have themselves been redesignated as Pharmacists. In the circumstances of the cases like those of the applicants, there is ample justification for the department to review this pay scale keeping in view the background; and through the machinary of Departmental Anomalies Committee may evolve suitable solution at least in respect of such of Medical Store Keepers who were already in service while the 4th Pay Commission pay scales were introduced. As we have stated above, the Tribunal cannot grant any relief to the applicants as their claim is not covered under the relevant rules. The applicants do not possess the requisite qualifications which could have entitled them to be redesignated as Pharmacist. In that view, no direction can be issued in their favour.

10. We, therefore, dismiss these OAs with no order as to costs.

  
(A.P. NAGRATH)

MEMBER (A)

  
(S.K. AGARWAL)

MEMBER (J)