

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the ~~7~~¹⁰ day of October, 2010

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Original Application No. 428/2009

Gopal Lal Sharma, aged 65 years,
s/o Shri Shiv Prashad Sharma,
r/o 5-Gha-11, Jawahar Nagar, Jaipur
retired from the post of Pharmacist
from National Institute of Ayurveda,
Madhav Vilas,
Amer Road,
Jaipur.

.. Applicant

(By Advocate: Shri S.L.Songara)

Versus

1. Union of India through
the Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi.
2. National Institute of Ayurveda,
through Director,
Madhav Vilas,
Amer Road,
Jaipur.

... Respondents

(By Advocate: Shri Anurag Agarwal proxy counsel for Shri
M.D.Agarwal)

Original Application No. 429/2009

Hanuman Sahai, aged 70 years,
s/o Shri Bhawani Shankar,
retired from the post of Pharmacist
from National Institute of Ayurveda,
Madhav Vilas, Amer Road,
Jaipur r/o Jaisinghpura Khor,
Ward No.52, Jaipur

... Applicant

(By Advocate: Shri S.L.Songara)

Versus

1. Union of India through
the Secretary, Ministry of Health and
Family Welfare,
Nirman Bhawan,
New Delhi.
2. National Institute of Ayurveda,
through Director,
Madhav Vilas Amer Road,
Jaipur.

... Respondents

(By Advocate: Shri Anurag Agarwal proxy counsel for Shri
M.D.Agarwal))

O R D E R

Per Hon'ble Mr. M.L.Chauhan, M(J)

By this order, we propose to dispose of both these OAs as
common question of facts and law is involved in these cases.

2. This is second round of litigation. Earlier both the applicants
have filed CWP No.5618/1995 and CWP No.4899/95 before the
Hon'ble High Court in the year 1995. However, these cases
remained pending before the Hon'ble High Court for considerable
time and were transferred to this Tribunal to decide the same on
merit in the year 2009 consequent upon conferment of jurisdiction

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to this Tribunal to decide the matters pertaining to National Institute of Ayurveda and the same were registered as TA No. 20/2009 and TA No. 19/2009. The grievance raised by the applicants in these cases were regarding grant of revised pay scale pursuant to the order dated 21.7.1995 whereby the respondents have granted two different revised pay scales on the basis of educational qualification.

3. While disposing of the aforesaid TA on 24th August, 2009, this Tribunal by separate orders observed that similar grievance was raised in TA No.12/2009 in the case of Smt. Savitri Devi Sharma vs. Union of India decided on 5.9.2009 and the challenge made to the aforesaid notification dated 21.7.1995 was negatived relying upon the judgment of the Apex Court whereby the Apex Court held that parity in pay scale cannot be claimed when educational qualification is different. However, on the basis of the submissions made by the learned counsel for the applicant that he intend to move Misc. Application for amendment of TA incorporating additional grounds based on discrimination, inasmuch as, in case of similarly situated persons who did not possess higher educational qualification, respondents have allowed higher pay scale vide order dated 25.8.2004 whereas the said benefit has not been extended to the applicants, the applicants were permitted to file fresh OA within a period of one month and in case such OA is filed within the aforesaid period, the same will be considered on merit and it was open for the respondents to raise all permissible objections. Pursuant to the aforesaid directions, the applicants

have filed the aforesaid OAs whereby in Para 4 (XV) in OA No. 428/2009 and Para 4 (XVIII) in OA No. 429/2009, the applicants have pleaded that similarly situated employees who were earlier denied the pay scale of Rs. 1350-2200 were later on granted the benefit of the same by the respondents. For that purpose, reliance has been placed on the letter dated 28.8.2009 (Ann.A/6) whereby desired information under RTI Act was supplied vide letter dated 21.7.2004 enclosed with Ann.A/6.

4. Notices of both these applications were given to the respondents. The respondents have filed reply. The plea of discrimination as raised by the applicants has been repelled by the respondents against relevant paragraphs whereby it was stated that the benefit of pay scale of Rs. 1350-2200 has been given to the employees who were entitled to the same. However, the fact that the information as sought by the applicants under RTI Act, which formed part of Ann.A/6, was supplied to the applicants has not been denied.

5. The applicants have filed rejoinder thereby reiterating the plea taken by them in the OAs. In the rejoinder, the applicants have taken additional plea that they have submitted representation dated 3.9.2009 to the respondents but even then their cases were not referred to the Review Committee just like similarly situated employees namely Smt. Annama, M.J. Pharmacist; Smt. Salimore M, Staff Nurse (Ayr), Ms. Jessy Roy, Staff Nurse (Ayr).

6. We have heard the learned counsel for the parties and gone through the material placed on record.

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7. At the outset, it may be stated that the question whether parity in pay scale can be claimed where the educational qualification is different in respect of same institute has been decided by this Tribunal in the case of Smt. Savitri Devi vs. National Institute of Ayurveda in TA No.12/2009 decided on 5th August, 2009, copy of which has been placed by the respondents as Ann.R/2. At this stage, it will be useful to quote para 7, 8 and 9 of the order, which thus reads:-

"7. The sole question which requires our consideration is whether the parity in pay scale can be claimed when educational qualification is different. In other words, whether classification based on educational qualification is a reasonable classification as permissible under Article 14 of the Constitution of India ? At the outset, it may be stated that the matter on this point is no longer res-integra. The Hon'ble Apex Court in the case of Sita Devi & Ors. vs. State of Haryana and Ors., 1996 SCC (L&S) 1321, has held that classification on the basis of educational qualification has always been upheld by this Court as reasonable and permissible under Article 14. The appellants before the Apex Court were non-matriculate. Their case was that they too have been performing same duty as had been performed by matriculate teachers. The Apex Court held that where the petitioners complain of unlawful discrimination offending Article 14, it is for them to satisfy the Court that the distinction made is irrational and baseless and that it really amounts to unlawful discriminated prohibited by Article 14. It was further held that classification on the basis of educational qualification is reasonable and permissible under Article 14.

8. Further, the Apex Court in the case of State of Bihar vs. Bihar State + 2 Lecturers Associations, AIR 2007 SC 1948, has held that trained and untrained lecturers belong to two categories and these constitute different classes. The classification is reasonable and is based on intelligible differentia which distinguishes one class (trained) included therein from the other class (untrained) which is left out. Thus, it cannot be successfully contended that different pay scales cannot be fixed for trained lecturers on one hand and untrained lecturers on the other hand. Further, the Hon'ble Apex Court in the case of Sohan Singh Sodhi vs. Punjab State Electricity Board, Patiala, (2007) 2 SCC (L&S) 198 has held that parity in pay scale cannot be claimed when educational qualification is different and fixation of different scale of pay

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for the employees on the basis of educational qualification per se not discriminatory. The Hon'ble Apex Court has relied upon a number of decisions including the decision of Three Judge Bench in the case of Government of West Bengal vs. Tarun Kumar Roy, 2004 SCC (L&S) 225 whereby the Apex Court after noticing several other decisions held that parity in pay cannot be claimed when the educational qualification is different. Thus viewing the matter in the light of the law laid down by the Apex Court we are of the view that the applicant is not entitled to any relief.

9. Yet for another reason, the applicant is not entitled to any relief. As can be seen from the order dated 21.7.1995 (Ann.A/3). The Government have re-designated certain posts as Pharmacist and Staff Nurse and also sanctioned pay scale of Rs. 1350-2200 to these categories which scale was applicable to those who fulfill educational qualification and experience at par with their counterparts in C.G.H.S. It is further stipulated in the said order that those who do not fulfill the requisite qualification and experience will be given the scale of Rs. 1200-2040. The order came into effect from 1st June, 1995. At this stage, it will be useful to extract the said order in extenso, which thus reads:-

"In pursuance of Ministry's letter No.V.28011/20/1992 Ay.Desk-II dated 18.7.95 sanction is hereby conveyed to the revision of Scale of Pay and redesignation of Dispensers & Nursing Sister as Pharmacist and Staff Nurse (Ayurveda) respectively as follows:-

The Posts of Dispensers, Sr. Dispenser and Pharmacist are redesignated as Pharmacist; and Nursing Sister as Staff Nurse (Ayurveda), the Scale of Pharmacist and Staff Nurse (Ayurveda) will be Rs. 1350-2200).

The above Scale will be applicable to those who fulfil the qualifications and experience at par with those of their counterparts in C.G.H.S.

Those who do not fulfill the requisite qualifications and experience will be given the scale of Rs. 1200-2040.

This comes into effect from 1st June, 1995."

As can be seen from the prayer clause, the applicant has not challenged validity of this order. Even on this ground, the applicant is not entitled to any relief..."

8. The finding given by this Tribunal as reproduced above in the case of Savitri Devi (supra) is squarely applicable in the facts and

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circumstances of these cases. Thus, we see no infirmity in the action of the respondents whereby the applicants were not given higher pay scale of Rs. 1350-2200 as admittedly, the applicants do not fulfill the requisite qualification and experience for the post in question. However, the applicants have also not challenged validity of the order dated 1.6.1995 prescribing two separate pay scales for the post of Dispensers, Sr. Dispenser and Pharmacist which are redesignated as Pharmacists and Nursing Sister as Staff Nurse (Ayurveda) and Pharmacist and Staff Nurse (Ayuveda) were given the pay scale of Rs. 1350-2200. This scale will be applicable to those who fulfill the qualification and experience at par with those of their counterparts in the C.G.H.S. and those who do not fulfill the requisite qualifications and experience will be given the pay scale of Rs. 1200-2040. Thus, even on this ground, the applicants are not entitled to any relief without challenging the validity of the aforesaid order.

9. Now the next question which requires our consideration is whether the applicants have made out a case for discrimination, inasmuch as, the higher pay scale has been granted to Smt. Annama, MJ, Pharmacist, Smt. Salimore M, Staff Nurse (Ayr) and Ms. Jessy Róy, Staff Nurse (Ayr) in terms of letter dated 21.7.2004 whereas no such higher scale of Rs. 1350-2200 was granted to the applicants. As can be seen from the letter dated 21.7.2004 issued by the Govt. of India, Ministry of Health and Family Welfare, Department of Ayush, which decision has been taken on the representation of above three persons, it is evident that the Government has taken a conscious decision to the effect that

these three employees who were allowed the pay scale of Rs. 1200-2040 should be placed in the pay scale of Rs. 1350-2200 as they possess equivalent qualification of other staff whom the upgraded pay scale of Rs. 1350-2200 was allowed. It is further recorded in Para-4 that all of them were selected and appointed on the basis of same advertisement on the same post and pay scale in 1987. In Para-5 educational qualification for the post of Nursing Sister and Dispensers as advertised at the relevant time has been noticed and in Para-6 the Govt. had clarified intent of last portion of the order dated 1.6.1995 viz. those who do not fulfill the requisite qualification/experience may be given the scale of Rs. 1200-2040 to mean that the National Institute of Ayurveda (NIA) was established in 1976 and most of the employees working in the Institute had been taken from erstwhile State govt., Ayurvedic College, Jaipur. They were later absorbed in the NIA and since few of them were not having even the basic qualification of diploma/certificate they were to be granted lower scale and not the one who do possess/fulfill educational qualification at the time of recruitment made through the open advertisement. Thus, from this clarification issued by the Govt. of India vide letter dated 21.7.2004 to the earlier order dated 1.6.1995, it is evident that persons who were absorbed in the NIA and fulfill the qualification and experience for the post of Nursing Sister and Dispenser shall be considered for upgraded scale. In other words, persons who possess/fulfill the educational qualification at the time of absorption in the Institute are to be treated as possessing qualification and experience at par with their

counter-parts in C.G.H.S. for the purpose of grant of pay scale of Rs. 1350-2200. In Para-7 of the subsequent letter dated 21.7.2004 academic and technical qualification of three persons who were granted pay scale of Rs. 1350-2200 has been mentioned. Thus contention of the learned counsel for the applicant that they were similarly situated to that of above mentioned three persons whose name find mention in order dated 21.7.2004 is wholly misconceived.

These three employees, whose representations were accepted by the Government were fulfilling the requisite qualification for the post at the time of initial recruitment whereas the applicants were absorbed, though they were not having even the basic qualification of diploma/certificate. Thus, the contention so raised by the learned counsel for the applicants based on discrimination deserves out right rejection.

10. Further, the submission made by the applicants based upon the averment made in the rejoinder that the applicants have submitted representation dated 3.9.2009 even then their cases were not referred to the Review Committee, as was done in the case of three persons who have made representation, also requires out right rejection. Admittedly, both the applicants have retired from service in the year 2002 and 2003. Three employees whose representations were accepted had made representation in the year 2003 which resulted into the decision vide letter dated 21.7.2004. Order regarding grant of pay scale based upon educational qualification was issued on 1.6.1995. As such, no direction can be given to the respondents to consider stale claim of

the applicants after more than 14 years. The view we have taken is in conformity with the law laid down by the Hon'ble Apex Court in the case of C. Jacob vs. Director of Geology and Mining and Anr., (2008) 2 SCC (L&S) 961 whereby the Apex Court has held that courts should be circumspect in issuing such direction as it ultimately leads to consideration the case on merit at subsequent stage of litigation as if the cause of action stood revived due to fresh consideration.

11. Thus, viewing the matter from any angle, we are of the firm view that the applicants have not made out a case for grant of relief. Accordingly, both the OAs are dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)

Admv. Member

M.L.Chauhan
(M.L.CHAUHAN)
Judl. Member

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