

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

**ORDERS OF THE BENCH**

**Date of Order: 31.03.2015**

OA No. 480/2013

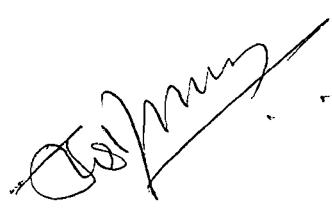
Mr. A.K. Garg, counsel for applicant.  
Mr. Mukesh Agarwal, counsel for respondent nos. 1 & 2.  
Mr. M.D. Agarwal, counsel for respondent no. 3.

Applicant is also present in person.

Arguments heard.

Order is reserved.

*Anil Kumar*  
(ANIL KUMAR) (JUSTICE HARUN-UL-RASHID)  
ADMINISTRATIVE MEMBER JUDICIAL MEMBER



Kumawat

1/4/2015

order pronounced today  
in the open court by  
the aforesaid Bench.

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1/4/15  
C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR.**ORIGINAL APPLICATION No. 480/2013****ORDER RESERVED ON: 31.03.2015****DATE OF ORDER : 14.2015**

CORAM :

**HON'BLE MR. JUSTICE HARUN UL-RASHID, JUDICIAL MEMBER  
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

Praveen Benson wife of Shri Vinod Benson aged about 59 years, resident of 66, Govindpuri, Gayatri Nagar, Ajmer Road, Sodala, Jaipur. Presently working as Matron/Nursing Superintendent, National Institute of Ayurveda, Madahv Vilas Palace, Amer Road, Jaipur.

... Applicant  
(By Advocate: Mr. A.K. Garg)

Versus

1. Union of India through the Secretary, Department of AYUSH, Ministry of Health and Family Welfare, B-Block GPO Complex, New Delhi.
2. Ministry of Finance, Department of Expenditure, Government of India, New Delhi through its Secretary.
3. The Director, National Institute of Ayurveda, Madhav Vilas Palace, Amer Road, Jaipur.

... Respondents

By Advocate: Mr. Mukesh Agarwal - Respondents nos. 1 & 2  
Mr. M.D. Agarwal - Respondent no. 3.

**ORDER****PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

The applicant has filed the present OA praying for the following reliefs:-

- "(i). To direct the respondents to agree to the representations and grant correct pay fixation on the post of Assistant Matron and Matron w.e.f. October, 1996 and 25.08.2009 respectively along with arrears on account of revised pay fixation with reasonable interest thereat till final payment to the applicant.
- (ii) To direct the respondents to pay benefits under MACP fixation of pay 15600-39100 Grade Pay Rs.6600/- to the applicant w.e.f. 01.09.2008 and enhanced salary benefits accordingly.
- (iii) Any other relief which the Hon'ble Tribunal deems fit in the facts & circumstances of the case may be allowed to the applicant.

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(iv) Exemplary Costs of the litigation may also kindly be directed to be paid by the respondent Institute to the applicant."

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was initially appointed on the post of Allopathy Staff Nurse in the scale of Rs.1400-2600 vide office order dated 04.11.1987. That the applicant is governed by the Rules NIA Service Rules, 1982.

3. The applicant was subsequently promoted to the post of Assistant Matron in the scale of Rs.2000-3200 (pre-revised), which was later on revised to Rs.6500-10500/- on the recommendations of the 5<sup>th</sup> Pay Commission vide order dated 17.10.1996.

4. The applicant submitted representations for grant of correct pay band and correct pay on the post of Assistant Matron and Matron after completion of 13 years whereas the service rules provide for such promotion on completion of five years on the post of Assistant Matron. The last representation dated 12.01.2013 has not been properly responded and no final decision has been taken as yet.

5. That the respondents institute granted pay scale of Rs.9300-34800/- (6<sup>th</sup> CPC) PB-2 Grade Pay 4600 instead of the applicant's entitlement for Rs.15600-39100 with Grade Pay Rs. 5400/-. Thus there is the basic difference of Rs.6300/- and other admissible allowance w.e.f. October, 1996.

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6. The applicant on promotion as Matron on 25.08.2009 was given pay scale of Rs.8000-13500 as per 5<sup>th</sup> CPC and Rs.9300-34800/- (6<sup>th</sup> CPC) with Grade Pay of Rs.5400 in PB-2 against her entitlement of Pay Band-3 of Rs.15600-39100 with Grade Pay Rs.6600/-. Thus she has been paid less 1200/- per month in the Grade Pay and other admissible allowances with effect from 25.08.2009.

7. The respondents under the MACP Scheme granted pay scale of Rs.9300-34800/- plus Grade Pay Rs.4800/- which should have been more as a result of the aforesaid correct grant of pay scale and grade pay.

8. The learned counsel for the applicant also submitted that the pay scale of Rs.8000-13500/- which is given to Matron was given to Late Shri Kamlesh Kumar Sharma (Ayurveda Compounder) in the year 1999 and to Smt. Annamma M.J., working as Pharmacist in the year 2008 and then how can the applicant be discriminated.

9. Thus it is clear that the applicant has been paid less salary and allowances than her entitlement. The Institute have already given higher pay scale and pay to few of the employees like Mr. Rajendra Prasad Sharma, Mr. N.N. Kuttey and Mr. J.P. Sharma. That the applicant is entitled for similar treatment.

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10. The learned counsel for the applicant submitted that the respondent Institute vide its reply dated 28.02.2013 (Annexure A/16) only intimated the applicant that the proposal for upgradation of pay scales of Assistant Matron and Matron have been sent to the Ministry of Ayush and the same are still pending for decision.

11. It has been further stated that the respondent Institute is duty bound to follow similar pay scales as obtained in the Central Government and other organizations under the Ministry of Health and Family Welfare. Therefore, the OA be allowed and the respondents be directed to fix the correct pay and grade pay to the applicant.

12. The respondents have filed their reply. In their written reply, they have denied that there is any right of the applicant to get grade pay of Rs.6600/-, as prayed for by the applicant. The applicant submitted a representation in pursuance to the order passed by the Central Administrative Tribunal in OA No. 863/2012 and the respondents have replied to the representation vide letter dated 28.02.2013 (Annexure A/16).

13. The respondents have submitted that if the applicant was aggrieved by her fixation in the year 1996 then she should have challenged that order of pay fixation at the very first instance. Now after a lapse of long time and to cover up the huge delay of many years, the applicant in the garb of order passed by this Tribunal in OA No. 863/2012 want to challenge the pay fixation

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done in the year 1996 and is trying to get the delay of years together condoned in the garb of the order dated 04.01.2013 passed by this Tribunal. The OA is hopelessly delayed and hence it should be dismissed on the ground of delay alone.

14. The respondents have submitted in their written reply that as per NIA Service Rules, 1982, the post of Assistant Matron and Matron are classified under Group 'B' category. The post of Assistant Matron and Matron are to be filled by promotion. One post of Matron was created in the Institute vide letter dated 12.02.2009 in the pay scale of Rs.8000-13500/- (pre-revised) and the same was filled up by promotion of the applicant w.e.f. 28.05.2009. The benefit of MACP has also been granted to the applicant in accordance with the provisions of NIA Service Rules in vogue.

15. The respondents have stated that according to the recommendations of the 6<sup>th</sup> CPC, the pay scale of Rs.8000-13500 is shown in Pay Band -2, 9300-34800 with Grade Pay 5400 and also in Pay Band-3 15600-39100 with Grade Pay of Rs.5400 by indicating Group 'A' entry level. As per NIA service Rules, 1982, the post of Matron is promotional post in Group 'B' and not in Group 'A'. Therefore, PB-2 9300-34800/- with Grade Pay Rs.5400/- was granted to the applicant and pay fixation was done accordingly. The applicant joined the said post without any objection whatsoever. The question of payment of less salary to the applicant does not arise.

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16. The respondents have submitted that Shri Kamlesh Sharma was initially appointed as Compounder in the State Ayurveda College, Jaipur and subsequently absorbed in NIA w.e.f. 01.01.1979. He was sanctioned II ACP in the ACP Scheme w.e.f. 09.08.1999 in the pay scale of Rs.8000-13500/- which is next hierachal scale in the cadre. Similarly Smt. Annamma M.J. was also granted second ACP in the pay scale of Rs.8000-13500/- w.e.f. 30.05.2008 (Annexure R/4).

17. The respondents have submitted that the applicant could not get pay upgradation under ACP Scheme due to the fact that before becoming eligible for grant of pay upgradation under ACP Scheme, she got promotion as Assistant Matron on 17.10.1996 in the pay scale of Rs.6500-10500 and subsequently as Matron of 25.08.2009 in the pay scale of Rs.8000-13500/-. The respondents have further stated that as regards the grant of higher pay scale to the persons promoted to the post of Administrative Officer is concerned, as per recruitment rules, the post of Administrative Officer has been classified as Group 'A' post and, therefore, the persons concerned have been granted the grade Pay of Rs.5400/- in Pay Band -3 Rs.15600-39100/- as per recommendation of 6<sup>th</sup> CPC. Hence no discrimination has been done with the applicant.

18. The respondents have denied that the respondent Institute has not complied with any direction of Government of India, as alleged by the applicant. There cannot be a comparison with the pay scale given by the Government of Rajasthan and the

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respondent Institute. The respondents have also denied that reply dated 28.02.2013 is meaningless. On the contrary, the reply dated 28.02.2013 has clarified all the facts. The applicant has not been deprived of any of her rightful claim nor has any discrimination been made. The applicant has not been paid less salary/emoluments in any manner. The applicant is not entitled for the pay scale as demanded by her as she is getting the pay scale according to NIA Rules.

19. Therefore, the OA has no merit and it should be dismissed with costs.

20. The applicant has also filed the rejoinder.

21. Heard the learned counsel for the parties and perused the documents on record. During the arguments, the applicant herself admitted that she is restricting her prayer to the relief under 6<sup>th</sup> CPC and she is not praying for the relief w.e.f. 1996.

22. The learned counsel for the respondent no. 3 raised a preliminary objection with regard to delay in filing the OA. The learned counsel for the applicant submitted that earlier the applicant had filed an OA No. 836/2012. Along with the OA, the applicant had also submitted an MA for condonation of delay. Vide order dated 04.01.2013 of the Tribunal, the applicant was given liberty to file a detailed representation before the respondents and the respondents were expected to consider the same expeditiously. It was also stated in the order that if any

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prejudicial order is passed against the applicant, she would be at liberty to file substantive OA. The respondents have decided the representation of the applicant vide letter dated 28.02.2013 and being aggrieved by this communication, the applicant has filed the present OA. Therefore, it cannot be said that the OA is time barred.

23. Having considered the rival submissions of the parties on the question of limitation, the OA was heard on merit.

24. We have carefully perused the letter dated 28.02.2013 (Annexure A/16). The respondents have categorically informed the applicant that one post of Matron in the pay scale of Rs.8000-13500/- was created vide letter dated 12.02.2008 and this post was filled up by giving promotion to the applicant. According to the recommendation of the 6<sup>th</sup> CPC, the pay scale of Rs.8000-13500/-is shown in PB-2 9300-34800 with Grade Pay of Rs.5400 and also shown in PB-3 15600-39100 with Grade Pay Rs.5400 by including Group 'A' Entry Level. The respondents have also informed that the post of Matron is promotional post under Group 'B' and not Group 'A'. Therefore, PB-2 9300-34800 with Grade Pay Rs.5400/- was granted to the applicant and accordingly the pay fixation has been done. The applicant has been informed that as per the information received from Nursing Council of India, the qualification of Nursing Superintendent is much higher than the Post of Matron, mentioned in the NIA Service Rules and cannot be compared with Nursing Superintendent. It has also been informed to the applicant that

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her proposal regarding upgradation of pay scale of Assistant Matron and Matron has already been submitted to the Department of Ayush for consideration and the same is under consideration in the Department of Ayush. We have carefully perused the essential qualification and experience of Nursing Superintendent, which is as follows:-

1. Master Degree in Nursing.
2. Ten years & Experience in Nursing in which 3 years as Deputy Nursing Superintendent and 7 years as Assistant Nursing Superintendent.

On the other hand, the essential qualification of Matron are as follows:-

1. Higher Secondary or equivalent examination.
2. Certificate of Ayurvedic Nursing Qualification if not certificate of A Grade nurse and registered with the Nursing Council of India.
3. 3 years experience as Assistant Matron in a recognized Hospital  
OR

B.Sc. in Nursing from a University.

Thus admittedly, the qualification and experience of Nursing Superintendent are much higher than that of Matron. Therefore, the applicant cannot compare herself with the pay band and grade pay of Nursing Superintendent.

25. From the reply of the respondents, it is clear that the applicant has not been discriminated viz-a-viz other employees of the Institute. The respondents in their reply have clarified the position. With regard to Shri Kamlesh Sharma and Ms. Anamma, which was referred to by the applicant in her OA, we are satisfied with the clarification given by the respondents in their reply. Similarly, the respondents have categorically stated that the post of Administrative Officer is a Group 'A' post and hence it is in pay band-3 15600-39100 with Grade Pay 5400

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whereas the post of Matron is a Group 'B' post, therefore, its pay is in pay band-2 of Rs.9300-34800/- with Grade Pay of Rs.5400/-. Obviously, the post of Administrative Officer, which is a Group 'A' post cannot be compared with Group 'B' post, which the applicant is holding as Matron.

26. Thus on the basis of above discussion, we do not find any merit in the present OA and hence it is dismissed with no order as to costs.

27. However, in view of the fact that the case of the applicant has been referred to the Department of Ayush for consideration, therefore, if the Department of Ayush agrees with the proposal for upgradation of pay scale of Assistant Matron and Matron then this order of the Tribunal rejecting the present OA would not come in the way of the respondents to take a decision with regard to the upgradation of pay scales of Assistant Matron and Matron.

*Anil Kumar*  
(Anil Kumar)  
Member (A)

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*Harun-Ul-Rashid*  
(Justice Harun-Ul-Rashid)  
Member (J)