

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
CHANDIGARH**

Filed on: 07.10.2014

Reserved on: 09.09.2016

Pronounced on: 14.09.2016

OA No. 060/00895/2014

Coram: Hon'ble Mr. Justice L.N. Mittal, Member(J).
Hon'ble Mrs. Rajwant Sandhu, Member(A).

Mrs. Simarjit Bhullar W/o Sh. J.S. Bhullar aged 61 years, Ex-DNS (APC) File No. 206 and resident of House No.671, Sector 11-B, Chandigarh.

.....Applicant

By Advocate : Sh. Jagdeep Jaswal

Versus

1. Postgraduate Institute of Medical Education and Research, through its Director, Sector 12, Chandigarh.
2. Medical Superintendent, Postgraduate Institute of Medical Education and Research, Service Book Section, Sector 12, Chandigarh.
4. Assistant Admn. Officer in the O/o Medical Superintendent, PGIMER, Service Book Section, Sector 12, Chandigarh.

.....Respondents

By Advocate : Sh. Saurabh Gulia

ORDER

By Hon'ble Mrs. Rajwant Sandhu, Member(A):-

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief(s):-

- (i) The impugned order dated 04.02.2014 (Annexure A-1), 23.02.2013 (Annexure A-2) and dated 17.4.2013 (Annexure A-3) be quashed and set aside being wholly illegal and arbitrary.
- (ii) The respondents be directed to consider the claim of applicant for refixation of her pay at par with other similarly situated employees as per option dated 15.3.2002 with all consequential benefits alongwith interest.

2. It is stated in the OA that the applicant initially joined the services of PGIMER w.e.f.1.6.1974 as Sister Grade II and was further promoted as Sister Grade I, ANS and DNS. She retired from service on 30.04.2013. While working as Sister

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Grade I, the applicant became eligible for the benefit of second ACP in the pay scale of Rs. 6500-10500 w.e.. 09.08.1999 and was granted the same. The applicant also submitted her option dated 15.3.2002 vide dispatch No.MOT/206/15.03.2002 for pay fixation from the date of her annual increment due in June every year. A copy of the option letter dated 15.03.2002 is attached as Annexure A-4. The colleagues of the applicant who also joined in 1974 received arrears of increment in 2012, but apparently due to non-implementation of the option exercised by the applicant, she got much lesser amount since she had been drawing her basic pay at a lower stage i.e. Rs.24340 whereas the basic pay of her other colleagues/juniors was Rs. 24810. The applicant submitted a representation dated 14.12.2012 (Annexure A-5), but the same had been rejected vide impugned order dated 23.02.2013 (Annexure A-2). Another representation dated 04.04.2013 (Annexure A-5/A) had also been rejected vide impugned order dated 17.4.2013 (Annexure A-3) stating that as per Government's instructions, the option was to be exercised within one month. Hence this OA.

3. In the grounds for relief, judgments in some cases decided by the Tribunal have been cited to support the claim of the applicant.

4. In the written statement filed on behalf of the respondents, it has been stated that financial upgradation after 24 years under ACP Scheme w.e.f. 09.08.1999 in the pay scale of Rs. 6500-10500 (Central Pay Scale) plus usual allowances as admissible at the PGIMER was granted to Mrs. Simarjit Bhullar (retired as DNS on 30.04.2013) vide office letter No. EV (9)- PGI-2002/4730-57 dated 07.03.2002 (Annexure R-1). In terms of this letter, it was clearly mentioned that an applicant was required to submit her option directly to the Financial Advisor within one month from the date of issuance of this office letter. However, the present applicant failed to exercise her option. Therefore, her pay could not be refixed in accordance with the extant Government orders. With respect to the option letter dated 15.03.2002 as



submitted by the applicant, the same is not traceable in the records of the answering respondents despite best efforts. Rather the truth of the matter is that no such option was exercised by the applicant as being stated now. In this regard, the necessary intimation has already been sent to the concerned official vide office letter No. MS/SBS/2014/33 dated 04.02.2014.

5. In the rejoinder filed on behalf of the applicant, it is stated that even if it is presumed that applicant did not submit her option or submitted a wrong option, she was getting pay at par with her colleagues and difference has arisen only in 2012, when vide DOPT instructions dated 19.03.2012 (Annexure A-11), the employees in whose case increment was due between January to June have been granted one extra increment and it is thereafter only the pay fixation of applicant has been proved disadvantageous to her causing financial loss every month. Such circumstances have already been dealt with by the DOPT vide its OM dated 25.02.2003 (Annexure A-12) and it was decided therein that employees can be allowed to revise their option in the event of unanticipated development/change of rule etc. In the present case, the applicant and her colleagues were getting equal pay before DOPT instructions dated 19.03.2012, and it is only after the said instructions have been issued, the colleagues of applicant were getting higher pay than her. Therefore, as per DOPT letter dated 25.02.2003, applicant is entitled for revision of her option and therefore in that circumstance as well, she would be entitled to relief claimed in OA.

6. Arguments advanced by the learned counsel for the parties were heard when the learned counsel for the applicant stated that the applicant had submitted her option regarding the date of grant of financial upgradation under ACP taking into account the date of her increment, but the same had apparently not been acted upon by the respondents. It was only when OM dated 19.03.2012 (Annexure A-11) was issued by Department of Expenditure, Ministry of Finance, Government of India and

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the colleagues of the applicant got substantial arrears of pay that she realized that she was getting lesser pay than her colleagues who were similarly situated in terms of post and years of service. Learned counsel also stated that the claim in the OA related to a recurring cause of action and the applicant be allowed to give her option again so that she would benefit by way of revised pay fixation and consequential enhancement of her pension.

7. Learned counsel for the respondents merely reiterated the content of the written statement and stated that the applicant's option claimed to have been submitted by her on 15.3.2002 was not available in the records of PGI and hence, no action had been taken regarding the same.

8. We have given our careful consideration to the matter. It appears from the rejoinder filed on behalf of the applicant that prior to 2012, the applicant was getting the same salary as her colleagues and hence, had no grievance. It was only with the issue of OM dated 19.03.2012 (Annexure A-11) that the position had changed and while the colleagues of the applicant got substantial arrears on account of the revised pay fixation, the applicant did not benefit similarly. The root of this appears to be the non-fixation of the pay of the applicant on being granted financial upgradation under the ACP Scheme from the date of her annual increment which fell in June at the time when the ACP Scheme was to be implemented.

9. At this stage, it is difficult to determine categorically whether the applicant had indeed submitted her option as she claims on 15.3.2002 and the PGI authorities had not acted on the same or that the option was never submitted by her and hence her pay revision after financial upgradation under the ACP Scheme was effected from the date of implementation of the scheme qua the applicant. We would prefer to give the applicant the benefit of doubt and hence the respondents are directed to fix the pay of the applicant on financial upgradation under the ACP Scheme in the pay scale of Rs. 6500-10500 from the date of her annual increment

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which fell in June of the relevant year notionally. However, arrears due to the applicant on account of the revision of pay/refixation of pension may be released to the applicant only for a period of 18 months prior to the date of filing of the OA i.e. from 26.3.2013 onwards.

10. With the above observations, this OA is allowed. No costs.

(RAJWANT SANDHU)
MEMBER(A)

(JUSTICE L.N. MITTAL)
MEMBER(J)

Dated: 14.9.2016
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