

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 2409/2013

Reserved on 27.07.2016
Pronounced on 03.08.2016

Hon'ble Mr. K.N.Shrivastava, Member (A)

Mrs. Anneyamma Johny,
W/o Johny Mathew,
R/o A-9, First Floor, South City-II,
Gurgaon.
Employees with Respondent No.3 ... Applicant

(Present in person)

VERSUS

1. The Secretary, Ministry of Finance,
Department of Expenditure,
North Block, New Delhi.
2. The Secretary and Financial Adviser,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi.
3. The Director, LRS Institute of TB &RD,
Sri Aurbindo Marg,
New Delhi-30 ... Respondents

(By Advocate: Ms.Neha Bhatnagar)

ORDER

This Original Application (OA) has been filed under Section 19 of the Administrative Tribunals Act, 1985 by the applicant who is a Staff Nurse working under Respondent No.3. The specific reliefs calimed by her in the OA read as under:-

- “(a) Direct the Respondents to follow it fully, without any reservations and implement the allowance in letter and spirit on par as decided by the Cabinet as well as recommended by the 6 CPC.

- (b). Declare the Notification No.7 (20) /2008-E.III (A), dated 24.9.2008, as illegal, arbitrary, discriminatory, unreasonable, unjust and inequitable and quash and set aside the same and implement the allowances in letter and spirit on par as decided by the Cabinet.
- (c). Direct to issue the Notification doubling the Grant of additional increments (Qualification pay) to Nursing Staff and increasing the all allowance by 25% when DA payable on revised pay scales gone up by 50% on 1.1.2012.
- (d). Direct that the arrears which are due to the applicants from 1.9.2008, annual increase of allowance due to increment and second level arrears from 1.1.2012 onwards be immediately paid to the applicant herein along with interest at the rate of 15% per annum; and
- (e). Direct that the cost be paid to the Applicant.
- (f). Pass such other and further orders as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the case."

2. The brief facts of this case are as under:

2.1 The applicant is working as Staff Nurse with the Respondent No.3 since 22.03.1996. Her claim is that in terms of the Sixth Central Pay Commission (6 CPC) recommendations, she is entitled to get some enhanced allowances which have been denied to her. These are:

Family Planning Allowance (FPA), additional increment (in short qualification allowance (QA) to Nursing staff and Intensive Care Unit Allowance (ICUA).

2.2. She has contended that Government of India had decided that the recommendations of 6 CPC in respect of Government employees shall be accepted as a package subject to modification thereof vide Resolution No.

1/1/2008 IC dated 29.08.2008. The Government decision regarding Miscellaneous allowance as mentioned in Annexure 1, Part B, Serial no. 8 of Resolution reads as under:-

"The Commission recommends doubling of the extant rates of Cycle Allowance, Washing Allowance, Special Allowance, Night Duty Allowance and Split Duty Allowance. Similarly, rates of allowances specific to different Ministries/ Departments/ Organizations not covered in this Report will also be doubled. The rates of these allowances will be increased by 25% every time the Dearness Allowance payable on revised pay scales goes up by 50% (Para No. 4.2.81)" Para 4.2.81 of the Report states the same without changes even in punctuation. (Relevant part of resolution at page No. 54 and recommendation at page No. 254 & 255 enclosed as Annexure A & B respectively)."

According to her, as per the decision of the Government of India and also as per the recommendations of 6 CPC, the Miscellaneous allowances are to be doubled. The applicant alleges that in the OM No.7(20)/2008-E.III (A) dated 24.09.2008 (Annexure 15-17 of the paper book), Respondent No.1 has replaced the word 'rates' with the word 'amount' which has created the controversy.

3. Aggrieved by the said OM, the applicant has filed the instant OA.

4. Pursuant to the notice issued only Respondent No. 3 has filed reply. Respondent No.1 and 2 did not file their reply despite several opportunities given to them.

5. The case was taken up for hearing the arguments of the parties on 27.07.2016. Shri Johny Mathew, the husband of the applicant who is Special Power of Attorney holder of the applicant argued the case on behalf of applicant. Ms. Neha Bhatnagar, learned counsel argued the case on behalf of respondent No. 3. The Tribunal had permitted Shri Johny Mathew, husband of the applicant to argue the case on behalf of applicant vide order dated 22.01.2015.

6. Shri Johny Mathew argued that the Gazette Notification of Government of India (Annexure-A) in which 6 CPC recommendations, as accepted by the Government, have been published and that the impugned OM dated 24.09.2008 is not in conformity with Annexure-A. He alleged that the respondents have failed to implement the recommendations of 6 CPC in regard to FPA, QA and ICUA. Concluding his arguments Shri Johny Mathew submitted that respondents may be directed to implement the 6 CPC recommendations in true letter and spirit and that the relief prayed for by the applicant in the OA may be granted.

7. Per contra, Ms Neha Bhatnagar, learned counsel for Respondent No. 3 submitted that applicant has claimed multiple reliefs in this OA which is not allowed under the Administrative Tribunals Act, 1985. She further submitted that the impugned order is dated 24.09.2008 whereas the applicant has challenged the said order much belatedly, after a lapse of about five years, in the year 2003 and as

such the OA is hopelessly time barred. It was also submitted that respondent No. 3 has simply implemented the directions of Ministry of Finance on the issue of Miscellaneous allowance viz; FRA, QA and ICUA. Concluding her arguments, she submitted that the 6 CPC has only made recommendations and it was upto the Government of India to decide whether to implement the recommendations in toto or with certain modifications. She said that the impugned OM dated 24.09.2008 has been issued by the Department of Expenditure (Ministry of Finance) after due consideration and the applicant has no right to question that. Concluding her arguments, she submitted that the OA is liable to be dismissed both on the ground of limitation as well as on merit.

8. Replying to the arguments of learned counsel for Respondent No. 3, Shri Johny Mathew argued that the applicant has not prayed for multiple reliefs and that the reliefs prayed for emanate from the impugned OM of Respondent No.1 dated 24.09.2008.

9. I have considered the arguments put-forth by the learned counsel for the parties and have also gone through the pleadings and the documents annexed thereto. It is quite clear that Respondent No.3 was duty bound to implement all the directions issued by Respondent No.1 and 2 by way of OM and Circulars and had no independent authority to act on the issues involved. Further, Respondent No.1 is the nodal Department in the matter

of pay and allowances of all classes of Governments employees across Ministries/Departments. The Pay Commission only makes recommendations to the Government who have the privilege and authority to accept the recommendations made by the Pay Commission as they are, or accept them with some modifications. The recommendations of the 6 CPC in the matter of Miscellaneous Allowance, as mentioned by the applicant in the OA, have been implemented by the Government vide impugned OM dated 24.09.2008, with certain modifications. The action taken in this regard by the Government cannot be questioned by anyone legally. Further, the applicant has questioned the impugned OM after about five years of its issuance by way of filing the instant OA and as such the OA is definitely barred by limitation.

10. In view of the discussions in the foregoing paras, I hold that the OA is devoid of merit as well as it also suffers from limitation. Accordingly, the OA is dismissed.

11. No order as to costs.

(K.N.Shrivastava)
Member (A)

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