

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 2601/2013

Order reserved on: 1.12.2015
Order pronounced on: 8.12.2015

Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Mr. P.K. Basu, Member (A)

Mrs. Gurmeet Kalia (Singh)
C/o Dr. Gurdev Singh Kalia
BD-62-B, Shalimar Singh
New Delhi-110088

... Applicant

(Through Shri A.P. Dhamija, Advocate)

Versus

1. The Union of India through
Secretary (Estt.)
Ministry of Railways,
Railway Board,
Rail Bhawan, New Delhi
2. The General Manager (Personnel)
South Eastern Railway,
Garden Reach,
Kolkata-700043
3. Chief Personnel Officer (Medical)
South Eastern Railway,
Garden Reach,
Kolkata-700043
4. Chief Medical Director
South Eastern Railway,
Central Hospital,
Garden Reach, Kolkata-700043

... Respondents

(Through Shri Shailendra Tiwari, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant was appointed as Audio Metrician-cum-Speech Therapist. She joined service in 1976 and retired on the same post with effect from 31.03.2009 on attaining the age of superannuation. She is seeking higher pay scale of Rs.5500-9000 (5th Pay Commission) in replacement of pay scale of Rs.1400-2300 with effect from 1.01.1996, as has been done in the case of similarly situated Dietician and Physio Therapist working in the medical department, who were drawing similar scale of pay and were holding isolated post, as the applicant.

2. The applicant filed OA 47/2002 before the Kolkata Bench of the Central Administrative Tribunal, which was disposed of vide order dated 1.12.2006 with the following directions:

“In view of the facts of the case, we are of the opinion that it is just and proper to direct the respondent-authorities to consider the representations submitted by the applicant by a reasoned and speaking order within a period of 3 (three) months from the date of receipt of this order.”

Since no speaking order was passed by the respondents, another OA No.25/2011 was filed by the applicant.

3. It is the case of the applicant that a copy of order dated 20.03.2007 was handed over to him during the course of this OA, which is quoted below:

"Subject: Order dated 1.12.06 passed by Hon'ble CAT/ KOL in O.A. No.47/2002 in the matter of G.K. Singh Vs. U.O.I. & others.

You have filed an O.A. bearing No. 47/2002 before the Hon'ble CAT/KOL claiming upgradation of pay-scale of Audio Metrician-cum-Speech Therapist. After hearing from both sides, the Hon'ble Tribunal vide their Order dated 1.12.06 has directed the respondents to consider the representations submitted by the applicant to pass a reasoned and speaking order within the period of 3 months. The above order has been received by this Railway through your representation dated 6.1.07 on 10.01.07.

In obedience to the directions passed by the Hon'ble C.A.T./ KOL on 1.12.2006 in the above matter. I Shri S. Bhattacharya being the Chief Personnel Officer, South Eastern Railway and Respondent No. 3 have considered the matter pertaining to the upgradation of one higher grade post of Audio Metrician-cum-Speech Therapist in the pay scale of Rs.5500-9000 (RSRP 1997) at par with Dietician/ Physio Therapist with retrospective effect; and

Since the upgradation to the higher scale of pay is not within the purview of the Zonal Railway, a proposal regarding allotment of higher scale of pay has already been referred to the Railway Board after observing of the formalities for their sanction. The Railway Board has stated that the matter has been examined at appropriate level of the Ministry of Railways and your demand for upgradation of pay-scale cannot be agreed to."

Sd/-

(Sushobhan Bhattacharya)
Chief Personnel Officer"

4. It has been stated that in the case of one Ms. Sanchita Majumdar, Dietician and Shri Subhashish Kundu who were working in the Medical Department of the Railways and were

also holding isolated posts, in their case, recommendations were made for upgradation to the higher pay scale treating these posts as technical posts, but not in the case of the applicant.

5. The applicant's counsel drew our attention to Schedule of revised scales for different posts notified by the Railways in which under the Medical Department, Dieticians have been shown to be in the pre-revised pay scale of Rs.1400-2300 and in the revised pay scale of Rs.5500-9000. Our attention was further drawn to copies of several note-sheets based on which it is claimed that within the Railways, there was recommendation that the applicant be granted pay scale of Rs.5500-9000. However, these are only note-sheets and no specific order could be brought to our notice by the learned counsel for the applicant as a consequence to these note-sheets. Also, in view of law settled by the Hon'ble Supreme Court in **Union of India Vs. Ashok Kumar Aggarwal**, 2013 (14) SCALE 323, we cannot take cognizance of these note-sheets.

6. The reply of the respondents is that in the Railways, there is a long standing mechanism for settling disputes of employees related to pay and allowances and other service matters. In this regard, Joint Consultative Machinery was constituted by the government to promote harmonious relations and secure the greatest measure of cooperation between the government in its capacity as employer and the general body of employees (belonging to Group 'C' and 'D') in the matter of common

concern. Moreover, it is argued that the Hon'ble Supreme Court has repeatedly held that Courts/ Tribunal should not interfere with the recommendations of the expert bodies like Pay Commission except on the grounds of unjust and arbitrary state action or inaction or any grave error having crept in while fixing the pay scales. In this regard, reliance has been placed on **Prabhat Kiran Methani & ors. Vs. Union of India & anr.,** (1977) SCC (L&S) 279, **State of U.P. & ors. Vs. J.P. Chourasia & ors.,** 1989 (1) SCC 121 and **Secretary, Finance Department & ors. Vs. West Bengal Registration Service Association & anr.,** (1993) Suppl SCC 153.

7. Learned counsel for the respondents explained that the Fifth Pay Commission has not proposed any specific pay scale for the Audio Metrician-cum-Speech Therapist in their recommendations whereas there are specific recommendations for higher scales with respect to the categories like Physio Therapist, Dietician etc. In the absence of any specific recommendation, the general procedure has been followed and the applicant has been allotted the standard replacement scale of Rs.4500-7000.

8. As regards applicant's attempt to compare his post with Physiotherapists and Dieticians working in the Medical Department of Railways having similar pay scales in the Fourth Central Pay Commission, it has been clarified that such comparisons are not valid as the recruitment qualifications, duties and responsibilities, staff strength and avenues of

promotion of various categories of staff are widely varying and Pay Commission being an expert body has taken into consideration all such aspects which have a bearing on the pay scales. It is, however, submitted that the applicant has already been given two upgradations under the Assured Career Progression Scheme (ACPS) in the higher pay scales of Rs.5000-8000 and Rs.5500-9000.

9. It has further been argued that the applicant had approached Calcutta Bench of the Central Administrative Tribunal in OA 47/2002 and the Tribunal has passed order dated 1.12.2006, in compliance of which the railways passed order dated 20.03.2007. Thus the applicant has approached this Tribunal after a huge delay.

10. We have heard learned counsel for the parties and gone through the pleadings available on record.

11. The fact is that this matter came before the Calcutta Bench of this Tribunal and was decided in 2006, where after the department issued order dated 20.03.2007. The only ground which the applicant has now taken to justify delay of almost six years in filing this OA is that he never got a copy of the letter dated 20.03.2007. This is a specious argument and would not have been accepted by us but for the fact that the order of this Tribunal in OA 25/2011 (supra) granted liberty to the applicant to challenge the aforesaid speaking order dated 20.03.2007.

12. Even on merits, the applicant has not produced a single fact which indicates that respondents' action is unjust and arbitrary or some grave error has crept in. The applicant is trying to reopen the issue of Fifth Pay Commission scales on the ground that she is similarly placed as Dietician and Physio Therapist in the Medical Department of Railways. Not a single fact is placed before us by the applicant on which she has relied to establish this. As against this, the factual position is that Sixth Central Pay Commission made specific recommendations with regard to Dieticians and Physio Therapists in the Railways but did not make any recommendation for the post held by the applicant and where there is no recommendation as such, normal replacement scale will apply. The respondents, therefore, rightly granted normal replacement scale of Rs.4500-7000 to the applicant.

13. In view of above discussion, we find nothing illegal or arbitrary in the decision of the respondents. The OA is, therefore, dismissed. No costs.

(P.K. Basu)
Member (A)

(Syed Rafat Alam)
Chairman

/dkm/