

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-3395/2016

Reserved on : 31.10.2017.

Pronounced on :05.02.2018.

Hon'ble Ms. Praveen Mahajan, Member (A)

George F. Milton, 82 years
S/o Late Sh. P.K. Milton,
R/o Flat No. 4102,
Sapna Ghar Society,
Plot No. 6B, Sector-11,
Dwarka, New Delhi-110065. Applicant

(through Sh. Vishwendra Verma, Advocate)

Versus

1. Union of India through
The Secretary,
Ministry of Health and Family Welfare
(Department of Health),
Nirman Bhawan, New Delhi.
2. The Director General of Health Services,
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi.
3. Medical Superintendent,
Dr. Ram Manohar Lohia Hospital,
New Delhi. Respondents

(through Sh. J.P. Tiwari, Advocate)

O R D E R

Briefly stated, the facts of the current O.A. are that the applicant was appointed to the post of Physiotherapist in Dr. R.M. L. Hospital on 09.03.1959. He was promoted to the post of Senior

Physiotherapist on ad hoc basis w.e.f. 28.10.1968, and regularized on this post in July, 1971. The applicant submits that the 4th Central Pay Commission had recommended pay scales of Rs.1400-2300 for the post of Physiotherapist/Occupational Physiotherapist, Rs.2000-3200 for the post of Lecturer in Physiotherapy/Occupational Physiotherapist and Rs. 2375-3500 for the post of Senior Physiotherapist/Senior Occupational Physiotherapist. The 5th Central Pay Commission recommended that the pay scale for the said posts should have been Rs. 1640-2900, Rs. 2000-2500 and Rs. 2200-4000 respectively w.e.f. 01.01.1986. The respondents, however, gave the said pay scales w.e.f. 01.01.1996. Similarly placed persons filed OA-2408/2002 (Mrs. Sneh Lata Mitter & Ors. Vs. UOI), which was decided by the Tribunal on 21.04.2003, the operative part of the same reads as follows:-

- “(i) Following the recommendations of the 5th Central Pay Commission, we direct the Respondents to grant the pay scale of Rs.1640-2900 (pre-revised) for Physiotherapists/Occupational Therapists notionally w.e.f. 1.1.1986 and with actual benefits only w.e.f. 1.1.1996;
- “(ii) Similarly, the revised pay scales/replacement scales recommended by the 5th Central Pay Commission for the other categories of staff for the posts held by the Applicants i.e. revised pay scales of Rs. 2000-3500 and Rs. 2200-4000 shall be granted to them notionally w.e.f. 1.1.1986 and with actual benefits from 1.1.1996;
- “(iii) The consequential monetary benefits, as a result of the aforesaid directions, shall be granted to the

Applicants within three months from the date of receipt of a copy of this order."

2. The applicant states that the respondents implemented the above orders in respect of applicants in OA-2408/2002 only. Inspite of the directions issued by this Tribunal, similarly placed officers, who were in service at that time, were not granted similar benefits. He made several representations in this regard to respondent No.3, who wrote to respondents No. 1 & 2, recommending that Ministry of Health and Family Welfare may examine the claim of the applicant in consultation with the Department of Pension and Pensioners Welfare. Respondent No.2 informed respondent No. 3 on 22.01.2016 that the matter had been examined in consultation with the Department of Pension and Pensioners Welfare, who advised that the CAT order dated 21.04.2003 in OA-2408/2002 was applicable only to the applicants therein. It was also communicated that if the intention was to give benefit of the order of the Tribunal to all similarly placed employees, a case could be submitted for approval of Department of Expenditure.

3. Respondent No. 2 wrote a letter No. C-13019/7/2015-MH-I dated 08.03.2016 (Annexure A-4) to the Medical Superintendent, Safdarjung Hospital, New Delhi and Director, Lady Hardinge Medical College and Associated Hospitals, New Delhi requesting them to intimate details of the cases similar to that of the applicant so that a

consolidated proposal could be prepared and processed further. The applicant contends that since all similarly placed persons in Safdarjung Hospital and Lady Hardinge Medical College and Associated Hospitals had been given the benefit of the decision of the Tribunal, no case was reported by them and thus no action was taken to give similar benefit to him.

4. The applicant wrote a letter to the respondent No.1 requesting him to fix his pay in the pay scale of Rs. 2200-4000 notionally w.e.f. 01.01.1986, fix his pension notionally w.e.f. 01.01.1992, and give actual benefit of the enhanced pension to him w.e.f. 01.01.1996. This request was rejected by the impugned order dated 17.08.2016 stating that:-

“IFD has also intimated that in case of Shri Milton, he has already superannuated on 31.08.92 hence no actual benefits will accrue for him as per the judgment of the Hon'ble CAT. Accordingly, IFD has refused to consider the revision in the pension of Shri George F Milton.”

5. Aggrieved by the above mentioned action, the applicant has filed the current O.A. seeking the following relief:-

- “(i) to allow the O.A. and give following reliefs to the Applicant.
 - a. His pay may notionally be fixed in the pay scale of Rs.2200-4000 w.e.f. 01.01.1986 with all consequential benefits.
 - b. He may be granted increments notionally in the pay scale of Rs. 2200-4000 from 1986 to 1992.

- c. His pension may notionally be fixed as per pay drawn by him in the pay scale of Rs.2200-4000 notionally as on 31.08.1992.
- d. He may be paid actual benefits pension according to his pension fixed in the pay scale of Rs.2200-4000 w.e.f. 01.01.1996.
- e. He may be paid arrear of actual benefit of pension accrued to him with interest.
- f. His pension may be revised as per recommendations made by the subsequent Central Pay Commission and arrears may be paid to him with interest."

6. In the counter, the respondents state that the applicant was initially appointed as Physiotherapist on 09.03.1959. He was promoted to the post of Sr. Physiotherapist on 05.07.1971 in the pay scale of Rs.350-900. He continued in the same scale till his retirement on 31.08.1992. They contend that after OA-2408/2002 was decided by the Tribunal on 21.04.2003, the applicant made application dated 01.12.2014 to the Secretary, Ministry of Health & Family Welfare requesting to fix his pay. His application was considered in the Ministry but not accepted due to the reason that the order dated 21.04.2003 was applicable to the applicants of OA-2408/2002 only. The respondents also state that since the applicant had already superannuated on 31.08.1992, no actual benefits will accrue to him. Hence, the O.A. be dismissed.

7. In the rejoinder the applicant has reiterated the averments already made in the O.A. and stated that the contention of the respondents that the judgment dated 21.04.2003 in OA-2408/2002 was applicable only to the applicants therein is wrong, since in the said O.A., the Tribunal clearly and unambiguously directed the respondents to grant the pay scale of Rs. 2200-4000 to all the Senior Physiotherapists.

8. I have gone through the facts of the case and carefully perused the available record. I start with the decision passed in OA-2408/2002 (supra), which has been relied upon by the applicant in his O.A. It is not disputed that on the recommendations of the 5th CPC, the Government revised the pay scales of Physiotherapist/Senior Occupational Physiotherapist and made them effective w.e.f. 01.01.1996. Taking into account the recommendations of the 5th CPC and of the 4th CPC, the relief claimed for by the applicants has been allowed therein. The actual benefits to the Physiotherapists/Occupational Therapists (following the recommendations of the 5th CPC) have been held to be applicable to this category of staff w.e.f. 01.01.1996. Sub para 9(ii) of the judgment of the Tribunal (supra) reads that "**the revised pay scales/replacement scales recommended by the 5th Central Pay Commission for the other categories of staff for the posts held by the applicants i.e. revised pay scales of Rs.2000-3500 and Rs.2200-4000**

shall be granted to them notionally w.e.f. 1.1.1986 and with actual benefits from 1.1.1996".

9. I am not inclined to agree with the contention of the respondents that the directions of the Tribunal in OA-2408/2002 (supra) would be applicable/available only to the applicants therein. It has been held in a catena of judgments that once an issue has been decided on principle, the benefits available cannot be restricted to only the applicants. Further, the respondents have erroneously held that since the applicant superannuated on 31.08.1992, actual benefits would not accrue to him, and have rejected his case, without going into the merits of the claim of the applicant. The respondents have not taken into account the fact that the applicant was in service on 01.01.1986, the date, on which revised replacement pay scales recommended by the 5th CPC for his category of staff have been granted, notionally. No cogent reason has been advanced by the respondents as to why the same should be denied to the applicant.

10. The current O.A. has been filed only on 29.09.2016, though the applicant retired on 31.08.1992. Even after the decision of the Tribunal on 21.04.2003 in OA-2408/2002, the applicant delayed filing his claim by more than a decade. Normally, such a case would be hit by limitation but pension being a recurring cause of action, the delay is condoned.

11. In the relief claimed, the applicant himself has only asked for notional fixation in the pay scale of Rs. 2200-4000 w.e.f. 01.01.1986 with all consequential benefits as given to all other similarly placed person. In clauses-b & c, he has asked for increments to be fixed notionally in the pay scale of Rs.2200-4000 from 1986 to 1992 and for his pension to be fixed notionally as per pay drawn by him in the pay scale of Rs.2200-4000 as on 31.08.1992 i.e. the date when he superannuated. Keeping in view the facts of the case all the three benefits are admissible and accordingly allowed to the applicant. However, the actual benefits of pension, notionally fixed in pay scale of Rs.2200-4000 w.e.f. 01.01.1986 will accrue to the applicant, only 3 years prior to filing of the OA, alongwith interest, at GPF rates.

12. This exercise shall be completed within three months from the date of receipt of a copy of this order. No costs.

**(Praveen Mahajan)
Member (A)**

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