

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENH**

OA No. 2914/2012

Reserved on 17.08.2016
Pronounced on 22.08.2016

Hon'ble Mr. P.K.Basu, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

1. Dr.Viquar Ahmed
S/o Late Sh.N.A.Ansari,
R/O 79, Mansi Vihar, Sector-23,
Sanjay Nagar, Ghaziabad (UP).
 2. Shahidul Khair
S/o Late Sh.Md. A.K.Mallick,
R/o 401-B, Mandir Marg,
S.Khand-IV, Indrapuram,
Ghaziabad (UP).
 3. Dr. Mokhtar Alam
S/o Late Shahid Hasan,
R/O N-802, Jaipuria Sunrise Green,
Indrapuram, Ghaziabad (UP).
 4. Mrs. Kiran Negi, D/O Sh.S.S.Bisht
R/O Flat No. 127, Mahabhadrakali
Apartments, Plot No.6,
Sector-13, Dwarka, New Delhi.
 5. Mrs. Sonali Sajwan D/O Sh.S.C. Goyal,
R/O P-157-A, Sector-23,
Sanjay Nagar, Ghaziabad (UP).
 6. Rakesh Kumar Negi
S/o Shri Ram Singh Negi,
R/o L-176, Sector-23, Sanjay Nagar,
Ghaziabad (UP).
- .. Applicants

(By Advocate Shri Yogesh Sharma)

VERSUS

1. Union of India through
The Secretary,
Ministry of Health & Family Welfare,
Govt. of India
(Department of AYUSH), New Delhi.
2. The Director General,
Central Council for Research in
Unani Medicine, Govt. of India,
Ministry of Health & Family Welfare,
(Department of AYUSH),

Jawahar Lal Nehru Anusandhan
Bhawan, 61-65, Institutional Area,
Opp. D Block, Janakpuri,
New Delhi-58.

3. The Secretary,
Ministry of Finance, Department
Of Expenditure, Govt. of India,
North Block, New Delhi. ... Respondents

(By Advocate Shri A.K.Ohja and Mr.Ranjan
Tyagi)

ORDER

Hon'ble Mr. P.K.Basu, Member (A):

The applicants who are Research Assistant (Botany) and Research Assistant (Chemistry) have filed this OA claiming that they should be granted upgradation and merger of their post to the post of Research Officer as done in the cases of Research Assistant (Unani) with all consequential benefits from the same date. Secondly, it is prayed that the respondents be directed to conduct Cadre Review in the cadre of Research Assistant (Botany) and Research Assistant (Chemistry) to reduce the stagnation in this cadre in the light of Govt. of India instructions on the subject.

2. The learned counsel for the applicants states that in the Central Council for Research in Unani Medicine under the Department of Ayush, as the post of Research Assistant (Botany), Research Assistant (Chemistry) and Research Assistant (Unani) all three were originally in the pay scale of Rs.1400-2300. Vide order dated 10.05.1996, the Council upgraded all the 43 existing posts of Research

Assistant (Unani) to the promotion post of Assistant Research Officer (Unani) w.e.f. 1.03.1996 and consequently abolished the lower post of Research Assistant (Unani) and granted the upgraded scale of Rs.2000-3200 w.e.f. 1.03.1996 from the previous scale of Rs.1400-2300.

3. Vide order dated 2.08.2002, the respondents again revised the pay scale of Assistant Research Officer (Unani) from Rs.6500-10500 to 8000-13500/- initially w.e.f. 2.08.2002 but subsequently w.e.f. 1.1.1996 vide order dated 31.10.2007.

4. Vide order dated 20.07.2005 they merged the post of Assistant Research Officer (Unani) with the post of Research Officer (Unani) and abolished the post of ARO (Unani) altogether.

5. It is stated that the minimum qualification for the post of Research Assistant (Unani) was only Matric with Degree or diploma of minimum 4 years duration, whereas the minimum qualification for the post of Research Assistant (Botany/Chemistry) Post Graduation in the concerned subject.

6. Whereas the Research Assistant (Unani) have been finally merged with the posts of Research Officer (Unani) are getting the pay grade and grade pay of PB-3 Rs. 15600-39100+GP of 5400, the Research Assistant (Chemistry/Botany) are at PB-3 in the scale of 9300-34800+GP of 4200. According to the applicants this is as a

result of the respondents not undertaking any cadre review till date though the guidelines vide OM dated 23.11.1987 of the DOPT as well as 31.12.2010 stipulate that Cadre Review should be held every 5 years. The applicants also relied on order of CAT-Hyderabad dated 28.01.2011 in OA No. 906/2009, wherein the respondents were given a direction that though the cadre review was done much later but it should be deemed to have come into effect from the year 2002 when the cadre review was due.

7. It is submitted that as per existing rules, out of 9 posts of RO (C) 50% i.e. 4 or 5 posts should be filled up by DPC from RA (C) and similarly out of 9 posts of RO (B) 4 or 5 posts should be filled from ARO (B) of the Council by DPC. But even that quota has also not been filled up and promotion quota has been diverted and filled up through Direct Recruitment.

8. According to the respondents upto the year 2005, the minimum essential qualification for Research Assistant (Botany/Chemistry) was degree with two years experience or Post Graduate degree. It was only after 2005 that the essential qualification was post Graduate degree.

9. The learned counsel for the respondents first of all raised the ground of limitation as it is stated that the cause of action arose in 1995-96 due to implementation of Perumal Committee report which Committee was asked to examine the career advancement of various categories of employees working in CCRAS and, therefore, this OA is

hopelessly time barred and should be dismissed as being not maintainable.

10. The learned counsel for the respondents also states that this OA is not maintainable under Rule 10 of the CAT (Procedure) Rules, 1987 because the applicants have sought plural remedies for upgradation of the post of Research Assistant with Research Officer and also review of the Cadre.

11. On the merits of the case, the respondents argued that the applicants and Unani stream form different class. Whereas the applicants are from the non-medical stream, Unani employees are from the medical stream and therefore no claim of parity of scale of pay can be entertained. The respondents relied on judgments of Hon'ble Supreme Court in **Steel Authority of India Ltd. and Other Vs. Divyendu Bhattacharya** (2011 (2) SLJ 105), **S.C.Chandra & Ors Vs. State of Jharkhand & Ors** (2008 (1) SLJ 282 (SC) and **State of West Bengal & Others Vs. West Bengal Minimum Wage Inspectors Association and Others** (2010) 5 SCC 225) stating that there is no case made for 'equal pay for equal work'.

12. Learned counsel for the respondents relied on the judgment of Hon'ble Supreme Court in **C.Jacob Vs. Director of Geology and Mining and Another** (2008) 10 SCC 115) in which the Hon'ble Supreme Court has held as follows:-

"(b) When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do so may amount to disobedience of court order. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, not amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action."

In para 10 it was further elaborated as follows:-

"10. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim."

13. It is further stated that in TA No. 272/2009 which was disposed of vide order dated 23.12.2009, Research Assistants (Chemistry) had approached the Tribunal for pay parity which was dismissed by this Tribunal as being bereft of merit as also being belated.

14. Learned counsel for the applicants in reply states that the applicants have been stagnating in the same post of Research Assistant (Botany/Chemistry) and are seeking cadre review.

15. From the facts of this case it would appear that the applicants and Unani stream are two different streams, whereas the latter is a medical stream the applicants stream is non-medical. Moreover, as stated by the

applicants themselves, there has been difference of pay and cadre structure of the applicants' stream and medical stream since 1996 itself. All this happened as a result of the Perumal Committee recommendation. The applicants have also been benefited from the recommendation as their pay scales was upgraded from Rs.1400-2300 to Rs.1640-2900. In number of cases, the Hon'ble Supreme Court has held that Tribunal should not enter into deciding pay scales which should be left to the executive to be done on the recommendations of an Expert body, such as Pay Commissions. Moreover, in this case, as we have been seen the two streams are different, the hierarchy in the cadres also changed as per the Perumal Committee long back in 1996 and their pay scales were also different. The applicants should have approached this Tribunal at that time when for the first time the pay structure was changed for Research Assistant (Unani), ARO (Unani) and Research Officer (Unani). However, they chose not to challenge the said decision. Therefore, in view of the contention of the learned counsel for the respondents and the several Supreme Court judgments cited, this matter is indeed time barred. We also agree with the argument of the learned counsel for respondents that it is also a case of plural remedies and, therefore, this OA is not maintainable even on this ground.

16. On merit, as we have already seen there is no link between the two streams neither there is a case of parity as since 1996 there has been no parity. Therefore, this OA

is dismissed on all the above grounds. However, at the same time as a modal employer the respondents should hold the cadre review of the Research Assistant (Botany) and Research Assistant (Chemistry) so that these people, who are highly qualified, do not have to stagnate in the same post till the date of their retirement. We hope and trust that the respondents will take suitable action in this regard.

(RAJ VIR SHARMA)
MEMBER (J)

(P.K.BASU)
MEMBER (A)

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