

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

O.A.No.3216/2011

Order reserved on 23rd September 2016

Order pronounced on 07th October 2016

**Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Dr. B.K. Tiwari
Adviser (Nutrition)
Dte. General of Health Services
Ministry of Health and Family Welfare
Nirman Bhawan, New Delhi

(Mr. V.S.R. Krishna, Advocate)

..Applicant

Versus

Union of India through

1. The Secretary
Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi
2. The Director General
Dte. General of Health Services
Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi

(Mr. Ashok Kumar, Advocate)

..Respondents

O R D E R

Mr. K.N. Shrivastava:

The applicant has filed the instant O.A. under Section 19 of the Administrative Tribunals Act, 1985 praying for the main reliefs:-

“a) To direct the respondents to consider the grant of the upgraded pay scale of Rs.18400-22400 or any other similar upgraded pay scale for the post of Adviser (Nutrition).

b) To consider creating promotional avenue from the post of Advisor (Nutrition) to higher posts/pay scales keeping in view the dicta of the Hon'ble Supreme Court in Dr. Ms. O.Z. Hussains case;

c) To grant to the applicant the benefits of the upgraded scales or promotional avenues with retrospective effect along with consequential benefits like arrears of salary and allowances etc.”

2. The brief facts of the case are as under:-

2.1 The applicant joined the Directorate General of Health Services (DGHS) on 18.03.1992 as Advisor (Nutrition) in the pay scale of `14300-18300 (pre-revised). He was selected to the post through Union Public Service Commission (UPSC). His contention is that the similarly placed Advisors under the same Ministry, i.e., Ministry of Health and Family Welfare, viz. Advisor (Ayurveda) and Advisor (Homeopathy) have been placed in higher pay scale of `18400-22400, whereas he has been given a lower pay scale. Like-wise, the Advisor in other Ministries and Planning Commission have also been placed in the higher pay scale of `18400-22400.

2.2 The applicant claims that the prescribed qualification for Advisors in other Ministries as also for the Advisor (Ayurveda) and Advisor (Homeopathy) in the Ministry of Health and Family Welfare was Master's degree, whereas the qualification for the post of Advisor (Nutrition) was M.D. or Ph.D degree in Bio-Chemistry/Nutrition; which the applicant possesses. He thus claims that he is more qualified than other Advisors and hence he ought to have been placed in the pay scale of `18400-22400, as is the case with other Advisors.

2.3 The applicant, in support of his claim, pleads that the Hon'ble Supreme Court in the case of **Dr. Ms. O.Z. Hussain v. Union of India** has clearly observed that promotional avenues should be provided to scientific and technical posts, but in his case there is no promotional avenue available. He further pleads that the doctrine of 'equal pay for equal work' is not followed in his case, as he has not been given the same pay scale as has been given to Advisors in other Ministries as well as Advisor (Ayurveda) and Advisor (Homeopathy) in the Ministry of Health and Family Welfare.

The applicant has filed the present O.A. praying for the reliefs as mentioned above.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. Thereafter the applicant filed his rejoinder. With the completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 23.09.2016. Mr. V.S.R. Krishna, learned counsel for applicant and Mr. Ashok Kumar, learned counsel for respondents were heard.

4. The learned counsel for applicant reiterated the grounds raised in the O.A. and submitted that as per the principle of equality the applicant deserves to be placed in the same pay scale as that of the Advisor (Ayurveda) and Advisor (Homeopathy) in the Ministry of Health and Family Welfare. It was further submitted that the Department of Personnel & Training, in its clarificatory O.M. dated 18.07.2001 (page 140 of the paper book) answering to the question "Whether placement/appointment in higher scales of pay based on the recommendations of the Pay

Commissions or Committees set up to rationalise the cadres is to be reckoned as promotion/financial upgradation and offset against the two financial upgradations applicable under the ACP Scheme”, has answered as under:-

“Where all the posts are placed in a higher scale of pay, with or without a change in the designation; without requirement of any new qualification for holding the post in the higher grade, not specified in the Recruitment Rules for the existing post, and without involving any change in responsibilities and duties, then placement of all the incumbents against such upgraded posts is not be treated as promotion/ upgradation. Where, however, rationalisation/ restructuring involves creation of a number of new hierarchical grades in the rationalised set up and some of the incumbents in the pre-rationalised set up are placed in the hierarchy of the restructured set up in a grade higher than the normal corresponding level taking into consideration their length of service in existing pre-structured/pre-rationalised grade, then this will be taken as promotion/upgradation.”

Hence the applicant deserves the reliefs prayed for, Mr. Krishna argued.

5. *Per contra*, Mr. Ashok Kumar, learned counsel for respondents argued that the applicant was selected to the post of Advisor (Nutrition) in the pay scale as that of a Deputy Secretary in the Government. His case for higher pay scale was considered by the 5th Central Pay Commission (CPC), who recommended for the upgradation of the post of Advisor (Nutrition) to the Director level having the pay scale of `4500-5700; whose replacement scale is `14300-18300.

6. Vide Annexure R-2 office order dated 24.07.2002, he was placed in the Director’s pay scale of `14300-18300 w.e.f. 01.01.1996. He filed this O.A. in the year 2011, i.e., after long and inexplicable gap of nine years. Mr. Ashok Kumar further submitted that the post of Advisor (Nutrition) held by

the applicant cannot be compared with the posts of Advisor (Ayurveda) and Advisor (Homeopathy), as the Recruitment Rules for these posts are entirely different. He said that the posts of Advisor (Ayurveda) and Advisor (Homeopathy) are filled up by promotion, failing which by transfer or deputation, including short-term contract as per the Recruitment Rules. The Chief Medical Officers with eight years of regular service in the grade are eligible for promotion to the post of Advisor (Ayurveda) and Advisor (Homeopathy). The post of Advisor (Nutrition) is an isolated post, as per notification dated 05.12.1985 notified by the Ministry of Health and Family Welfare (Annexure R-5). It was further submitted that the applicant has already been given two financial upgradations under the Modified Assured Career Progression (MACP) Scheme considering that he has no promotional avenue.

Concluding his arguments, the learned counsel prayed for dismissal of the O.A. having no substance in it.

7. We have considered the arguments of learned counsel for the parties and perused the pleadings and documents annexed thereto.

8. From the records, it is quite clear that the post of Advisor (Nutrition) is an isolated post and its Recruitment Rules are completely different from those of Advisor (Ayurveda) and Advisor (Homeopathy). The Central Government appoints Pay Commissions periodically, who are required to look into the matters relating to pay scale upgradation, equivalence of posts, revision of pay scales, etc. The applicant's request for higher pay scale was considered by the 5th CPC, who, in their wisdom, recommended for upgrading the post from Deputy Secretary level to Director level but did

not agree with the proposal of Ministry (respondent No.1) to elevate the post to SAG level, which in fact is the demand of the applicant in the present O.A. The Notification of the respondent No.1 dated 05.12.1984 (Annexure R-5) clearly indicates that the post of Advisor (Nutrition) is an isolated post. The applicant has already been granted two financial upgradations under the MACP Scheme taking into consideration the fact that he has no promotional avenues. This Tribunal is required to consider the request of the applicant with regard to equivalence in terms of the Recruitment Rules only. As has been pointed out by us, the Recruitment Rules for the posts of Advisor (Ayurveda) and Advisor (Homeopathy) are different than those of Advisor (Nutrition), the post held by the applicant. As such, we are of the firm view that the request of the applicant for grant of equivalence with those posts cannot be considered. Further, the applicant was upgraded to the scale of Director by the respondents in accordance with 5th CPC recommendations. There is no credible explanation furnished by the applicant to agitate for his claim by way of filing the instant O.A. after nine years, i.e., in the year 2011. Hence the impediment of limitation also comes in his way.

9. For the reasons discussed in the pre-paragraphs, we are of the view that the O.A. is liable to be dismissed both on the grounds of merit as well as limitation. Accordingly, O.A. is dismissed. No order as to costs.

(K.N. Shrivastava)
Member (A)

/sunil/

(Raj Vir Sharma)
Member (J)