

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.3970/2016
M.A.No.912/2017

Order Reserved on: 17.03.2017
Order pronounced on 15.05.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

Dr. Anil Kumar Singh Bhadoria
[Senior Technical Assistant, Group B, Age 55 years]
S/o Sh. R.S.Bhadoria
R/o 740, Laxmi Bai Nagar
New Delhi – 110 023. ... Applicant

(By Advocate: Shri Rajesh Srivastava)

Versus

1. Union of India
Through Secretary
Ministry of Health & Family Welfare
Govt. of India
Nirman Bhawan
New Delhi.
2. Deptt. of Personnel & Training
Govt. of India
Through its Secretary
North Block
New Delhi.
3. Ministry of Ayush through its Secretary
Ayush Bhawan
GPO Complex
INA, New Delhi – 110 023. ... Respondents

(By Advocate: Shri Krishna Kumar)

ORDER

By V. Ajay Kumar, Member (J):

The applicant, a Senior Technical Assistant (STA) [Ayurveda], under the 3rd Respondent-Ministry of AYUSH, Govt. of India, filed the OA, seeking a direction to grant the benefit of Annexure A1-Order dated 31.05.2016 of the 1st Respondent-Ministry of Health and Family Welfare, wherein and whereunder the Government enhanced the age of superannuation of the specialists of non-teaching and public health sub cadres of Central Health Service (in short, CHS), and General Duty Medical Officers (in short, GDMO) of CHS to 65 years with immediate effect, to him also with all consequential benefits.

2. Heard Shri Rajesh Srivastava, the learned counsel for the applicant and Shri Krishna Kumar, the learned counsel for the respondents, and perused the pleadings on record.

3. The learned counsel appearing for the applicant submits that the Annexure A1-Order dated 31.05.2016 was issued in respect of Allopathic Doctors, working in all Ministries, except in the Ministry and Department of Ayush (A for Ayurveda, Y for Yoga, U for Unani, S for Sidha and H for Homeopathy) and hence, the same is discriminatory, towards practitioners/physicians working in the field/discipline other than Allopathic, and accordingly illegal and violative of Article 14 of the Constitution of India.

4. The learned counsel further submits that in OA No.562/2017 filed by the All India CGHS Ayurvedic Physicians Association along with two

others, this Tribunal vide its Order dated 02.09.2007 (Annexure A2) has granted all benefits mutatis mutandis to the Ayurvedic Physicians with their counterparts in other disciplines, i.e., Allopathic Doctors, by holding that since the Central Pay Commission had not discriminated against the Ayurvedic Physicians vis-à-vis Allopathic Physicians the non-granting of similar pay scales would amounts to discrimination.

5. The learned counsel further submits that since various benches of this Tribunal granted interim orders in different OAs that the superannuation of the identical persons shall remain in abeyance or subject to the result of the OA, as the case may be, the instant OA is liable to be allowed.

6. The applicant finally submitted that the applicant is a physician and doing duties similar to the duties of public health cadre of Allopathic Doctors, and an authorized practitioner of medicine having possessing Graduation in medicine and licensed by the appropriate Board.

7. On the other hand, the learned counsel for the respondents, would submit that the applicant has been working as Senior Technical Assistant (Ayurveda) and as per the recommendations of the 6th CPC, the Research Assistant and Sr. Technical Assistant (Ayurveda) working in AYUSH, do not fulfill the condition of medical practice as well as Degree in ISM&H as the minimum qualification, since the post of Research Assistant and Senior Technical Assistant (Ayurveda) do not require the medical practice, the claim of the applicant is untenable

and cannot be covered under the Annexure A1-Order dated 31.05.2016.

8. The learned counsel further submits that the applicant along with one Dr. Chhote Lal filed OA No.1751/2012, questioning their re-fixation of pay and this Tribunal by its Judgement dated 06.03.2013 (Annexure R3), while categorically observing that "Thus, there is no doubt in our mind that the scale being asked for by the applicants was admissible only on posts, which required medical practice and medical degree as minimum qualification and that the applicants were recruited for helping the Ministry in technical work such as preparation of pharmacopoeia and medical practice was not envisaged on their posts since they were located in the secretarial office and the applicants have not contradicted this nor have they produced any evidence to show that their posts required medical practice, and accordingly rejected their claim for the pay scale referred therein. In view of the categorical declaration, the applicant's post is not covered under the categories as specified in Annexure A1 Order dated 31.05.2016 and hence, he is not entitled for enhancement of age of superannuation from 62 to 65 years.

9. The learned counsel further submits that if a person working in LDC post, for which the essential qualification is Graduation, in a department, but possessing a Ph.D Degree would not by any criteria entitled to the benefits or the pay of a post for which the essential

qualification is a Ph.D, on the sole ground that he is also possessing a Ph.D Degree.

10. The learned counsel further submits that the Ministry of Health and Family Welfare vide Annexure R4-Office Memorandum, dated 30.08.2016, clarified that the Annexure A1-Order dated 31.05.2016 is applicable to Doctors of Central Health Service only, and the Departments/Ministries/State Governments/Autonomous Institutions may take decision, with the approval of their respective competitive authorities, regarding the applicability of the Ministry's decision to enhance the age of superannuation of Doctors to 65 years, as per their requirement and circumstances.

11. The applicant vide his rejoinder submitted that he is doing/performing same duties of a Allopathic Doctor and hence, he is entitled to get the benefit under the Annexure A1 Order dated 31.05.2016, on par with other Doctors of CHS Service.

12. Admittedly, the applicant does not belong to Central Health Service and hence, not directly covered under the Annexure A1, dated 31.05.2016. Hence, whether not granting similar benefit of enhancement of the age of superannuation to 65 years to the applicant on par with CHS Doctors is discriminatory is the question to be answered.

13. Enhancement of the age of superannuation of the Doctors of a particular category is a policy matter taken by the Government after a

conscious decision and keeping in view the shortage of experts in the relevant field, and the public interest.

14. The jurisdiction of this Tribunal on such matters is very limited and governed by the view expressed by the Hon'ble Apex Court in **P.U.Joshi & Others v. Accountant General, Ahmedabad and Others**, (2003) 2 SCC 632 and other similar line of cases. The relevant para of **P.U.Joshi** (supra) is extracted below:

"10. We have carefully considered the sub-missions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/ posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

15. The applicant admittedly working as a Senior Technical Assistant and as observed by this Tribunal in the OA filed by the applicant himself, that he was recruited for helping the Ministry in technical work, and medical practice was not envisaged on his post, since he

was located in the Secretariat office, and hence, his contention that he is performing the same duties of a regular CHS Doctor is unacceptable. For the same reasons, the contention of the applicant that Annexure A1-Order dated 31.05.2016 is discriminatory is also untenable.

16. In the circumstances and for the aforesaid reasons, we do not find any merit in the OA and accordingly, the same is dismissed. No costs. Interim Order dated 30.11.2016, is accordingly vacated. Pending MAs, if any, stand disposed of.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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