

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

O.A. No.1410/2014

Reserved on : 04.02.2019

Pronounced on : 18.02.2019

**HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MS. ARADHANA JOHRI, MEMBER (A)**

Dr. Madhusudan N. Rangne,
S/o Late Shri N. Rangne,
Aged about 55 years
R/o 350-A, Regal Shipra Sun City, Indirapuram,
Ghaziabad (UP)
And working as Research Assistant (Ay) under the
Respondents, present posted to EMR/HPC,
Department of AYUSH,
M/o Health & Family Welfare,
AYUSH Bhawan, INA,
New Delhi.Applicant

(By Advocate: Shri S.S. Tiwari)

Versus

1. Union of India,
Through its Secretary,
M/o Health & Family Welfare,
Nirman Bhawan,
New Delhi.
2. Secretary,
Department of AYUSH,
M/o of Health & Family Welfare,
AYUSH Bhawan, INA,
New Delhi.
3. Under Secretary,
Department of AYUSH,
M/o of Health & Family Welfare,
AYUSH Bhawan, INA,
New Delhi. ...Respondents

(By Advocate: Shri J.P. Tiwari)

ORDER

By Hon'ble Mr. V. Ajay Kumar, Member (J)

The applicant through the medium of instant OA is seeking quashing of the order dated 18.04.2013 whereunder the respondents following the judgment of this Tribunal in OA No.1751/2012 dated 06.03.2013 in Dr. Chhote Lal & another Vs. Union of India wherein it has upheld the respondents proceedings dated 04.04.2012 in lowering their pay scales corresponding to the pay scales in which they were working before the implementation of recommendations of 5th CPC, by stating that the applicant is similarly placed like the said Dr. Chhote Lal and Others and accordingly refixed the pay of the applicant with effect from 06.03.2011. He also sought extension of the benefit of the order dated 24.07.2008 in OA No.812/2006 of the Madras Bench of this Tribunal and to restore his pay scale of Rs.8000-13500 with effect from 01.01.1996 which was withdrawn by the impugned order dated 18.04.2013.

2. The short issue involved in the OA is whether the post of Research Assistant (Ayurveda) which the applicant is holding involved "medical practice" and accordingly whether he is entitled for the pay scale of Rs.8000-13500 (pre revised) in terms of the 5th CPC recommendations.

3. Heard Shri S.S. Tiwari, the learned counsel for the applicant and Shri J.P. Tiwari, the learned counsel for the respondents and perused the pleadings on record.

4. A perusal of the various orders passed by this Tribunal, copies of which are enclosed by the applicant as well as by the respondents to their respective pleadings reveal the following:-

(i) When the applicant and 3 others, namely, Dr. Chhote Lal, Dr. M.N. Rangne, Dr. A.K.S. Bhadoria and Dr. M.J. Subhani were placed in the scale of Rs.8000-13500 vide order dated 16.04.1999 read with order dated 18.05.1999 and when the respondents vide order dated 29.11.2002 sought to reduce the said scale, without issuing any show cause notice, the applicant along with the said 3 persons filed OA No. 3194/2002. The said OA was disposed of by an order dated 31.07.2003 (Annexure-R-V to the counter of the respondents) as under:-

“O.A. 3194/2002

By virtue of the present application, the applicants seek setting aside of the order of 29.11.2002 and to treat them as Group ‘A’ and to treat them as Group ‘A’ Medical Officers.

2. By virtue of the order of 29.11.2002, it has been pointed that in pursuance of the recommendations of the 5th Pay Commission, the revised pay scales of Group ‘B’ and ‘C’ technical posts shall be in the case of Senior Technical Assistant (Ayurveda) Rs.5500-9000, Research Assistant (Ayurveda) Rs.4500-7000 and Research Assistant (Unani) Rs.4500-7000.

3. Some of the relevant facts are that the applicants are that the applicants are all serving in the Ministry of Health and Family Welfare. After the 5th Pay Commission report was received, the applicants contend that they were placed in the scale of Rs.8000-13500/- vide order of 16.04.1999 read with order of 18.05.1999.

4. We are not dwelling into the other controversies for the present because it was pointed that while passing the impugned order whereby the scales of the applicants have been reduced, no show cause notice has been served on them.

5. The position in law is well settled that when an order which has civil consequences is passed, before it is so passed, a show cause notice must be served and thereafter in accordance with law, the respondents may pass a reasoned order.

6. What is the position herein? Though the applicants were awarded a higher scale, the same was revised but no show cause notice had been served on them. In this view of the matter, we quash the impugned order for the present and direct that if so advised, the respondents may serve a show cause notice and thereupon, they may pass a fresh order in accordance with law. OA is disposed of.

7. For purposes of clarification, we reiterate that we are not expressing ourselves on the other pleas of the applicants”.

(ii) In compliance of the said orders, the respondents vide Annexure R-VI Office Order dated 18.08.2003 have withdrawn their Office Order dated 29.11.2002 whereunder they have sought to reduce the pay scale of the applicants.

(iii) OA No. 495/2003 filed by Dr. Chhote Lal along with Dr. A.K.S. Bhadoria seeking for consideration for time bound promotion from the level of Medical Officer in the Grade of Rs.8000-13500 to the level of Sr. Medical Officer in the Grade of Rs.10000-15200 was disposed of by an order dated 21.01.2004 as under:-

“2. By virtue of the present application, the applicants contend that their claim should be considered for first time bound promotion from the level of Medical Officer in the grade of Rs.8000-13500 to the level of Senior Medical Officer in the grade of Rs.10000-15200/-. In this regard, the applicants rely upon the fact that the posts held by them had been upgraded and they were placed in the scale of Rs.8000-13500 vide order of 16.04.1999 read with order of 18.05.1999.

3. The order of 29.11.2002 which was the subject-matter of controversy in O.A. 3194/2002 had since been quashed by this Tribunal.

4. During the course of submissions, it was not disputed that thereafter no fresh order has been passed by the respondents. Learned counsel for the respondents informs us

that they have, in fact, issued a show cause notice in pursuance of the directions of this Tribunal.

5. As yet, when no order has been passed in pursuance of the abovesaid directions of this Tribunal, necessary consequence would be that the applicants would continue to be in the scale of Rs.8000-13500 with consequential benefits unless the said order is withdrawn in accordance with law as we have pointed above. Regarding the other controversies no opinion is being expressed. With these directions, the OA is disposed of”.

5. The said Dr. Chhote Lal and Dr. A.K.S. Bhadoria, again filed O.A. No. 4293/2010 seeking a direction to grant the corresponding revised pay scale in PB-3 of Rs.15600-39100 + GP Rs.5400 with effect from 01.01.2006 in terms of CCS (RP) Rules, 2008, and the said OA was disposed of by this Tribunal on 16.01.2012 as under:-

“2. Brief facts of the case, as culled out from the pleadings of the parties and accompanied documents, would reveal that the applicants are serving in the Ministry of Health & Family Welfare. After the Fifth Central Pay Commission Report was received, the applicants were placed in the pay scale of Rs.8000-13500 w.e.f. 01.01.1996, vide orders dated 16.04.1999 read with order dated 18.05.1999. This order was withdrawn by another order dated 29.11.2002. By virtue of the order aforesaid, it was pointed out that in pursuance of the recommendations of the Fifth Central Pay Commission, the revised pay scale of Group ‘B’ & ‘C’ technical posts shall be in the case of Senior Technical Assistant (Ayurveda) Rs.5500-9000, Research Assistant (Ayurveda) Rs.4500-7000 and Research Assistant (Unani) Rs.4500-7000. Taking exception to the withdrawal of the orders dated 16.04.1999 and 18.05.1999, vide which the applicants were placed in the pay scale of Rs.8000-13500 w.e.f. 01.01.1996, OA No.3194 of 2002 came to be filed by the applicants and some others in this Tribunal, which was disposed of, vide orders dated 31.07.2003 on a limited ground that the impugned order dated 29.11.2002 reducing the pay scales of the applicants would have civil consequences and would adversely affect them and the same ought to have been passed after putting them on notice. The Tribunal, while quashing the impugned orders, gave liberty to the respondents to serve a show cause notice upon the applicants and to pass a fresh order in accordance with law.

3. The respondents in consequence of the orders passed by the Tribunal withdrew the order dated 29.11.2002, vide orders dated 18.08.2003. It is not in dispute that ever since withdrawal of the order dated 16.04.1999, the applicants are indeed getting pay scale of Rs.8000-13500. The pleadings made in this OA and the counter affidavit filed on behalf of the respondents, would further show that pursuant to directions given by this Tribunal, a show cause notice was given to the applicants to which they responded, but the same has not been finally decided. Even though, it is mentioned in the counter reply filed on behalf of the respondents that the Department of Expenditure, Ministry of Finance, was consulted, which opined against the applicants on the basis that the applicants did not have the requisite qualification for the pay scale of Rs.8000-13500. However, as mentioned above, no final order on the show cause notice given to the applicants to which they responded, has been passed till date. We are distressed to note that a small issue as the one raised by the applicants has not been taken to its logical ends even though a period of more than eight years have gone by. However, we are of the view that at this stage the applicants may not be allowed the pay scale as demanded by them and referred to above for the simple reason that they are claiming a corresponding revised pay scale to the pay scale of Rs.8000-13500 as has been recommended by the Sixth Central Pay Commission on the ground that eligibility of the applicants for the pay scale of Rs.8000-13500 is still in dispute or in other words under consideration. Till such time, therefore, the applicants are held entitled to the pay scale, as mentioned above, a corresponding pay scale as recommended by the Sixth Central Pay Commission cannot be given to them. As mentioned above, the applicants are indeed getting the pay scale of Rs.8000-13500 for the reason that the impugned order in OA No. 3194/2002 has been set at naught and thereafter withdrawn by the respondents.

3. In totality of facts and circumstances of the case, we will direct the respondents to take the show cause notice issued to the applicants as regards withdrawal of order dated 16.04.1999 to its logical ends as expeditiously as possible and definitely within a period of eight weeks from today. In case, the applicants are not granted the pay scales of Rs.8000-13500, it would be open for them to challenge the order that may be passed, by filing a separate Original Application and in the said OA the applicants may seek corresponding pay scales as recommended by Sixth Central Pay Commission in the event they are held entitled for pay scale of Rs.8000-13500.

4. With the observations and directions, as mentioned above, present Original Application stands disposed of”.

6. In compliance of the orders of this Tribunal in O.A. No. 4293/2010 dated 16.01.2012 in Dr. Chhote Lal and Another Vs.

Union of India, the respondents issued order dated 04.04.2012 and the operative part of the said order reads as under:-

“17. THEREFORE, in conclusion, it is found that the nature of duties attached to the posts held by Dr. Chhote Lal i.e. Senior Technical Assistant (Ayu.) and Dr. A.K.S. Bhadoria i.e. Research Assistant (Ayu) does not involve ‘medical practice’ though they are having the medical degree as stipulated by the 5th Central Pay Commission. Further, Non Practicing Allowance, Post Graduate Allowance and Annual Allowance are also not attached to these posts. Therefore, Dr. Chhote Lal, Senior Technical Assistant (Ayurveda) and Dr. A.K.S. Bhadoria, Research Assistant (Ayu) are not entitled to the scale of pay of Rs.8000-13500/-(pre-revised) and consequently, Non Practicing Allowance, Post graduate and Annual Allowance cannot be granted to them. However, both the incumbents are entitled to the revised pay scale corresponding to the pay scale in which they were working before the implementation of the 5th Central Pay Commission.

18. This issues with the approval of the competent authority”.

7. Aggrieved with the said order, in declaring that they are not entitled to the pay scale of Rs15600-39100 (pre-revised) and consequently Non Practicing Allowances, Post Graduate and Annual Allowances, the said Dr. Chhote Lal and Dr. A.K.S. Bhadoria, filed OA No.1751/2012. The said OA was disposed of by this Tribunal by order dated 06.03.2013 as under:-

“8. The issues to be decided are whether medical practice and medical degree were essential minimum qualifications for the posts for granting the pay scale desired by the applicants or not and if so whether the posts of the applicants had these as minimum qualifications. In this connection, we have perused the recommendations of the 5th CPC which have been quoted above. It is clearly mentioned that the higher entry scale was recommended for such posts of ISM&H which required medical practice as well as medical degree. Further, the advice of Ministry of Finance received in regard to the matter of grant of higher pay scale to the applicants also provides grant of these scales to only those posts which carry medical practice and medical degree. The advice of Ministry of Finance also says that the notification issued by that department also

contained the same provision, relevant extract of that is as follows:-

“MEDICAL AND PARAMEDICAL SERVICES
XII. INDIAN SYSTEM OF MEDICINE
AND HOMOEOPATHY (ISM AND H)

Starting pay scale for all posts 8000-275-13500 52.33 requiring medical practice in ISM and H and a degree in ISM and H as the minimum Qualification.

XIII. CLINICAL PSYCHOLOGISTS

All posts of 1640-60-2600-EB-75 8000-275-13500 52.46

Clinical Psycholo- 2900/2000-60-2300-
gists requiring EB-75-3200-100-3500/
minimum quail- 2200-75-2800-EB-100-
fication of MA/ 4000 M.Sc (Psychology) and D M & S P

6th CPC has also repeated the same requirement. 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.

9. Now the question to be decided is whether the posts the applicants were occupying had these minimum qualifications or not? The Recruitment Rules for the posts of the applicant quoted above make it clear that even diploma holders were eligible to be appointed to the post of RA and subsequently for promotion to STA after 5 years of regular service. Thus, a degree was not minimum qualification as per the recruitment rules. The applicants had stated in their arguments that this provision in the recruitment rules was contrary to IMCC Act. However, the respondents have explained in their counter that at the time of promulgation of IMCC Act, 1970 various instructions in the country were awarding diplomas also for courses varying duration and these diplomas were included in the 2nd schedule of the IMCC Act for allowing such diploma holders to continue. In any case, in our considered opinion, even if IMCC Act provides only degrees it would not vitiate the provision in the recruitment rules requiring either degree or diploma for the post of RA. Thus, we come to the conclusion that the posts of RA and STA occupied by the applicants did not have degree in ISM&H as minimum educational qualification.

10. The respondents have also clarified that the applicants were recruited for helping the Ministry in technical work such as preparation of pharmacopoeia. Medical practice was not envisaged on their posts since they were located in the Secretariat office. The applicants have not contradicted

this nor have they produced any evidence to show that there posts required medical practice. Thus, on this account also the applicants failed to prove their case.

11. Regarding the contention of the applicants that a statutory notification issued by the respondents cannot be over turned by administrative orders, we find that in the statutory notification also no where the posts of applicants have been specifically mentioned. On the contrary the notification extends the benefit of higher scales to posts requiring medical degree and medical practice. Thus, the impugned orders issued by the respondents in no way over turn the statutory notification. They just establish that the applicants were not covered by the statutory notification.

12. Lastly, we come to the issue of recovery of excess amount paid to the applicants. We are not convinced by the explanation given by the respondents that the applicants had managed to get the higher scales in connivance with certain Ministry officials. In our considered opinion it was a genuine mistake of the respondents themselves for which applicants cannot be blamed in any way. We also cannot over look the fact that respondents have inordinately delayed rectifying this mistake of theirs again for which applicants cannot be held responsible. Under these circumstances, in accordance with the decision of Hon'ble Supreme Court in the case of Shyam Baby Verma & Ors. (supra) we direct that no recovery of the excess amount paid to the applicants will be made.

13. Thus, we hold that there is no infirmity in the impugned orders of the respondents dated 04.04.2012. However, considering the facts and circumstances of the case we direct the respondents not to make any recovery on account of excess amount paid to the applicants as a result of wrongly granting them higher scale. O.A. is accordingly disposed of. No costs".

8. Since the applicant in the instant OA is also identically placed like the said Dr. Chhote Lal and Dr. A.K.S. Bhadoria, the respondents have passed similar orders in respect of the applicant also vide the impugned Annexure A order dated 18.04.2013.

9. Shri S.S. Tiwari, the learned counsel appearing for the applicant strenuously pursued us that the applicant is not

identically placed like Dr. Chhote Lal and Dr. A.K.S. Bhadoria. But in view of the above referred various orders of this Tribunal wherein the applicant in the instant OA is also a party at the initial stages and in the circumstances, we cannot accept the submissions made by the learned counsel to this extent.

10. On the other hand, we fully agree with the submissions made by Shri J.P. Tiwari, the learned counsel appearing for the respondents that the applicant is identically placed like Dr. Chhote Lal and Dr. A.K.S. Bhadoria and since the identical order passed in their case was already upheld by this Tribunal in OA No.1751/2012 dated 06.03.2013 and since the applicant failed to show any order from any higher court contradicting the said view, we do not find any merit in the instant OA.

11. In O.A. No.812/2006 dated 24.07.20087 in Dr. V. Sivagourou Vs. Union of India and Others, on which the applicant placed reliance, the relief claimed was as under:-

“(a) To declare that the JIPMER, Pondicherry (Class III Post) Recruitment Rules, 1975 in as much as it classifies the post of Assistant Clinical Pathologist in Class III Non-gazetted with a scale of Rs.650-900 (pre-revised) read with the letter bearing No.A.12034/18/2003-ME(IV) dated 12.09.2005 issued by the first respondent as illegal and unconstitutional and (b) direct the respondents to reclassify the said post as a Class II Gazetted post with the pay scale of Rs.8000-13500 with effect from 01.01.1996 on par with General Duty Medical Officers and other posts carrying MBBS Qualifications, with attendant in situ promotion as Senior Medical Officer on completion of 6 years of service in the scale of Rs.10000-15200 and grant the same to the applicant with arrears of pay and attendant benefits and pass such other orders as are necessary to meet the ends of justice”.

12. A perusal of the facts of the said case clearly reveals that the same are different from that of the instant OA and hence not applicable.

13. In the circumstances and for parity of reasons, the OA is disposed of in terms of the judgment dated 06.03.2013 in OA No.1751/2012 in Dr. Chhote Lal and Another Vs. Union of India.

No costs.

(ARADHANA JOHRI)
Member (A)

(V. AJAY KUMAR)
Member (J)

RKS