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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 515/2003

New Delhi, this the 13th day of February, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A. SINGH, MEMBER (A)

Ms. Neena Mahajan
w/o Sh. Vikas Mahajan
r/o L-405, Agrasen Awas
66 I.P. Extn.
Patparganj
Delhi - 110 092.

... Applicant

(By Advocate: Sh. Vikas Mahajan)

Versus

1. Union of India
through
The Secretary
Ministry of Chemicals & Fertilizers
Udyog Bhawan
New Delhi.
2. The Member Secretary
National Pharmaceutical Pricing Authority,
2E/21, Jhandewalan Extension,
Link Road
New Delhi.

.. Respondents

(By Advocate: Sh. K.C.D. Gangwani)

ORDER

Justice V.S. Aggarwal:-

The Ministry of Chemical and Fertilizer, Government of India has set-up a Department/Office, i.e., National Pharmaceuticals Pricing Authority (in short 'NPPA') which has been assigned the function of Price Fixation/Price Revision of bulk drugs based on the comprehensive studies of bulk drugs. While carrying out the cost-cum-techno economic studies of bulk drugs, the work involves collection, compilation and analysis of voluminous data of various manufacturers of the drug. Prior to the setting up of NPPA, the function of the Price Fixation/Price Revision of bulk drugs was being performed by the Bureau of Industrial Costs and prices. The staff has

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been employed by the NPPA on contract/ad-hoc basis. There are two categories of employees employed by the NPPA on contract/ad-hoc basis. There are Data Entry Operators (in short DEOs) appointed on a consolidated salary of Rs.5000/- per month and Young Professionals (in short YPs) appointed on a consolidated salary of Rs.7000/- per month. The Data Entry Operators are graduates whereas the Young Professionals are qualified either as Cost Accountants or as Pharmacists. The functions being performed by Young Professions who are Cost Accounts and Young Professions (Tech.) also differ. The Young Professions (Cost Accountants) are involved in the Cost-cum-Techno-Economic study of the bulk drugs which includes Financial Analysis i.e. Cost Analysis and Cost Examination. On the contrary the Young Professionals of Pharmacists, called Young Professionals (Tech.) are involved in the compilation and collection of technical information/data relating to Cost Price study.

2. The applicant is a Cost and Works Accountant and has qualified from the Institute of Cost and Works Accountants of India (in short 'ICWAI'). She was appointed as Young Professional w.e.f. 28.9.1999. She was appointed after being screened in the interview. The initial appointment of the applicant continued for about four months without break and thereafter the respondents started the breaks of giving artificial breaks after 89 days. Her services have been continued though artificial breaks were being given after a period of three months.

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3. The applicant contends that though she has been given the designation of Young Professional, she has actually qualified and eligible to be appointed as Assistant Director (Cost) in the pay scale of Rs.8000-13500.

4. The applicant further contends that there is no post like Young Professional in any of the Departments under the Government of India. The work which is performing is of a continuing nature, and therefore, there is no justification for giving the artificial breaks. The vacancies for the post of Assistant Director (Cost) exists and otherwise also it is contended that the continuation of the applicant for fairly such a long period demands that she should be regularised as Assistant Director. It is in this backdrop that the applicant seeks that she should be granted scale of Rs.8000-13500 with allowances like leave, increments, maternity leave and also the benefits of service conditions as are admissible to regularly appointed Assistant Directors. The applicant has also prayed that she should be awarded the scale of Rs.8000-13500 of the Assistant Director. It is further prayed that if she applies for the regular appointment she should be given age relaxation and artificial breaks should not be given.

5. The application is being contested. The respondents do not dispute that National Pharmaceutical Pricing Authority is an attached office of Department of Chemicals & Petrochemicals in the Ministry of Chemicals & Fertilizers. Government of India issued the Drug Price Control Order thereby

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prescribing 74 bulk drugs prices of which are to be fixed by the Government based on certain criteria. NPPA has been delegated this power to fix the prices of bulk drugs. For the purpose of cost-cum-techno-economic studies and information of prices NPPA collects information through available literature, interaction with Company's fact sheets, personal visits to the factories. For these purposes various levels of posts have been created in the NPPA. In order to help the officers in collating, analysis and preparation of report some Data Entry Operators/Young Professionals were engaged on temporary, contract and need based basis to complete such studies. There are no regular posts of Data Entry Operators and Young Professionals. The work so assigned is seasonal. Once study is complete, the price of the bulk drug is fixed, it will remain valid for three years and next study would start after three years. In case of formulations, the prices so fixed by the NPPA will remain in force till there is substantial increase in the prices of inputs. Thus the quantum of work varies from time to time.

6. It is denied that the applicant is entitled to the scale and facilities of the Assistant Director. The said post is stated to be filled through the Union Public Service Commission.

7. The question as to the jurisdiction to entertain the application had already been considered in the case of Ms. Garima Seth & Others v. Union of India & Others, in OA No.156/2002, decided on 28.1.2003. It was held:

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"7. During the course of submissions, our attention has been drawn as to whether we will have jurisdiction to entertain the application with respect to persons serving in the NPPA. However, the learned counsel for the applicants has drawn our attention to the Resolution of the Department of Chemicals and Petrochemicals dated 29.8.1997. It shows that the Government had decided to establish an independent body of experts to be called as NPPA consisting of a Chairperson in the status of the Secretary to the Government of India besides the Members etc. It is entrusted with the task of prices-revision and other related matters such as updating the list of drugs under price control. It has also to monitor the process of decontrolled drugs. The expenditure of the authority shall be borne by the Central Government. It clearly, therefore, shows that respondent No.2 is not a separate entity or a society registered in the Societies Registration Act. It is only an attached office of the Ministry of Chemicals and Fertilizers. Consequently, this Tribunal will have jurisdiction to entertain the application.

8. Keeping in view the same, the said contention no more survives for consideration.

9. The learned counsel for the applicant has contended that applicant has been appointed on contract basis taking unemployment situation in the country to the advantage of the respondents. The services are being given artificial breaks and after few days, the applicant is again re-employed. It is not disputed that the applicant was employed on a consolidated fees of Rs.7000/- as Young Professional in NPPA. It was mentioned that the assignment does not carry any House Rent Allowances, Dearness Allowances, City Compensatory Allowances, etc. The applicant has been engaged and the services are given artificial breaks and we referred to some of those

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orders. Annexure A-2 is the order of 28.3.2001 whereby the services of the applicant were terminated recording:-

"The undersigned is directed to say that your services are no longer required in the NPPA due to non availability of work.

Therefore, your engagement with the NPPA will be discontinued w.e.f. 31.3.2001.

Sd/-
(S.K.Gupta)
Dy. Director (Estt.)"

10. On 4.4.2001, she was gain re-engaged:

"The undersigned is directed to inform that you are hereby engaged as DEO/YP purely on temporary and adhoc basis w.e.f. 04.04.2001 to 30.06.2001 or till such time the work is available for your which ever is earlier. During the period of your appointment in National Pharmaceutical Pricing Authority (NPPA) you will be entitled for a consolidated honorarium of Rs.5000/-/Rs.7000/- p.m."

11. Similarly, other orders have been produced on the record to show that artificial breaks have been given and she has been continued. The correctness of these orders have not been disputed. A bare reading of these orders show that the contention of the respondents that after sometime the work is over and services are disengaged cannot be believed. The arguments that it is because of non-availability of work does not stand the scrutiny because after a few days the person is being re-employed. Thus their notional breaks which cannot be approved.

12. We know from the decision of the Supreme Court in the case of Ratan Lal v. State of Haryana, (1985) 4 SCC 43 that such breaks so given would be

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violative of the Article 14 of the Constitution of India. Identical is the position herein and therefore the breaks as such cannot be approved.

13. However, the learned counsel for the applicant contended that the applicant is entitled to the scale of Assistant Director and has been continued the same duties.

✓ 14. So far as this particular contention is concerned, it has to be stated to be rejected. The applicant was performing duties of Young Professionals there is no corresponding post of Assistant Director comparable with Young Professional. It was not disputed that so far as the Assistant Directors are concerned, the recruitment could only by following the procedure by the Union Public Service Commission and therefore, merely because the applicant contends that some of the duties performed by her and those of Assistant Directors it cannot be believed that she can get the same scale.

15. In face of what has been recorded in the preceding paragraphs, regularisation of the applicant cannot be allowed so far as the Assistant Directors are concerned it has to be done in accordance with the recruitment rules and there is no post of Young Professional.

16. Our attention has been drawn towards the decision of this Tribunal in the case of Ms. Garima Seth & Others (supra). This Tribunal, relying upon the decision of the Full Bench of this Tribunal in the



case of Dr. (Mrs.) Sangita Narang and Others v. Delhi Administration, Etc., [1988] 6 ATC 405 held that principle of equal pay for equal work cannot be lost sight of. This order of the Tribunal had been upheld by the Supreme Court. Keeping in view this Tribunal, so far as the Data Entry Operators are concerned, they were given corresponding scale of Rs.5000-8000.

17. The difficulty for the applicant is that there is no corresponding scale for the post of Young Professional. All that can be conjoled from the record is that the post of Young Professional was considered to be superior, even from the initial appointment, than the Data Entry Operators. The fairness does not require that she should get less than Data Entry Operators.

18. For these reasons, we dispose of the present Original Application with the following directions:

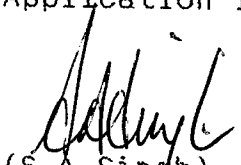
- a) In the absence of regular post, the applicant shall be allowed to continue without a break so long as the work requirement exists. Of course, in case of indiscipline or any such act, the respondents are at liberty to terminate the services of the applicant.


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b) The applicant would be entitled to one Casual Leave, if she serves for full one month period.

c) The claim of the applicant for the scale should be considered in view of the fact that in any case because she would not get less than the Data Entry Operators who had been placed in the scale of Rs.5000-8000 as has been done in the case of Ms. Garima Seth & Others.

19. With these directions, the Original Application is disposed of. No costs.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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