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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1979/2003

New Delhi, this the 9th day of January, 2004

Hon'ble Shri Shaker Raju, Member (J)
Hon'ble Shri S.K. Naik, Member (A)

Dr. Atul Kumar Gupta
s/o Late Shri Y.V.Gupta
Senior Scientific Assistant
Group 'C' (Pay scale Rs.6500-10500)
Homoeopathic Pharmacopoeia Laboratory
Under M/o Health & Family Welfare,
New Delhi
r/o 37- Nai Basti,
Ghaziabad (UP)

..Applicant
(By Advocate: Shri M.L.Sharma)

Versus

Union of India through
Secretary (ISM &H)
Department of ISM & Homoeopathy
Ministry of Health & Family Welfare
Red Cross Building
1-Red Cross Road, New Delhi

..Respondent
(By Advocate: Shri M.M.Sudan)

O R D E R

Shri S.K.Naik:

The applicant - Dr. Atul Kumar Gupta - has come before this Tribunal for the third time. Earlier, he had filed OA-2687/2001 claiming therein that even though he possessed the qualification of MSc (Chemistry) and Ph.D in Chemistry and thus fulfilled more than the required qualification for being entitled to the scale of pay of Rs..6500-10500/- w.e.f. 1.1.1996, the same was denied to him. He had further alleged therein that he was discriminated, vis-a-vis, his counter-parts in the Central Drug Laboratory (CDL) and Central Indian Pharmacopoeia Laboratory (CIPL), Ghaziabad. The Tribunal vide its order dated 2.5.2002 had disposed of the said OA with the following directions:-

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"6.... In our view, therefore, there is an anomaly in the pay scale of applicant who possesses the same qualifications as SSAs of CDLs and had the same pay scale prior to 1.1.1996 as that of SSAs of CDLs. Resolution of this anomaly warrants consideration.

7. In the light of above discussion, it would be in the interest of justice to dispose of this OA directing respondents to consider the case of applicant as an anomaly by constituting a committee having officers of the level of Joint Secretary and above from the Ministry of Finance, Ministry of Personnel and Ministry of Health and Family Welfare, which should consider applicant's representations stated above along with the present OA as a supplementary representation and taking a reasoned decision on the issue of granting pay scale of Rs.6500-10500 to applicant w.e.f. 1.1.1996 as accorded to SSAs of CDLs, within a period of three months from the date of communication of these orders. Ordered accordingly."

2. Subsequently, the applicant had also filed a contempt petition for non-compliance of the orders of the Tribunal which was dismissed by the Tribunal holding that it did not find any wilful disobedience of its order.

3. The respondents, in compliance with the direction of the Tribunal in its order dated 2.5.2002, constituted a Committee of Joint Secretaries of the Ministry of Personnel, Ministry of Finance and Ministry of Health & Family Welfare. The said Committee considered the case of the applicant and decided not to recommend the higher scale of Rs.6500-10500/- for the post of Scientific Assistant in Homoeopathic Pharmacopoeia Laboratory (HPL), Ghaziabad. Not satisfied with the Committee's recommendation, the applicant has once again come before us through the present OA.

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4. Shri M.L.Sharma, counsel for applicant assails the impugned order primarily on two counts; his first contention is that the applicant is not only fully qualified with M.Sc. (Chemistry) degree behind him, but with an added Ph.D degree to his credit, deserves the higher scale of Rs.6500-10500/- . The other ground on which the impugned order has been challenged pertains to discrimination, vis-a-vis, Senior Scientific Assistants (SSAs) in other sister Organizations, such as, CDL and CIPL, Ghaziabad. In support of his first contention, the counsel has argued that the 5th Central Pay Commission, vide its recommendation under para 69.55 pertaining to the Ministry of Health & Family Welfare, has recommended and allotted the higher scale of Rs.6500-10500/- in respect of those Research Assistants/SSAs of CDLs, who were possessing M.Sc. degree. This recommendation having been accepted by the Government of India, the respondents could not over-look the fact that the applicant possesses not only a degree in M.Sc. but in addition has a Ph.D degree to his credit. Under the circumstances, denial of the higher scale of Rs.6500-10500/- has resulted in gross injustice.

5. On the question of discrimination, the counsel has stated that while the higher scale of pay of Rs.6500-10500/- has been allowed to SSAs working in all CDLs and also in CIPL, Ghaziabad, who are similarly placed, like the applicant, denying the same to the applicant amounts to gross discrimination, besides being illegal and violative of Articles 14 & 16 of the Constitution. In support of this contention, the counsel has referred to the judgment of the Hon'ble Punjab &

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Haryana High Court in Pawan Kumar v. The State of Haryana & others, 2003 (3) ATJ 429. He has further contended that the Director (I/C) of the HPL, Ghaziabad had clearly delineated the nature of duties performed by the applicant and had categorically stated that they are similar to those SSAs working in all CDLs and also the SSAs working in CIPL, Ghaziabad and had recommended that the pay scale of SSAs, HPL, Ghaziabad be upgraded to the pay scale of Rs.6500-10500/-. Finally, the counsel has contended that the Tribunal in its order dated 2.5.2002 had clearly held that an anomaly existed in the pay scale of the applicant and it was incumbent upon the Committee to resolve the anomaly which has not been done. With the rejection of his claim, the anomaly continues to persist and, therefore, urged that the impugned order be set aside and the higher pay scale of Rs.6500-10500/- be granted to the applicant.

6. Shri M.M.Sudan, counsel for respondents forcefully countering the arguments advanced by the counsel for applicant has contended that as per the direction of the Tribunal, the Committee at the level of Joint Secretaries drawn from the Ministry of Finance, Ministry of Personnel and Ministry of Health & Family Welfare was constituted and this high level Committee had gone into all the points raised by the applicant in his earlier OA as well as the representations and after giving full consideration of the implications decided not to recommend the case for the grant of the higher pay scale fully enumerating the reason as to what repercussion would it have on the management of the cadres in the Department. The counsel has contended that

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the matter of revision of pay scale of the SSAs in HPL, Ghaziabad was placed before the 5th CPC by the Department of ISM & H, so was the case with regard to the SSAs in other Organizations under the Ministry of Health & Family Welfare. However, the 5th CPC recommended a pay scale of Rs.5500-9000/- only in case of SSAs in the HPL and did not recommend the higher pay scale of Rs.6500-10500/- while it made specific recommendations for the scale of Rs.6500-10500/- in respect of SSAs in CDL. Obviously, the expert body, like the Pay Commission, took into consideration not only the minimum essential qualification but also the duties, responsibilities, nature of work, the vertical and horizontal relativities and the host of other relevant consideration and yet did not recommend the higher scale.

7. With regard to the contention of the counsel for applicant that the applicant possessed not only M.Sc. degree but a Ph.D degree; the counsel for respondents has contended that while possession of the essential qualification entitles an employee for consideration, the possession of any other qualification over and above thereto does not entitle him for any special consideration for the grant of a higher pay scale. The repeated emphasis by the counsel for the applicant on the matter of qualification has been countered by the counsel for respondents by submitting that the same has to be seen in the perspective of the recruitment rules and where the rules provide 100% promotion from the feeder cadre, as is the case here, additional qualification is totally irrelevant.

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8. On the point of alleged discrimination, the counsel for respondents has contended that the pay scale of Rs.6500-10500/- to the SSAs of CDLs was granted because of the nature of duties they were supposed to perform, the pay scale prevalent to the feeder cadre and other forms. The same facts with regard to the SSAs of HPL were also placed before the same expert body who, after careful consideration, did not recommend the pay scale of Rs.6500-10500/-. The method of recruitment and nature of job of both CDL/CIPL and HPL are different. The nature of duties at CDL/CIPL includes the testing of products ranging from generics to vitamins, ophthalmics, wide range of antibiotics, cosmetics, surgicals, injections, injectables, condoms, etc., while the HPL tests homoeopathic products but does not test products like surgicals, injectables, condoms, antibiotics, vaccines etc. He has further contended that CDL and HPL have different duties and functional roles. Since the SSAs in other sister Organization, i.e., CIPL were not similarly circumstanced, the question of discrimination did not arise and the applicant cannot claim that he has been discriminated against.

9. We have heard the counsel appearing for both the parties. The impugned order, as stated earlier, has been assailed primarily on two counts; one that the applicant possesses the qualification even higher than the required essential qualification which has been prescribed for SSAs not only in the Organization of the applicant, i.e., HPL, but also in other sister Organizations. Since in the other Organizations, the higher scale of Rs.6500-10500/- has been granted, the counsel for

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applicant contends that the applicant should also be granted the same scale of pay. The other point, on which he has relied upon, relates to hostile discrimination. He contends that while the pay scale of Rs.6500-10500/- has been given to the SSAs of CDL and CIPL, who are required to possess the M.Sc. degree, the same has been denied to the applicant even though he possesses the Ph.D degree, which higher than the M.Sc. (Chemistry) degree.

10. We have carefully considered the averments made by the counsel for the parties. Insofar as possessing of qualification much higher than the required for consideration of promotion is concerned, the same, in our view, may add to the advantage of a candidate at the time of his recruitment to a service but certainly it would not add any additional weightage at the time of promotion since promotions are held as per the provisions of the rules. The repeated averments in the OA and very forceful argument by the counsel for applicant that the applicant was much more qualified than what was required for the post of SSAs and, therefore, should be given the higher pay scale, in our view, does not merit consideration.

11. Insofar as the point of hostile discrimination advanced by the counsel for applicant is concerned, here again, we find that the analogy which he has drawn, is not apt. Discrimination can be alleged, vis-a-vis, a similarly circumstanced colleague in service. Just because the designation is the same but when the employees belong to different Organizations, it cannot be said that there has been discrimination. As has been

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amply clarified by the Committee of three Joint Secretaries, the post of SSA in HPL is not comparable with that of SSA in CDL which was specifically recommended by the 5th CPC. The Committee has also clearly brought out in the impugned order that possessing of M.Sc. or Ph.D degrees is not of much relevance, as the post is required to be filled 100% by promotion based on seniority and suitability from the feeder post of Scientific Assistant for which graduation is the minimum qualification prescribed. More importantly, we find that the Committee has dealt with the question of relativities in para 5 of the impugned order in which it has been clearly stated that upgradation of this post in isolation will affect the established relativities as post of SSA in PLIM, Ghaziabad, which carries minimum direct recruitment qualification of M.Sc. also exists in an identical pay scale of Rs.5500-9000/- . It has further been stated that in other sister Institutes of Indian Systems of Medicine & Homoeopathy as well as PLIM, Ghaziabad, posts carrying minimum direct recruitment qualification of M.Sc. actually exists in the pay scale of Rs.4500-7000/- which is lower even what the applicant has been assigned. When the Pay Commission has gone into this aspect and assigned the pay scale of Rs.5500-9000/-, there is hardly any justification for the Tribunal to interfere in the matter.

12. With regard to the judgment of Hon'ble Punjab & Haryana High Court in Pawan Kumar's case (supra), we have carefully gone through the same and find that the facts and circumstances of the case in that judgment are totally different and have no relevance to the facts of

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the present case. In the case cited, the facts were totally different in that the State Government of Haryana, at one point of time, had taken a conscious decision to grant the same scale of pay, i.e., parity to the Statistical Assistants in all the Departments and the Statistical Assistants working in various Departments were granted similar scales of pay on various occasions and when the same pay scales were revised, the parity was maintained. Subsequently, in the case of the petitioner before the Hon'ble Punjab & Haryana High Court, however, a departure was made and, therefore, the Hon'ble Court held that case to be a case of discrimination and allowed the petition. In the instant case, there is not only no conscious decision by the competent authority to allow the parity of pay to the Statistical Assistants of various Organizations, but the same in fact is being contested by them vehemently. The cited case would, therefore, not provide any help to the applicant.

13. With regard to the revision of pay scale, we have to keep in mind the view pronounced by the Hon'ble Supreme Court in Union of India & another v. P.V. Hariharan & another, 1997 SCC (L&S) 838 in which it has been held as under:-

"5. ...We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that

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interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter."

14. In the instant case, a direction was earlier issued for the constitution of a high level Committee to look into the anomaly, if any. The 5th Pay Commission had not made any specific recommendation with regard to applicant's post. The Committee, in our view, has thoroughly gone into the pros and cons of the matter and we find no irregularity and illegality in the opinion expressed by the Committee. The application, under the circumstances, has to be held to have no merit and is accordingly dismissed with no order as to costs.

Naik
(S. K. Naik)
Member (A)

S. Raju
(Shanker Raju)
Member (J)

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