

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WRIT PETITION (CIVIL) No. 2325/2011**

% **Reserved on:** 21st November, 2016
Date of Decision: 04th January, 2017

CENTRAL INDUSTRIAL SECURITY FORCEPetitioner
Through Ms. Noor Anand, Advocate.

Versus

SURINDRA BHYAKTARespondent
Through Ms. Harvinder Oberoi, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J.

The Union of India and the Director General, Central Industrial Security Force (CISF, for short) impugn the order dated 23rd November, 2010 passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) whereby OA No. 1828/2008 filed by Surindra Bhyakta, the respondent before us, has been allowed with the direction that he was eligible for scale of pay of Rs.1350-2250 from 1st January, 1986 and accordingly should be paid arrears of pay.

2. The respondent claims that he being a Pharmacist was entitled to pay scale of Rs.1350-2250 in terms of the Central Civil Services (Revised Pay) Rules, 1986, a claim that has been accepted by the Tribunal. The petitioners,

however, assert that the respondent would be entitled to the said scale with effect from 5th June, 1996 and not before.

3. This is the second round of litigation, for the respondent had earlier filed OA No. 35/1997. We would subsequently refer to the order of the Tribunal passed in the said OA and the consequent order of the petitioner-Central Industrial Security Force and begin by first elucidating the factual matrix relevant to the present dispute.

4. The respondent was appointed as a Compounder on 15th April, 1985 in the scale of pay of Rs.330-560. The said designation and post of Compounder, however, was at variance, for the Ministry of Health and Family Welfare vide their letter dated 19th July, 1955 had decided to change the designation of Compounder to Pharmacist. The said letter was issued in view of the representation that all Compounders who had been included in the first register compiled under Sections 29 and 20 of the Pharmacy Act, 1948 and were to be designated as Pharmacists. This letter had, however, stated that this would not have involved any change of scale of pay. For the sake of clarity, we would like to reproduce the entire letter dated 19th July, 1955 which reads:-

“Sub:- Change of designation of Compounders’ to ‘Pharmacists’ Resolution passed by the Pharmacy Council of India.

I am directed to say that it was represented to the Govt of India that all ‘Compounders’ whose names had been included in the ‘first registers’ (Compiled under section 29 and 20 of the Pharmacy Act 1948) should be designated as ‘Pharmacist’. This matter has been under the consideration of the Govt. of India for some time. Before a decision was taken, the matter had been referred to Pharmacy Council of India. That council agreed with the proposal. A copy

of the resolution on the subject passed by the Pharmacy Council of India at their meeting held on the 12th November, 1954 is enclosed.

The change of designation of the Compounders to that of Pharmacists will not involve any change in their scale of pay which will continue to be regulated in accordance with the orders contained in the Govt. of India, Ministry of Finance O.M. No. 1 (53)-Est (Spl)/47 dated 14th April, 1950 (copy enclosed for ready refer). I am to suggest that, if there is no objection, similar action in the matter may be taken by the State Governments in so far as Compounders/Dispensaries working in hospitals dispensaries etc. under the State Governments are concerned. This Ministry may kindly be informed in the course of the action taken by the State Governments in the matter.”

5. The Fourth Pay Commission in its recommendations in paragraph 15 relating to para medical staff had noticed that there were 2400 posts of Pharmacists in the Central Government, including Railways, who were recruited in the pay scale of Rs.330-560 with selection grade of Rs.425-640. Considering the recruitment qualification and duties and responsibilities, it was recommended that Pharmacists in the pay scale of Rs.330-560 may be given pay scale of Rs.1350-2200 and those in the scale of 425-640 and Rs.425-700 may be given the pay scale of Rs.1400-2600. It was also recommended that the Ministry could examine the desirability of few posts in the pay scale of Rs.1640-2900.

6. However, the respondent even after the implementation of the Fourth Pay Commission vide Central Civil Services (Revised Pay) Rules, 1986 was given pay scale of Rs.1200-2040 corresponding to the pay scale of Rs.330-560. This was notwithstanding the fact that Fourth Pay Commission had specifically upgraded the pay scale of Pharmacists in the scale of Rs.330-560 to that of Rs.1350-2200. Considering the representation made by the

respondent vide letter dated 19th January, 1989, the respondent was given pay scale of Rs.1350-2200, which was however subsequently withdrawn vide letter dated 9th January, 1990 re-fixing the pay of the respondent in the pay scale of Rs.1200-2040 with a direction that excess payment made in terms of the order dated 19th January, 1989 should be claimed/recovered. Thereafter, correspondence was exchanged and the representation of the respondent remained under consideration. The petitioners vide their letter dated 26th/29th June, 1996 informed the respondent that the post of Compounder was re-designated with effect from 5th June, 1996 as Pharmacists and accordingly from the said date the respondent would be entitled to pay scale of Rs.1350-2200. However, the respondent was aggrieved by this letter because he was denied the said pay scale with effect from 1st January, 1986 and recoveries, etc. had also been directed for the period when the said scale was paid.

7. The Tribunal in the impugned order after noticing the facts has allowed the said OA. The Tribunal has noticed that the respondent had first approached the Tribunal vide OA No. 35/1997, which was decided on 4th September, 2000. This order refers to the Government of India's letter No. 7-21/55-D dated 19th July, 1955 issued by the Ministry of Health quoted above in support of the contention that the designation of Compounder had been changed to Pharmacist. Referring to the ambivalent stand of the petitioners, who had initially agreed with the respondent and then had withdrawn the scale of Rs.1350-2200, the following directions were made:-

“3. We have come across several problem areas in so far as the attitude of the respondents is concerned in the matter of grant of the above scale of pay to the applicant from 1.1.86. Firstly, it has not been clarified by the respondents in unequivocal terms as to why and, based on what reasoning, they could not re-designate the

post of Compounder to that of a Pharmacist in line with the aforesaid letter of the Ministry of Health. It is seen from the record that, at one stage, the respondents had yielded some ground in the matter and had sanctioned the above-mentioned scale of pay in favour of the applicant on a provisional basis, and this was done on 19.1.89. Subsequently, without assigning any reasons, the respondents withdrew the above scale and placed the applicant instead in yet another scale of pay which was supposed to be the replacement scale of pay for the post of Compounder. Lastly, in their letter/order dated 5.6.96, the respondents have simply stated that the Ministry of Home Affairs have not agreed to the grant of the above scale of pay (Rs.1350-2200) w.e.f. 1.1.86. It was also mentioned that they had agreed to re-designate the post as above w.e.f. 5.6.96 and granted the scale of pay of Rs.1350-2200/- with effect from the same date, namely, 5.6.96 (Annexure-A). What essentially stands out in this case is that the respondents have never ever passed a speaking and a reasoned order in response to the representations filed by the applicant.

4. In the circumstances, noting that a simple change in the designation is involved, the OA is disposed of with a direction to the respondents to review the matter and if necessary, consider making amendment to the relevant rules so as to grant the scale of pay of Rs.1350-2200/- to the applicant w.e.f. 1.1.86 on par with the other Central Police Organisations in terms of the letter of the Ministry of Health dated 19.7.55. The respondents are further directed to take a final decision in the matter as far as possible within a period of two months from the date of receipt of a copy of this order under advice to the applicant and after affording full opportunity to him to state his case. The respondents are also directed to pass a speaking and a reasoned order enabling the applicant to agitate the matter further, if necessary, in an appropriate forum or in a Court of law.

No order as to costs.”

8. Thereafter, it appears that the petitioners went in a different direction for they perceived that the certificate of pharmacy produced by the

respondent was not genuine or was invalid. Ultimately, after screening and verification, the certificate of pharmacy produced by the respondent was accepted vide order dated 26th July, 2007, whereby the charge against the respondent for giving wrong information by producing false diploma certificate was dropped. The letter dated 26th July, 2007 refusing to grant scale of Rs.1350-2200 with effect from 1st January, 1986 gives the following reasons:-

“4. Thereafter, the matter was again referred to the Ministry of Finance for grant of upgraded pay scale of Rs.1350-2200 retrospectively wef 01-01-1986. The matter was re-examined by the Ministry of Finance, Department of Expenditure. After re-examination they have found that the directions of the Hon’ble Tribunal are limited to “the respondent to review the matter and if necessary, consider making amendment to the relevant rules.....” within a period of two months (as far as possible) after allowing the applicant an opportunity to state his case. In the light of the above directions it has been informed that change of designation of post with retrospective effect and amendment of Rules in individual cases would be against the spirit of the Rules itself and as such would not be in public interest. Also, in terms of provision contained in GFR, benefits of upgraded pay scales can be given only prospectively.

5. In view of the foregoing discussions, the petitioner is hereby informed that his request for grant of pay scale of Rs.1350-2200 wef 01-01-1986 could not be acceded to. However, consequent upon re-designation of his post from Compounder to Pharmacist in the higher pay scale of Rs.1350-30-1440-40-1800-EB-50-2200 wef 9th June, 1996 vide Battalion Service order Part I No.34/1996 dt. 26/29 June, 1996, his pay has already been fixed wef the same date vide Battalion Service order Part II No. 206/96 dt. 05-08-1996.”

9. The contention of the petitioners, which was also raised before the Tribunal, was that the respondent was enrolled as a Pharmacist only on 5th

March, 1992 and hence was not entitled to the scale of pay applicable to the Pharmacists from 1st January, 1986. The said contention was rejected, the reason being that the respondent was always eligible for enrolment even earlier under the Pharmacy Act, 1948. The enrolment of the respondent as a pharmacist on 5th March, 1992 was a ministerial act and not a determinative factor. We are in agreement with the Tribunal that the argument raised by the petitioners authorities, being far-fetched and nebulous, must be rejected. The error and default were on the part of the petitioners who had not re-designated the post of Compounders as Pharmacists in the Recruitment Rules applicable to the Central Industrial Security Force. It is not the case of the petitioner that the essential qualifications of Compounders as per the Recruitment Rules were different as that of Pharmacists. The registration as a pharmacist was not mandated or required. We have quoted the letter of the Government of India No. 7-21/55-D dated 19th July, 1955. This letter affirms and records the mere change in designation or nomenclature of the post. It also records that due to the said change of designation or nomenclature, the pay scales of Compounders would not undergo a change for the Compounders and the Pharmacists were treated as one and the same. The Fourth Pay Commission did not consider the case of Compounders as separate and distinct from those of the Pharmacists, in view of the fact that Compounders had been re-designated as Pharmacists pursuant to letter No. 7-21/55-D dated 19th July, 1955 of the Ministry of Health. It is not the case of the petitioners that the respondent was performing different duties and was not performing the work as a Pharmacist. The posts of Compounder and Pharmacist were identical. The petitioners themselves have re-designated the post of Compounder in Central Industrial Security Force as Pharmacist

belatedly as they had failed to follow the mandate of the letter dated 19th July, 1955. They were themselves at fault. The respondent would not suffer for the said lapse or omission which could only be attributed to the petitioners.

10. The fact that the respondent was registered as a Pharmacist with effect from 5th March, 1992 would not make the slightest difference. This was not the requirement or the stipulation in the letter No. 7-21/55-D dated 19th July, 1955. This is not what was stipulated and required by the Fourth Pay Commission recommendation, which had accepted upgradation of pay scale applicable to Pharmacists. It is not the case of the petitioners that this was the requirement, which was introduced in the Recruitment Rules when the post of Compounder was re-designated as Pharmacist. Interestingly, the respondent had got himself enrolled as a Pharmacist on 5th March, 1992, but his pay scale is being revised to Rs.1350-2200 not from the said date but with effect from 29th June, 1996. The stand of the petitioners is clearly conflicting and is devoid of any merit.

11. In view of the aforesaid discussion, we do not find any merit in the present writ petition and the same is dismissed. We affirm the order passed by the Tribunal. No order as to Costs.

(SANJIV KHANNA)
JUDGE

(CHANDER SHEKHAR)
JUDGE

JANUARY 04, 2017/VKR