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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.2462 of 2002

New Delhi, this the 7th day of February, 2003

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

1. Dinesh Kumar
S/o Sri Satya Narayan
R/o 25/A, Ahir Mohalla,
Najafgarh Road,
Nangloi,
Delhi.
2. Bijender Kumar
S/o Late Jas Ram Singh
R/o 147, Gali No.13,
Balbir Naga Extension Nalapar,
Shahdara,
Delhi.

-APPLICANTS

(By Advocate: Shri Apurb Lal)

Versus

1. Director General,
ICMR, Ansari Nagar,
New Delhi.
2. Institute of Pathology (ICMR)
Through its
Officer on Duty,
Safdarjung Hospital Campus,
Post Box No. 4909,
New Delhi-29.

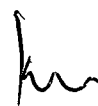
-RESPONDENTS

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)

The two applicants in this OA have filed this OA seeking a direction to the respondents to pay wages as per 5th CPC applicable to the Laboratory Assistants (hereinafter referred to as LA).

2. Facts in brief are that the applicants are working as Daily Wager LAs. They claim that they possess the requisite qualification and experience for regular appointment but they are not being paid proper wages since their appointment either as per 5th Pay Commission or on equal pay for equal work.



3. The applicants had earlier filed an OA No. 1907/2000 seeking a direction to the respondents to consider their case for regularisation. The said OA was disposed of with a direction to the respondents to consider the claim of the applicants for regularisation as LAs as expeditiously as possible. Thereafter the applicants filed a CP as the order was not complied with. Thereafter applicants filed another OA No. 2017/2001 claiming equal wages for equal work but the Tribunal vide order dated 16.8.2001 dismissed the OA with a direction that the proper remedy available to the applicants is to file a Contempt Petition instead of filing the present OA which would be barred by doctrine of constructive res judicata. The applicants thereafter filed a Writ Petition against the order dated 16.8.2001 but the same was withdrawn. The applicants still claim that they have not been paid wages as per the 5th Pay Commission or on the basis of equal pay for equal work so they pray for a direction to the respondents to pay them on the basis of equal pay for equal work.

4. The respondents are contesting the OA. The respondents have taken an objection about the maintainability of the OA and submitted that the same is barred by constructive res judicata itself and also submitted that the applicants are claiming the relief of payment of wages in accordance with the 5th Pay Commission but are not entitled to the same in view of the fact that the Central Civil Services (Revised Pay) Rules, 1997 specifically provide that the rules are not applicable to the persons who are being paid on daily

for

wages. It is also stated that the applicants are not performing the duties as regular employees are performing.

5. I have heard the learned counsel for the parties and gone through the records of the case.

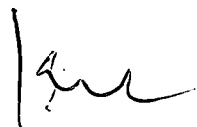
6. This is a third round of litigation. As per Annexure A-2 when the second OA of the applicants was dismissed it was specifically observed by this Tribunal as under:-

"In my considered view the proper remedy before these two applicants is to file a Contempt Petition instead of filing the present OA which would be barred by doctrine of constructive res judicata" (emphasis supplied).

7. Against this order the applicants had gone in appeal before the Delhi High Court by filing a Civil Writ Petition but they had withdrawn the same. The position as is clear from the pleadings of the parties remains the same. The applicants are again claiming wages on the basis of equal pay for equal work so the OA still remains barred by principles of doctrine of constructive res judicata and is not maintainable.

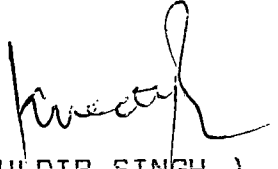
8. Besides that it is admitted by the applicants themselves that they are working on daily wages basis so the question of applicability of 5th CPC does not arise, hence the applicants cannot claim any wages under the recommendation made by 5th CPC.

9. As far equal pay for equal work is concerned,



(4)

daily wager cannot claim equal wages with regular employees, so none of the grounds have any merits. Hence, OA being devoid of any merit, calls for no interference. Accordingly, the same is dismissed. No costs.


(KULDIP SINGH)
MEMBER(JUDL)

/Rakesh