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Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 1228/99

New Delhi this the 23rd day of February, 2001

Hon'ble Mr. V.K. Majotra, Member (A)
Hon'ble Mr. Shanker Raju, Member (J)

L.C. Tyagi
S/o Shri Mangat Singh Tyagi,
R/o Type No. 760, N.H.-4,
Faridabad (Haryana)

-Applicant

(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India through
The Secretary,
Ministry of Water Resources,
Govt. of India,
Sharm Shakti Bhawan,
New Delhi.
2. The Chairman,
Central Ground Water Board,
Jam Nagar House, New Delhi.
3. The Director (Administration),
Central Ground Water Board,
N.H. 4, Faridabad (Haryana)

-Respondents

(By Advocate: Shri N.S. Mehta)

ORDER (Oral)

Mr. V.K. Majotra, Member (A)

Applicant's grievance is that the respondents have not finalised ^{his} ~~the~~ case for grant of higher pay scale of Rs. 1200-2040/4000-6000 at par with the Laboratory Assistant working in the Geological Survey of India (GSI) which is illegal, unjust and arbitrary and against the principle of equal pay for equal work. The applicant having ^{been} ~~was~~ appointed as Helper in 1965 was promoted as Lab Attendant in 1968 and further promoted as Lab Assistant in August, 1976 on ad hoc basis. He was regularised as such in 1983. It is stated that after the IVth Central Pay Commission (CPC) the pay of Lab. Assistant working in the GSI was fixed in the pay scale of Rs. 1200-2040. However, the applicant and other similarly situated persons working in the office of the respondents were

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granted a lower pay scale of Rs.950-1500 (975-1540) in spite of the fact that qualifications, nature of duty and Recruitment Rules in both the departments for Lab Assistants were almost same. The applicant along with other Lab Assistants made a representation to the Government for revision of pay at par with Lab Asstts. of GSI. The matter was referred to the Anomaly Committee which had agreed to revise the pay scale of Lab Asstt. to Rs. 1200-2040 after changing the recruitment rules at par with GSI as was done in the case of ~~Draughtman~~^b. After the Vth CPC also the applicant was granted a lower pay scale of Rs. 3200-4900 vis-a-vis the pay scale of Rs. 4000-6000 accorded to Lab Asstt in the GSI.

2. Earlier on, the applicant had filed an OA 1093/93 which was dismissed as not pressed/withdrawn on 24.11.94 by the Lucknow Bench of this Tribunal. The applicant has sought grant of pay scale of Rs. 1200-2040/4000-6000 with the arrears of difference of pay scales and other consequential benefits.

3. In their counter, the respondents have contended that the applicant was granted revised pay scale of Rs. 975-1540 after the IVth CPC which corresponded^b with the pre-revised pay scale of Rs. 260-400/- to the Lab Asstt. in Central Ground Water Board (CGWB), effective from 1.1.86. It is contended that whereas the applicant had sought the same relief of grant of pay scale of Rs. 1200-2040 in the earlier OA as in the present case and the earlier OA having been dismissed as not pressed/withdrawn, the applicant cannot be allowed to seek the same relief in the present OA. Further that the applicant had willingly opted for the pay scale of Rs. 3200-4900 applicable in

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CGWB after the Vth CPC w.e.f. 1.1.96 on the basis of Govt. of India's Notification dated 30.9.97, the present petition is barred by limitation. The respondents have ^b further stated that ~~whereas~~ the Anomaly Committee had rejected the demand of the applicant on the ground that the same did not come within the laid down definition of Anomaly. According to the respondents, after considering duties, responsibilities, qualifications, hierarchical structure in the CGWB, the Lab Asstts in the organisation were accorded the revised pay scale of Rs. 3200-4900 in substitution of the pre-revised pay scale of Rs. 975-1540. The respondents have also stated that the Lab Asstt. in GSI has higher educational qualifications than the Lab Asstt. in CGWB. Therefore, the applicant cannot be granted parity with Lab Asstt in GSI.

4. We have heard the learned counsel of both sides and perused the material available on record.

5. The first issue before us is whether after the dismissal of OA-1093/93 relief relating to grant of pay scale of Rs. 1200-2040 can be raised up in the present matter or not. The learned counsel of the applicant has stated that the earlier OA was withdrawn by them from the Lucknow Bench of the Tribunal in view of approaching recommendations of the Vth CPC. Shri Mehta, learned counsel of the respondents stated that as per order dated 24.11.94 in OA-1093/93 ^b that OA was dismissed as not pressed/withdrawn. Shri Sharma, the learned counsel of the applicant relied on a Full Bench decision in K. Raghunathan Vs. Accountant General & Ors. 1989 (1) ATJ 488 wherein it was held that dismissal of a Writ Petition in limini when no reason was given for dismissing the same does not operate as res-judicata. The learned counsel of

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the respondents Shri N.S. Mehta stated that OA-1075/93^h was not dismissed in limini; it was dismissed as it was not pressed by the applicant. Therefore, the ratio of the case of Shri K. Ranganathan (Supra) will not apply to the present case. We are in agreement with the learned counsel of the respondents that the dismissal of the earlier OA will operate as res-judicata as it was not dismissed in limini so far as applicant's claim for grant of the pay scale of Rs. 1200-2040 which related to the recommendations of the IVth CPC is concerned. Shri Mehta has ^{also} taken exception to the present OA as being barred by limitation. According to him, when the pay scale recommended by the Vth CPC was adopted by the Govt. of India vide its Notification of 30.9.97 and the applicant had willingly accepted the same scale, the present petition is barred by limitation. In this regard, it is seen that the matter has been pending consideration with the Anomaly Committee for quite some time. Vide Minutes dated 6.4.99 of the Anomaly Committee, the proposal relating to grant of scale of Rs. 4000-6000 to Lab Assistants of CGWB as given to the Lab Assistants in GSI was not considered stating "the proposal was outside the purview of the Anomaly Committee". It is also contended by the applicant that his representation has remained unresponded by the respondents till now. In view of the fact that the Anomaly Committee observed ^{that} the matter under consideration was outside their purview ^{only} on 6.4.99 and also that applicant's representation has not been decided by the respondents till now, ^{that} in our view, the present petition will not be hit by limitation.

6. Now we are left with the claim of the applicant for the grant of pay scale of Rs. 4000-6000 along with arrears as consequential benefits. The learned counsel of

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the applicant contended that whereas the applicant and Lab Assistant in GSI have the same educational qualifications and perform the same duties and functions, the applicant has not been accorded the pay scale of Rs. 4000-6000 as Lab Assistants of GSI. The Recruitment Rules for Lab Assistant in CGWB were notified in October 1985. The Educational Qualifications for Lab Assistant in the Recruitment Rules are as follows:-

- 1) Matriculation or equivalent qualification.
- 2) Three years' experience in a Chemical Laboratory.

The Educational Qualifications for Lab Assistant in GSI are as follows:-

- 1) Higher Secondary or equivalent examination in the science group.
- 2) Should have 2 years experience in a scientific laboratory.

Desirable: B.Sc. Degree with Chemistry

Whereas the Educational Qualification for Lab Assistant in CGWB is Matriculation with three years experience, it is Higher Secondary with two years experience in a scientific laboratory for Lab Assistant in GSI. A desirable educational qualification of B.Sc. Degree with Chemistry has also been prescribed as an educational qualification for Laboratory Asstt. in GSI. In our view, certainly the academic qualifications prescribed for the Lab. Assistant in GSI ^{are} higher than the educational qualifications prescribed for the Lab. Assistant in CGWB. The learned counsel of the respondents has brought to our attention ~~the~~ Union of India & Ors. Vs. P.V. Hariharan 1997 (3) SCC 568 wherein it has been held that fixation of a pay scale is the function of the Government and not of the Courts or the Tribunal. The learned counsel also stated that the 7th CPC had prescribed the respective scales for Lab. Assistant of GSI and CGWB after taking into consideration

their respective Recruitment Rules, Educational Qualifications, duties and responsibilities. Basically, fixation of a pay scale is the function of an expert body like the Central Pay Commission. However, in rare cases, where the CPC may not have considered the comparative educational qualifications, duties, responsibilities, hierarchical structure etc. the Courts may tend to interfere and require the Government to consider the matter in the light of the observations/directions of the Court. In the present case, as we have already held that the educational qualifications of Lab. Assistant in GSI are certainly higher than those of Lab Assistant in CGWB, we are not inclined to go into the question of the duties and functions of Lab. Assistant in two organisations. The aforesaid difference of qualification has also been considered by the Vth CPC in their recommendations. We have no material before us to sit in judgment over the conclusion and recommendations of the Vth CPC.

7. Having regard to the above reasons and discussion, we do not find it appropriate to interfere with the pay scale accorded to the applicants on the basis of the recommendations of the Vth CPC. The OA is, therefore, dismissed being devoid of merit. No costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Member (A)

cc.