

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2146/99

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri Govindan S. Tampi, Member(A)

New Delhi, this the 18th day of December, 2000

(By Ms. Shrin Khajuria, Advocate)

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1. Director General
Indian Council of Medical Research
Ansari Nagar
Post Box 4911
New Delhi - 110 029.
2. The Secretary
Ministry of Health and Family Welfare
Nirman Bhawan
New Delhi.
3. The Secretary
Department of Expenditure
Ministry of Finance
North Block
New Delhi - 110 001. Respondents

(By Shri V.K.Rao, Advocate)

ORDER (Oral)

Justice V. Rajagopala Reddy:

The applicant was appointed in 1987 as a Statistical Assistant in the Institute of Research in Medical Statistics, a permanent Institute of the Indian Council of Medical Research in the pay scale of Rs.425-700. The minimum essential qualifications for the post of Statistical Assistant is a Postgraduate in Mathematics or Statistics. The applicant possess the postgraduate qualification of mathematical statistics.

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2. The replacing scale after the Fourth Central Pay Commission's recommendations has been accepted by the Government for the post of Statistical Assistants as Rs.1400-2300. The grievance of the applicant is that for the incumbents with Masters Degree, on similar jobs, the pay scale that has been recommended by the Fourth Pay Commission was Rs.1640-2900. Hence the Statistical Assistants, whose essential qualification for the post, being Masters Degree, are also entitled for the higher scale of Rs.1640-2900 w.e.f. 1.1.1986. Since the applicant was appointed on 23.1.1987, she claims the benefit w.e.f. the said date. This question has been considered by the Madras Bench of this Tribunal in R.Jayasri and Others Vs. Union of India & Others in T.A.No.13 to 21 of 1999 where a group of Statistical Assistants have approached the Tribunal, the Tribunal allowed the TAs and given the following directions:

"i) The impugned order dated 11.4.1997 is quashed.

ii) The respondents are directed to consider the case of the applicants for revision of their pay scale from Rs.1400-2300 to Rs.16400-2900, with effect from 1.1.1986 and revise the pay scale accordingly. While such revision will have notional effect from 1.1.1986, the applicants will be entitled to arrears of pay and allowances upon such refixation of pay only with effect from 1.7.1997, ie. the date of filing of the writ petitions.

iii) This order shall be complied with within three months of receipt of a copy of this order by the respondents."

3. It is thus seen that the actual monetary benefits were given to the applicants therein, from the date of filing their writ petitions though the notional benefit was given from 1.1.1986.

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4. The learned counsel for the applicant contends that as the Department has all along been agreeing with the claim made by the applicants therein for the higher pay scale of Rs.1640-2900, the applicant herein could not approach the Tribunal earlier. Hence the applicant is entitled for the actual benefit w.e.f. 1.1.1986 or from the date of her initial appointment.

5. The applicant prays for upgradation of pay scale of Rs.2000-32000 w.e.f. 23.1.1994 as certain other statistical assistants have been given the said scale upgradation. It is also the case of the applicant that she is entitled for promotion to the post of Technical Officer w.e.f. 13.5.1997 as the respondents had promoted certain Statistical Assistants to the said post from the said date. The applicant cannot therefore be discriminated either for promotion or for upgradation as all the incumbents belong to Statistical Assistant have got this benefit.

6. The present OA is filed for the following reliefs:

"i) Direct the Respondent No.1 to grant promotion to the Applicant to the post of Technical Officer w.e.f. 13.5.97, alongwith all consequential benefits;

ii) Direct the Respondents to grant the pay scale of Rs.1640-2900 w.e.f. from 23.1.87 to the Applicant;

iii) Direct Respondents to grant a one time upgradation of pay scale to the Applicant and place her in the pay scale of Rs.2000-3200 w.e.f 23.1.94;

iv) Direct the Respondents to grant the pay scale of Rs.6500-10500 to the Applicant w.e.f. 1.1.96, as per the Fifth Pay Commission recommendations;

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v) Pass such other and further orders as may be deemed just and necessary in the interests of justice."

7. The learned counsel for the respondents, Shri V.K.Rao contends that the OA is hopelessly barred by limitation as the applicant having been appointed in 1987 and right from that date she has been representing to the respondents for the higher scale, which has not been acceded to, hence the applicant should have approached the Tribunal in 1987 itself. Therefore, the OA has to be dismissed on the ground of limitation. It is alternatively contended that the applicant is entitled only for the notional benefit w.e.f. the date of her appointment but actual benefits from the date of filing of this OA, as the Madras Bench has granted the scale benefit w.e.f. the date of filing of the Writ Petitions in the High Court which have been transferred to the Tribunal later. It is further contended that as certain seniors have been stagnating in service, their scales have been upgraded and the applicant having completed only four years service on the date of such upgradation, she was not entitled for such benefit.

8. Lastly, it is contended that the applicant is not entitled for promotion to the post of Technical Officer as certain Senior Statistical Assistants have been promoted in 1997 temporarily against the vacancies in extra mural project which is of temporary nature and as soon as the project is wound up the said incumbents would have returned to the parent department and they would get only the replacement scale for Rs.1640-2900.



9. We have given careful consideration to the submissions made by the counsel on either side. It is not in dispute that the applicant had making several representations right from her appointment for seeking higher scales. Though her representations have not been rejected upto 1994, in view of Section 21 of the Administrative Tribunals Act, the applicant could have waited only for six months and thereafter within a period of one year she should have approached the Tribunal. It is also seen that one of the representations has been rejected in 1994 and even thereafter she had not approached the appropriate forum. The learned counsel for the applicant contends that the respondents had been assuring that the applicant was entitled for the higher pay scale no cause of action arose for her to question the action of the respondents. But the fact remains that the applicant was not given the higher pay scale till now. Mere assurance or repeated representations would not extend the limitation under the Act. In the circumstances, the OA is liable to be dismissed on the ground of limitation. However in view of M.R.Gupta Vs. Union of India & Others, 1995(5) SCC 628, the OA cannot be thrown out because the matter pertains to the payment of salary every month on the basis of revision of pay scales and this would be having continuous cause of action. Still the question of granting of arrears of pay scale should have to be considered only w.e.f. the date of filing of the OA. In view of the fact that Madras Bench has directed the revised pay scale with notional effect from 1986 and actual

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benefits from the date of filing of the Writ Petitions in the High Court. Since the applicant came to this Tribunal in 1999, she will be likewise entitled for notional benefits w.e.f. the date of her appointment and for actual benefits from the date of filing the OA.

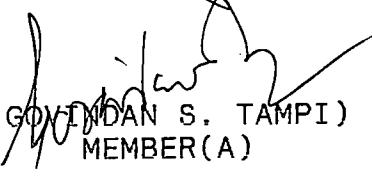
10. As regards the other two reliefs, we are afraid that the applicant cannot get any relief. It appears that only seniors were given higher scale on upgradation of the posts on the ground of their stagnation in the service when there being no promotion to the post of Statistical Assistants, their scales have been upgraded but the said benefit cannot be given to the applicant who was only having four years of service at the appropriate time. Now that the applicant is given the benefit of higher scale w.e.f. the date of her appointment the question of upgradation to the scale as prayed for in relief No.8(iii) becomes infructuous. As regards the relief of promotion to the post of Technical Officer, it was given in 1997 to certain senior persons who are already drawing the pay scales of rs.1640-2900. They cannot be granted to the applicant as it is stated that the promotion was made only against of temporary project which is of short duration. The applicant being only a junior officer in the cadre cannot get any benefit as was given to certain seniors.

11. The OA therefore is disposed of with a direction to the respondents to consider her case for revision of pay scales from Rs.1400-2300 to Rs.1640-2900. Such revision will have notional effect

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from the date of her appointment till 1.1.1996 and from 1.1.1996 the replacement scale would be given as per the the Fifth Pay Commission's recommendations. However, she will be entitled for arrears only from the date of filing of the OA., i.e., 30.9.1999, till the date of actual payment.

12. This order shall be complied within three months from the date of receipt of a copy of this order. NO costs.


(GOVINDAN S. TAMPI)


(V.RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

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