

Central Administrative Tribunal, Principal Bench

Original Application No.1651 of 1998

New Delhi, this the 30th day of April, 2001

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

1. Shri Brijesh Kumar Aggarwal, son of Shri Bishnu Prakash Aggarwal, resident of B-8/21, Vasant Vihar, New Delhi-110057.

2. Shri Nam Kumar son of late Shri Janki Prasad Jain, resident of Sector 2, Quarter No.110, R.K.Puram, New Delhi-110022.

- Applicants

(By Advocate Shri G.D.Gupta)

Versus

1. Union of India through the Secretary to the Government of India, Ministry of Water Resources, Shram Shakti Bhawan, New Delhi.

2. The Chairman, Central Water Commission, Sewa Bhawan, R.K.Puram, New Delhi. - Respondents

(By Advocate Shri V.S.R.Krishna)

O R D E R

By V.K.Majotra, Member(Admnv) -

The applicants were appointed as Research Assistants (for short 'RAs') in January/February, 1973 in the scale of Rs.210-425 in Ganga Basin Water Resources Organisation (for short 'GBWRO'). At present they are employed as RAs in the scale of Rs.1600-2660 in Central Water Commission (for short 'CWC'), R.K.Puram, New Delhi. According to applicants they were recruited under Ministry of Irrigation and Power (Ganga Discharge Circle) Non-Ministerial and Ministerial Class-III Posts Recruitment Rules, 1963 (hereinafter referred to as 'the Recruitment Rules') under which post of RA was required to be filled by direct recruitment with qualifications as either M.Sc. or 1st Class Graduate in Science. It is stated that in 1973 the Third Central Pay Commission (for short '3rd CPC') recommended grade of Rs.550-900 for the post of RAs. Vide Annexure-A-4 dated 19.12.1973 Ministry of Irrigation & Power recommended to the

(18)

Ministry of Finance for grant of scale of Rs.550-900 to RAs. In GBWRO there was a junior post of Silt Analyst (for short 'SA') having lower qualifications and lower responsibilities and duties than those attached to the post of RAs. The Ministry of Water Resources upgraded the said post and re-designated the same as RA in the scale of Rs.425-700 and a common seniority list was prepared. Later on, a selection grade in the scale of Rs.550-900 was also created in which erstwhile SAs were benefited by virtue of their seniority. In 1978 the RAs of GBWRO, to which the applicants belong, were merged with RAs of CWC. According to applicants this merger took place even though qualifications, duties and responsibilities to the post of RA of CWC were lower than the qualifications and duties attached to RAs of GBWRO. In December, 1979 one of the constituent units i.e. Central Water Power Research Station (for short 'CWPRS') Pune, was delinked from CWC and RAs in the same Unit were given grade of Rs.550-900 with effect from 1.12.1979. Similarly, Central Soil Material Research Station (for short 'CSMRS'), Delhi another unit of CWC was delinked from CWC in 1983 and RAs working therein were given grade of Rs.550-900 with effect from 21.1.1983. The applicants claim that at the time of their direct recruitment they were holding the degree of M.Sc. and were fully qualified as per the Recruitment Rules and, therefore, they were entitled to the grade of Rs.550-900 as per the recommendations of the 3rd CPC. Before delinking RAs in CWC, CWPRS and CSMRS were born on one common seniority list with B.Sc. as minimum qualifications. After delinking, the essential minimum qualification of RAs of CWPRS and CSMRS was enhanced from B.Sc. to M.Sc. for further recruitment of RAs and

their pay scale was revised from Rs.425-700 to Rs.550-900 with effect from 20.8.1979 and 21.1.1983 respectively.

(19)

2. The applicants filed O.A.No.1866 of 1989 before this Tribunal seeking the grade of Rs.550-900. Vide order dated 6.5.1994 the OA was disposed of with the following directions:-

"We have gone through the records and heard the learned counsel for both the parties. The respondents have themselves stated in their reply that Research Assistants in the C.S.M.R.S. Delhi and C.W.P.R.S., Pune before separation of cadres from Central Water Commission were getting the pay scale of Rs. 425-700 which was identical to the pay scale of the applicants. As the issue raised in this OA is already under consideration of the respondents who are to examine the report of the Cadre Restructuring Committee, we refrain from passing any direction at this stage. However, it is incumbent upon the respondents to take note of the fact that the 3rd Pay Commission recommended the pay scale of Rs. 550-900 for the Research Assistant, and that as stated in their counter, before delinking the pay scales were same in all the organisations. The respondents will no doubt take into account the judgment of Hyderabad Bench of Tribunal in OA No. 402/87 delivered on 10.7.1989. As this matter is pending for a long time, respondents are directed to consider all the issue expeditiously and pass speaking orders within a period of 6 months from the date of communication of this order or make a suitable reference to the Pay Commission".

3. When the respondents did not comply with afore-stated orders despite representations of the applicants they initiated contempt of court proceedings on 18.5.1995 by filing CP No.161/1995. Vide order dated 14.11.1996 (Annexure-A-18) the CP was disposed of with the order that in case the applicants made a self contained representation, the respondents would consider the same in detail and pass a detailed speaking and reasoned order. The applicants were provided liberty to agitate surviving grievance in accordance with law, if so

11

advised. The respondents disposed of applicants' representation dated 9.12.1996 which was submitted in response to Tribunal's order dated 14.11.1996, vide their order dated 25.6.1997 (Annexure A-1) rejecting the claim of the applicants for grant of higher scale of pay.

4. According to applicants whereas 3rd CPC had recommended the scale of Rs.550-000 for RAs possessing M.Sc. or B.Sc. 1st Class, the respondents in Annexure-A-1 have wrongly stated that the 3rd CPC had recommended the scale of Rs.425-700 for those who were in the erstwhile scale of Rs.210-425. The applicants have sought quashing and setting aside of impugned letter dated 25.6.1997 (Annexure-A-1) and declaration that they are entitled to the scale of Rs.550-900 (pre-revised) on the basis of 3rd CPC in the post of RAs in CWC w.e.f. 29.1.1973 and 24.2.1973 respectively with all consequential benefits like arrears of pay with interest @ 18% per annum.

5. In reply, the respondents have contended that directions in CP No.161/1995 in OA 1866/89 having been complied with vide impugned order dated 25.6.1997, the present application is barred by doctrine of res judicata and constructive res judicata. Respondents have claimed to have made a detailed speaking order contained in Annexure-A-1 rejecting the claim of the applicants for higher pay scale of Rs.550-900 (pre-revised) with effect from 29.1.1973 and 24.2.1973 respectively. They have refuted the contention of the applicants that the 3rd CPC had recommended the pay scale of Rs.550-900 to RAs. According to them the 3rd CPC had recommended the scale of Rs.550-900 for Level-I post of non-gazetted scientific staff in the scale of Rs.325-575. The scale of Rs.425-700 was recommended for

(21)

Level-II posts of non-gazetted scientific staff in the grade of Rs.210-425. The scale for the post of RAs existing in CWPC and GBWRO at that time was Rs.210-425. The 3rd CPC recommended the pay scale of Rs.425-700 as corresponding scale in respect of posts carrying the pay scale of Rs.210-425. Accordingly, the RAs in CWC were accorded the revised pay scale of Rs.425-700 with effect from 1.1.1973.

6. According to respondents mere possession of higher educational qualifications, namely, M.Sc. does not automatically entitle the applicants, who were holding Level-II posts for claiming higher grade of Rs.550-900, which was recommended for Level-I posts. Moreover, the applicants were merged with the cadre of RAs of CWC where the minimum educational qualification required for RAs was only graduation in Science and the pay scale of Rs.210-425. For such posts, the 3rd CPC recommended the pay scale Rs.425-700 only. The respondents have further contended that since GBWRO was merged in the cadre of CWC, the applicants have to be governed by the rules and regulations of CWC and the rules and regulations of GBWRO and 3rd CPC's recommendations become irrelevant in their matter.

7. As regards the upgradation and redesignation of the post of SA as RA, the respondents have stated that the post of SA and RA were identical posts with identical pay scales, namely, Rs.425-700. Merger of SAs of GBWRO with RAs in CWC and redesignation as RA is an administrative matter. The respondents have further stated that CWPRS and CSMRS were delinked from CWC in 1979 and 1981, respectively, on the recommendations of High Level Committee set up by the Government of India so that these research stations carry out specific research work as premier research organisations in the

country. On their separation from the CWC fresh recruitment rules were framed by them. According to respondents, the RAs of these Institutes cannot be compared with RAs of CWC as they belong to different organisations. RAs of CWC have to be governed by the Recruitment Rules of CWC and not by those of CWPRS and CSMRS. The respondents have also stated that although GBWRO had recommended a scale of Rs.550-900 for RAs, yet their recommendations would not be applicable to the RAs now working in CWC which is a separate organisation.

8. We have heard the learned counsel of both sides and examined the material available on record.

9. The learned counsel of applicants Shri G.D.Gupta, contended that the applicants were recruited in GBWRO in January and February, 1973 as per Recruitment Rules of 1963 where the prescribed qualification for recruitment was M.Sc./ 1st Class Graduate in Science. According to him the 3rd CPC had recommended the scale of Rs.550-900 for RAs. According to him the recommendations of the 3rd CPC were qualification oriented and not job oriented. However, as the applicants were initially placed in the scale of Rs.210-425, when they were recruited in GBWRO which scale was basically prescribed for B.Sc.qualification prior to 1973, the applicants were wrongly placed in that scale which should have been corrected in view of their higher qualifications and they should have been accorded the pay scale of Rs.550-900. The learned counsel stated that vide Annexure-A-5 dated 20.11.1973, which is a note recorded by GBWRO, the qualifications prescribed for the post of RA being M.Sc. or 1st Class Graduate in Science and since the applicants are engaged in highly technical work and doing independent

investigation, the RAs working in the organisation were recommended the scale of Rs.550-900, as according to the organisation, it was a mistake to have placed RAs in the lower scale of Rs.210-425, which should be corrected. The learned counsel then stated that CWPRS and CSMRS were delinked from CWC in 1979 and 1983. RAs in these organisations were also working in the scale of Rs.210-425. According to learned counsel the duties of RAs in CWC are also research oriented. When the qualifications of RAs in those two organisations were raised, their scale was also raised to Rs.550-900. On the other hand the applicants were recruited with higher qualifications and have research oriented work but they have been discriminated against and placed in a lower scale of Rs.425-700. The learned counsel drew our attention to chart attached with Annexure-A-1 relating to the comparative duties attached to the post of RAs working in CWC, CWPRS and CSMRS to establish that the duties of RAs in CWC are no less research oriented than those of the RAs in CWPRS and CSMRS. The learned counsel of applicants contended that although they had not challenged their merger with CWC they certainly claim higher pay scale in view of their qualifications and recommendations of CPCs.

10. Shri Gupta, also relied on AIR 1988 SC 1997 Y.K.Mehta's case wherein non-implementation of principle of equal pay for equal work in the matter of Staff Artists of Doordarsan was held amounting to discrimination and Staff Artists were held entitled to same pay scale as their counter parts in Films Division in the Ministry of Information & Broadcasting.

11. The learned counsel of respondents Shri Krishna, stated that after the merger of GBWRO into CWC those transferred from GBWRO cannot look back to rules

operating in GBWRO. After merger employees of CWC have to be governed by the related recruitment rules of CWC. Even if the present RAs who were initially recruited in GBWRO possessed higher qualifications, now that the minimum qualification for RAs in CWC is only B.Sc. the applicants cannot be provided any superior scale or benefits on account of their higher qualifications. The learned counsel stated that much water has flown since 1973. Even 4th & 5th CPC have also made their recommendations upto 1996. The delinked institutes namely, CWPRS and CSMRS although before delinking were part and parcel of CWC after their delinking are being governed by their own recruitment rules. The present applicants who are part of CWC cannot compare themselves with RAs of CWPRS and CSMRS i.e. premier research oriented organisations. According to learned counsel of respondents CWC is only a technical organisation engaged basically in data collection. RAs of CWC cannot be compared with those of research oriented institutions such as CWPRS and CSMRS. According to him, the recommendations of GBWRO regarding upscalation of RAs in GBWRO have no relevance at this stage when the merger took place in 1978 and recommendations of GBWRO in respect of RAs were not accepted. The learned counsel stated that if the RAs of CWC are given benefits available to RAs of other dis-similar organisations, it will have a cascading effect. Comparison should always be had between similarly placed personnel and similar organisations, which is not the case being projected by the applicants here. The learned counsel also drew our attention to order dated 3.8.1994 in OA 1001/90 (Annexure-III to Annexure A-17). The relevant portions of this order are reproduced here:-

25

"It is also stated that the persons like the applicants having a similar grievance had approached the Hyderabad Bench of the Tribunal in OA 261 of 1987 with similar prayers. That OA has been dismissed by the order dated 25.7.1990, Annexure-I. Hence it is contended that this application also deserves to be dismissed.

We have seen the judgment rendered earlier by the Hyderabad Bench. It is clear from that judgment that the 18 applicants before them, working as Research Assistants in the Central Water commission, claimed that they must be given the pay-scale of Rs. 550-900 given to Research Assistants in the Central Water and Power Research Station, Pune and the Central Soil and Material Research Station, New Delhi. After careful consideration the Tribunal came to the conclusion as follows:-

"To sum up, the applicants' grievance is mainly that the scale of pay available to Research Assistants (Scientific) in CW&PRS and CSMRS should be given the Research Assistants (Scientific) in C.W.C. It not having been established that the work of Research Assistants in the three organisations is identical and since the educational qualifications are not the same, the Research Assistants in the three organisations do not form one class. Not extending the scale to Research Assistants in CWC cannot be assailed as being discriminatory and violative of Articles 14 and 16 of the Constitution of India since, after bifurcation or trifurcation in the year 1979 and 1981, the three wings are governed by separate and distinct service rules. The applicants, no doubt, had a cause of action or grievance since no proper options were given to them in the years 1979 and 1981 when notifications were issued proposing to give options only to employees in position in CW&PRS and CSMRS. Again, when statutory rules were framed in the years 1983 and 1984 respectively, options were not given to them to join either CW&PRS or CSMRS. But the applicants never questioned either the Office Memorandum or the Statutory Rules at the relevant point of time. Instead they continued without demur in CWC. It is only in the year 1987 that they have turned round and questioned the validity of the options given and even when doing so they have not asked for or prayed for relief by way of being given an option. All that they have sought is a direction that the same pay scale available to the Research Assistants in CW&PRS and CSMRS should be given to the Research Assistants in CWC. On the ground of inordinate delay in questioning the procedure laid down in giving or granting options and since no prayer for granting options is sought, the argument that the applicants should have been given the options is liable to be rejected. For these reasons we find no merit in the application. The Full Bench decision is not applicable to

the facts of the present case. The application is accordingly dismissed. No costs".

We are in respectful agreement with the judgment of the Hyderabad Bench of the Tribunal. Accordingly, we do not find any merit in this OA and it is accordingly dismissed. No costs".

12. The learned counsel stated that this judgment has attained finality and the settled position in respect of RAs in the CWC should not be disturbed now. Relevant extracts of the 3rd CPC as detailed in Annexure-A-3 are given below:-

"Having regard to the qualifications that have been prescribed and the nature of work that is performed by the various grades of scientific staff, we have come to the conclusion that four levels, as discussed below should adequately cover the requirements for this category of staff:-

(i) In our view, below the gazetted staff there are at least two distinguishable levels of scientific work which require graduates or post graduates. The higher grade would require a post-graduate education and call for some degree of originality and capacity for independent work. Such scientific assistants should, in course of time, be able to carry out independent investigations of the type conducted by scientific officers. The lower grade could be adequately manned by the good science graduates. The work at this level would be mostly standardised and conducted under the guidance of gazetted officers. Scientific Assistants in this grade should have reasonable expectations of moving to the higher grade. Thus a structure of two grades, instead of a single integrated grade, would serve the purpose of paying for the jobs at rates appropriate to the responsibilities, and at the same time provide an incentive to good performance.

(ii) Level I should, therefore, be that corresponding to the existing rate of Rs. 325-575. There should be direct recruitment to the majority of these posts, for which the qualification should be (a) M.Sc.. or (b) B.E., or (c) first class B.Sc.(Hons) or (d) at least a second class B.Sc. or Diploma in engineering with about 3 years' experience. There should be a provision for the promotion of merited scientific assistants in the next lower grade indicated below.

(iii) Level II would be that corresponding to the existing grade of Rs.210-425. Recruitment to this level should be confined to those

having at least a second class B.Sc.(Hon) or B.Sc. with not less than 55% marks in the aggregate or a Diploma in engineering. There should be a small provision for promotion from the grade indicated below, but such promotions should be strictly on merit.

Based on these general observations we recommend the following five standard scales of pay for the non-gazetted scientific staff:-

Existing scale(Rs.)	Proposed scale (Rs.)	Qualification for Recruitment
Level I	550-900	M.Sc/B.E./First Class B.Sc.(Honours) or Diploma in Engineering Second Class B.Sc. with 3 years experience.
Level II 210-425	425-700	Second Class B.Sc. (Honours) or B.Sc with not less than 55% of marks in aggregate or Diploma in Engineering.

13. The learned counsel of respondents stated that for Level-I scale of Rs.325-575 the scale of Rs.550-900 was proposed and qualification for recruitment was kept at M.Sc., B.Sc.1st Class or Diploma in engineering and 2nd Class B.Sc. with three years experience. For Level-II scale Rs.210-425 scale of Rs.425-700 was proposed with second class B.Sc. (Hons) or B.Sc. with not less than 55% marks in aggregate or diploma in engineering. According to learned counsel revised scales were proposed for the existing scales and then the minimum qualifications were prescribed and the recommendations for availing of the proposed scales. He explained that one could possess much higher qualification than the minimum prescribed qualifications but he could not be placed in a higher scale on the basis of a higher qualification.

14. After considering the rival contentions we are of the view that the 3rd CBC had recommended a scale of

Rs.550-900 for Level-I post of non-gazetted scientific staff in the scale of Rs.325-575. The scale of Rs.425-700 was recommended for Level-II post of non-gazetted staff in the scale of Rs.210-425. The scale for the post of RAs in WC and GBWRO at that time was Rs.210-425. Therefore the RAs in CWC who were working in the scale of Rs.210-425 had to be placed in the corresponding scale of Rs.425-700. The applicants were merged with the cadre of RAs of CWC way back in 1978 where the minimum qualification required for RAs was only graduation in Science with pay scale of Rs.210-425. For such a post the 3rd CPC had recommended a pay scale of Rs.425-700. After merger with the cadre of CWC the applicants have to be governed by the rules and regulations of CWC and not by the rules and regulations of GBWRO or certain research organisations like CWPRS and CSMRS.

15. As it is basically the job of Expert bodies like the Pay Commission to evaluate the duties, responsibilities and qualifications of different categories of staff and recommend pay scales for them and although we are invited by the applicants to compare their duties, responsibilities and qualifications with those of RAs of CWPRS and CSMRS we have to refrain from indulging in this such a comparison.

16. In the instant case the decision of the Tribunal in OA 1001/90 is squarely applicable to the facts and circumstances of the present case. No benefit can be accorded to the applicants from the ratio in Y.K.Mehta's case (supra). We also find that the impugned order dated 25.6.1997 (Anexure-A-1) is quite

detailed and speaking having discussed all aspects of the matter and reaching a logical conclusion in rejecting the applicant's claim for grant of higher pay scale. We do not have before us any good grounds to interfere with the same.

17. In the result, the OA is dismissed, however, without any order as to costs.

S. Raju
(Shanker Raju)
Member (J)

V.K.Majotra
(V.K.Majotra)
Member (Admnv)

rkv