

Central Administrative Tribunal
Principal Bench
New Delhi



O.A. No. 1403/95

Decided on 2.9.1999

Mrs. Anita Singh & Ors. ... Applicant

(By Advocate: Shri P.P.Khurana)

Versus

Union of India & Ors. ... Respondents

(By Advocate: Shri Ajesh Luthra)

CORAM

HON'BLE MR. JUSTICE R.G. VAIDYANATHA, VICE CHAIRMAN
HON'BLE MR. J.L. NEGI, MEMBER (A)

1. To be referred to the Reporter or Not? Yes
2. Whether to be circulated to other outlying Benches of the Tribunal or not? No

R.G.Vaidyanatha

(R.G. VAIDYANATHA)
VICE CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI.

ORIGINAL APPLICATION NO. 1403/95

Thursday, this the 2nd day of September, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri J.L.Nagi, Member(A).

1. Mrs.Anita Singh,
271, Gagan Vihar,
Delhi - 51.
2. Uday Kumar,
A-1, Shyam Vihar, Ph-II,
Najafgarh,
New Delhi.
3. Mrs.Meena Rani,
C-A/69,
Tagore Garden,
New Delhi - 27.

... Applicants.

(By Advocate Mr.P.P.Khurana)

Vs.

1. The Lt. Governor,
Govt. of N.C.T. of Delhi,
Old Rajpur Road,
Delhi - 54.
2. Commissioner-cum-Secretary
(Education), Govt. of N.C.T. of
Delhi, Department of Archaeology,
Old Secretariat,
Delhi.

... Respondents.

(By Advocate Shri Ajesh Luthra)

O R D E R (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed their reply. We have heard Mr.P.P.Khurana, counsel who is present on behalf of the applicants and Mr.Ajesh Luthra proxy counsel for the respondents.

2. This application has been filed by three applicants who are working as Technical Assistants in the Department of Archaeology of the Delhi Administration. The Department of Archaeology of Delhi Administration is on the same pattern like the Archaeological Survey of India. There are posts of Technical Assistants in both the Departments. The Recruitment Rules for the post of Technical Assistants in the Department of Archaeology of Delhi Administration is on

par with their counter-parts in Archaeological Survey of India. The pay scale of the applicants is 1400-2300, but the pay scale of Technical Assistants in the Archaeological Survey of India is Rs.1640-2900 (Revised). It is also alleged that the duties and responsibilities of the applicants are identical with the duties of their counter-parts in the Department of Archaeological Survey of India. The IVth Pay Commission recommended that the post of Technical Assistants and Senior Technical Assistants in the Department of Culture should be merged and given a common pay scale of Rs.1640-2900. The Government of India implemented the recommendation of IVth Pay Commission only in respect of Technical Assistants working in the Department of Culture and did not extend that benefit to other Technical Assistants in other Departments like National Archives, National Museum and Archaeological Survey of India. Then, there is a reference in the pleadings to earlier decisions of this Tribunal, which we will presently refer. The applicants' main case is that in view of their qualifications, duties and responsibilities ~~are~~ ^{being} equal to that of their counter-parts in the Archaeological Survey of India, they are entitled to the same pay scale of Rs.1640-2900 on the ground of equal pay for equal work.

The applicants, therefore, pray that they should be granted the same pay scale of Rs.1640-2900 w.e.f. 1.1.1986 and they should be paid all arrears and consequential benefits.

3. The respondents in their counter, have admitted that the Recruitment qualifications for the post of Technical Assistants in the Department of Archaeology of Delhi like applicants and their counter-parts in Archaeological Survey of India are almost same. There is some reference in the counter about the post of Documentation Officer which is not relevant for our present purpose, since we are concerned with the pay scale of Technical Assistants. It is also

stated that there was no such posts of Technical Assistants in the Delhi Administration when the IVth Pay Commission Report was implemented. That the posts of Technical Assistant was sanctioned by the Delhi Administration only in 1989 and therefore, the earlier decisions bearing on the point will not apply to the case of the applicants. It is therefore, stated that the applicants are not entitled to the reliefs prayed for.

4. The learned counsel for the applicant contended that since the applicants have same Recruitment Rules, similar duties and responsibilities like Technical Assistants in the Archaeological Survey of India, they are entitled to get the same pay scale of Rs.1640-2900. The learned counsel for the respondents contended that the applicants cannot get the benefit of IVth Pay Commission Report since the posts were created only in 1989 and therefore the question of application of IVth Pay Commission Report w.e.f. 1.1.1986 does not arise. In other words, the contention is that since IVth Pay Commission Report was given w.e.f. 1.1.1986 it will not benefit the applicants whose posts came to be created in 1989 and the applicants came to be appointed only subsequently. It was also argued on behalf of the respondents that a matter like this should be decided by an Expert Body like Pay Commission and that a Tribunal or Court should not go into the question of pay scales.

5. After hearing both sides, we observe that as a matter of general principle there is no dispute that a question of proper pay scale has to be decided by an Expert Body like Pay Commission. We also agree that it is a question of policy for the Government to decide the question of

pay scales. But, in cases where the allegation is one of equal pay for equal work, then it is the duty of the Tribunal or Court to consider whether such a ground is made out. If the applicants can establish that they are doing the same work like their counter-parts in the Archaeological Survey of India or other Departments and if they can show that they are entitled to equal pay for equal work, then it is the duty of the Tribunal to interfere and grant the relief. We are aware of the limitation in a matter like this and proceed to consider the same on the available materials on record.

6. In this case, the fact that the applicants and their counter-parts in the Archaeological Survey of India are having similar Recruitment Rules and qualifications is not disputed in this case, but on the other hand, unequivocally admitted in the counter filed by the respondents. There is also no denial on the facts that the applicants have same duties and responsibilities like their counter-parts in Archaeological Survey of India. In view of this position the application of rule of equal pay for equal work is directly attracted to this case.

In this case, we may also refer to some earlier decisions of this Tribunal bearing on the point.

The earliest case brought to our notice is of the Hyderabad Bench of this Tribunal in the case of S.V.P. Halakatti and J.Vara Prasad Rao [(1989) 9 ATC 758], where an identical question arose for consideration. There the dispute was whether the Technical Assistants in the Archaeological Survey of India are entitled to pay scale as Technical Assistants in the Department of Culture. The

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IVth Pay Commission had recommended the revised pay scale of Rs. 1640-2900 to Technical Assistants in the Department of Culture. Since the Technical Assistants in the Archaeological Survey of India were aggrieved by the action of the Government in not granting the benefits to the applicants, they filed an Original Application before the Hyderabad Bench of this Tribunal. The Tribunal went into the question of nature of work and qualification and admission of respondents in that case and came to the conclusion that both sets of Officers were having same Recruitment Rules, qualification and same duties and responsibilities and therefore held that the Technical Assistants of Archaeological Survey of India are entitled to the revised pay scale of Rs.1640-2900.

Then, we may refer to an unreported Judgment of a Division Bench of the Principal Bench in O.A. No.490/90 dt. 13.3.1992. In this case, the question was whether the Assistant Archives Gr.II in the National Archives of India are entitled to the pay scale of Rs.1640-2900 as given to Technical Assistants in the Department of Culture. The Tribunal examined the question about the Recruitment Rules, nature of qualifications, duties and responsibilities and came to the conclusion that the applicants in that case are entitled to the same pay scale of Rs.1640-2900 and allowed the application.

Then, we have another un-reported Judgment of a Division Bench of Principal Bench of this Tribunal decided on 21.11.1994 in O.A. Nos. 1009/94 and 1211/94, where the Assistant Archives Gr.II and Surveyor in the department of

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Delhi Archives filed these two OAs seeking the same pay scale of Rs.1640-2900 given to Technical Assistants in the Department of Culture. Again, the Tribunal considered the question of equal pay for equal work and found that both posts carries same duties and responsibilities and have same qualifications and therefore, the rule of equal pay for equal work is attracted and accordingly, allowed the application. In that case also, a similar stand was taken by the administration that the matter ^{had been} is referred to the Vth Pay Commission and therefore, the applicants' claim cannot be considered. The same argument was pressed into service by the learned counsel for the respondents that even in this case the administration has referred the question to the Vth Pay Commission and it is for them to decide.

7. When we are of the view that ^{rule of} equal pay for equal work is attracted, we have to find out whether both sets of Officers have same nature of duties and responsibilities and have same qualifications. In this case, on the pleadings we find that there is no dispute about the applicants having same qualifications, duties and responsibilities with their counter-parts viz. Archaeological Survey of India. Therefore in the facts and circumstances of the case, we do not find any legal impediment to direct the Administration to grant the pay scale of Rs.1640-2900 to the applicants.

8. The learned counsel for the respondents contended that the applicants cannot be given the benefit of the IVth Pay Commission Report since it was given effect to from 1.1.1986, whereas, the applicants' posts were created only in 1989. The argument is no doubt attractive, but we have to see the facts and circumstances of the case. In this case, the first two applicants came to be appointed in the year 1989

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and the third applicant came to be appointed in 1991. May be, the applicants cannot get any benefit from 1.1.1986 since they came to be appointed either in 1989 or 1991. When once we apply the Rule of equal pay for equal work, the applicants will be entitled to the pay scale only from the date they are appointed and not from an earlier date.

Therefore, the applicants are entitled for the pay scale of Rs.1640-2900 w.e.f. the date they came to be appointed.

9. Now, the question is about the dates from which the relief should be given. The learned counsel for the

applicants contended that applicants should get arrears of monetary benefits from the date of their respective appointments. There is no such uniform rule where

we can grant arrears of monetary benefits. We must also take into consideration the burden on the State exchequer.

The applicants have approached this Tribunal in 1995, though they were appointed in 1989. The argument that applicants came to Court only after some employees got the relief is not a reason to claim monetary benefits for six years prior to the date of the application. It may be, in some

cases, the Tribunal might have granted monetary benefits from retrospective dates, but having regard to the burden on the State Exchequer we feel that in the facts and

circumstances of the case monetary benefits should be granted to the applicants from the date of this application i.e. 1.8.1995 and therefore, we are granting arrears of

monetary benefits only from 1.8.1995.

10. In the result, the application is allowed as follows :

(1) The respondents are directed to fix the

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pay of the applicants in the scale of Rs.1640-2900 on the respective dates they came to be appointed viz. (first applicant - 17.5.1989, second applicant - 12.7.1989 and the third applicant - 12.3.1991).

- (2) The fixation of pay as mentioned in Clause - I shall be on notional basis from the respective dates.
- (3) The applicants are entitled to actual monetary benefits only from 1.8.1995 and onwards.
- (4) The respondents are directed to comply with this order within a period of four months from the date of receipt of copy of this order.
- (5) No order as to costs.

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(J.L.NEGI)
MEMBER (A)

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE-CHAIRMAN.

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