

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

OA No.444/86

DATE OF DECISION

6/7/92

Sh.Pawan Kumar Tyagi

Applicant

Versus

Delhi Administration

Respondents

CORAM

Hon'ble Mr. Justice Ram Pal Singh, Vice Chairman(J)

Hon'ble Mr. I.P. Gupta, Member(A)

For the Applicant

Sh.D.C.Vohra, counsel
for the applicant.

For the Respondents

SH.B.R.Parashar, counsel
for the respondents

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT

(Delivered by Hon'ble Sh.I.P.Gupta, Member (A))

In this application filed under Section 19 of the Administrative Tribunal Act, 1985, the applicant who was appointed as Laboratory Assistant in the scale of Rs 260-430 in the Directorate of Health Services and Family Planning, Delhi Administration, vide order dated 13-9-76 has requested for the relief that the respondents be directed to place the applicant in the appropriate scale attached to the post of Laboratory Assistant viz 290-500 for the period from 3-3-81 to 22-8-83 and Rs 330-530 from 23-8-83 onwards with all consequential financial benefits. Other reliefs in the application were not pressed.

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2. The learned counsel for the applicant contended that
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- (i) The pay scale of Lab Asstt. was revised from 260-430 to 290-500 in the Education, Directorate of Delhi Administration from 3-3-81 (Annexure B)
 - (ii) The pay scale of Lab. Assistant in the Education Directorate was revised still upwards i.e. 330-530 from 23-8-83 (Annexure C)
 - (iii) The brief of discussion with employees' representatives under the Directorate of Health in the office of Directorate of Health Services on 21-5-84 (Annexure E) included the following paragraph:-

The matter regarding the pay scale of Lab. Asstt. working under the Directorate of Education has been examined. The case is being referred to Delhi Administration for pointing out this ^{anomaly} ~~normality~~ to the pay commission recommending ^{the} favourable necessary action.

- (iv) The action-taken note of the office of Directorate of Health Services (Annexure P) included the following para:-

Pay scale of Lab. Assistant should be made on the pattern of Directorate of Education, Delhi Administration, Delhi.

The matter is within the competence of the Delhi Administration/Government of India. This Directorate has referred the matter to them and is awaiting their reply. The last reminder was sent on 24.7.1985.

- (v) The counter of the respondents admitted that there was anomaly in the pay scales of Lab. Asstt. in Education Directorate and Lab. Assistant in the Directorate of Health Services and for the

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removal thereof the matter was to be referred to Delhi Administration for pointing out to the Fourth Central Pay Commission but the anomaly continued to exist despite several representations.

(vi) Several cases were cited. In the case of R.D. Gupta ^{v/s} Lieutenant-Governor Delhi (1987(4) SCC 505) it was observed that where all things were equal, there should be no discrimination on the ground of different departments. In the case of Randhir Singh V/s Union of India (AIR 1982 SC 879) the Hon'ble Supreme Court had observed that "Construing Articles 14 and 16 in the light of the Preamble and Art 39(d), it is clear that the principle "Equal pay for Equal work" is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer."

3. The counsel for respondents did not appear either on 29-6-92 or on 1-7-92 and hence the case was heard ex parte.

4. The points made out in the counter are:-

(i) Lab. Assistants working under Directorate of Health Services have been appointed in accordance with provision contained in the Recruitment Rules and the pay scale laid down in Recruitment Rules was 260-430.

(ii) The anomaly in pay scales of Lab. Asstts. had been discussed and an assurance was made to employees' representatives that this would be examined and referred to Delhi Administration for pointing out the anomaly to Fourth Central Pay Commission and the matter was duly brought to the notice of the Delhi Administration.

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5. The issue involved in this case is one of revision of payscales. As observed in the case of Randhir Sinfh V/s U.O.I. & Others (Supra), the equation of posts and the equation of pay are matters primarily for the Executive Govt. and expert bodies like the Pay Commission and not for Courts but where all things are equal, that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments.

6. In this case we find the posts of Lab. Assistants exist both under the Education Directorate and the Health Directorate under the same employer i.e. Delhi Administration. When the pay was revised in the Education Directorate on 3-3-81 to Rs 290-500 the qualifications prescribed were Matriculation/Higher Secondary with science from a recognised Board/University with a desirable qualification of at least 6-months experience as Lab. Assistant. The Recruitment Rules relating to the applicant of Matriculation/Higher Secondary with Science and Diploma in Medical Lab. Techniques. The Qualifications are thus not lower than those relating to Education Directorate. The applicant was appointed in September, 1976 and by March, 1981 he had much more than 6 months' experience. According to compendium at Annexure 'D' the Lab. Assistant is to assist Lab Technician but the applicant was allotted duties of pathological nature and in fact this allotment was regularised by issue of a formal order on 27-9-85 that Lab. Assistants in Delhi Administration dispensary will conduct routine examinations of urine, blood, sputum etc. The counter

shows that during various discussion the anomaly was accepted. No where it is mentioned that the duties of Lab. Assistant in Health Directorate are less responsible or less heavier than those of Lab. Assistants in Education Directorate. The difference in pay scale, specially with regard to scale of Rs 290-500 is irrational. However Section 21(3) of the Administrative Tribunal Act does not empower the Tribunal to entertain a matter arising more than 3 years prior to constitution of the Tribunals. R-relief pertaining to period preceding 3 years from 1-11-85 cannot be given but within 3 years could be given. We therefore direct the respondents to fix the scale of the applicant and the Lab. Assistants in the Health Directorate at Rs 290-500 from 1-11-82 and allow consequential benefits. This should be done early, preferably within 4 months from the date of receipt of a copy of this order.

7. As regards the payscale of Rs 330-550 we find from Annexure C that the essential qualification was raised to Senior Secondary/Intermediate with science with a desirable qualification of 6 months' experience. The qualifications being different the applicant cannot claim as a matter of right the scale of 330-530 merely because the posts have the same nomenclature and are of the same rank. However it seems, even in respect of this scale, the anomaly has been accepted in the counter and the matter was brought to the notice of the Delhi Administration. We would direct the respondents to take a decision in this regard

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early, preferably within 6 months, keeping in view all factors.

With the aforesaid directions, the OA is disposed of with no order as to costs.

I. P. Gupta
(I.P. GUPTA) 6/7/92
MEMBER (A)

Ram Pal Singh 6.6.92.
(RAM PAL SINGH)
VICE CHAIRMAN (J)

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