

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 536/2004

MAM-517/2004

New Delhi this the 17th day of November, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member (A)

In the matter of

1. Shri J.C.Gonsalvez,
S/o Shri F.M.Gonsalvez,
DG II /46 D, Vikas Puri,
New Delhi.
2. Shri S.K.Srivastava,
S/o Late Shri M.P.Srivastava,
E-303, Sagar Sadan, 113,
I.P..Extension, Delhi-110092
3. Shri S.Anil Kumar,
S/o Shri R.S. Pillai, 3063,
Sainik Colony, Faridabad.

Applicants

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

VERSUS

Union of India through:

1. The Secretary,
Ministry of Consumer Affairs,
Food and Public Distribution,
Department of Food and Public
Distribution, Block No.2, 5th Floor,
C.G.O.Complex, Lodi Road, New Delhi
2. The Director,
Ministry of Consumer Affairs,
Food and Public Distribution,
Department of Food and Public Distribution,
Block No.2, 5th Floor, C.G.O.Complex,
Lodi Road, New Delhi-110003
3. The Secretary,
Ministry of Finance,





Department of Expenditure,
South Block, New Delhi

Respondents

(By Advocate Mrs.Meenu Mainee)

O R D E R

(Hon'ble Mr. S.A. Singh, Member (A))

The applicants working as Assistant Chemist and Chemist in the Directorate of Vanaspati Vegetable Oils and Fats, Department of Food and Public Distribution are aggrieved by the impugned order dated 7.1.2004 whereby their request for upgradation of pay scale has not been agreed to by the respondents.

2. The case of the applicants is that the posts of Assistant Chemist and Chemist held by them would come under the category of Scientific Staff and, therefore, in accordance with the recommendations at para 51.29 of the 5th Central Pay Commission report, they are entitled to the revised pay scales of Rs.5000-8000 and Rs.6500-10500. However, the same has not been granted by the respondents. These scales are recommended for those Scientific Staff having minimum recruitment qualification of Graduate or Post Graduate.

3. The Recruitment Rules for the posts of Assistant Chemist and Chemist stipulates the minimum recruitment qualifications as Degree/ Post Graduate in Science with Chemistry as one of the subjects or Degree in Science followed by diploma in Oil Technology of a recognized University/Institution. The applicants are holding Scientific posts as their duties are Scientific in nature and as such they are entitled to the upgraded pay scales at par with similarly placed Scientific personnel working in other Departments of the Govt. of India, namely, Junior Technical Assistants and Technical Assistants working in the Ministry of Science and Technology. They added that the posts of Technical Assistant and Junior Technical Assistant had also been upgraded on the analogy of the minimum recruitment qualification in terms of the recommendations of the 5th Central Pay Commission and, therefore, by not agreeing to the request of the applicants is discriminatory.

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4. The applicants are also based their case on the fact that the Cadre Controlling Authority had recommended the grant of pay scales in accordance with the recommendations of the 5th Central Pay Commission but the same was not agreed to by the Department of Expenditure, Ministry of Finance for no apparent reason.

5. The case of the applicants was contested by the respondents pleading that the pre revised pay scale for the posts of Chemist and Assistant Chemist in the Directorate were Rs. 1640-2900 and Rs.1400-2300, respectively. These pay scales were revised on the recommendations of the 5th Central Pay Commission to Rs.5500-9000 and Rs. 4500-7000, respectively instead of higher replacement admissible scale of Rs.6500-10500 (prescribed qualification of Engineering Degree/M.Sc.) and Rs.5000-8000 (having qualification of B.Sc./Diploma in Engineering) respectively.

6. The respondents stated that the post of Assistant Chemist and Chemist fulfill the requirement for grant of higher replacement scale in accordance with the recommendations of the 5th Central Pay Commission. On the basis of these recommendations, the Department of Biotechnology and the Department of Science and Technology granted the upgraded pay scales to their Junior Technical Assistants and Technical Assistants who are at par with Chemist and Assistant Chemist. The proposal for according the higher replacement scales to Chemist and Assistant Chemist of this Directorate was also considered and approved by the Finance Division of the Ministry but the same was not accepted by the Implementation Cell of the Department of Expenditure, Ministry of Finance on the following grounds:

- (i) The recommendation of the Fifth Central Pay Commission with regard to grant of pay scales in accordance with the qualifications prescribed for recruitment to various posts do not stipulate that all such posts have to be mandatorily placed in such higher pay scale;
- (ii) This recommendation of the Fifth Central Pay Commission has not been accepted by the Government ; and
- (iii) The posts under consideration have not been classified as Scientific by the Department of Science and Technology.

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7. We have heard the learned counsel for the parties and have gone through the documents on record. The reason for not acceptance of grant of higher pay scales to the applicants given by the respondents are that the posts under consideration have not been classified as Scientific by the Department of Science and Technology and that the recommendations of the 5th Central Pay Commission with regard to grant of higher pay scale (in accordance with the qualifications) do not stipulate that all such posts have to be mandatorily placed in such higher pay scales and moreover the recommendation of the 5th Central Pay Commission has not been accepted by the Government.

8. We take up the question whether these posts have been classified as Scientific by the Department of Science and Technology. In support that these posts are Scientific in nature, the applicants have placed on record the recommendations of the 5th Central Pay Commission as mentioned in Para No. 51.29 which reads as under:-

“ 51.29. To support the effort of the offices engaged in Scientific activity there is a large number of scientific and technological staff. They are distributed across various Ministries, Departments, attached and subordinate offices, including national laboratories and field programmes. They assist scientific officers in setting up experiments, conducting various tests to ascertain physical chemical and other properties of samples and in collecting information from various technical papers, field reports, surveys and documents for the purpose of planning new experiments, or assisting officers in writing technical reports, programmes and projects. Some of them are engaged in regulatory, training and extension type of work, such as food and drug control, agriculture extension etc. Still others perform work of routine character like preparing reagents, conducting standardised tests, calibration and so on. The level of duties, however, does not vary to a great degree. They are usually recruited with basic qualifications of graduation or post-graduation in science, degree or diploma in engineering, or even matriculation with science, with or without special diploma, certificates, training or experience”.

A plain reading of the above Paragraph would show that those persons who work in national laboratories and field programmes would come under the purview of the Scientific Staff. The respondents have themselves indicated in their counter that the Directorate has a well equipped laboratory exclusively devoted to the analytical and

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standardization work pertaining to oil and fats. Hence it is difficult to accept the contention that these applicants are not performing duties of Scientific nature.

9. Now we take up the issue regarding grant of pay scale in accordance with the qualification. In this respect, the applicants have placed on record the orders dated 9.2.2001 and 18th August, 2000 wherein higher replacement scales of pay have been granted to Jr. Technical Assistants, Technical Assistants and also Junior Analyst as consequence of the recommendations of the 5th Central Pay Commission. The relevant portion of the order reads as under:

“ Fifth Pay Commission had recommended that for (i) a post having qualifications of B.Sc./Diploma in Engineering as essential eligibility condition at the entry level and in the pre-revised pay scale of Rs.1400-2300, a higher replacement scale of pay of Rs.5000-8000 may be allowed, and (ii) a post having prescribed qualification of an Engineering Degree/ M.Sc. and in the pre-revised pay scale of Rs.1640-2900, the higher replacement scale of pay of Rs.6500-10500 may be made admissible subject to the condition that educational qualifications laid down for direct recruitment should apply to promotions also.

2. It has been decided with the approval of the Ministry of Finance, Department of Expenditure (Pay Implementation Cell) that in accordance with the above recommendations of 5th Central Pay Commission, the following replacement scales of pay will be admissible to Jr. Technical Assistants (Group ‘C’ post) and Technical Assistants (Group ‘B’ post) in the Department of Biotechnology w.e.f. 1.1.1996:-

S.No.	Post	Pre-revised pay scale	Normal replacement pay scale presently admissible	High replacement pay scale admissible with effect from 01.01.1996
1.	Junior Technical Assistant	Rs.1400-2300	Rs.4500-7000	Rs.5000-8000 (S-9)
2.	Technical Assistant	Rs.1640-2900	Rs.5500-9000	Rs.6500-10500 (S-12)



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10. The educational qualifications for the applicants have also been placed on record and they are as under:

Chemist

- (A) Master's degree in Chemistry / Applied Chemistry with specialisation in Oils and Fats or Degree in Oil Technology of a recognised University or equivalent.

OR

- (B) (i) Degree in Science followed by Diploma in Oil Technology of recognised University/Institution.
(ii) 2 years practical experience in the analysis of Oils and Fats

Assistant Chemist.

Essential:

- (i) Degree in Science with Chemistry as one of the subjects; and
(ii) about one year's experience in the analysis of oil and fats.

Desirable

Diploma in Oil Technology from a recognised Institute.

It is thus clear that the applicants do fulfil the qualifications required for grant of pay scale as per the recommendations of the 5th Central Pay Commission which has been accepted by the respondents. The only ground for non acceptance given is that the proposal has not been agreed to by the Implementation Cell of the Department of Expenditure, Ministry of Finance.

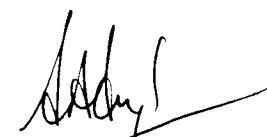
11. No other grounds have been brought to our notice for denying them the upgradation. Even the respondents have agreed that the applicants are entitled to these higher replacement scale but have shown their helplessness in the face of the non acceptance by the Implementation Cell of the Department of Expenditure, Ministry of Finance. We

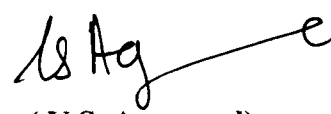


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find that this is the only ground for rejection of the claim of the applicants. The facts placed on record do show that the applicants are similarly placed as Jr. Technical Assistants and Technical Assistants who have been granted the higher replacement scale vide the Department of Biotechnology order dated 9.2.2001.

12. In view of the above, we quash the impugned order dated 7.1.2004 and direct the respondents to re-consider the case of the applicants for grant of higher pay scales of Rs. 5000-8000 and Rs.6500-10500 for the post of Assistant Chemist and Chemist in accordance with the recommendations of the 5th Central Pay Commission within a period of six months from the date of receipt of a copy of this order. No costs.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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