

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 21st DAY OF October 2010)

Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)

Original Application No.1095 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

Virendra Kumar Gupta, aged about 55 years S/o Late Asharfi Lal Gupta,
R/o 2/6 GPO Compound Pratap pur, Agra.

..... Applicant

Present for Applicant: **Shri H.S. Srivastava Advocate**

Versus

1. Union of India, through the Secretary, Ministry of Communications,
Department of Post, New Delhi.
2. The Director General, Department of Post, Dak Bhawan, Sansad
Marg, New Delhi.
3. The Chief Postmaster General, U.P. Circle, Lucknow.
4. The Postmaster General, Agra Region, Agra.
5. The Senior Superintendent of Post Offices, Agra Division, Agra.

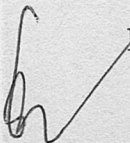
..... Respondents

Present for Respondents : **Shri Firoz Ahmad, Advocate**

ORDER

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)


The applicant in this case is aggrieved by the reduction of his
pay scale from Rs.1350-2200/- to Rs.1200-2040, without notice.



2. To elaborate, the applicant was initially appointed as Laboratory Technician in April, 1974 in the pay scale of Rs. 330-560 in the Post of Telegraph Department (now department of post). The post of Laboratory Technician was categorized as para-medical Group 'C' effective from 01.03.1981. According to the applicant, as per the 4th Pay Commission recommendation the pay scale of 330-560/- for Para-medical staff was replaced by Rs. 1320-2200, while the normal replacement scale for the said pre-revised scale is Rs.1200-2040/-. The applicant was placed in the scale of Rs.1320-2200/- but later on, the same was reduced to Rs.1200-2040. The applicant has preferred a representation but there was no joy out of it. In an identical case of one Shri Prahalad Prasad O.A. 1006 of 1998 was filed, which was decided on 23.03.2001 whereby the respondents were directed to restore the pay scale of Rs.1320-2200/-. The applicant has sought a similar relief in this O.A..

3. Respondents have contested the O.A.. According to them, the pay scale of 1320-2200/- was erroneously granted to the Laboratory Technician as the correct pay scale is only Rs.1200-2040/-. In fact, the Jabalpur Bench has passed an order to this effect in various O.A. filed before it and, as such, it is only appropriate that the same is adopted.

4. Rejoinder Affidavit has been filed by the applicant reiterating the same fact as explained in the Original application. In addition to, the applicant has filed an Amendment Application seeking amendment to this O.A. in respect of relief column, whereby he has claimed interest on the arrears of pay and allowances.



5. Supplementary Counter Affidavit has also been filed by the Respondents.

6. Counsel for the applicant argued that the respondents have mistaken the post of Laboratory Technician to Laboratory Attendant. As per the Pay Commission Recommendation Para-medical staff is in a different footing. Again the counsel argued that in the case of Prahalad Prasad (supra) the respondents have already restored the pay scale of 1320-2200/- and as such the applicant is also entitled to the same benefit, as afforded to Shri Prahalad Prasad.

7. Counsel for the respondents submitted that this case is barred by limitation. He has also referred to the contention raised in the counter affidavit including that the order of this Tribunal in Prahalad Prasad Case is under challenge before the Hon'ble High Court and that in a few cases the Jabalpur Bench has held that Laboratory Technician is entitled to normal replacement pay only, he also invited the attention of the Tribunal to the decision in **P.B. Hariharan's** case stated in Paragraph 4 of the Counter Affidavit.

8. Arguments are heard and documents perused. As regards the technical objection of limitation, the applicant has approached the Tribunal after the decision in the case of Prahalad Prasad. His is one of continuing cause, inasmuch as, he has been getting according to him less pay every month. In this regard the decision of the Apex

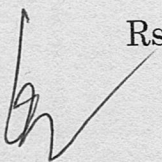
Court in case of *M.R. Gupta v. Union of India* reported in (1995) 5

SCC 628 as well as in the case of *Jai Dev Gupta Vs. State of*

Himanchal Pradesh (1997) 11 SCC 13 refers. As such, the point of limitation does not act against the case of the applicant. Of course, in so far as, arrears of pay and allowances are concerned, there can be a restriction for the period prior to one year anterior to the date of filing of the O.A.

9. The contention of the applicant's counsel is that the respondents have confused themselves in that they had mistaken Lab Attendant for Lab Technician. According to him, in all other departments, the pay scale of Lab. Technician is Rs 1350 – 2200 and not the normal replacement scale for Rs 1200 – 2040. In this regard, he had produced the orders in respect of Railways, Ministry of Health, and certain other organizations of the State Government. We are afraid; we cannot take into account the pay scales of State Government employees while we would certainly take into account the pay scale of the Ministries in the Central Government. But, such a comparison without adequate materials of functional responsibility etc., cannot be considered by us in this O.A. However, we are bound to follow the precedents, if any, so that consistency is maintained, for, Consistency is a virtue, as held by the Apex Court in **Marathwada Agricultural University v. Marathwada Krishi Vidyapith, M.S.K.S., (2007) 8 SCC 497**.

10. The contention of the respondents is that the applicant was no doubt appointed as Lab. Technician since March 1974 in the scale of Rs. 330 – 560. He was transferred to P & T Dispensary Agra on



01-04-1981, confirmed in the said pay scale w.e.f. 01-03-1981. While implementing the recommendations of the IV Pay Commission, an error occurred in that the pay replacement pay scale of the Lab. Technicians corresponding to Rs 330 – 560 was fixed at Rs 1350 – 2200, whereas it should have been a simple replacement scale of Rs 1200 – 2040 and on the basis of the decision of the CAT, Jabalpur Bench in O A Nos. 55/96, 76/96, 140/96 and 213/96, the Director General, Department of Posts, New Delhi issued directions dated 01-10-1997 to rectify the error in fixing the pay scale of the Lab Technicians in P & T Dispensaries and modify the pay scale to Rs 1200 – 2040. Be that as it may, it is equally true that in OA No. 1006/1998, this Bench of the Tribunal has held as under:-

4. *The learned counsel appearing for the applicant has also referred to the recommendations made by the 5th CPC to highlight the fact that Lab Technicians are required to be placed in the revised scale of 4500-7000/-. Whereas, he has been actually placed, as pointed out in the lower pay scale of Rs.4000-6000/-. We have refused the Central Civil Services (Revised Pay) Rules, 1997 and find that Part B of the Ist Schedule to the aforesaid certain common categories of staff. The post of Lab Technician is included in this category. In this category are included those posts in respect of which the revised scale of pay are to be given after the administrative Ministries/Department concerned have taken steps to modify the recruitment rules, restructure Cadres, etc. as necessary in a given situation. The implementation of the revised pay scales under this part is to take effect prospectively, i.e. after the recruitment rules etc. have been modified. Until that happens, the holders of the aforesaid posts are supposed to work in the replacement scales of pay. In so far as the applicant is concerned the existing pay scale of the lab Techno has been shown as Rs.1320-2040/- under Part 'B' aforesaid. This scale of Rs.4000-6000/- as shown in part 'A' of the aforesaid Ist Schedule. The rule position in respect of Lab. Techn. Under the C.C.s. (Revised Pay) Rules, 1997 relating to the recommendations of the 4th CPC has not been placed before us. We are, therefore, unable to convince ourselves that the pay scale of Rs.1350-2200/- was wrongly given to the applicant. The applicant's claim that being a para-medical staff, he was entitled to be placed in the pay scale of 1350-2200/-, cannot, therefore, be denied keeping in view the fact that as already pointed out, the lab Techn. Are required to be*

placed in the revised scale of Rs.4500-7000/- which is the replacement scale of Rs.1350-2200/- as shown in Part 1 of the Ist Schedule to the aforesaid Rules of 1997. In the extract relating to the 4th CPC's recommendation enclosed by respondents' letter dated 01.10.1997 placed on record by respondents. It has been shown that the pay scale of Rs.330-560/- applicable to Radiographer, X-Ray Technicians and Pharmacists has been revised to Rs.1350-2200/- and these posts have been shown as part of the para-medical staff. This position further strengthens the claim of the applicant and we find it difficult to believe the respondents' vacation that the pay scale of Rs.1350-2200/- was incorrectly fixed. The judgment/ order of the C.A.T. referred to in the respondents aforesaid letter of 01.10.1997 has not been made available and in the absence of this information, we are not able to satisfy ourselves that the applicant has been given the reduced pay scale of Rs.1200-2040/- in pursuance of the judgment/ order of this Tribunal. As already stated we are not able to reach a firm conclusion in this regard. Notwithstanding this position, we are sure that the post of Lab Techn. is in my cause required to be placed in the scale of 4500-7000/- which is the scale claimed by the applicant. The respondents are required to modify the recruitment rules and take such other steps on might be necessary before the aforesaid revised pay scale of Rs.4500-7000/- in granted to Lab Techn. We cannot be sure, however, that with the qualification and the experience possessed by the applicant, he would be placed ultimately in the revised pay scale of Rs.4500-7000/-. We thus if find that until the administrative Ministry Department concerned has taken a final view in this regard in accordance with the provisions made in part 'B' of the Ist Schedule to the aforesaid Rules of 1997 it should not have been necessary for the respondents to reduce the applicant's pay scale from 1350-2200/- to 1200-2040/-. The matter could be decided at the appropriate time and in due course after a decision on the revision of the Lab Technicians' pay scale to Rs.4500-7000/- had been taken.

5. In the facts and circumstances outlined in the preceding paragraphs, we have reached the conclusion that if the pay scale earlier given to the applicant was at all required to be reduced, the respondents should have first issued a notice to the applicant to show cause in the matter, and a decision should have been taken only after giving reasonable opportunity to the applicant to state his case. This has not been done in circumstances which do not clearly indicate that the respondents have taken the right decision in the matter. The decision taken by the respondents to reduce the pay scale of the applicant from Rs.1350-2200/- to Rs.1200-2040/- is, therefore, quashed and set aside. His pay will be restored to Rs.1720/- PM with effect from the date from which it was reduced to Rs.1530/- PM and the applicant will be entitled to consequential benefits. The respondents are given liberty to issue a notice to the applicant and allow him full opportunity to state his case before the matter is decided. In the event of the order to be passed by the respondents being adverse to the applicant, the respondents will pass a speaking and a reasonable order having regards to the points raised in the present OA and

to such other material as the applicant might place before the respondents during course of personal hearing. The respondents are also directed to take a decision for placing the Lab Technicians in the revised scale of Rs.4500-7000/- as expeditiously as possible and in any event within a period of three months from the date of receipt of a copy of this order."

11. The Hon'ble Apex Court has, in the case of **Sub-Inspector Rooplal v. Lt. Governor, (2000) 1 SCC 644**, held as under:-

12. At the outset, we must express our serious dissatisfaction in regard to the manner in which a Coordinate Bench of the Tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same Tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement. This Court in the case of *Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel* while dealing with a case in which a Judge of the High Court had failed to follow the earlier judgment of a larger Bench of the same Court observed thus:

The judgment of the Full Bench of the Gujarat High Court was binding upon Raju, J. If the learned Judge was of the view that the decision of Bhagwati, J., in *Pinjare Karimbhai* case and of Macleod, C.J., in *Haridas* case did not lay down the correct law or rule of practice, it was open to him to recommend to the Chief Justice that the question be considered by a larger Bench. Judicial decorum, propriety and discipline required that he should not ignore it. Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by courts of coordinate authority or of superior authority. Gajendragadkar, C.J., observed in *Bhagwan v. Ram Chand* :

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'It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that inquiry sitting as a Single Judge, but should refer the matter to a Division Bench, or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety.'

12. It is stated that the order in OA No. 1006/1998 is under challenge before the Hon'ble High Court. Pendency of a writ petition cannot mean that the order of the Tribunal is not subsisting. Even if stay is granted, the order of the Tribunal can be stated to be only kept under abeyance and not set aside. In this regard decision of the Apex Court in the case of ***Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn., (1992) 3 SCC 1***, wherein the Apex Court held :-

While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. When a challenge against an order of a lower court is made before the higher court and the same is admitted, in the event of no stay having been granted, the said judgment under challenge could

well be followed. This is evident from the decision of the Apex Court in the case of *Dental Council of India v. Subharti K.K.B. Charitable Trust*, (2001) 5 SCC 486. In that case, the High Court of Allahabad issued a mandamus to the Government in respect of admission to the Dental College for a particular year and the same was challenged before the Apex Court. Though the case was pending, no stay was granted. The High Court had on the basis of the said Mandamus issued further orders in respect of admission in the subsequent years and when the same was challenged, the Apex court has held as under:-

20. Now, considering the aforesaid agreed order, the next question pertains to the students who are admitted by the respondent College for the academic years 1996-97, 1997-98, 1998-99 and 1999-2000.

21. learned Senior Counsel Mr Shanti Bhushan submitted that the institution has given admission to 100 students on the basis of the order passed by the High Court of Allahabad and, therefore it would not be just to hold that the institution has acted de hors the statutory regulations. He pointed out that this Court has not stayed the operation of the impugned order passed by the Allahabad High Court.

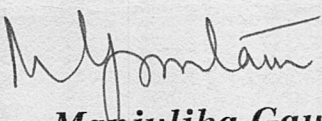
22. In this case, the Central Government undisputedly has granted approval for establishing Dental College to the respondent Trust. The only question was whether students' strength should be 100 as contended by the Trust or 60 as contended by DCI. Hence, considering the peculiar facts of this case, particularly the order passed by the High Court of Allahabad on 5-9-1997 issuing a mandamus to accord approval to the Dental College for admitting annually a batch of 100 students instead of 60 students and the fact that this Court has not stayed the operation of the said order and also the further orders passed by the High Court on 26-2-1999 and 17-4-1999 in Writ Petition No. 8299 of 1999, we do not think that it would be just and proper to disturb the admissions granted by the Dental College. (emphasis supplied)

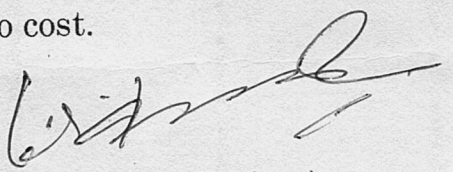
13. In view of the above, this Bench is bound to follow the precedent of its own and we have no hesitation to pass the same order in this case, as we had passed our orders in the above said O.A. And, whatever treatment has been afforded in the case of the applicant in OA No. 1006 of 1998 the same shall be applicable to the applicant in the present case as well. The applicant has submitted that in the case of the applicant in the above OA, the Respondents have complied with the order, notwithstanding the fact that a writ petition against the

order of the Tribunal is pending. Para 4(xiii) of the O.A. refers. No stay appears to have been granted in that case.

14. Accordingly, this **OA is allowed**. Respondents are directed to restore the pay scale of pay of Rs 1350 – 2200 to the applicant and grant annual increment accordingly and corresponding pay under the subsequent Pay Commissions' recommendations as accepted by the Government. Arrears of pay and allowances, arising therefrom should be paid to the applicant commencing from the period September 2004 only i.e. one year anterior to the date of filing of the O.A. Of course, fixation of pay scale should be made subject to the outcome of the pending writ petition. As regards prayer for interest, the same is rejected. An undertaking to the effect that in the event of the Writ petition pending before the High Court being allowed, the applicant undertakes to refund the entire amount in one lump sum shall also be taken from the applicant before making the aforesaid payment to the applicant.

15. The above order is to be complied with, within three months from the date of communication of this order. No cost.


(**Mrs. Manjulika Gautam**)
Member-A


(**Dr. K.B.S. Rajan**)
Member-J

Sushil