

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

(THIS THE 31st DAY OF March, 2011)

HON'BLE DR.K.B.S. RAJAN, MEMBER (J)
HON'BLE MR.S.N. SHUKLA, MEMBER (A)

Original Application No.682 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

1. Nesar Ahmad, Son of Shri Noorul Haque Khan, Lab. Assistant, D.L.W. Inter College Varanasi.
2. A.K.Verma, Son of Shri V.G.Verma, Lab.Assistant, D.L.W. Inter College, Varanasi.

..... Applicants

By Advocate: Shri S. Mandhyan

Versus

1. The Union of India, through the General Manager, Diesel locomotive Works, Varanasi.
2. Member Staff, Railway Board, Rail Bhawan New Delhi.
3. Secretary (Establishment), Railway Board, Rail Bhawan, New Delhi.
4. Chief Personnel Officer, Diesel Locomotive Works, Varanasi.

..... Respondents

By Advocate: Shri A.K. Sinha

ORDER

(DELIVERED BY HON. DR. K.B.S. RAJAN, MEMBER-J)

The applicants claim continuance of parity in pay scale in respect of lab assistant (school) at par with TGT and Librarians of the

same institution. Respondents index towards the Pay Commission recommendations and contend that judicial interference is least called for as per various decisions of the Apex Court. Hence, this O.A.

2. The brief facts of the case as per the applicants are that the Applicant No.1 was appointed as Lab Assistant on 08.07.1988 and Applicant No.2 was appointed on the same post on 05.10.1988. They were all through treated to be equivalent to Primary School teachers as well as the Librarians working in the D.L.W. Inter College. Based upon such parity Ministry of Education and Culture (Department of Education) approved and the Railway Board accepted and fixed pay scale of Lab Assistant (School) as Rs.330-560, the same as that of Primary School Teachers. The D.L.W. administration recognized Lab Assistant (School) and Librarian both in the scale of Rs1200-2040 as isolated in miscellaneous posts which had no promotional avenue vide letter dated 14.08.1987 (Annexure A-4 & A-5 refers). The D.L.W. administration framed avenue of advancement for Lab Assistant & Librarian vide order dated 30.07.1992. It provided that whenever Primary School teachers will be considered for promotion to the post of Trained Graduate Teacher, the Lab Assistant and Librarian may also be considered subject to their possessing requisite qualification who were graduation in Arts of Science with Bachelor of Education or its equivalent (Annexure A-6 refers).

3. One Shri J.N. Dwivedi, Lab Assistant was promoted to the post of T.G.T. after obtaining B.Sc. degree. Even the teaching allowance @ Rs.100/- per month was given to the Lab Assistant (School) as was admissible to the teaching staff in PRT Grade and Librarians. While implementing the recommendations of Vth Central Pay Commission, Railway Board omitted the category of Laboratory Assistant (School) while allotting separate pay scales with other similar isolated specified categories as Lab Assistants (Mech.), Lab Assistants (Psychology) Lab Assistants (Medical) etc. and as such disparity in revised pay scales crept in for Lab Assistant (School). The Lab Assistant (School) has been fixed in the pay scale of Rs.4000-6000 (RSRP) in Vth Pay Commission due to non-consideration of pay structure for this category under specified categories by the Railway Board while implementing the recommendations of the Vth Central Pay Commission. It is also relevant to mention here that Lab Assistant (Schools) are tagged with the Primary School Teachers for avenue of advancement and consequently Lab Assistant (School) are stagnating in the recruitment cadre and grade for the last 15 years. The avenue of advancement of assigned with Teaching Staff of D.L.W. Schools as per G.M. (P), Varanasi letter dated 26.08.1992 but the respondents are denying the same arbitrarily. Pay scale of Lab Assistants (Science School) Rs.1200-2040 (RPS) is replaced by pay scale of Rs.4000-6000 (RSRP) instead of Rs.4500-7000 (RSRP) as Primary School Teachers who were placed in the pay scale of Rs.1200-2040

(RPS) prior to Vth Pay Commission were given the pay scale of Rs.4500-7000 9RSRP). As such, there is a hostile discrimination in granting pay scales different in the same avenue of advancement, which hits the provisions of Articles 14 and 16 of the Constitution of India.

4. Applicants filed O.A. No.375 of 2004 which was disposed of with the direction to the Secretary (Establishment) Railway Board to decide the representation of the applicants dated 31.12.2003 (Annexure A-12 refers). The Respondent No.2 has decided the detailed representation of the applicants by cryptic order alleging to be speaking order vide order dated 03.01.2005, in which Respondent No.2 has clarified that the Laboratory Assistants are not eligible for three tier pay structure as they cannot be treated at par with teachers since educational qualifications prescribed are neither the same nor comparable as those of teaching posts. Pay scale of Rs.4000-6000 to the Librarians is available, who are also non teaching staff while normal replacement scale of Rs.4000-6000 is only available to the applicants who are Lab Assistant.

5. The Applicants have thus, preferred this OA seeking the following relief/s:-

- (i) To issue writ, order or direction in the nature of Certiorari quashing the order dated 03.01.2005 as communicated by covering letters dated 28.1.2005 and 03.2.2005.*

- (ii) *To issue a writ, order or direction in the nature of Mandamus commanding the respondents not to give effect order dated 03.1.2005 as communicated by covering letters dated 28.1.2005 and 03.2.2005.*
- (iii) *To issue writ, order or direction in the nature of mandamus commanding the respondents to accord the same pay scale of Rs.4500-7000 to the applicant as has been paid to the PRTs and Libraries of the D.L.W. Inter College, Varanasi.*
- (iv) *To issue such other and further order or direction which this Hon'ble Tribunal may deem fit and proper in the nature and circumstances of the present case."*

6. The Respondents have contested the O.A. According to them, equations of job evaluation of posts or equation of pay or determination of Pay Scales are the primary functions of expert bodies like the Pay Commission with which normally the courts should not interfere, except on any of the grounds of unjust and arbitrary state action or inaction or any grave error having crept in while fixing the Pay Scales which may warrant the interference of the Court. The issue regarding grant of senior/selection grade to the Lab. Assistant (School) in the revised Pay Structure at par with teachers has been examined in consultation with the department of Education who had clarified that Lab Assistant are not eligible for the three tier pay structure i.e. basic/senior/selection grade recommended by the Chattopadhyaya commission as they cannot be treated at par with teachers since the educational qualification prescribed for them are neither the same not comparable as for teaching post vide Railway Board's letter dated 08.08.94 (Annexure IV refers). The Vth Pay Commission generally followed the

principles of improved pay scales for higher level of qualification and skills. This is in line with the overall objective of the Government of gradually upgrade the level of literacy and skills among its employees with a view to enhancing the overall working efficiency. Consequently Primary School Teachers were recruited with Higher Secondary with (2 years) Junior Basic Training or Intermediate with Junior Basic Training (1 year) or Senior Secondary (+2) examination with Junior Basic Training (1 year) (Annexure A-4 refers).

7. The educational qualification for the Railway School Librarians for future recruitment shall be b. Lib. (4 years course) or Graduation with professional qualifications of Diploma in Librarianship making the qualification equivalent to B.Lib. (Annexure A-VI refers). Whereas, the required qualification for the post of laboratory Assistant (School) continued to be Senior Secondary/Intermediate with Science and 1 year experience in Pathological and Bio-Chemical Laboratory(Annexure A-VII refers). Respondents have also submitted that prior to the revision of the pay scale by the Vth Pay Commission, the post of Trained Graduate Teacher scale Rs.1600-2660/- were filled by a positive act of selection from amongst the Primary Teacher, Librarian and Lab. Asstt. (School) having the requisite qualification i.e. graduation in any discipline with Bachelor of Education and eligible candidates were/are considered as and when vacancy arises for

appointment/promotion to the post of T.G.T. Science. However, Applicant No.2 Sri Ajay Kumar Verma does not possess the requisite qualification for the post of T.G.G. Science. The Competent Authority after considering the relevant records decided the representation of the applicants vide order dated 3.1.2005, which is a speaking and reasoned order.

8. In the Rejoinder Affidavit filed by the applicant it is stated that all the recommendations forwarded from the respective departments have been taken into consideration, but when there was no recommendation for the post of the Railway Administration as well as the Union the due consideration to the Lab Assistant has escaped attention and that is why they have been placed in the normal replacement scale. There is one glaring example of such mishap in the case of the Librarians working in D.L.W. Inter College specifically which was corrected by the Board as late as on 24.01.2004. In that case also there was no recommendation by the Railway Board and as such the same was corrected. Therefore, the present matter also merits consideration likewise and deserves pay scale of Rs.4500-7000 as being paid to the Primary Teacher and Librarian of the D.L.W. Inter College, Varanasi.

Normally there may be no interference in the recommendations of the Pay Commission, but that cannot exclude omission even on the part of the Pay Commission which can be for various reasons and which if, pointed out ought to be removed or

one is left with no other option but to take it to the Hon'ble Court of Law and in this particular case when the discrepancy is writ large on the face of record the interference of this Hon'ble Tribunal is imminent.

9. In the supplementary counter, respondents have annexed letters issued in the wake of VI Pay commission recommendations/ acceptance by the Govt.

10. Counsel for the applicant had argued the matter and supplemented the same with the written submission and extract of the written submission, which summarizes the arguments of the applicant is as under:-

"13. As mentioned above, in pursuance of the relevant order, the D.L.W. Administration framed Avenue of Advancement for Lab Assistant (School) in 1992 which is almost about 09 years after the said post was created in D.L.W. Inter College. According to this avenue, Lab Assistant, PRTs and Librarians were given same status and also they has common channel of promotion to T.G.T. in the pay scale of Rs.1400-2600 (subsequently stands revised to Rs.5500-90000 for the purpose of recruitment of Lab Assistant (School) is required to have Intermediate Science with one year experience in pathological lab and the PRT requires Intermediate with Junior Basic Teaching Certificate (of one year) or its equivalent and the qualification for Librarian was Intermediate with one year Certificate Course in Library Science. The sum and substance of above, is that for recruitment to either Lab Assistant (School), P.R.T. or Librarian 13 years of educational career was bare minimum.

14. All these 03 posts has avenue of further promotion to the post of T.G.T. in case they acquire requisite qualification for recruitment to the post of T.G.T. as a matter of promotion.

15. The Vth C.P.C. placed the PRTs in the pay scale of Rs.4500-7000. No such revision was accorded to either the Librarian or lab Assistant. Serious anomaly was created, however, Railway Board came to the rescue of Librarian as coming in

2004 going beyond recommendation of the Vth C.P.C. they allotted the Librarian Pay Scale of Rs.4500-7000. Vide letter dated 31.04.2004 the Librarian were also entitled to the said scale as all through they were being treated at par with Librarian and PRTs and under normal replacement scale they were placed in the pay scale of Rs.4000-6000/-.

16. *The applicants had the approached the respective respondent authorities, but their legitimate claim was rejected vide impugned order dated 31.01.2005.*
17. *The Avenue of Advancement is still in vogue, but after recommendation of Vth C.P.C. the seniority of Lab Assistant is nullified with progression in career to next higher grade which is admissible to PRT and Librarian. This anomaly could have been averted, had the same treatment been granted by the Railway Board to the case of the applicant by placing them as well in the Grade of Rs.4500-7000 as even they were also have become entitled to upgradation in pay scale due to stagnation in promotion.*
18. *So far as issue of all the 03 i.e. Lab Assistant (School) PRT and Librarian being accorded same status, there is voluminous evidence with can be ascertained from the pleadings on record.*
19. *In one of peculiar case, all through the working of the Lab Assistant (School) was being treated as teaching experience. This is fortified by the fact that one Lab Assistant (School), namely, Shri J.N. Dwivedi who was appointed as lab Assistant in 1985 though passed B.Sc. in 3rd Divn., which was not acceptable qualification but was relaxed only on the basis of experience of 10 years which was taken as teaching experience and he was promoted as a T.G.T. but now the respondents have taken a somersault and no such working as Lab Assistant (School) is being treated as teaching experience.*

Ref: Railway Board's letter No.E(PCA)I-87/PS-5/PE-9 dated 04.10.1989.

20. *The case of Shri Dwivedi was peculiar in self, but nevertheless keeping him in view discrimination is writ large on the face of record hit by Article 14 of the Constitution of India.*
21. *It is significant to mention that privilege of Senior Grade and Selection Grade upgradaion is not exclusively attached with the Teacher as Librarians are also getting the same which non teaching post. Only on the basis that their basic scale was made Rs.4500-7000 whereas when from the very inception the Lab Assistant (School) were also being treated at par with Librarian and PRT then there is no reason to negate the said privilege of getting Senior Grade after 12*

years of continuous service and Selection Grade after 24 years on completion thereof.

22. *The Railway Administration had been giving the Lab Assistant (School) Teaching Allowance which was admissible to teaching staff. Therefore, there is nothing off-shoot which can at all differentiate Lab Assistant from that of PRT. Therefore, taking cue from the name Lab Assistant (School) missing from the recommendation of C.P.C. Railway Administration cannot ipso facto on their whims put the Lab Assistant (School) in the normal replacement scale of Rs.4000-6000 as there is no reason worth even the mention but differentiae them from either Librarian or PRT and particularly with the Librarian in spite of finding no place in the Vth C.P.C. recommendation have been accorded the same criteria as that of PRT. Therefore, the Lab Assistant (School) cannot be left in lurch only on the whimsical attitude of the authorities concerned and this Hon'ble Court has ample powers to set right the appercart which has been unnecessarily disturbed on whimsical approach of some officers at the helm of affairs.*
23. *The judgments annexed by the respondents dated 27.8.2007 and 29.04.2002 are not at all applicable to the case of the applicants and as such have no relevance whatsoever to the issue at hand.*
24. *Much emphasis has been laid while rejecting claim of the applicants on Chattopadhyaya recommendation which basically is only paper without being put into practice. This report was submitted in 1994, but no action inconsonance with the said recommendation was ever taken Therefore, now at this stage those recommendations of 1994 cannot be relied upon to negate the claim of the applicants as all through even after 1994 Lab Assistant (School) have been treated at par with P.R.T. and Librarian, hence at this stage this cannot from excuse to negate what is due to the applicants."*

11. Counsel for the respondents has made his submission in which emphasis was on the general reservation of the Courts in interfering with the Pay Scale matters, for which there is expert commissions and Committees that may be specially constituted.

12. Arguments were heard and documents perused. There is absolutely no doubt that in matters of fixation of pay scale to any

post, it is for the executives to decide as held in a number judgments of the Apex court. At the same time, a caution has been administered by the Apex court indicating the circumstance under which Court could intervene. In *Randhir Singh v. Union of India, (1982) 1 SCC 618*, the Apex Court has held as under:-

We concede that equation of posts and equation of pay are matters primarily for the executive Government and expert bodies like the Pay Commission and not for courts but we must hasten to say that 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. Of course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same.

The above was cited in the case of State of M.P. vs Pramod Bhartiya, (1993) 1 SCC 539 wherein it has also been held as under:-

It is not enough to say that the qualifications are same nor is it enough to say that the schools are of the same status. It is also not sufficient to say that the service conditions are similar. What is more important and crucial is whether they discharge similar duties, functions and responsibilities.

With the above decisions in mind the case herein has to be analyzed.

13. The claim of the applicants is based on the following two factors:-

- (a) That hithertofore, there has been equation in pay scales of the posts of Lab. Assistants (Schools), Librarians and T.G. Teachers.
- (b) These posts form feeder grade to promotional posts of P.G.T. subject to the incumbents' fulfilling the requisite qualifications meant for the P.G.T. posts.

- (c) The Government have not taken up the matter relating to the Lab. Assistants highlighting the specialized nature of the duties and responsibilities, with due recommendations before the Pay Commission, consequent to which the Pay Commission has been silent about the pay scale at par with other two posts and hence only replacement pay scales have been granted to Lab Assistants.

14. As regards (a) above, an identical situation had arisen in the case of *State of W.B. v. W.B. Minimum Wages Inspectors Assn., (2010) 5 SCC 225*, wherein the Apex Court has, inter alia held as under:-

18. The principles relating to granting higher scale of pay on the basis of equal pay for equal work are well settled. The evaluation of duties and responsibilities of different posts and determination of the pay scales applicable to such posts and determination of parity in duties and responsibilities are complex executive functions, to be carried out by expert bodies. Granting parity in pay scale depends upon comparative job evaluation and equation of posts.

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22. The claim in the writ petition was not based on the ground that subject post and reference category posts carried similar or identical duties and responsibilities but on the contention that as the subject post holders and the holders of reference category posts who were enjoying equal pay at an earlier point of time, should be continued to be given equal pay even after pay revision. In other words, the parity claimed was not on the basis of equal pay for equal work, but on the basis of previous equal pay.

23. It is now well settled that parity cannot be claimed merely on the basis that earlier the subject post and the reference category posts were carrying the same scale of pay. In fact, one of the functions of the Pay Commission is to identify the posts which deserve a higher scale of pay than what was earlier being enjoyed with reference to their duties and responsibilities, and extend such higher scale to those categories of posts.

24. The Pay Commission has two functions; to revise the existing pay scale, by recommending revised pay scales corresponding to the pre-revised pay scales and, secondly, make recommendations for upgrading or downgrading posts resulting in higher pay scales or lower pay scales, depending upon the nature of duties and functions attached to those posts.

Therefore, the mere fact that at an earlier point of time, two posts were carrying the same pay scale does not mean that after the implementation of revision in pay scales, they should necessarily have the same revised pay scale.

25. As noticed above, one post which is considered as having a lesser pay scale may be assigned a higher pay scale and another post which is considered to have a proper pay scale may merely be assigned the corresponding revised pay scale but not any higher pay scale. Therefore, the benefit of higher pay scale can only be claimed by establishing that holders of the subject post and holders of reference category posts, discharge duties and functions identical with, or similar to, each other and that the continuation of disparity is irrational and unjust.

15. Thus, that there had been parity in pay scale hitherto alone would not by itself a justifiable fact for parity to be maintained at all times.

16. As regards (b) above, unequal feeder posts are not uncommon in Government organizations. (see **Union of India vs N.Y. Apte 1998 (6) SCC 741**). However, when there is no change in the conditions for promotion to PGT, and when there has been parity in the pay scales amongst the feeder posts, it is a matter to be considered whether the pay scales should be identical or not. True, there has been some change in the qualification requirement in respect of the other two categories. Reason as to why such a change has not been contemplated in respect of Lab. Assistant cannot be difficult to comprehend. The input to the Pay Commission might not have been there in respect of Lab Assistants.

17. As regards (c) above, the respondents have not specifically stated that full details in respect of Lab Assistants have been furnished to the Pay Commission for consideration. And there is substance in the arguments of the applicants that unless full

details are furnished the Pay Commission would not be in a position to consider and make its recommendation. The different in pay created in the V Pay Commission widens with the revision of pay scales in the VI Pay Commission by virtue of different grade pay, even if there be the same broad pay band.

18. In view of the above, ends of justice would be met, if the respondents constitute a Committee headed by a senior officer at the level of Joint Secretary in the Railway Board and Director in the Finance wing of Railways, which would consider the case of the applicants and also of the Department and arrive at a decision whether the matter needs to be reconsidered by the Respondents for bringing back the pay parity amongst the Lab. Assistants, the Librarians and the T.G.Ts. One of the applicants or their authorised representative (any official of the Railways) may be given audience by the Committee. The Committee's decision be made within a period of four months from the date of communication of this order.

19. The O.A. is disposed of with the above directions. No cost.


(S.N. Shukla)
Member-A


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

Sushil