

(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

(THIS THE 15th DAY OF December, 2011)

PRESENT:

HON'BLE MR. JUSTICE B.N. SHUKLA, MEMBER-J

HON'BLE MR. D. C. LAKHA, MEMBER-A

ORIGINAL APPLICATION NO. 1036 OF 2005

(U/s, 19 Administrative Tribunal Act. 1985)

1. Narendra Kumar, a/a 48 years, S/o Shri Pooran Chand, R/o L.I.G. 2154, Awas Vikas No. 3, Kalyanpur, Kanpur.
2. Praveen Kumar Saxena, a/a 50 years, S/o Late Shri C.L. Saxena, R/o 46/396, P. Shivpuri Vinayakpur, Kanpur.
3. Akhilesh Kumar Pandey, a/a 37 years, S/o Shri K.M. Pandey, R/o 88, Indrapuri, Vinayakpur, Kanpur.

.....Applicants

By Advocate: Shri A.K. Dave.

Versus

1. Union of India through the Secretary, Ministry of Food and consumer Affairs Department of Sugar and Edible Oils Krishi Bhawan, New Delhi.
2. The Secretary Expenditure, Ministry of Finance, Government of India, New Delhi.
3. The Director, National Sugar Institute, Kalyanpur, Kanpur.
4. Senior Administrative Officer/Finance Officer, N.S.I., Kanpur.

..... Respondents

By Advocate: Shri Anil Dwivedi.

ORDER

(DELIVERED BY:- HON'BLE MR. D.C. LAKHA, MEMBER-A)

The following reliefs have been sought in this O.A.:-

"(1) to quash and set aside the notification dated 25.8.03 with regard to applicants cadre (Annexure A-3A) and direct the respondents to frame rules after rational assessment of the job analysis of the draftsman Sugar Institute as compare with draftsman of other Department of Central Government, pending framing of new rules, rules as existing prior to 25.8.2003 may only be applied.

(i)(a). Direct the respondents no. 1 and 2 to grant the scale of Rs. 5000-8000 and Rs. 5500-9000 to the Applicants w.e.f. 1.1.1996 for their working as Draftsman Grade II and Draftsman Grade I



respectively on the basis of their working in different grades during the relevant period from 1.1.96 on onwards in place of Rs. 4500-7000 for Grade II and Rs. 5000-8000/- per Grade I as per Vth Pay Commission recommendation:-

	<u>Grade II</u>	<u>Date</u>	<u>Grade I</u>	<u>Date</u>
(i) Narendra Kumar	Rs. 5000-8000	1.1.96	5500-9000	17.7.97
(ii) Praveen Kumar Saxena	Rs. 5000-8000	1.1.96	5500-9000	6.8.97
(iii) Arvind Kumar Pandey	Rs. 5000-8000	6.8.97	5500-9000	1.1.2004"

(ii) direct the respondents to pay difference of arrears of salary to the Applicants after refixation of their pay in relevant grant w.e.f. 1.1.96 onwards with interest alongwith other service benefits."

2. The facts in the OA may be stated in nutshell as below:-

All the three applicants have challenged the pay fixed by the respondents pursuant to the notification dated 25.08.2003, which is also under challenge. Accordingly, Annexure A-1, A-2 and A-3 fixing the pay of the applicants are under challenge. It is averred in the OA that all the three applicants belong to Draftsman Cadre in the National Sugar Institute, Kanpur which is established by Government of India under Ministry of Food and Consumer Affairs Department of Sugar and Edible Oil and the conditions of service of the applicants are framed by Government of India under Article 309 of the Constitution of India. The qualification and the initial appointment of the applicants are not disputed. The Applicant No. 1 Narendra Kumar was initially appointed as Draftsman Grade II in 1983 in the Grade of Rs. 330-560/-. He was promoted as Draftsman Grade I Rs.1600-2660 (Pre-revised) vide order dated 8th September, 1997 and presently working in the revised Grade of Draftsman I Rs. 5000-8000/-.


3. The Applicant No. 2 Praveen Kumar Saxena was initially appointed as Draftsman Grade III in the pay scale of Rs. 110-200/- w.e.f. 06.02.1973. He was promoted as Draftsman Grade II w.e.f.

23.08.84 in the grade of Rs. 330-560/- and he was further promoted as Draftsman Grade-I in the pay scale of Rs. 5000-8000/- w.e.f. 18.6.1998. The Applicant No. 3 Akhilesh Kumar Pandey was appointed as Draftsman in Grade-III in the pay scale of Rs. 1200-2040/- in the year 1992. He was promoted as Draftsman Grade- II in the Grade Pay of Rs. 1400-2300/- w.e.f. 06.08.97 and he was further promoted as Draftsman Grade-I in the Grade pay of Rs. 5000-8000/- w.e.f. 01.01.2004. The present pay scale of the staff including Draftsman N.S.I. was based on the recommendation of the successive Central Pay Commission adopted by the Government from time to time. Accordingly, the last pay revision was based on the recommendation of the Vth Central Pay Commission w.e.f. 01.01.1996 after approval of the Government of India with some modification. In Para 4.13 of the OA, it is stated that the pay scales of Draftsman in various Ministries were considered and recommendations were made for revision of Grade in the Cadre of Draftsman. Photo copy of relevant Para 50.37 is annexed as Annexure No. A-4. In certain cases while approving the sketch by Government, as per the recommendation of the Vth Pay Commission it was left to the concerned Ministry to decide such issues before applying the revised scales and in their cases the concerned posts were to be governed by the normal replacement scale till then. As per this Para No. 4.15 (Part-B report) at serial No. 10 revised pay scale of Draftsman Grade-I was revised from 1400-2300/- to 5000-8000/- Grade-II and Draftsman Grade-I from 1600-2660/- to 5500-9000/-. No pre-condition was laid down for granting the revised scale of Draftsman. Therefore, as such the revised grades were implemented in all the other Departments of Government of India. The order to this effect issued by D.G., Central Public Works

Department are placed as Annexure A-6 and Annexure A-6A. These revised scales were issued by C.P.W.D., Ministry, Army, Navy, Defence and Airforce. But Respondent No. 3 and 4 while implementing the revision of pay scale have fixed the Applicant No. II in the Grade-II in the pay scale of Rs. 4500-7000/- and Rs. 5000-8000/- in Grade-I instead of Rs. 5000-8000/- for Grade II and Rs. 5500-9000/- for Grade-I as approved by the Government of India in some of the other Ministries/Departments.

4. Accordingly, the pay has been fixed for applicant No. 1, 2 and 3 (Annexure A-1, A-2 and A-3). Respondents have not shown any reason for not fixing the pay of the applicant according to the recommendation of the Central Pay Commission. All the applicants have repeatedly represented to the respondents for proper fixation of their pay in the approved scale of pay and also represented through recognized Union (Annexure A-7 and Annexure A-8). The Director of the Institute vide his letter dated 14.7.2000 referred the applicants letter to Director of S.D.F. Government of India and also letter of the Union was sent to the Ministry. But the decision is still awaited from the Ministry.

5. The plea has also been taken in the OA to challenge the notification dated 25.8.2003 stating that this has been issued without job analysis of the Draftsman of the Sugar Institute Cadre vis-à-vis the Draftsman of other Departments of Government of India and the applicants cadre has not been given any opportunity to represent their case before issuing the aforesaid notification dated 25.08.2003. Therefore, this notification is issued to the detriment of the applicants without calling for their reply or representation. The applicants have been discriminated as against other Draftsman working in other Department/Ministry of Government of India.



Hence this notification is illegal and unconstitutional the basis of equality provided for under Article 14 of the Constitution. Hence this notification be set aside and revision of pay should be allowed to the applicants at par with other Departments like C.P.W.D. and Ministry of Defence as they are similarly placed.

6. Counter affidavit has been filed on behalf of the respondents to which the rejoinder affidavit of the applicants has also been submitted. In the counter reply the initial appointment and subsequent promotion has been agreed to and there is no dispute. Referring to notification Gazette of India dated 08.04.1989 G.S.R.- 242 (Photo copy as Annexure CA-1) it has been stated in the counter reply that on the basis of this notification Draftsmen were given the revised pay scale w.e.f. 08.04.1989 vide Institute Letter No. *Estt. 38(1)/83 dated 08.09.1989*. The pay scale given to the Draftsman-I, II and III respectively were Rs. 1600-2660/-, Rs. 1400-2300/- and Rs. 1200-2040/- (Annexure CA-I). However, several representations were received from the Draftsmen regarding grant of pay scale for Draftsman-I as Rs. 5500-9000/-, Draftsman-II as Rs. 5000-8000/- and Draftsman-III as Rs. 4500-7000/-. The matter was dully examined by the Government and after careful consideration, the Recruitment Rules for various posts of Draftsman interalia were amended vide Gazette notification dated 25.08.2003, wherein following grades were kept as under:-

Name of the Post	Pay Scale
Draftsman-I	Rs. 5000-8000/-
Draftsman-II	Rs. 4500-7000/-
Draftsman-III	Rs. 4000-6000/-

7. However, several representations were received from Draftsmen regarding grant of pay scale like other Ministries/Departments namely viz. Defence, Army, Navy, CPWD etc., After careful consideration only the Gazette notification dated 25.08.2003 was issued providing for pay scale




of Draftsman-I, Draftsman-II and Draftsman-III as Rs. 5000-8000/-, 4500-7000/- and 4000-6000/- respectively. Method of recruitment, pay limit and other qualification have also been laid down in this notification. But after consideration and keeping all the facts on the point it was not found possible to grant upgraded pay scale to them at par with Ministries/Departments like Defence, Army, Navy and C.P.W.D. etc.. So it is wrong for the applicants to say that their pay has been fixed in arbitrary manner and any discriminating against the similarly placed Draftsman in other Ministries and Departments. Hence, there is no violation of Article 14 of the Constitution.

8. In view of the service conditions and Recruitment Rules in other Ministries, parity to which the applicants have laid their claim to, could not be found feasible and possible. In the recommendation of the Central Pay Commission as well it was left to concerned Ministries to take decision in this respect. When other things like the nature of duty, service conditions etc. are not equal the pay scales are not expected to be the same. Hence, Article 14 and 16 of the Constitution are not attracted as there is no violation as alleged by the applicants. It is totally wrong to allege that the pay of the applicants have been fixed in arbitrary and discriminatory manner.

9. In the rejoinder affidavit filed by the applicants it has been stated that the respondents have granted revised pay scale in the Cadre of Draftsman by notification dated 08.04.1989 with immediate effect whereas the applicants were entitled for the same w.e.f. 01.01.1983 and the other similar cadres in different Ministries were also granted pay revision in 01.01.1986 though the Government took the decision at the later date. As such the Labour Court in the award dated 05.05.2004 in I.D. Case No.

74/92 relying upon the Judgment of Hon'ble Supreme Court held that the revised pay scale benefit was to be effective from 01.01.1986 though the said award was challenged by the respondents in Writ Petition No. 8484/05 which is still subjudice in the Hon'ble High Court, New Delhi. As far as the revised pay scale recommended by Vth Pay Commission is concerned the applicants are entitled for the same w.e.f. 01.01.1996 and accordingly, the pay should be fixed like it has been done in other Ministries as referred to above. The respondents have not substantiated their contention as to why the applicants could not be treated at par with other Draftsman of other Departments/Ministries of Government of India. The Government of India sanctioned by letter dated 07.11.2007 the revised higher pay scales to the applicants' w.e.f. 26.08.2003 belatedly due to administrative lapse. The applicants are demanding the same w.e.f. 01.01.1996.

10. We have heard learned counsels for both the parties and have gone through their pleadings. The learned counsel for the applicant has emphatically reiterated the arguments on the basis of the plea taken by the applicant in the OA that in other Ministries like Defence and Departments like C.P.W.D. and Navy the scales of the Draftsman, as recommended by the Vth Pay Commission have been allowed. The applicants are also discharging the same kind of duty and functions and as their counter parts in other Departments under Government of India hence, there should not be any discrimination and on the principle of same pay for same work should be applicable. It is also emphasized by the counsel for the applicants that the representations of the applicants and recommendation of the Director, National Sugar Institute, Kanpur, have not been duly considered and it has not been clarified by the respondents as to why the applicants could not be given parity with the other Draftsman




and some of the representations of the applicants are still pending for disposal.

11. The learned counsel for the respondents in support of the facts and circumstances given in the counter affidavit, has empathetically contended that the Vth Pay Commission, recommending the revised pay scale for certain common categories of staff including Draftsman have provided "that in certain cases the recommendations of the Pay Commission are subject to fulfillment of specific conditions. This condition relates inter alia to changes in the Recruitment Rules, restructuring of Cadre, redistribution of posts into higher grades etc..... Therefore, in those cases where conditions such as changes in Recruitment Rules etc. which are brought out by the Pay Commission as the rationale for the grant of these upgraded scales it will be necessary for the Ministries to decide upon the such issues and agree to change suggested by the Pay Commission before applying these scales to the posts to these posts w.e.f. 01.01.1996.....It would, therefore, be seen that it is implicit in the recommendation of the Pay Commission that such scales necessarily have to take prospective effect and the concerned posts will be governed by the normal replacement scales until then." The respondents' counsel has argued that it was left to the concerned Ministries/Department to grant the revised scale from the prospective dates where the Ministries/Department intended to bring about changes in Recruitment Rules restructuring of cadre etc. By the impugned notification dated 25.08.2003 the earlier Recruitment Rules 1984 were superseded and these Rules entitled National Sugar Institute (Draftsman) Recruitment Rules 2003 were notified. Accordingly, the scales of pay provided for in these Rules have been given the prospective effect. On the point of the pay scales to the Draftsman applicable in other Ministries/Departments as

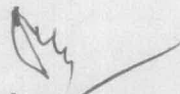
referred to in the OA could not be followed in case of the applicants because Government of India, after due consideration, did not find any case for parity. The applicants have not succeeded to substantiate their claim of parity with Draftsman in other Ministries/Departments. Since they have claimed that their pay scale should be par with Draftsman Ministries/Departments it was their duty to substantiate as to how their function and duty are similar to those working in other Departments. On the point of award of the labour court dated 05.05.2008 the learned counsel for the respondents has contended that this award has been stayed by Hon'ble High Court in Delhi by order dated 16.05.2006 (Annexure CA-I) and the Writ Petition challenging this award is still subjudice. Hence no benefit arising out of this award can be given to the applicants for the time being.

12. We have given thoughtful consideration to the averments, arguments and contentions of both the learned counsels and have also perused the pleadings on record. It has become amply clear without any doubt that the recommendation of the Vth Pay Commission was not mandatory to be implemented as such as recommended in the case of the applicants. The respondents, exercising of power under Article 309 of the constitution issued the notification 25th August, 2003 whereby earlier Recruitment Rules, 1984 pertaining interalia to Draftsman working in National Sugar Institute, Kanpur have been superseded and the new Rules called "the National Sugar Institute (Draftsman) Recruitment Rules, 2003" have been notified. In these Rules method of Recruitment, qualifications and pay scales have been provided for. While deciding the pay scales of the Draftsman in the National Sugar Institute, Kanpur the respondents considered the case of parity of pay scales to the Draftsmen N.S.I., with

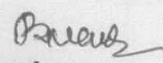


other Draftsman working in other Ministries as well as other Government and it was not found possible and expedient to keep these applicants or Draftsman of N.S.I. ^{at} ~~have~~ par with those working in other Ministries/Departments. And this was adequately in tune with the recommendation of the Vth Pay Commission. In the light of the facts and circumstances of this case we find no merit in the OA. The notification dated 25.08.2003 is legally correct and the case of the applicants is found devoid of merit.

13. Hence, the OA is dismissed. No order as to costs.


Member (A)

/s.v./


Member (J)