

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 20th day of December 2007.

Original Application No. 1337 of 2000

Hon'ble Mr. G. George Paracken, Member (J)

Hon'ble Mr. K.S. Menon, Member (A)

1. Uma Shanker Ram, S/o Sri S. Kumar working as Research Asstt. Middle Ganga Division-III, Varanasi, R/o 5/9 11, B-1, Hukul Gang Nai Basti, Varanasi.
2. S.N. Yadav, S/o late Vasudev Yadav, working as Reasonal Asstt. In the office of Hydrological Circle Varanasi, R/o 5-10/87, Ganj Sarnath, Varanasi.
3. Lal Chand, S/o late Ram Sumer, working as working as Research Asstt. Middle Ganga Chhoti Sarjoo, Sub-Division, Varanasi, R/o A-3 K 814 Janki Dham Coloney, Varanasi.
4. Kailash Ram, S/o Sri Bulli Ram, working as working as Research Asstt. Middle Ganga Division-III, Varanasi, R/o House No. 17/62 K, Indrapur Shivpur, Varanasi.
5. Jagdish Prasad, S/o Late Sri S. Singh, working as RAMGD-II/Varanasi, R/o S/10/78 Hukul Ganj, Varanasi.
6. Puran Singh, S/o Late Sri C. Singh, working as s working as Research Asstt. Upper Sone-Rihand Sub Division, Rewa, R/o 9/26 Hydel Coloney Chopan, p.O. Chopan.
7. Radhey Shyam, S/o Late Sri Sukh Lal, working as working as Research Asstt. Middle Ganga Division-III, CWC, Divisional Lab Varanasi, R/o House No. C-10/44-A, Jiapura, Varanasi.
8. Mool Chand, S/o Sri Ganga Prasad, working as Research Asstt: Hydrological Observation Circle, CWC, Varanasi.
9. Ashok Kumar Srivastava, late T.P. Srivastava, working as working as Research Asstt. Middle Ganga Division-III, Varanasi, R/o 16 Tagore Town Colony orderly Bazara, Varanasi.



10. Anil Kumar Mishra, S/o Sri J.M. Mishra, working as Research Asstt. Middle Ganga Yamuna Sub-Division (CWC), Allahabad.
11. H.P. Srivastava, S/o late B. Prasad, working as working as Research Asstt. In the office Middle Ganga Division-III, Varanasi, R/o S 6/80 Orderly Bazar, Varanasi.

. . . Applicants

By Adv: Sri V.K. Goel, Sri R. Verma and Km. M. Sharma

V E R S U S

1. Union of India through Secretary, Ministry of Water Resources, New Delhi.
2. Chairman, Central Water Commission, Sewa Bhawan, R.K. Puram, New Delhi.

. . . Respondents

By Adv: Sri S. Singh

O R D E R

By G. George Paracken, Member (J)

All the applicants in this OA are Research Assistants in the office of Middle Ganga Jamuna Sub Division, Central Water Commission, Allahabad, Upper Rihand Sub Division, Rewa, in the office of Middle Ganga Division III, and Hydrological Observation Circle, Central Water Commission, Varanasi. Applicant No. 2 in this OA had earlier approached this Tribunal by filing OA No. 1403/98 with the same prayer as in this OA. It was disposed of vide annexure A-2 order dated 16.08.1999 with the direction to the respondents to consider the representation of the applicant and to decide the same within 03 month's time. The impugned Annexure A-1, the order of the respondents dated 14.10.199 has been issued in compliance of the

aforesaid order of this Tribunal. By the said order the respondents rejected the demand of the applicants for granting the pay scale of Rs. 6500-10500. The said order reads as under: -

"In regard to the above, it is stated that the pre-revised scale of pay of Research Assistant of C.S.M.R.S was Rs. 1640-2900 whereas that of Research Assistant of CWC was Rs. 1400-2300 only. Accordingly, the corresponding revised scale of pay granted by the Government to the RAs of CSMRS on the recommendations of the 5th Pay Commission is higher i.e. Rs. 6500-10500 as compared to the revised scale of pay of RAs of CWC which is Rs. 4500-7000. As the pay scales are granted by the Commission, CWC, on its own, has no authority to grant higher scale of pay of Rs. 6500-10500 to the RAs of CWC which has been given to the RAs of CSMRS."

2. During the pendency of this OA, the Govt. of India, Ministry of Finance Department of Expenditure itself have agreed is aggrieved with the proposal of the respondents in this case to upgrade the scale of Rs. 4500-7000 to Rs. 5000-8000 on the basis of essential recruitment qualification of B.Sc required for appointment to the post. But the benefit of such up-gradation was granted to the applicants only prospectively w.e.f. 24.06.201 i.e. the date of issue of Annexure A-3 in the inter departmental note between Ministry of Finance and the respondents. The applicants have, therefore, impugned the said note dated 24.06.2004 by amending the present OA.

3. The present contention of the applicants is that they are satisfied by the revised scale of Rs. 5000-8000 provided it is granted to them from 01.01.1996 as

2

in the case of all other beneficiaries of the recommendations of the 5th Pay Commission as accepted by the Government of India. The Applicant's counsel made the matter still shorter by producing. A copy of the order dated 16.05.2007 in OA No. 487/06 passed by the Madras Bench of this Tribunal, in which the same issue has been considered and decided. The Madras Bench allowed the said OA by directing the respondents to grant higher scale of pay of Rs. 5000-8000 with retrospective effect from 01.01.1996. The said order reads as under:

"8. Having heard both sides, it is noticed that it is not necessary for the Tribunal to look into whether the applicant is entitled for the pay scale of Rs. 5000-8000/- against Rs. 4500-7500/- which he is not getting as the Ministry of Finance Department of Expenditure in their order dated 24.06.2004 have decided themselves already on that aspect of higher pay scale as under:

Govt. of India

Ministry of Finance, Department of Expenditure
(Implementation Cell)

2. Ministry of Water Resources may refer to their proposal regarding upgradation of pay scale of the post of Research Assistant in Central Water Commission (CWC) from the pay scale of Rs. 4500-7000/- to Rs. 5000-8000/- on the basis of the essential recruitment qualification of B.Sc required for appointment to the post. The proposal has been considered in this Department and concurred with. The upgraded pay scale in the instant case shall take effect only prospectively.

This issues with the approval of Secretary (Expenditure).

Sd/-

(Monaj Joshi)

Officer on Special Duty (IC)
(emphasis added)

Dated 24.6.2004

9. Thus the respondents have cleared the proposal of the Ministry of Water Resources to give the cadre of applicant the scale of Rs. 5000-8000/- and the only issue to be looked into is to examine whether the decision apply decision which is

'prospective' as per the not of the Ministry of Finance dated 24.6.2004 is in order or it should be from 1.1.1996.

10. In this context the learned counsel for the applicant also relied on the decision of the CAT Principal Bench in OA 2657/2000 dated 20.2.2002 wherein the Principal Bench had ordered the scale of Rs. 5000-8000/- to those getting Rs. 4500-7000/- with effect from 1.1.1996 which reads as under:

"16. Only one aspect now remains to be decided upon and that relates to the date from the revised pay scale comes in to vogue. The latest letter of the Ministry of Defence dated 26.12.2001 states that "These orders will be effective from the date of issue. The actual benefit, however, be admissible from the date of placement of the individuals in different grades on restructuring" The order thus makes it prospective in operation and that would have been endorsed in normal circumstances, but the position in this OA are slightly different. The latest orders of the Ministry have fixed the revised scale of pay of the Chargeman/Sr. Chargeman in Part I and II as Rs. 5000-8000/- which is nothing but the reiteration of what they had directed in their letter No. 11/97-D (civ I) dated 11.11.1997, which have not been rescinded. The modification leading to the lowering of the scales had been ordered only by a subordinate formation i.e. the AOC (Records) office letter dated 3.7.2000 and not by the Ministry. As observed in para 13 (supra) this modification has no sanction in law and the revised pay scales of Rs. 5000-8000 as far as the applicants are concerned, have come into being with effect from 1.1.1996 itself. They have also drawn the emoluments in the revised scales with annual increments also for three years. In that backdrop, postponing the adoption of the revised scales to some future date, after restructuring the cadres and grafting fresh RRs would in effect nullify the effect of the Pay Commission's recommendations, accepted and given effect in 1977 and now reiterated on 26.12.2001. We are, therefore, of the considered view that the 1.1.1996 itself and that the respondents' action by the impugned orders revising the same downwards and ordering the recovering of the amounts allegedly paid in excess, should be quashed and set aside.

17. We also note that respondents have raised an objection that the matters regarding fixation of pay are better left to the expert body fixed by the Govt. of India and it was not for the Tribunal to adjudicate on them as has been decided by the Hon'ble Apex Court in the case of State of MP Vs. P.V. Hariharan (JT 1997 Vo. III SC 569). We are in full agreement with the same. However, in this case we are not passing any order as to particular scale or its relevance for a particular post but are only setting aside the wrong order implementation issued by the respondents, contrary to the recommendation of the expert body i.e. 5th Central Pay Commission, duly accepted by the Govt. and directed for implementation by the Controlling Ministry of the respondents i.e. Ministry of Defence but thereafter sought to be modified by the respondents, a

subordinate office. Interestingly Ministry of Defence have reiterated their earlier directions on 26.12.2001, putting the respondents clearly in the wrong. The Tribunal can in the circumstances, properly and legally interfere with the incorrect action of the respondents. That is exactly what we have done.

18. In the above view of the matter the application succeeds and impugned order dated 3.7.2000 and 18.11.2000 directing the refixation of the pay of the applicant, revising it downwards for Rs. 5000-8000/- to Rs. 4500-7000/- and ordering recovery of the amount allegedly paid are quashed and set aside. Respondents shall, within three months from the receipt of a copy of this order rectify their mistake and place the applicants in the correct pay scale of Rs. 5000-8000/- with effect from 1.1.1996 and grant them all consequential monetary benefits. Interim order dated 19.12.2000 is made absolute. No cost.

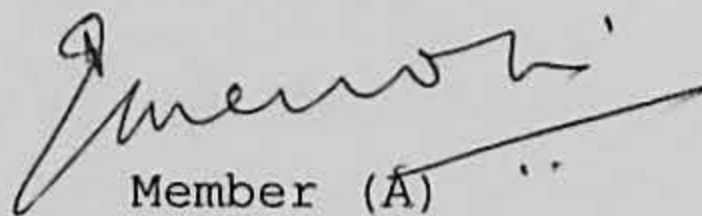
(Emphasis added)

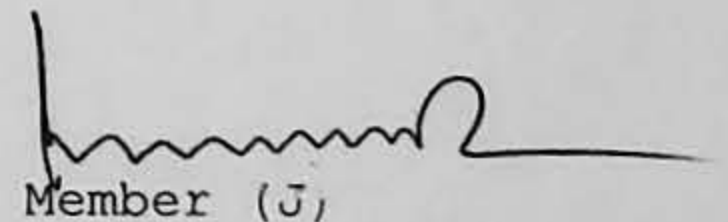
11. While certain facts relating to the matter under discussion may be different from the cited in the CAT decision cited supra regarding the context of taking a decision, the ratio of this order will be still relevant because the respondents have already decided to give the applicants the scale of pay of Rs. 5000-8000/- to the Research Assistant and all their colleagues in equivalent grade stated in the OA are already said to have been paid the same scale of Rs. 5000-8000/- with effect from 1.1.1996 even though there were all in an identical scale as that of the applicant prior to the revision of pay scale by Vth Pay Commission and for no conceivable reason the applicant's cadre has been denied the scale of Rs. 5000-8000/- and keeping in view the fact that work done by Research Assistant can be no stretch of imagination be treated not on par with those in the equivalent grade doing and hence the applicant in Research Assistant cadre has as much claim if not more, for the scale of Rs. 5000-8000/- in comparison with those who have already given the scale of Rs. 5000-8000/- with effect from 1.1.1996, while deciding to give the Research Assistant the scale of Rs. 5000-8000/-, the respondents have given no reason whatsoever for fixing the higher scale prospectively and thus it is evident that the respondents have no valid reason except to apply, perhaps, the administrative exigencies on their side to give higher scale of Rs. 5000-8000/- only prospectively and hence we have no hesitation to consider the decision of the respondents as arbitrary. Viewed in the background of the circumstances of the case as narrated above and applying the ratio of the decision of the CAT, Principal Bench cited supra, we are convinced that while we are not usurping the role of Pay Commission while fixing the pay scale of Rs. 5000-8000/- to Research Assistant instead of Rs. 4500-7000/- because this pay scale has already been decided by the respondents and denying the same from 1.1.1996 is a clear instance of delayed and leisurely decision by the respondents vide their note dated 24.06.2004 and

applying the axe against its validity from 1.1.1996 is also clear instance of hostile discrimination against the Research Assistant vis-à-vis all others cited by the applicant in the OA., we are, therefore, convinced that the applicant has made out a clear case for the relief sought for and hence the impugned order dated 13.12.2006 is quashed and we direct the respondents to give the applicant the pay scale of Rs. 5000-8000/- as they themselves decided already vide order dated 24.6.2004 and ensure that this higher scale is given to the applicant who is a Research Assistant with effect from 1.1.1996 and pass necessary orders to that effect within a period of 6 weeks from the date of receipt of a copy of this order. The OA is allowed. No costs."

4. There is no dispute from the either of the counsel for the parties that the aforesaid order in OA 487/06 squarely covers the case of the applicant herein also. We are bound to follow the aforesaid order of the co-ordinate Bench as we find no reasons to deviate from it. In the result this OA is allowed. The respondents are directed to grant the applicants herein the scale of Rs. 5000-8000 w.e.f. 01.01.1996 and pass necessary order to that effect within 06 weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

/pc/


Member (A)


Member (J)