

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO. 318 OF 1999
Cuttack this the 12th day of May 2004

Bidyadhar Sahu & Others ... Applicants

Applicants

-VERSUS-

Union of India & Others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? Yes

~~(M.R.MOHANTY) 12~~
MEMBER (JUDICIAL)

(B.N. V.S.M)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
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ORIGINAL APPLICATION NO. 318 OF 1999
Cuttack this the 12th day of May 2004

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)

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1. Bidyadhar Sahoo, aged about 38 years, S/o. Banchhanidhi Sahoo, At-Jariput, PO-Gudum, P.S./Via-Khurda, Dist-Khurda
2. Subash Chandra Bahinipati, aged about 42 years, S/o. Dayanidhi Bahinipati, At-Chainpur, PO-Metari, P.S. Dehanga, Dist-Puri
3. Swapan Kumar Das, aged about 40 years, S/o. Ranjit Kumar Das, House No. A/E-136, V.S.S.Nagar, Bhubaneswar, Dist-Khurda
4. Rashmiranjan Moharana, aged about 41 years, S/o. Bhramarbar Moharana, At-Dhamile, PO-Kethapatna, PS-Balianata, Dist-Khurda
5. Jyotish Ranjan Behera, aged about 37 years, S/o. Padma Charan Behera, At-Nuapatna, PO-Banugary Via-Phulnakhara, Dist-Khurda
6. Ramesh Chandra Mishra, aged about 40 years, S/o. Biswanath Mishra, At-Bidurpur, PO-Jenapur PS-Delanga, Dist-Puri
7. T. Ghanashyam Reddy, aged about 46 years, S/o. T. Sima Reddy, At-Chikarda, PO-Randha, PS-Gelanta Dist-Ganjam
8. Pratap Kumar Paikaray, aged about 36 years, S/o. Nabakishore Paikaray, At-Khudupur, PO-Bhimpur, Via-Jatni, Dist-Khurda

All are working as Laboratory Assistants in the Office of Regional Office for Health & Family Welfare, Government of India (M.O.F.R.S. Unit) B.J.25, B.J.B.Nagar, Bhubaneswar-751014 (Orissa)

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Applicants

By the Advocates

M/s. B.N. Nayak
B.B. Mohapatra

-VERSUS-

1. Union of India represented through its Secretary, Ministry of Health & Family Welfare, Nirmal Bhawan, New Delhi-110 011
2. Director General of Health Services, Nirmal Bhawan New Delhi-110 011

3. Director, National Malaria Eradication Programme, Govt. of India, 22-Shamnath Marg, Delhi-110054
4. Regional Director, Regional Office for Health & Family Welfare, Government of India, B.J-25, B.J.B.Nagar, Bhubaneswar-751014
5. Union of India, Ministry of Finance (Department of Expenditure) represented through its Secretary, Nirman Bhawan, New Delhi-110011
6. Union of India, Ministry of Personnel, Public Grievances and Pension (Department of Personnel & Training) represented through its Secretary, North Block, New Delhi-110 001

... Respondents

By the Advocates

Respondents

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ORDER

MR.B.N.SOM, VICE-CHAIRMAN: Applicants, Shri Bidyashar Sahay and seven others working as Laboratory Assistants in the Office of the Regional Director, Health and Family Welfare, Govt. of India, Bhubaneswar, claiming upgradation of their pay scale to bring parity with the pay scale of Junior Technicians under National Malaria Eradication Programme (in short N.M.E.P.). They have claimed that they are entitled to upgradation of pay scale of Rs.4500 to 7000/-, the pay scale which has been granted to the Junior Technicians under N.M.E.P. Scheme.

2. The factual background leading to the claims made by the applicants is that after being recruited as Laboratory Assistants in the year 1980 under Malaria Operational Field Research Scheme (in short M.O.F.R.S.) under which project they worked for 15 years in the scale of Rs.260-430/-, all the posts of Laboratory Assistants, M.O.F.R.S. were integrated with N.M.E.F. with effect from 29.9.1995 (Annexure-A/1) in the pay scale of Rs.950-1540/-. Soon thereafter, on the recommendation

of the 5th Central Pay Commission, the Directorate of N.M.E.P., by their order dated 18.12.1998 upgraded the pay scale of Junior Technicians N.M.E.P./ an equivalent post to Laboratory Assistant in the pay scale of Rs.975-1540/- to the scale of Rs.4500-7000/- with effect from 1.1.1996, but no such upgradation of pay scale was made available to the Laboratory Assistants of erstwhile M.O.F.R.S., who were granted pay scale of Rs.3200-4900/-. The grievance of the applicants is that they have been representing to the authorities against this apparent first inequality in pay scale by their/representations dated 28.12.1998 (Annexure-A/4) complaining that by granting the lower pay scale to the Laboratory Assistants of erstwhile M.O.F.R.S., the Respondents have denied equal pay for equal work. While the matter stood thus, the Respondents by their order dated 21.6.2000 (Annexure-A/8) upgraded the pay scale of Junior Technicians/Laboratory Assistants of erstwhile M.O.F.R.S. staff to Rs.4000,6000/- with effect from 1.1.1996 without going into the logical conclusion to grant them the pay scale of Rs.4500-7000/- which has been granted to the Laboratory Assistants of original N.M.E.P. staff. The applicants have made detailed submission to show that the nature of duties discharged by the Junior Technicians/Laboratory Assistants of the N.M.E.P. group is identical to that of the duties performed by them, who have come from M.O.F.R.S. group, and therefore, the principle of equal pay for equal work cannot be denied. They have also put forth a complaint that the Respondents have not assigned any good reason

in the matter of granting two different pay scales in the same cadre of Junior Technicians/Laboratory Assistants, particularly when the applicants are discharging the similar nature of duties and having more qualification and experience.

3. The Respondents by submitting a detailed counter have opposed the prayer of the applicants. They have stated that the 5th Central Pay Commission had recommended two different pay scales in the cadre of Junior Technicians/Laboratory Assistants, which reads as under:

Sl. Designation	3rd Pay N.o.t	IV Pay tien	Vth Pay Commn.	Revised upgraded Commn.	Pay from 1.1.96
1. Jr. Technician	Rs.260- of N.M.E.P	975- 430	3200-4900 1540	Rs.4000 - 6000/- Rs.4500 - 7000/-	
2. Laboratory Asst. (M.O.F.S. Unit)		Rs.260- 430	-de- -de-		Request for same upgradation i.e., 4500 - 7000/-

In consideration of the above recommendation of the 5th Central Pay Commission, the Respondents decided to grant the pay scale of Rs.4000-6000/- to the applicants at par with the Junior Technicians of N.M.E.P. group with effect from 1.1.1996 by their order dated 21.6.2000. The Respondents have further submitted that the applicants, ^{not} under Annexure-A/4 had categorically/been claiming the scale of Rs.4500-7000/- and in the circumstances, they cannot claim the above scale as a matter of right. They have also disputed that the job carried out by the Laboratory Assts. of erstwhile M.O.F.S. Unit is the same as carried out by the Junior Technicians of N.M.E.P. and therefore, the Respondents have stated that they cannot claim total parity.

4. We have heard the learned counsel for both the

sies and also perused the materials placed on record.

5. The question of granting parity in the scale of pay, i.e., Rs.4500-7000/- to the Laboratory Assistants, M.O.F.R.S. unit with those of Junior Technicians of NMEPS Unit was the subject matter of adjudication before the Lucknow Bench of this Tribunal in O.A. No.403/2003. While disposing of the matter, the Lucknow Bench in their order dated 2.4.2003 observed as under:

"...Considering the facts and circumstances, as the question raised before us is already engaging the attention of the Central Government, it would not be proper for us to interfere in the matter except with a direction to Respondent Nos. 1 and 2 to get the aforesaid dispute resolved after obtaining the report of the Anomaly Committee within a specified time".

The learned Senior Standing Counsel appearing on behalf of the Respondents have now placed before us the recommendation of the Anomaly Committee, Ministry of Finance, Department of Expenditure dated 15.12.2003 as well as a copy of the letter dated 18.12.2003 issued by the Ministry of Health & Family Welfare, Department of Health, Govt. of India, directing the Director, N.M.E.P. regarding the implementation of 5th Pay Commission's recommendations for Junior Technicians/Laboratory Assistants and removal of anomaly, by stating that the said anomaly may be removed on the lines as suggested by the Department of Expenditure in this regard. The Department of Expenditure (Implementation Cell) has directed as under :-

" Ministry of Health & Family Welfare may kindly refer to their proposal regarding upgradation of pay scale of direct recruits to the posts of Junior Technician/Lab Assistant in the Directorate of National Anti Malaria Programme(NAMP) from existing Rs.4000-6000/- to Rs.4500-7000/- consequent to judgment

dated 2.4.2003 of Lucknow Bench of CAT in O.A.No.403/2002 wherein the Tribunal had directed that the issue to be resolved after obtaining the report of the Anomaly Committee within a period of 6 months. The issue has been considered in this Department and it is observed that the anomaly in the present case is solely on account of wrong implementation of a specific recommendation of Fifth CPC by the administrative ministry. The Fifth CPC recommendation should correctly have been implemented with all the posts of Lab Assistant (whether filled by promotion or by direct recruitment) in NAMP being initially placed in the scale of Rs.4000-6000 w.e.f. 1.1.1996. Thereafter 34 of these posts should have been upgraded to the scale of Rs.4500-7000/- and redesignated as Lab Assistant-I to be filled by promotion of the existing Lab Assistants who would then be classified as Lab Assistant-II. Furthermore, all future appointment to the post of Lab. Assistant-I should have been made through promotion of Lab Assistants-II with the post of Lab Assistant-II being filled 50% by direct recruitment of graduates and 50% by promotion of Insect Collectors. This course of action being the only correct method would now have to be followed. The administrative ministry is also advised that the existing pay (and not pay scale) of such of these promoted Lab. Assistants as had wrongly been extended the higher scale of Rs.4500-7000/- would be protected and no recoveries be made from them. This will also remove the glaring anomaly which has been created by wrong implementation of the Fifth CPC recommendation by the administrative ministry. The administrative ministry may also like to fix responsibility for such wrong implementation of the Fifth CPC recommendation".

From the above noting of the Department of Expenditure it is clear that the Fifth Pay Commission had recommended that the post holders in the cadre of Laboratory Assistants whether recruited by promotion or by direct recruitment in NAMP should be initially placed in the pay scale of Rs.4000-6000/- with effect from 1.1.1996. Thereafter 34 of these posts were to be upgraded to the next higher scale of Rs.4500-7000/- being redesignated

as Lab Assistant-I to be filled by promotion from amongst existing Lab Assistants, who would then be classified as Lab Assistants-II. It has also been clarified that the future appointment to the post of Lab. Assistant-I should be made through promotion of Lab Assistant-II with the post of Lab Assistant-II being filled 50% by direct recruitment and 50% on promotion of Insect Collectors.

Viewed from this angle, we have ^{no} hesitation to hold that the dispute which has arisen in this case with regard to operation of two pay scales, i.e., Rs 4000-6000/- and Rs. 4500-7000/- in the same cadre of Lab Assistants has now been resolved and also the apparent violation of the principles of equal pay for equal work has ^{now} been corrected. ^{when}

We would like to observe that the letter dated 18.12.2003 was issued to Director, NAMP to implement the decision of the Department of Expenditure (Implementation Cell), at the same time the said Director, NAMP ought to have been asked to implement the decision in respect of all Lab Assistants in the country. If such an action would have been taken in the month of December, 2003, it would not have been necessary for us to hear this O.A. in extense. Be that as it may, we therefore, direct Res. Nos. 1,2 and 3 to issue necessary orders implementing the decision of the Ministry of Expenditure (Implementation Cell) with regard to restructuring of pay scale of Lab. Assistants working in their organisation so as to remove any anomaly as well as to extinguish if any more litigations are pending elsewhere.

For the reasons recorded above, we do feel that

it would suffice if we dispose of the O.A. with a direction to implement the instructions of the Ministry of Finance (Implementation Cell) (as referred to above) within a period of 120 days from the date of receipt of this order. Ordered accordingly. No costs.

*Subrat
12/03/04*

(M.R.MOHANTY)
MEMBER (JUDICIAL)

R.S.
(~~B.N.~~ SOM)
VICE-CHAIRMAN

BJY