

8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH

O.A NO. 322 OF 1999

Cuttack, this the 12th day of February, 2004

Bana Behari Mohanty Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *no*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *ye*

M.R. Mohanty
12/02/04
(M.R. MOHANTY)
MEMBER (JUDICIAL)

B.N. Som
(B.N. SOM)
VICE-CHAIRMAN

9

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH

O.A.NO. 322 OF 1999

Cuttack, this the 12th day of February, 2004

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

.....

Bana Behari Mohanty, aged about 58 years, son of late Krushna Chandra Mohanty, at present working as Senior Laboratory Technician, in the A.R.C.Hospital, Charbatia, District Cuttack

..... Applicant

Vrs.

1. Union of India, represented by its Secretary, Department of Cabinet Affairs, Cabinet Secretariat, New Delhi.
2. Director, A.R.C.East Block V, R.K.Puram, New Delhi 110 066
3. Deputy Director (Administration), A.R.C., At/PO Charbatia, Dist.Cuttack 754028

..... Respondents

Advocates for applicant - M/s C.A.Rao and S.K.Behera

Advocate for respondents - Mr.B.Dash, ASC.

.....
ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

Shri Bana Behari Mohanty has filed this Original Application, being aggrieved that although the post of Senior Laboratory Technician is a promotional post and Laboratory Technician is a feeder post to it, the

✓

10

2

Respondents, without any reasonable basis, have merged the pay scales of both the posts while revising the same on the recommendation of the Fifth Central Pay Commission. He has, therefore, approached this Tribunal seeking the following reliefs:

- "i) Original Application be admitted.
- ii) The impugned order vide Annexure 10 be quashed.
- iii) Respondents be directed to revise the scale of pay of the applicant to Rs.5500/- to Rs.9000/-.
- iv) Any other relief or reliefs as would be deemed fit be granted."

2. The case of the applicant is that the pay scale of Senior Laboratory Technician, which he is holding since 20.7.1984, should have been in the scale of Rs.5500-9000/- whereas the Respondents have allowed the pay scale of Rs.4500-7000/- for this grade. This has created an anomaly with pay scale of Dietician, Physiotherapist, etc. He is also aggrieved that whereas the Fifth Central Pay Commission has recommended that the post of Laboratory Technician should be included in the category of Scientific Assistant, the same benefit has been denied to Laboratory Technician. He had made repeated representations to rectify the anomaly, the first one on 28.10.1986 and the second one on 30.11.1993, but to no effect. On 29.5.1999 vide Annexure 10 the applicant was informed by the Respondents that in the absence of specific orders for revision of pay scale of Senior Laboratory Technician by the Ministry of Finance, his pay has been revised by giving the normal replacement pay scale, as recommended by the Pay Commission from

✓

Rs.1400-2300/- to Rs.4500-7000/-. The grievance of the applicant is that the Respondents, while rejecting his prayer for higher pay scale (Annexure 10) apparently did not refer the matter to the Ministry of Finance for a decision with reference to the anomaly appointed by him.

3. The Respondents have contested the Original Application by filing counter. They have submitted that the pay scales of Laboratory Technician and Senior Laboratory Technician have been given effect to as per the recommendations of the Fourth Pay Commission and Fifth Pay Commission. As per the pre-revised scale of Rs.1400-2300/-, the corresponding pay scale of Rs.4500-7000/- has been given to the Senior Laboratory Technician with effect from 1.1.1996 and the pay scale of the Laboratory Technician was enhanced to Rs.4000-6000/- in place of the pre-revised scale of Rs.1200-2040/-. They have denied that the Physiotherapist and the Dietician have been given the pay scale of Rs.5000-9000/- with effect from 1.1.1996. They have also rebutted the allegation of the applicant that the Senior Laboratory Technician was not given the same pay scale as that of Scientific Assistant. They have stated that in fact the parity between the two was recommended by the Fifth Pay Commission and the same was implemented by them. In view of the above, the Respondents have submitted that the Original Application is devoid of merit.

4. We have heard the learned counsel for both the parties and have also perused the records placed before us.

12

4

5. The Respondents have also submitted the O.M. dated 28.10.1997 regarding implementation of the Fifth Central Pay Commission's recommendations and extension of revised scales of pay to the personnel working in various organisations under Cabinet Secretariat and the memorandums dated 31.5.2001 and 5.9.2001 regarding implementation of the recommendations of the Fifth Pay Commission in respect of Aviation Research Centre and also the Recruitment Rules for the post of the Laboratory Technician and Senior Laboratory Technician.

6. The grievance of the applicant is that the pay scale of Senior Laboratory Technician should have been upgraded to Rs.5500-9000/-. The Respondents have repeatedly made the point, both in the counter as also during the oral arguments, that determination of pay scale according to the job classification having been done by an expert body like Central Pay Commission, the plea of the applicant is devoid of merit. They have also stated that the applicant could not have compared his pay scale with the functionaries in other cadres/organisations. The submission made by the Respondents can hardly be faulted. In this connection, we would like to refer to the observations made by the Apex Court in the case of *Secretary, Finance Department v. West Bengal Registration Service Association*, AIR 1992 SC 1203. In that case, their Lordships have observed that ordinarily the pay structure is evolved keeping in mind several factors, e.g., method of recruitment, level at which recruitment is made, minimum educational qualification/technical qualification required, the nature of duties and

2

responsibilities, the horizontal and vertical relativities with similar jobs, public dealings, satisfaction level, employer's capacity to pay, etc.. In the instant case, it is not the case that the Pay Commission had not considered the pay scale of the post held by the applicant. In fact, the Pay Commission had recommended putting the Laboratory Technicians under two groups, one Degree qualification and another holding Diploma qualification and recommended appropriate pay scales on the basis of the educational and technical qualifications. In the case of the employees of the Aviation Research Centre, the Government having regard to the special nature of conditions of service of personnel working in various ministerial/secretarial service organisations had considered the pay scales separately and implemented the recommendations of the Fifth Central Pay Commission by issuing separate orders dated 23.5.2001. In that order, we find that the pay scales of Senior Laboratory Technician and Laboratory Technician have been indicated at serial nos. 32 and 33 respectively. The Government have upgraded pay scales in respect of number of posts, but that did not include any change in the pay scale as originally recommended by the Pay Commission in respect of Laboratory Technician and Senior Laboratory Technician. This decision of the Respondent-Department is not amenable to our scrutiny as the determination of pay scale as fair compensation for labour on the basis of job classification is a function of the executive. It is not for the Courts to say who should get what pay. In the circumstances, the O.A. is devoid of merit.

✓

14

6

7. Before we conclude, we would like to observe that the learned counsel for the applicant had submitted that while disposing of the representation submitted by the applicant vide Annexure 10, the Respondents had stated that "his case has got no merit and does not deserve for taking up with the competent authority". The learned counsel submitted that it was not appropriate on the part of the Aviation Research Centre, Charbatia, i.e., Respondent No.3 to withhold the representation at his level instead of forwarding it to Respondent No.2 for taking up the matter with the higher authorities to examine whether any anomaly existed or not as regards revision of pay scale of Laboratory Technician with reference to the Pharmacist. With reference to the educational/technical qualification of Pharmacist and Laboratory Technician, we find that for Laboratory Technician (Rs.4000-6000/-) the educational/technical qualifications are Bachelor of Science or equivalent from a recognized University with Micro Biology/Biology as main subject, or (A) 10+2 pass certificate with Science from a recognized University/Board or equivalent, and (B) Diploma in Medical Laboratory Technique, and for Pharmacist (Rs.4500-7000/-) qualifications are 10+2 pass certificate with Science from a recognized University/Board or equivalent, and Diploma in Pharmacy from a recognized institution registered under the Pharmacy Act, 1948. Again for Senior Radiographer (Rs.5000-8000) essential qualifications required are 10+2 pass certificate with Science from a recognized University/Board or equivalent, and one year Diploma in Radiography from a recognized institute. Apparently there is a case for

K

examining whether the pay scales of Pharmacist/Senior Radiographer have been put on a higher scale, keeping in view their job classification and other factors compared to Laboratory Technician/Senior Laboratory Technician. In the circumstances, we direct the Respondents to examine the pay scales given to the Laboratory Technician and Senior Laboratory Technician vis-à-vis Pharmacist and Senior Radiographer having regard to their job classification, vertical and horizontal relativities, avenue of promotion, public dealings, etc., by referring the matter to the Departmental Anomaly Committee.

8. With the above observation and direction, the Original Application is disposed of. No costs.

M.R. Mohanty
12/02/04
(M.R. MOHANTY)
MEMBER (JUDICIAL)

B.N. Som
(B.N. SOM)
VICE-CHAIRMAN