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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.473 OF 2001

Cuttack, this the 3rd day of March 2003

Dr. Indira Nayak

.....

Applicant

Vrs.

Union of India & Others

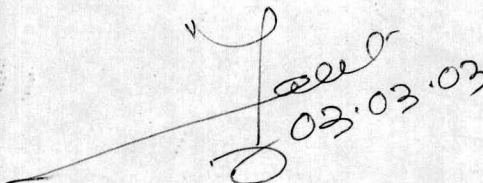
Respondents.

FOR INSTRUCTIONS

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

yes

yes.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N.SOM)
VICE-CHAIRMAN

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CORAM:

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

Dr. Indira Nayak, aged about-33 years, daughter of Kishore Chandra Nayak, at present working as Farm Supervisor, Office of Superintendent Random Sample Poultry Performance Tasting Centre, Central Poultry Complex, Nayapalli, Bhubaneswar-12, Dist-Khurda, Orissa.

.....Applicant

By the Advocate(s)

..... M/s. K. C. Kanungo
R.N. Singh

Vrs.

Union of India represented through;

1. Secretary Department of Animal Husbandry & Dairying, Ministry of Agriculture, Krishi Bhavan, New Delhi.
2. Secretary Ministry of Finance, Govt. of India, North Block, Central Secretariat, New Delhi-1.
3. Superintendent Random Sample Poultry Performance Tasting Centre (RSPPTC), Central Poultry Complex, Nayapalli, Bhubaneswar-12, Dist-Khurda.

..... Respondent(s)

By the Advocate(s) -

.....

Mr. J.K. Nayak

ORDER

SHRI B.N. SOM, VICE-CHAIRMAN:

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This Original Application has been filed by Dr. Indira Nayak seeking two reliefs, (1) that the order of the Respondent at Annexure-2 discontinuing payment of NPA to her w.e.f. September, 2001 and also recovery of the NPA amount paid to her since her appointment as

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Farm Supervisor in September, 1993, and, (2) to direct the Respondent to place her in the pay scale of Rs.8,000-13,500/- (Group 'A') w.e.f. 01.01.1996 as she possesses the Master Degree in Veterinary Science and Animal Husbandry and is registered with Veterinary Council of India.

2. In support of her aforesaid claims, the applicant has stated that it is the Respondents who had in their requisition letter sent to the Employment Exchange had notified that NPA @ Rs.600/- was payable to Veterinary Graduates (Annexure-3). On her joining the appointment she had been paid NPA by the Respondents as part of her salary. She, referring further to Annexure R-2 and Annexure R-3, argued that although minimum educational qualification of degree in Veterinary Science was introduced for grant of NPA, the provision for relaxation was made in the same Govt. order which prescribed that NPA would be allowed to officers holding degree in Veterinary Science and Animal Husbandry if the post held by them relates to technical management, field service, education, research and research management in the general areas of veterinary science. The applicant therefore argued that her case was covered under the relaxation clause at para-2 of the Respondent's letter dt.6.2.93 (Annexure R-3). Her claim for the revised pay scale of Rs.8000-13,500/- is based on the plea that keeping in view her educational qualification and that she holds registration with Veterinary Council of India, she comes within

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the principle set by the 5th Central Pay Commission in para 55.291 of their Report for grant of Group 'A' scale of Rs.8,000-13,500/- to the Veterinary Officers. Referring to Annexure-5 i.e. Gazette Notification issued by Ministry of Finance on 30.09.1997, implementing the recommendation of the 5th Central Pay Commission under Veterinary Officer and Staff, that entry grade for all posts requiring a degree of B.V.Sc. and Animal Husbandry with registration in the Veterinary Council of India as the minimum essential qualification, should be put in Group 'A' scale referred to earlier, The Ld. Counsel for the applicant, Mr. K.C. Kanungo argued that whereas the Pay Commission has given replacement pay scales for Veterinary post holders, like, Assistant Veterinarian/Biological Assistant/Zoological Assistant possessing B.Sc. degree in Biological Sciences, Stockman/Compounder/Stock Asstt./ Animal Husbandry Asstt. etc. no mention has been made about the post of the Farm Supervisor. In the circumstances and in view of the fact that the job description of Farm Supervisor requires degree of Veterinary Science and Animal Husbandry the replacement pay scale should logically be in the scale of Rs. 8000-13,500/-.

3. The Respondents have refuted these claims by filing a counter. They have stated that the post of Farm Supervisor is a Group 'C' post in the pre-revised pay scale of Rs.1600-2660/-. NPA is payable only to the Veterinary doctors who are recruited to these

posts through UPSC and these posts carry pay scale of not less than Rs.2000-3500/- (pre-revised). They further stated that degree in B.V.Sc. and Animal Husbandry with registration in the Veterinary Council of India are the minimum essential qualifications and all these posts are in Group 'B' or Group 'A' category. They have admitted that granting of NPA to the Applicant was done erroneously, that the Farm Supervisors are not entitled to get NPA was decided by Bombay Bench of this Tribunal in O.A. No.81/95 after which payment of NPA to the Farm Supervisor and other subordinate officers under Department of Animal Husbandry and Dairying had been stopped except with respect to Farm Supervisor of Bhubaneswar by mistake and that was rectified in September, 2001 (Annexure-2).

4. We have heard Mr. K.C. Kanungo Ld. Counsel for the applicant and Mr. J.K. Nayak, Ld. Addl. Standing Counsel for the Respondents. Mr. Kanungo has taken us through the Report of the Pay Commission on the Veterinary Officers and Staff, the job description of the Farm Supervisor, the qualification acquired by the applicant in other relevant matters to embellish his arguments. Mr. Nayak has also put before us various Govt. orders and has taken us through the Report of the Pay Commission in support of his arguments. Mr. Kanungo has heavily relied on the recommendation of the Pay Commission as contained in Para 55.291 to show how payment of NPA to Farm Supervisor was justified. Describing the

essential qualification of the applicant and the essential qualification for the post of Farm Supervisor as notified in the Recruitment Rules he argued that the pay scale of this post deserve to be considered in the scale of Rs.8,000-13,500/-. Mr. J.K. Nayak Addl. Standing Counsel refuted these arguments of the Ld. Counsel for the applicant referring to the averments made in the counter and additional counter submitted by the respondents.

5. We have perused the records placed before us in the matter and have given our best thoughts to the issue agitated before us. The Pay Commission have divided the Veterinary Officers and Staff under three Groups. (i) Veterinary Officers; (ii) Veterinarians; and (iii) Para Veterinarians. In para 55.282 the Commission have described the hierarchy of veterinary officers. These officers are authorized to practice medicine, sign or authenticate veterinary health certificates and give evidence as experts under the Indian Evidence Act. They require registration with the Veterinary Council of India after securing a Bachelor's degree in Veterinary Sciences & Animal Husbandry. Posts at this level are usually placed in the pay scales ranging from Rs.1640-2900 to Rs.7300-7600(pre-revised). Below the officers' category are those who directly assist in the performance of veterinary and animal husbandry functions, like, Animal House Supervisors/Caretakers and Biological/Zoological/Veterinary Assistants, with a requirement of degree in Biological Sciences.

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These personnel are placed in the scales of Rs.1200-2040 to Rs.1640-2900, in Group C. Below them the para-veterinarians who provide auxiliary support in veterinary and animal husbandry practices are in Group 'D' scale.

6. On the recommendation of the 5th Pay Commission all Veterinary officers were placed in Group 'A' category giving them parity with General Duty Medical Officers and Dental doctors under the Govt. of India. For the Veterinary Assistants and Para Veterinarian the replacement pay scales were recommended as applicable to the other Central Govt. employees in Group 'C' & 'D'.

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7. This being the organizational structure and classification of posts let us find out the position of Farm Superintendent in the hierarchy. It is admittedly a Group 'C' post in the pay scale of Rs.1600-Rs.2660 (prerevised). The entry qualification is degree or diploma in Veterinary Science and Animal Husbandry or degree in Agriculture. The recruitment qualification to the post did not have any exclusive qualification prescribed, like, degree in Veterinary Science and Animal Husbandry with registration in Veterinary Council of India as the minimum qualification when the applicant was recruited (nor has it now). She was having only a degree in Veterinary Science and Animal Husbandry and was not registered in Veterinary Council of India. The fact that subsequently she got

registration in Veterinary Council of India does not make a case for the Respondents to initiate a proposal for upgradation of the post of Farm Supervisor unless the Respondents ^{feel} ~~felt~~ that the job requirement of this post require the service of a veterinary doctor. On the other hand, the Ld. Counsel for the applicant has argued in support of the claim for upgradation of the pay scale of the post that the post is basically a veterinary post though the title of the post is different; that the post of Farm Supervisor is an isolated post, the Recruitment Rules prescribed that preference should be given to a veterinary graduate and that there will be no disturbance in horizontal and vertical relativities in the organization. The question of determining what pay scale should be granted to a particular post keeping in view the requirements of job, entry qualification etc. are eminently the functions of an expert body like Pay Commission. In this connection we quote, "Law is well settled in this regard. It has been repeatedly held that Court shall not interfere in the pay scale fixed by the Govt. after taking opinion of the experts unless a case of a hostile discrimination is made out in a given case. Even in such an eventuality, the Court should act with utmost restraint, in suitable case, refer the matter back to the State Govt. for reconsideration."

This was the observation of Gauhati High Court case of W.P.C. 12 of 1997 decided on 8.12.1999 2000(2) SLR 61.

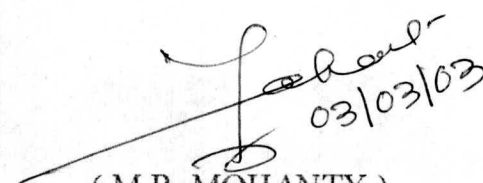
Q We would also like to refer to the observation of the Apex Court in the case of Dy. Dir. Gen. Of Geo. Survey of India & Anr. V. R. Yadaiah & Ors, 2000(5) SLR 400. There they observed as follows:-

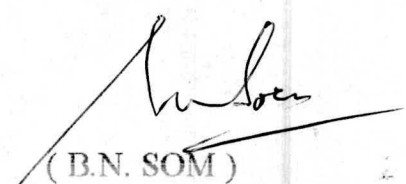
“Ordinarily, the Courts or Tribunal should not go into the question of fitment of the officers in a particular group or the pay scale thereto, and leave that matter to the discretion and expertise of the Special Commission, like, Pay-Commission, unless the Court finds on materials produced that there is some apparent error”.

Q 8. In the instant case, as we have brought out earlier, that the Pay-Commission in their Report have categorized the Veterinary Officers and Staff working under the Ministry of Agriculture into 3 categories viz. veterinary doctors, veterinary assistants and Para-veterinarians. We have found that in this classification although it has not been very clearly mentioned, but there is no doubt in the matter that the Farm Supervisor post does not fall in the category of Veterinary Officers who are authorized to practice in medical science or authenticate veterinary certificate and give evidence under Indian Evidence Act. The post falls under veterinary assistant group, being in Group 'C'. However, we go thus far and close the matter with the observation that it is for the Respondents to feel the need if post of Farm Supervisor requires higher qualification with higher pay scale for better management of the duties and responsibilities attached to it.

It is not the job of this Tribunal to determine appropriate pay scale for individual post or a service.

9.Regarding payment of NPA, the matter has already been decided by the Mumbai Bench of this Tribunal in O.A. No.81/1995. We are bound by the ratio of the judgment in that OA regarding applicability of NPA to Farm Supervisors in the organization and accordingly reject the claim of the applicant for grant of NPA. However, as the applicant was paid NPA on their own by the Respondents from the date of her appointment till September 2001, we find no merit in the office order No.44/2000 dt.25.09.2001 ordering recovery of the amount that has already been paid to the applicant. We accordingly order that payment of NPA made already shall not be recovered. To this extent the OA succeeds and we dispose of the O.A. with the above observations and order. There is no order as to cost.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

CAT/CTC
Kalpeswar