

8

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 360 OF 2004
Cuttack, this the 4th day of May, 2005

Madhusudan Das Applicant
VERSUS
Union of India & Others Respondents

FOR INSTRUCTIONS

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

Label
04.05.05
(M.R. MOHANTY)
MEMBER (JUDICIAL)

Label
(B.N. SOM)
VICE-CHAIRMAN

9

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 360 OF 2004
Cuttack, this the 4th day of May, 2005

CORAM : HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R.MOHANTY, MEMBER (J)

.....

Shri Madhusudan Das, aged about 43 years, Son of Brundaban Das, Doordarshan Kendra, P.O.Sainik School, Bhubaneswar.

..... Applicant

By the Advocates - M/s. H.K.Kar, N.K.Das,
M.K.Maharana.

Versus-

1. Union of India, represented through the Secretary, Ministry of Information and Broadcasting, New Delhi-1.
2. Secretary, Ministry of Finance, Govt. of India, Department of Expenditure, New Delhi.
3. Director General, Doordarshan, Govt. of India, Modi House, Copernikas Marg, New Delhi.
4. Director, Doordarshan Kendra, Bhubaneswar, At-Doordarshan Kendra, P.O. Sainik School, Dist-Khurda.

..... Respondents

By the Advocates - M/s. S.B.Jena, A.Kanungo.

.....

2

ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

This O.A. has been filed by Shri Madhusudan Das, presently working as Library and Information Assistant in Doordarshan Kendra, Bhubaneswar seeking following reliefs:

- "(i) to pass appropriate order directing the Respondents to allow the applicant revised scale of pay (Rs. 5500-9000/-) immediately.
- (ii) to pass appropriate order directing the Respondents to grant the applicant revised scale of pay w.e.f. 1.1.96 calculating the arrears upto date.
- (iii) grant any other relief to which the applicant is entitle.

2. The undisputed facts of the case are that the applicant was redeployed as surplus staff to the post of Library and Information Assistant with effect from 5.2.94. At the time of his redeployment, admittedly, he was not possessing essential educational qualification for the post. Then, on 21.2.02, the pay scale of the ^{departmental} librarian was enhanced to Rs. 5500-9000/- by merging the existing posts of Library and Information Assistant and Sr. Librarian and Information Assistant who were then in the respective pay scale of Rs. 5000-8000/-. The applicant represented to Respondent No.4 to grant him the revised pay scale but in spite of his repeated representations no positive decision has been taken to give him the benefit of revised higher pay scale. He has further submitted that similarly situated persons with the identical duties and holding equal pay scale have been allowed

a

the revised pay scale. He has cited the case of one Shri A.N.Nayak, Library and Information Assistant of Doordarshan, Sambalpur who received the benefit after he had approached this Tribunal in O.A.No. 527/94.

3. The Respondents in their counter have submitted that the applicant was appointed as Library and Information Assistant by relaxing educational qualification required for the post. This relaxation was granted to the applicant solely on the ground that he was a surplus employee, but his claim for further relaxation for granting the higher pay scale in terms of Ministry of Finance O.M. dated 21.2.02 is not feasible because the higher scale has been made applicable only in respect of such incumbents to the post of Library and Information Assistant with the requisite qualification as includes Bachelor Degree of Library Science alongwith the graduate degree. In other words, those who possess the degree in Library Science with graduate degree, they only will be given the benefit of upgraded scale and others lacking in degree in Library Science will remain in the normal replacement scale of pay of Rs. 5000-3000/-.

4. We have heard the Ld. Counsel for both the parties and have perused the records placed before us.

5. During oral argument, the Ld. Counsel for the applicant relying on the order of this Tribunal in O.A.No. 527/94 submitted that the benefit given to Shri A.N.Nayak should also be made available to him otherwise it would result in discrimination. We have perused the order of this Tribunal

in O.A.No. 527/94(Single Bench). On perusal of the decision in O.A.No. 527/94, we are of the opinion that the issue involved in this O.A. is distinguishable. In the earlier case in O.A.No. 527/94, the applicant, Shri A.N.Nayak, a surplus staff of Dandakaranya Project was disallowed the benefit of replacement pay scale for the post of Librarian(Jr.) in the pay scale of Rs. 1200-2040 on the ground that petitioner was not in possession of the requisite educational qualification. After taking into consideration the fact that the applicant, admittedly, was appointed to the post relaxing the educational qualification to accommodate the petitioner as surplus staff and was granted the pay scale of Rs. 1200-2040/-, a scale of pay which was revised to Rs. 1400-2600/- could not be denied to him. In the present case, the Respondents have denied the benefit of higher scale of Rs. 5500-9000/- on the ground that after the implementation of the recommendation of the 5th Central Pay Commission regarding revision of pay scales to departmental librarians, the applicant along with other officials in that cadre were given benefit of the revised pay scale of Rs. 5000-8000/-. Later on the Government decided to raise the said pay scale to Rs. 5500-9000/- for those departmental librarians who possess minimum qualification of Bachelor in library science along with a graduate degree. In other words, the higher pay scale of Rs. 5500-9000/- was made available to such officials who possess certain special technical qualification and not that the scale of Rs. 5500-9000/- was made a replacement pay scale for all the departmental librarians.

K

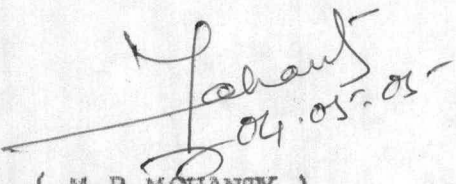
Thus, the decision of the Tribunal in O.A.No. 527/94 does not have binding effect on us when we are considering the plea of the Respondents that higher pay scale in the grade of Rs. 5500-9000/- is applicable only on fulfillment of certain technical educational qualification. We have also perused the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) letter No. 4/21/93-CS III containing terms and conditions for redeployment of surplus staff (Annex-XI). One of the conditions regarding redeployment of surplus staff against Group 'C' posts includes a condition that although the minimum educational qualification may be deemed to have been relaxed in exercise of the power conferred on the Department of Personnel and Training under Rule 4(2) (iii), except that, in cases where certain minimum technical qualification are prescribed for a particular post. It is an admitted fact that the applicant does not possess minimum technical qualification for the post in question, and, therefore, he could not have been got the benefit of deemed relaxation as stated above. However, in para-5 of the conditions attached to the instruction regarding redeployment of surplus staff, it has also been provided that if a surplus staff 'is already holding an equivalent post with substantially identical duty on a regular basis and has given satisfactory performance therein for atleast two years, he will not be treated as unsuitable for the appointment to a post, merely on the ground of not possessing the educational or technical qualification prescribed for appointment. In this case, the applicant is working as

42

departmental librarian since 1990, he is, therefore, entitled for the benefit of his experience on the job for all these years for the purpose of his elevation to the pay scale of Rs. 5500-9000/-.

6. Having regard to the above facts and circumstances of the case, we are hereby directing the Respondents to consider the case of the applicant for grant of upgraded pay scale of Rs. 5500-9000/- in view of the proviso to Rule 4(2) (iii) of Central Civil Services, Redeployment of Surplus Staff Rules, 1990 as referred to in the letter of Ministry of Personnel, Public Grievances and Pensions as referred to earlier at para-10 and also the decision of the Apex Court in the case of Shri A.N. Nayak referred to in the communication from Station Director, Sambalpur to the Director, Doordarshan Kendra, Bhubaneswar (Annexure-R/2).

7. Accordingly, the O.A. succeeds. No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SGM)
VICE-CHAIRMAN

KUMAR