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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.868 OF 2006

Cuttack this the 16th day of January 2009

CORAM:

THE HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND

THE HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

...
Sri Bangali Rout, aged about 57 years, S/o. late Bhima Rout,
At/PO-Kendupadar, P.S. Nimina, Dist-Ganjam

...Applicant

By the Advocates: M/s.H.S.Satpathy

D.R.Bhokta

D.R.Sahu

D.Mohanty

-VERSUS-

1. Union of India represented by its Secretary, C.H.S., Ministry of Health & Family Welfare Department, Govt. of India, Nirman Bhawan, New Delhi
2. Director General of Health Services, Ministry of Health, EPI Section, Nirmal Bhawan, New Delhi
3. The Director, Regional Leprosy Training & Research Institute, Govt. of India, Ministry of Health & Family Welfare, Berhampur, Aska, Dist-Ganjam, PIN-761111

...Respondents

By the Advocates: Mr.U.B.Mohapatra

ORDER

SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

1. Aggrieved by the non-payment of upgraded pay scale at Rs.5000-150-8000/- with effect from 1.1.1996 under the Assured Career Progression (in short A.C.P.) Scheme on the basis of the 5th CPC report, the applicant has filed this Original Application for direction to the above effect to be made to the Respondents herein.



2. Brief facts which have led to filing of the application are as follows:

The applicant was originally appointed as Laboratory Assistant on 9.7.1993 under the Respondent No.3, the Director, Regional Leprosy Training & Research Institute, Government of India, Ministry of Family Welfare, Bhabanipur in Ganjam District. While so working, on the basis of the recommendations of the 5th Central Pay Commission (in short CPC), A.C.P.Scheme was introduced in the Government service with effect from the date of its notification issued by the Government in that behalf. Since the applicant is working as Laboratory Assistant under the 3rd Respondent, as per the recommendations made by the 5th CPC, he is entitled to pay scale which is allowed to the Laboratory Technicians as per Paragraph 55.149 of the Pay Commission report, viz., the pay scale corresponding to Rs.1200-2040/-. As the said pay scale was not given to him, the applicant has approached this Tribunal with the above prayers.

3. The main ground urged in the O.A. is that there were so many letters issued by the Director, 3rd Respondent, RLTRI, Aska, Ganjam for the upgradation of pay scale for the post of Laboratory Assistant in which the applicant is working. Further it is averred that as per Paragraph-69.2 of the 5th CPC, the diseases like T.B.,



Leprosy, Malaria, Fileria come under the communicable disease and the applicant having worked in the field of Leprosy come under direct contact with the leprosy patients and as such, he is entitled to the upgraded pay scale at par with the pay scale provided to the staff of National Malaria Eradication Programme (NMEP) and thereby, he is to receive the pay scale as recommended by the 5th Central Pay Commission with effect from 1.1.1996 and consequently, the benefit of ACP on completion of 12 years of service. Hence the denial of the pay scale recommended by the 5th CPC, according to the applicant, is irregular and illegal and hence this Tribunal should direct the Respondents to grant the pay scale as recommended by the 5th CPC.

4. Resisting the above contention, a counter/reply statement has been filed for and on behalf of the Respondents. It is stated in the counter affidavit that even though 5th CPC has recommended upgradation of pay scale of Laboratory Assistant, that pay scale has not been approved by the Government of India as per Resolution (Pt.B.) while accepting the report of the Pay Commission. At the same time, it is also contended in the reply statement that the recommendation of the pay scale by the Pay Commission with regard to the upgradation will be available to the Laboratory Assistants who are in the pay scale of Rs.1200-2040/-



only in respect of Laboratory Technicians who are mentioned in Pt.B of the Resolution. To substantiate this point, the Respondents relied on Annexures-R/1 and R.2 orders of the Government of India. Annexure-R/1 is the resolution of Government report, Pt.B and Annexure-R/2 is the Pt.C of the said report. In the above report, it is stated that upgradation of pay scale of Laboratory Assistant was not accepted by the Government. In this background, it is advantageous to quote hereunder what the Respondents in Para 12 of their counter have stated:

“That in reply to Para 5.1 of th O.A., it is submitted that although the up-gradation of the pay scale Post of Laboratory Asst. of Regional Leprosy Training & Research Institute, Aska was recommended by the director, RLTRI, Aska, the present grievance of granting higher pay scale at par with the Laboratory Asst. working under NMEP & NICD is not at all tenable in view of the fact that in accordance with the recommendation of 4th Pay Commission different pay scales were granted to the Laboratory Technicians of different RLTRIs. For instance as per the 4th Pay Commission report Rs.1320-2040/- and Rs.1200-2040/- were granted to the Laboratory Technician attached to RLRTI, Aska and RLRTI Raipur (Chhatisgarh) respectively and accordingly on the basis of the recommendation of the 5th Pay Commission they were granted the corresponding pay scales of Rs.4500-7000/- and Rs.4000-6000/-. Therefore, there were neither illegality or discrimination in the matter of granting the pay scales. The copy of the recommendation is annexed herewith as Annexure-R/4.”



5. The learned counsel for the Respondents drawing our attention to the above quoted paragraph submitted that reading of the same would clearly indicate that the scale of Rs.5000-8000/- is only applicable to the Laboratory Technicians/Assistants who were in the scale of Rs.1320-2040/- and Rs.1200-2040/- pursuant to the recommendations of the 4th CPC and were in receipt of Rs.4000-6000/- as recommended by the 5th CPC. Since the applicant was in a different pay scale, i.e., Rs. 3200-4000/- as per the recommendations of the 5th CPC, by no stretch of imagination he could be entitled to the pay scale of Rs.5000-8000/- as recommended by the 5th Central Pay Commission.

6. The applicant has also filed a written note of submissions, which is more or less reiteration of facts in the O.A.


7. On anxious consideration of the rival contentions and on perusing the documents produced before this Tribunal, the question to be considered is whether the applicant is justified in approaching this Tribunal or not.

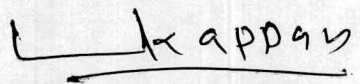
8. It is the admitted case of the applicant that he was in a different pay scale, i.e., Rs.975-1540/- as recommended by the 4th CPC which was revised to Rs.3200-4900/- as per the recommendations of the 5th CPC. As per Annexure-R/1, it is clear that the Laboratory Technicians and Assistants, who are in the pay

scale of Rs.1320- Rs.2040 and Rs.1200-2040/-, are entitled for the enhanced pay scale recommended by the Pay Commission. It is also to be noted that the upgradation of the post of the applicant, i.e., Laboratory Assistant of RLRTI, Aska, has not been declared at par with the Laboratory Assistant & Technical staff of other Laboratories, over which the Government is the best judge.

9. A similar question was also raised before the C.A.T, Jabalpur Bench in O.A. 1203/05 decided on 24th October, 2007. The Jabalpur Bench, having considered this question in extenso, came to the conclusion that it is not expected of the Tribunal to sit in appeal over the recommendations of the expert body, like Pay Commission and accordingly dismissed the O.A.

10. Having regard to what has been discussed above, we are of the view that the applicant has not been able to make out a case for the relief prayed for. Accordingly, the O.A. fails and is dismissed being merit-less. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER