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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.


Original Application No.319 of 2007  
Cuttack, this the 10<sup>th</sup> day of December, 2009

Smt.Bijayalaxmi Patnaik .... Applicant  
Versus  
Union of India & Ors. .... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?

  
(JUSTICE K. THANKAPPAN)  
MEMBER (JUDICIAL)

  
(C.R. MOHAPATRA)  
MEMBER (ADMN.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

O.A.No.319 of 2007

Cuttack, this the 10th day of December, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)

A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Srimati Bijayalaxmi Patnaik, wife of Sri Asim Parida, aged about 48 years at present working as Librarian in the Institute of Hotel Management and Catering Technology and Applied Nutrition, V.S.S.Nagar, Bhubaneswar-751 007.

.....Applicant

Legal practitioner: M/s.S.Mohanty, S.K.Das, Advocate

- Versus -

1. Union of India represented by the Secretary, Ministry of Tourism, Government of India, Transport Bhawan, New Delhi, PIN 110 001.
2. The Chairman, Board of Governors, Institute of Hotel Management and Catering Technology and Applied Nutrition, Bhubaneswar-751 007.
3. The Principal, Institute of Hotel Management and Catering Technology and Applied Nutrition, Veera Surendra Sai Nagar, Bhubaneswar, Dist. Khurda, PIN 751 007.

....Respondents

Legal Practitioner : Mr. U.B.Mohapatra, SSC

O R D E R

MR. C.R.MOHAPATRA, MEMBER (A):-

Seeking direction to the Respondents to revise the scale of pay of the applicant who is a Librarian in the Institute of Hotel Management and Catering Technology and Applied Nutrition, from Rs.4000-6000/- to Rs5500-9000/- w.e.f. 25.3.1996 with all consequential benefits after quashing the order of rejection of her representation for revision of the aforesaid pay scale pursuant to the order of the Tribunal under Annexure-A/12 dated 06.06.2007, this Original Application has been filed under section 19 of the Administrative Tribunals Act, 1985 by the Applicant on the following grounds.

- (a) The applicant was appointed as Demonstrator in the Institute of Hotel Management and catering technology and applied nutrition [in short 'IHM'], Bhubaneswar w.e.f. 30.08.1981;

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- (b) She is a Post Graduate (MA) in Political Science from Utkal University and has acquired the qualification of B.Lib from IGNOU New Delhi in the year 1996. Thereafter, she was entrusted with the duty and responsibility of the Library of the Institute w.e.f. 25.03.1996;
- (c) On 15.09.1998 vide Annexure-A/2 she was appointed as Librarian in the pay scale of Rs.4000-6000/- of the Institute;
- (d) Recruitment Rules with regard to various categories of Group C and D posts in the library discipline were issued by the DOP&T under Annexure-A/3 dated 12.08.1991 directing all Departments to adopt the same;
- (e) On the recommendation of the Vth Pay Commission, the pay scale of Librarians possessing qualification of B.Lib with graduation degree has been raised to Rs.5500-9000/- w.e.f. 01.01.1996. But the said benefit was not extended so far as the Librarian of the IHM is concerned although the IHM is one of the institutes continuing under the Ministry of Tourism and the pay scale etc. decided by the Government so far as other Government of India employees are concerned has fullest application to the employees of the IHM institutes;
- (f) The case of the present applicant is covered by the decision of the Principal Bench of the Tribunal dated 4.6.2004 in OA No.1959 of 2003 filed by one of the aggrieved employee of the IGH namely Smt.Urmilla Punj. Pursuant to the order of the Tribunal, Smt.Punj was extended the benefits of the enhanced scale by the Respondents. Therefore, non-extension of the benefits is against the law laid down by the Hon'ble Apex Court in the case of **Amit Lal Beri v Collector of Central Excise**, 1975 (4) SCC 714.
- (g) As per the decision of the Hon'ble Apex Court, in the case of **S.I.Roopal v Lt. Governor of Delhi & Others**, 2000 SCC

(L&) 213, Applicant is entitled to the same relief as granted by the PB, New Delhi in the case of Punj (supra).

2. Respondents to justify the order of rejection under Annexure-A/12 have taken the following stand in their counter filed in this case on 23<sup>rd</sup> July, 2008:

- (i) The Institute of Hotel Management, Catering Technology & Applied Nutrition, Bhubaneswar being an autonomous Institution under the Ministry of Tourism, Government of India, like some other IHMs established in other states, employees of the institute are not treated as Central Government Employee and service rules and financial benefits are not extended to them *suo moto* like other Central Government employees;
- (ii) The Institute of Hotel Management, Catering Technology & Applied Nutrition, Bhubaneswar is not fully financed by Government of India. This Institute is functioning on its own resources. The Government of India, Ministry of Tourism only provides grant-in-aid to meet the deficit on capital grants. The recruitment rule/service rule is specifically formulated for these autonomous Hotel Management Institutes basing on its activities. Therefore, the scale of pay applicable to its employees is not similar to other Central Government employees;
- (iii) The employees of this institute are the employees of the Society and service rules etc. framed exclusively for these institute by the Ministry of Tourism, Government of India is applicable to them. Therefore, the OM No.AB-14017/43/91-Estt.(RR) dated 12.08.1991 issued by Department of Personnel and Training read with Ministry of Finance OM No.71/3/2001-I dated 21.2.2002 for granting higher scale of pay of Rs.5500-9000/- to the Librarians, as cited by Applicant, has no relevance so far as Librarians serving under the present institution are concerned.

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The Ministry of Tourism, Government of India vide letter under Annexure-R/2 dated 12<sup>th</sup> June, 2002 has categorically directed not to act upon the OM dated 12.08.1991 issued by the DOP&T;

(iv) The applicant was appointed as Demonstrator in Canning and Food Preservation Department in the Institute of Hotel Management, Catering Technology & Applied Nutrition, Bhubaneswar on 30.08.1982. For administrative reasons the stream in which Applicant was appointed was closed down. Applicant was therefore rehabilitated to look after the library work. Since the scale of pay of Demonstrator and librarian of the institute was same i.e. Rs.4000-6000/-, on the option, the applicant was absorbed as Librarian vide order under Annexure-R/4 dated 15.09.1998;

(v) The Recruitment Rule framed by the DOP&T has no relevance so far as the Librarian of the institution is concerned as the appointment and conditions of service of the present department are governed by the rules framed by the Ministry of Tourism, Government of India under Annexure-R/5;

(vi) The Librarians of the Institute are granted/entitled to the scale of pay of Rs.4000-100-6000/- as recommended and approved by the Ministry of Tourism, Government of India, under Annexure-R/6;

(vii) The case of Smt. Punj decided by the PB, New Delhi is not similar to the present case; for which extension of the benefit of the decision in the case of Smt. Punj (supra) was denied by the Ministry of Tourism, Government of India in their letter No. 15(8)/2001-HRD dated 12.04.2007;

(viii) The Applicant was absorbed in the post of Librarian carrying the scale of pay of Rs.4000-6000/- w.e.f. 15.09.1998 and not from 25.03.1996. Meanwhile, two financial up-gradations

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under ACP have been allowed to the applicant; first placing her in the scale of Rs.4,500-7000/- and then in the scale of Rs.5000-8000/-.

By stating so, the Respondents have prayed for dismissal of this OA being devoid of any merit.

3. Points raised in the pleadings of the parties were also the points for arguments advanced by Learned Counsel appearing for the respective parties and having heard them at length, perused the materials placed on record. From the facts narrated above, now the entire case of the applicant boils down to the issue whether the order issued by the DOP&T is applicable to the employees serving in the Institution and whether the facts and issues involved and decided by the PB in the case of Smt.Punj (supra) are one and the same in the present case. Perused the decision of the PB, New Delhi placed in the Original Application at Annexure-A/5. It is seen that the claim of the Applicant in the said OA was extension of the higher pay scale of Rs.1400-2600/- as was given to Librarians working in other Departments of the Government of India vide OM dated 12.08.1991 issued by DOP&T. Respondents by filing counter objected to the stand of the Applicant on the following grounds:

“4. The Respondents have filed reply and have opposed the application. According to the Respondents the staff pattern of IHMS is very small. Pay to Principal (sic) were in a higher pay scale of Rs.425-700/- whereas the applicant was in the pay scale of Rs.330-560/-. According to the Respondents, the Government of India, Ministry of Finance Vide OM dated 24.7.1990 introduced the new pay structure of library staff. Such staff was to be placed in the pay scale of Rs.1400-2600/- with the condition that the applicant must be having the qualification of graduation plus Bachelor Degree in Library Science. The applicant is a graduate and has completed her diploma in Library science by correspondents. Therefore, she was not eligible for the higher pay scale as claimed.”

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The PB, New Delhi after taking support of the decisions of the Ahmedabad Bench of the Tribunal in OA Nos.35/93 & 693 of 2000 came to the conclusion as under:

“9. For the reasons mentioned above, the OA is allowed. The Respondents are directed to consider the claim of the applicant for grant of higher pay scale of Rs.1400-2600/- in terms of Notification dated 12.08.1991. In case it is considered necessary, they may hold a DPC for promotion to the post of Library Information Assistant and to provide the higher pay scale to the applicant.”

4. It is the case of the Applicant that based on the aforesaid decision/direction Smt.Punj, Applicant before the PB, has been extended the pay scale of Rs.1400-2600/- as also Rs.5500-9000/- but the Respondents denied the said benefit to the Applicant thereby causing discrimination between similarly situated employees working under the administration of one Ministry. It is noticed that the grounds taken by the Respondents in the impugned order as also in the counter filed in this case were not the grounds urged before the PB i.e. the order issued by the DOP&T is not applicable to the Institute unless and otherwise specifically accepted by the Ministry of Tourism Department. Rather Chapter III dealing with the ‘general conditions of service’ of the Memorandum of association produced by the Respondents clearly envisages that the orders issued by the Government are applicable to the present institution mutatis mutandis. Had there been no application of the DOP&T instruction issued in 1991, the Respondents ought not to have implemented the order instead of approaching before higher forum. Therefore, denial of the scale of pay of Rs.5500-9000/- on the ground that the DOP&T order is not applicable does not stand in the scrutiny of law. Hence such plea of the Respondents is overruled especially for the reason of the conditions stipulated in the memorandum of association produced by the Respondents along with the counter. On perusal of the order of the PB, it is noticed that

extension of the benefit of the DOP&T circular dated 12.08.1991 to the applicant, as by that time she was the Librarian of the IHM was the subject matter of consideration before the PB. But the Applicant cannot claim extension of the benefit of the DOP&T circular dated 12.08.1991 as according to the Respondents she became regular Librarian only w.e.f. 15.09.1998. Further it is noticed that pursuant to the order of the PB and on the recommendation of the DPC, the scale of pay of Rs.1400-2600/- was extended to Ms. Punj only w.e.f. 5<sup>th</sup> April, 2005 but it does not reveal from any of the materials placed on record that Smt. Punj has been extended the benefit of the DOP&T dated 21.2.2002 revising and granting the pay scale of Rs.5500-9000/- w.e.f. 1.1.1996. Law is well settled that in between one homogenous group there cannot be two pay scales or else this will be violation of the mandate enshrined under Article 14 and 16 of the Constitution providing that there can be no discrimination between similarly situated employees working in a particular department. For the discussions made above, we find considerable force in the submission of the Learned Counsel for the Applicant that if the order under Annexure-12 is allowed to stand injustice caused to the applicant would be allowed to perpetuate besides causing discrimination. Hence, the order under Annexure-12 is quashed. The matter is remitted back to the Respondents for giving a fresh consideration in the matter of grant of the pay scale of Rs. 5500-9000/- to the Applicant at least from the date the Applicant became the regular Librarian in the department or from the date this scale of pay was granted to Mr. Punj, Librarian working in IHM Pusha, New Delhi. The consideration as directed above, shall be made by the Respondents and the result thereof be communicated to the applicant within a total period of 90(ninety) from the date of receipt of the order.

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5. With the observations and direction made above, this OA stands allowed. There shall be no order as to costs.

K. Thankappan  
(JUSTICE K. THANKAPPAN)  
MEMBER (JUDICIAL)

C.R. Mohapatra  
(C.R. MOHAPATRA)  
MEMBER (ADMN.)