

13

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.544 OF 2010
Cuttack this the 26th day of June, 2012

Sri Hari Kishan Yadav Applicant
Vs
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 Tribunal or not?

(C.R.MOHAPATRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judi.)

14
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ORIGINAL APPLICATION NO.544 OF 2010

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CORAM:

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

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

...
Sri Hari Kishan Yadav, aged about 43 years, S/o. late
Shyo Dayal Yadav, at present working as Medical
Assistant, in Aviation Research Centre Hospital (in short
A.R.C.Hospital), At/PO-Charbatia, Dist-Cuttack

...Applicant

By the Advocates:M/s.B.S.Tripathy, M.K.Rath, J.Pati & Mrs.M.Bhagat
-VERSUS-

1. Union of India represented through the Cabinet Secretary to the Govt. of India, Cabinet Secretariat, Bikaner House (Annexe), Sahajahan Road, New Delhi
2. The Special Secretary, Aviation Research Centre (ARC), Cabinet Secretariat, Govt. Of India, Bikaner House (Annexe), Sahajahan Road, New Delhi
3. The Director General of Security, Cabinet Secretariat, Block-V (East), R.K.Puram, New Delhi
4. The Deputy Director(A), Air Wing, Director General of Security, Cabinet Secretariat, Block-V (East), R.K.Puram, New Delhi
5. The Deputy Director(Admn) Aviation Research Centre (ARC), At/PO-Charbatia, Dist-Cuttack
6. The Director of Accounts, cabinet Secretariat, Govt. of India, New Delhi

...Respondents

By the Advocates:Mr.S.Barik, ASC

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O R D E R

A.K.PATNAIK, MEMBER(J): Applicant, Hari Kishan Yadav is

at present working as Medical Assistant, Aviation Research Centre Hospital, Charbatia. He had earlier moved this Tribunal in O.A.No. 39 of 2010 claiming that he is being given less pay in comparison to other I.A.F. personnel who have either been

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15
appointed as DFO(S), JAO on deputation basis or have been reemployed. Taking note of the fact that by then the matter was under consideration by the Cadre Review Committee, this Tribunal vide order dated 13.5.2010 disposed of the said O.A. with direction to the Respondents to intimate the result of the consideration by the Cadre Review Committee to the applicant within a stipulated period. The Respondents, vide Annexure-A/12 dated 01.07.2010 communicated the decision of the Cadre Review Committee, the full text of which reads as under.

Sub: O.A.No.39/2010 in the matter of Sh. H.K.Yadav for up-gradation of the post of Medical Asst. in ARC:

The application of Sh.HK Yadav, Medical Asst. has been examined at appropriate level at this Hqrs. And the following has been emerged.

(a) The individual's contention that his similarly placed peers in the IAF has been re-employed in the ARC in the pre-revised pay scale of Rs.5500-9000/- (now PB-2 with grade pay Rs.34200/-) in the post of DFO(S) and JAO etc. and whereas he has been re-employed in the pre-revised pay scale of Rs.4500-7000/- (now PB-1 with grade pay Rs.2800/-) in the post of Med.Asst. and therefore, his pay is to be fixed at par with those re-employed in Gp.'B' post does not hold any worth, because the post of Medical Asst. is a Gp.C non Gazetted non ministerial in ARC.

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- b) The IAF and ARC are two different Government organizations having different pay and rank structures as per their need for attainment of organizational objectives and therefore that post with similar nature of job may carry different pay scale in different departments. Also the parameter deciding the pay and perks may also vary.
- c) It is also relevant to note that Sh HK Yadav was on deputation to this department from 21.05.2001 to 19.07.2005 and was well aware of the pay scale of the Medical Asst at the time of joining ARC on re-employment and he has accordingly given acceptance for offer of appointment.
- d) The proposal for upgradation of the Grade Pay (Pay Scale) was examined in details in the ongoing Cadre Review but the upgradation of the Grade Pay of Medical Assistant has not been approved".

2. Aggrieved with the above communication, applicant has moved this Tribunal in the present O.A. seeking the following relief.

- i) To pass appropriate orders quashing the order vide letter dtd. 01.07.2010 in Annexure-A/12.
- ii) To pass appropriate orders directing the Respondents to fix the scale of pay of the applicant correctly at par with other similarly situated Indian Air Force

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17

personnel and to extent all other service and consequential benefits, to which he is eligible and entitled; and

iii) To pass such further order/orders as are deemed just and proper in the facts and circumstances of the case and allow this O.A. with costs.

3. Respondents have filed their counter opposing the prayer of the applicant to which applicant has also filed rejoinder. Respondents have also filed reply to rejoinder.

4. We have heard Shri B.S.Tripathy, learned counsel for the applicant and Shri S.Barik, learned ASC appearing on behalf of the Respondents and perused the materials on record.

5. Shri Tripathy submitted that after amendment of the Recruitment Rules, 1977, the pay scale of Medical Assistant were brought at par with Junior Technical Officer (J.T.O.), Gr.II, D.F.O.(S) and Junior Accounts Officer. According to Shri Tripathy, the post of Junior Technical Officer, Gr.II(DFO(S) and Junior Accounts Officer carrying the pay scale of Rs.5500-9000/- and that the pay scale of Medical Assistant having been brought at par with as above, the applicant is entitled to Rs.5500-9000/-.

6. His second plank of argument is that the active I.A.F. and Ex-I.A.F. personnel are being appointed as JTO-II, DFO(S) and Jr.A.O. either on deputation basis or on reemployment in the

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scale of Rs.5500-9000/- whereas the posts of Medical Assistant(Dental) and Medical Assistant (General) carrying the scale of Rs.4500-7000/- thereby creates a diversification and/or anomaly between the two.

7. In response to the above, Shri Behera submitted that it is incorrect on the part of the applicant to say that the pay scale of Medical Assistant has been brought at par with the pay scale of JTO, Gr.II, DFO(S) and JAO. In so far as other aspect of argument is concerned, it has been submitted by Shri Behera that IAF and ARC are two different Government organizations having different pay and rank structures specific to the hierarchical need. According to Shri Behera even if the same nature of job in different organizations carry different pay scales, the applicant has no right to claim higher pay granted by the another organization. According to Shri Behera the applicant having accepted the offer of appointment as Medical Assistant carrying the scale of Rs.4500-7000/-, he is estopped to ask more pay compared to I.A.F.

8. We have considered the submissions of the learned counsel for the parties and given our anxious thoughts to the arguments advanced at the Bar.

9. Applicant has not produced any document in support of his claim that the pay scale of Rs.5500-9000/- meant for JTO,

Gr.II, DFO(S) and JAO has been brought at par with Medical Assistant under the Respondent-Department. Secondly, as it reveals from the relief (b) sought by the applicant that he has claimed pay parity with other similarly situated Indian Air Force personnel. In this connection, it is to be noted that determination of pay, perks etc. is not within the competency of the Court/Tribunal. Since the applicant has not produced a scrap of paper showing that the pay scale of Rs.5500-9000/- meant for Medical Assistant under the Respondent-Department which has been denied to him, in our considered view, right to sue does not accrue on the applicant.

The above view is fortified by the decision of the Hon'ble Apex Court in the case of **Union of India Vrs S Thakur** (2008) 13 SCC 463; **K.T.Veerappa Vrs State of Karnataka** (2006) 9 SCC 406; **Harayana State Minor Irrigation Tube wells Corporation Vrs G.S.Uppal** (2008) 7 SCC 375; **State of Bihar Vrs Bihar Veterinary Association** (2008) 11 SCC 60 and **State of Harayana Vrs. Harayana Civil Secretariat Personnel Staff Association** (2002) 6 SCC 72.

10. Last but not the least, it is worth-mentioning that on the direction issued by this Tribunal in O.A.No.39/2010, the matter regarding upgradation of the Grade Pay (Pay Scale) in so far as Medical Assistant is concerned , was examined by the

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cadre Review Committee, which did not approve of the upgradation of the scale of pay for the reasons recorded vide Annexure-A/12. On examination of the said order, we are of the view that hardly there is any scope to interfere with it. For the reasons discussed above, we hold that the applicant has not been able to make out a case for any of the relief sought and accordingly, the O.A. is dismissed. No costs.


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K.PATNAIK)
JUDICIAL MEMBER

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