

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 10.5.2000

O.A. No. 47/1995

Baliwala son of Shri Meghraj Ji resident of Chand Pole, at present working as SSG-I (Tube Well Operator) in Central Arid Zone Research Institute, Jodhpur.

... Applicant.

v e r s u s

1. Indian Council of Agricultural Research through its Secretary, Krishi Bhawan, New Delhi.
2. The Director General, Indian Council of Agricultural Research, Krishi Bhawan, New Delhi.
3. Under Secretary (E.E.II), Indian Council of Agricultural Research, Krishi Bhawan, New Delhi.
4. The Director, Central Arid Zone Research Institute, Jodhpur.

... Respondents.



Mr. P.K. Lohra, Counsel for the applicant.

Mr. V.S. Gurjar, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman.

Hon'ble Mr. Gopal Singh, Administrative Member.

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

In this application, the applicant has prayed for quashing the order Annexure A/1 with a direction to the respondents to allow the applicant the pay scale of Rs. 260-430 from the date of his appointment vide Annexure A/2 dated 19.1.84 with all arrears accruing therefor.

2. The short case of the applicant is that he is working as Tube Well Operator (SSG-I) and this post has been classified as Auxiliary

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category. It is his further case that the pay scale fixed for this category was Rs. 260-430 with effect from 28.5.82 and he is entitled for the same. Therefore, the order of appointment vide Annexure A/2 stating that his pay scale was fixed at Rs. 196-232 is totally erroneous and it should have been with the pay at Rs. 260-430.

3. In an earlier occasion, the applicant had approached this Tribunal for this relief in OA No. 205/91 contending that the concerned authorities of the Indian Council of Agricultural Research, Central Arid Zone Research Institute, Jodhpur, had recommended vide their letter dated 18.9.89 that the case of the applicant and other persons should be considered for the pay scale at Rs. 260-430. The said O.A. was disposed of by giving a direction to the respondents therein that they shall consider the recommendations made by the respondent No. 4. In pursuance of the OA No. 205/91 vide order dated 7.9.93, the authority has considered the matter and issued the present impugned order dated 18.2.94 vide Annexure A/1, stating as follows:-

"The matter has been examined in detail and it has been decided not to upgrade the posts of SSGr-I (Tube Well Operator). Further, it may please be intimated that whether the post of Tube Well Operator said to have been sanctioned in the scale of Rs. 950-1500 has been filled up. If so, the date since the present incumbent is working and his likely date of superannuation. In case the post is lying vacant, it may not be filled up until further order.

While arriving at the decision, the contents of your office letter No. A-33/91 Admn.I dated 7.10.93 referring to the judgement of Hon'ble CAT in OA No. 205/91 have been kept in view."



4. It appears that a Contempt Petition was filed by the applicant stating that the order dated 7.9.93 passed in OA No. 205/91 by the Tribunal has not been complied with by the respondents. But the respondents submitted that the said direction was fully complied with vide proceedings dated 18.1.94. The applicant complained that the said proceedings was not issued to him. The Tribunal directed the respondents to furnish a copy of the said order to the applicant and after receipt of the said order vide Annexure A/1, the applicant has filed the present O.A.

5. From the history of the case narrated above, it is clear that the respondents were not accepting the request made by the applicant and some other persons for upgrading 7 posts of SSGr.I (Tube Well Operator) to the grade at Rs. 260-430.

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6. The case of the applicant is that the post of which the applicant is holding, is required to be upgraded with a pay scale at Rs. 260-430. The grievance of the applicant is that the person who has been working as Tube Well Operator in the other Organisations of Indian Council of Agricultural Research (for short, ICAR) are getting the pay scale at Rs. 260-430, therefore, the applicant is also entitled to the same. Further argument of the applicant is that vide Appendix II annexed to the Technical Service Rules as reflected in the Handbook of Technical Services dated 2.10.1985, the pay scale regarding the Tube Well Operator is fixed at Rs. 260-430 and the post of Tube Well Operator is classified as Auxiliary as against the earlier classification as Technical. He extracted a part of Appendix II vide Annexure A/3 and on the basis of Annexure A/3, applicant contended that down below the entry 'Drivers of all vehicles... Auxiliary, pay scale Rs. 260-430 has been indicated and that is the pay scale fixed for the Tube Well Operator (Auxiliary) and the applicant is entitled for the same.

7. He has further contended that the other Tube Well Operators working in the other Organisations discharging the same functions and duties are getting the pay scale at Rs. 260-430, and on the basis of 'equal pay for equal work', the applicant is also entitled to the same pay scale and denying the same would be violative of Articles 14 and 16 of the Constitution of India. The applicant has referred to the case of Deep Chand working in some other Organisation contending that he is also Tube Well Operator, but with a pay scale at Rs. 260-430. Therefore, the applicant is also entitled for the same. At any rate, the impugned order at Annexure A/1 refusing to upgrade the post in question is a non-speaking order and is liable to be quashed on this ground alone. The learned counsel appearing for the applicant relied on judgements of Hon'ble the Supreme Court and the Rajasthan High Court in support of his contentions.

8. By filing reply and additional reply, the respondents have denied the case of the applicant. According to the case ~~xxx~~ of the respondents, the post which the applicant is holding, is the post of Tube Well Operator (SSGr.I). This post of Tube Well Operator (SSGr.I) is different from the post of Tube Well Operator (Auxiliary). Tube Well Operator (Auxiliary) is a Group 'C' post with a pay scale at Rs. 950-1500 created for the first time in the year 1987 vide Annexure R/3 dated 5.2.87 whereas the Tube Well Operator (SSGr.I) is a Group 'D' post with a pay scale at Rs. 750-940 (revised). Tube Well Operator (SSGr.I) means 'Supporting Staff Gr.I Tube Well Operator', which is different from Tube Well Operator (Auxiliary).



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9. The respondents have further stated that for the post of Tube Well Operator in Group-D, there are separate recruitment rules, which are applicable to the applicant and according to the said rules only, the applicant was given the pay scale at Rs. 196-232 from the date of his appointment. They have further stated that the case of Tube Well Operator cited by the applicant, namely Shri Deep Chand working in ICAR, New Delhi, is not comparable to that of the applicant's case. They stated that the said Deep Chand was working in Supporting Staff Grade-III, which is a promotional grade from the Supporting Staff Grade-II, therefore, the applicant cannot seek parity with the case of Shri Deep Chand. Moreover, even the nature of work and the qualifications prescribed for this post are entirely different and, therefore, the principle of 'equal pay for equal work' does not apply to the facts of the present case. The learned counsel appearing for the respondents contended that the arguments of the applicant are not tenable. He also relied upon number of judgements of Hon'ble the Supreme Court contending that there is neither irregularity nor illegality in the order Annexure A/1, and as such the application is liable to be dismissed.

10. After hearing both the sides, we find that there is no merit in the present application for the following reasons:

11. The fact that the applicant was appointed as Tube Well Operator (SSGr.I) with the pay scale of Rs. 196-232 (revised scale Rs. 750-940) is not disputed. But the short case of the applicant is that on the basis of the recommendations of lower authorities, the post in question should have been upgraded with the pay scale at Rs. 950-1500. No doubt, earlier this Tribunal directed vide order dated 7.9.93 in OA No. 205/91 (Annexure A/6), to consider the case of the applicant. Accordingly, the applicant's case was considered by passing the order Annexure A/1. But according to the applicant, the said order Annexure A/1 is illegal being a non-speaking order and being contrary to Articles 14 and 16 of the Constitution of India. But we find that there is no substance in this contention. Whether the particular post should be upgraded or not is a matter of policy and an employee has no right to ask for upgradation of any post. At any rate, this Tribunal cannot direct the official respondents to upgrade the post by exercising the power conferred under Articles 226 and 227 of the Constitution. Moreover, from a reading of the impugned order at Annexure A/1, we find that the representation of the applicant and other persons for upgrading 7 posts of SSGr.I (Tube Well Operator) in the pay scale at Rs. 260-430 was examined in detail and ultimately,



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the respondents have decided not to upgrade the post of SSGr.I (Tube Well Operator). We do not think that we can substitute our decision to the decision of the official respondents by directing the respondents to upgrade the post in question.

12. Whether a particular post should be upgraded or not would be a matter of purely administrative decision and such a decision cannot be said to be quasi-judicial. In this view of the matter, the judgement of Hon'ble the Supreme Court relied upon by the applciant, reported in (1978) 2 SCC 586, (1192) 4 SCC 605 and 1999 (2) WLC (Raj.) 195, do not apply to the facts of the present case. It is not disputed, nor it can be disputed that in view of the ^{law} laid down in these judgements that a quasi-judicial decision must be supported by reasons. As contended by the respondents, the decision ^{of the} authorities refusing to upgrade the post in question is purely an administrative decision and, therefore, the principles laid down in the above judgements do not apply to the order at Annexure A/1. We do not also find any malice on the part of the authorities nor any mistake on their part as alleged by the applicant, in taking the impugned decision vide Annexure A/1.



13. The second argument of the learned counsel for the applicant was that he was entitled to the pay scale at Rs. 260-430 as given to the other Tube Well Operators in ~~othe~~ Organisations. Meeting this point, it has been the case of the respondents that the applicant has been mistaking the position of Tube Well Operators with the other Tube Well Operators working in other Organisations. We think it appropriate to extract few relevant paragraphs from the additional reply submitted by the respondents as under:-

"1. It is respectfully submitted that 8 posts of Tube Well Operators in pay scale Rs. 196-232 in Supporting Staff Grade-I (Group 'D') were sanctioned/created under this Institute under IVth Year Plan vide Indian Council of Agricultural Research letter No. 10-7/66-AI (III/DF) dated 20.11.1970 and this Institute (Central Arid Zone Research Institute) Office order No. 7-2/80-Genl/Adm.II dated 1.8.1983 and under VI Five Year Plan Supporting Staff Grade-I were is in (Group 'D') post. The copy of letters dated 20.11.1970 and 1.8.1993 are annexed herewith and marked as Annexures R/1 and R/2.

2. It is respectfully submitted that one post of Tube Well Operator in Auxiliary category in Group 'C' in the pay scale of Rs. 950-1500 had been sanctioned in the year 1987 vide Indian Council of Agricultural Research letter No. 5-61/86-EE.II dated 5.2.1987 (Annexure R/3).

3. It is respectfully submitted that while the petitioner alongwith his other colleagues had been appointed in the year 1978, 1982 and 1986 against the Supporting Staff Grade-I post of Tube Well Operator under Group 'D'. The recruitment rules of - Supporting Staff Grade-I Group 'D' post are duly

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prescribed as per Annexure R/4 which are submitted herewith. There could not be any question of the applicant and his other colleagues having been appointed in Group 'C' because the only available posts were under Group 'D' at that time. The recruitment rules at Tube Well Operators post under Auxiliary category in Group 'C' subsequently formulated by Indian Council of Agricultural Research in 1993 are attached herewith as Annexure R/5. It may be seen from Annexures R/4 and R/5 that the qualifications prescribed for Group 'C' Auxiliary post and those prescribed under Group 'D' are not comparable. It is precisely because of this difference in the Group of these posts, category and qualifications prescribed that the upgradation of the posts of Tube Well Operators from Supporting Staff Grade-I to the Tube Well Operator in the higher scale of Group 'C' in the Auxiliary category could not be agreed to by the Indian Council of Agricultural Research, New Delhi.

4. The case of Tube Well Operator cited by the applicant from I.A.R.I, New Delhi, is not comparable to the instant case of applicant as may be seen from Annexure R/6, which is annexed herewith i.e. from the office order of promotion on selection of Shri Deep Chand, whose name has been cited by the applicant, it is clear that Shri Deep Chand was working in the Supporting Staff Grade-III which is a promotional grade in the Supporting Staff having pay scale Rs. 800-1150 in comparison to applicant, who is in the pay scale of Rs.750-940."

14. From the reply statements, as extracted above, it is clear that the applicant is a Tube Well Operator in Supporting Staff Grade-I and he is not a Tube Well Operator in Auxiliary category. It has been the specific case of the respondents that the Tube Well Operator (SSGr.I) is a Group 'D' category created in IVth Five Year Plan and the Tube Well Operator in Auxiliary category is a Group 'C' post created in the year 1987 (hereinafter we refer SSGr.I as Supporting Staff category and the other in Auxiliary category to avoid confusion). The applicant was appointed in Supporting Staff category. Moreover, the post of Supporting Staff category is created under the Recruitment Rules of 1975. This 1975 Rules provide 4 grades in Supporting Staff category of Tube Well Operators with different pay scales. Annexure R/4 dated 1.12.75 describes those categories as under:-

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|--|---|
| (i) <u>Supporting Staff Grade-I</u>
(Rs. 196-232) | Comprising all existing posts in the Scale Rs. 196-232. |
| (ii) <u>Supporting Staff Grade-II</u>
(Rs. 200-250) | Comprising all existing posts in the Scale Rs. 200-240 and Rs. 200-250. |
| (iii) <u>Supporting Staff Grade-III</u>
(Rs. 210-290) | Comprising all existing posts in the Scale Rs. 210-270 and 210-290. |
| (iv) <u>Supporting Staff Grade-IV</u>
(Rs. 225-308) | Comprising all existing posts in the Scale of Rs. 225-308. |

15. From the above extract of the Rules, 1975, it is clear that the applicant was appointed in Supporting Staff Grade-I category with the pay scale at Rs. 192-232 and that is the pay scale which was given from time to time. This pay scale fixed by the Rules cannot be changed by an administrative decision. In these circumstances, the request of the applicant that the Supporting Staff Grade-I should be upgraded with the pay scale at Rs. 260-430 cannot be done unless the rules are amended. No other rule has brought to our notice which prescribes the pay scale at Rs. 260-430 for the Supporting Staff Grade-I category. If that is so, we cannot direct the authorities to accord higher pay scale contrary to the rules.

16. It is also brought to our notice that in other Organisations, there are Tube Well Operators described under Auxiliary category. We also notice that vide Annexure R/3 dated 5.2.87, sanction was accorded for creation of various posts under VIIth Plan. One of the posts to be created ^{was} is the post of Auxiliary Staff. We think it appropriate to extract the relevant para of Annexure R/3 as under:-

"AUXILIARY:

Tube Well Operator Rs. 260-400	:	1	
Generator Operator Rs. 260-400	:	1	

Total	:	2	"
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It is also not demonstrated before us that the qualifications and the nature of duties of the Tube Well Operator (Auxiliary) and the Supporting Staff category of Tube Well Operators are one and the same. Vide Annexure R/5 dated 23.3.93, certain qualifications are prescribed for Tube Well Operators classified as Auxiliary in the pay scale at Rs. 950-1500, which is reproduced as under:-

"Educational and other qualifications required for direct recruitment:-

- ITI Certificate in relevant trade OR
- Matriculation or its equivalent with 3 years experience in operation/maintenance of Diesel/Electrical Pumps OR
- Eighth Class Pass with 5 years experience in operation and maintenance of Diesel / Electrical Pumps in a well recognised organisation."



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17. From this 1993 Rules, it is clear that ITI certificate in relevant trade or matriculation with 3 years experience or 8th pass with 5 years experience is prescribed. This was not the qualifications prescribed to the post of Tube Well Operator Supporting Staff Grade-I category in the year 1984, when the applicant was appointed. The case of the applicant is that he would also be qualified now to the post of Tube Well Operator (Auxiliary) since he was also 8th class pass with 5 years experience in relevant trade, ~~and~~ cannot be accepted now. Moreover, the applicant cannot rely upon the case of Shri Deep Chand, since he was working in Grade-III with the pay scale of Rs. 260-430, whereas the applicant was working with the pay scale of Supporting Staff Grade-I at Rs. 196-232. If that is so, the case of the applicant is not comparable to that of Shri Deep Chand. Deep Chand is entitled to the pay scale of Rs. 260-430 on the basis of the fact that he belonged to Grade-III. If that is so, the principle of 'equal pay for equal work' would not apply to the case of the applicant, on the basis of the case of Shri Deep Chand and consequently, the judgements of Hon'ble the Supreme Court relied upon by the applicant, reported in (1995) 4 SCC 507 and (1994) 4 SCC 408, do not apply to the case of the applicant. Moreover, in (1998) 1 SCC 428, Hon'ble the Supreme Court pointed out that a simplistic approach on the basis of the principle 'equal pay for equal work' may lead to undesirable results. Hon'ble the Supreme Court also pointed out in different organisations or even within the same organisation, there may be several considerations which affect the wage structure. In (1996) 7 SCC 266, Hon'ble the Supreme Court further pointed out that similarity of designation may not be conclusive for decision. In the instant case, by designation itself, it is clear that the applicant belongs to Supporting Staff Grade-I category. It itself means that he belongs to category of staff which supports the other categories. The person belonging to other category might have been given higher pay scale on the basis of qualifications prescribed and the nature and functions of duties that are being discharged. The applicant has not placed before us the nature and functions of duties of the Supporting Staff category and Auxiliary category Tube Well Operators for our comparison. Therefore, the applicant is not entitled to the pay scale of Tube Well Operator (Auxiliary) only on the basis of similarity in the designation of the post.

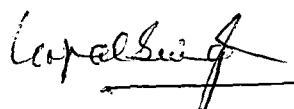
18. For all these reasons, we find that there is no substance in the arguments advanced by the learned counsel for the applicant. In

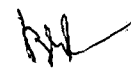




these circumstances, we have no other option but to pass the order as under:-

"Application is dismissed. But in the circumstances, no order as to costs."


(GOPAL SINGH)
Adm. Member


(B.S. RAIKOTE)
Vice Chairman

cvr.

I

Copy of order sent to
Counsel for respondents
Vide No 1074

dt 22-5-2000

OR

II

Copy of order sent to
Applicant vide

No 1073

dt 22-5-2000

OR

22/5/2000

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Part II and III destroyed
in negligence on 27.12.06
under the supervision of
section officer (I) as per
order dated 29/8/06

Section officer (Record)