

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 493/2004

MONDAY THIS THE 23rd DAY OF OCTOBER, 2006

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKAN, JUDICIAL MEMBER

1	D. Herald Immanuel Physical Training Instructor cum Deputy Warden, CIFNET Kochi-16	
2	K.V. Antony Technical Assistant (Computer) CIFNET Kochi-16	
3	R. Ethira Jalu Technical Assistant CIFNET, Kochi-16	Applicants

By Advocate Mrs. Annamma Philip

Vs.

1	Union of India represented by Ministry of Agriculture Department of Animal Husbandry Dairying Government Secretariat, Krishi Bhavan New Delhi.	
2	Director, CIFNET Fine Arts Avenue Kochi-16	Respondents.

By Advocate Mr. TPM Ibrahim Khan, SCGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicants are aggrieved by the rejection of their request to grant them financial benefits on the up-gradation of their scale to that of Rs. 5000-8000 w.e.f. 1.1.1996. The first applicant is a Physical Training Instructor -cum- Deputy Warden under the 2nd respondent. The second and third applicants are working as Technical Assistants in the same institute.

2 After the 5th CPC Recommendations were implemented, the applicants were appointed in the revised pay scale of Rs 4000-7000. According to the applicants, they were eligible for the higher pay scale of Rs. 5000-8000. Similarly situated persons working in the CIFNET approached CAT, Madras Bench of this Tribunal in O.A. 590/2002 for upgradation of their scale to Rs 5000-8000 as recommended by the Pay Commission. The Tribunal directed that their representation should be considered keeping in view the fact that the Department was in actively considering the applicants' demands at that time. In response to the various representations made by the applicants, the respondents have subsequently issued order No. 1-6/97-Adm. Vol. (iii) dated 14.10.2003 granting the upgraded pay scale of Rs. 5000-8000 to them. But unfortunately the financial benefits were stated to accrue to them only from the date of the order i.e. 20.5.2003. The applicants have contended wherever the upgradations have been allowed as recommended by the 5th

CPC, the financial benefits have been granted w.e.f. 1.1.1996.

Pointing out the same, the first applicant preferred a representation which was forwarded to the Ministry of Finance and it has been rejected stating that the "Implementation Cell has taken a policy decision that no retrospective upgradations are to be permitted. The second and third applicants also received similar rejection orders. The applicants have submitted that the treatment metted out to them is highly discriminative as Technical Assistants in various other departments of the Ministry of Agriculture have been granted financial benefits w.e.f. 1.1.1996 and different yardsticks are being adopted to treat similarly placed employees. The following reliefs are sought.:.

(i)to quash the 1st respondent's No. 3-27/2000-Fy (Admn) dt. 22.12.2003as communicated to the applicants by the 2nd respondents memo dt. 7.1.2004.

(ii)to direct the respondents to grant the applicants their financial benefits on the upgradation of their pay with effect from 1.1.1996 within a time frame to be stipulated by this Hon'ble Tribunal.

and

(iii)to issue such other reliefs as this Hon'ble Tribunal deem fit and proper.

3 In the reply statement, the respondents have contended that the 5th CPC has specifically recommended upgradation of pay scales of many categories of posts including the Technical posts in IFP Cochin and hence the actual benefit of upgraded scale was given with retrospective effect from 1.1.1996 in such cases, whereas

in the case of Physical Training Instructors, the 5th CPC has not specifically recommended upgradation and the decision was subsequently taken by the Government and hence the actual benefit of upgradation can be given only from a prospective date. They have enclosed Annexure R-2 (A) to (G) series of orders to show that the financial benefit were denied only on the direction given by the Ministry of Finance in purported implementation of a policy decision. They have also submitted that the nature of work in various Central Government Departments are different in terms of their duties and responsibilities.

4. Rejoinder has been submitted by the applicants pointing out that the respondents have no explanation as to why under the same Ministry the benefits of a particular scale have been denied to some individuals only retrospectively. Along with the additional rejoinder the applicants have also enclosed copies of the recommendations of the 5th CPC with reference to the post of Technical Assistant in the IFP Cochin which is also under the Ministry of Agriculture, Department of Animal Husbandry and Dairying, New Delhi. They have also pointed out the orders of this Tribunal in O.A. 659/2004 allowing the pay scale of Rs. 5000-8000 w.e.f. 1.1.1996 to Technical Assistants in the Directorate of Cashewnut & Cocoa Development which is an office functioning under the same Ministry.

5 We have heard learned counsels on both sides and perused the material on record.

6 In as much as the applicants have been already granted the revised upgradation pay scales, the only question to be decided is whether they are entitled to financial benefits accruing on account of the revision w.e.f. 1.1.1996 or as against the date of the order.

7 The applicants in their rejoinder had annexed a copy of the schedule to the orders granting the revised scales of pay recommended by the Vth CPC after approval of the Government and the Ministry of Agriculture for the posts in various offices under the Department of Animal Husbandry. Certain organisations like the Central Cattle Breeding Farms, Central Poultry Training Institute, etc, have been shown in the schedule. The post of Poultry Assistants and Technical Assistant under the Delhi Milk Scheme and Central Poultry Breeding Farm have been given the upgraded scale of Rs. 5000-8000. In the same schedule in the IFP under the Ministry of Agriculture the post of Statistical Assistant/Laboratory Assistant/Library Assistant/Marketing Assistant, etc. have been given the scale of Rs. 5000-8000. It is observed that CIFNET is not specifically included in the schedule. Similarly, there could have been many other institutions which have not been specifically included in the Schedule. However, the fact remains that the post of Technical Assistants and Laboratory Assistants in many of the

institutions under the Department of Animal Husbandry and Dairying and Department of Agriculture have been placed in the scale of Rs 5000-8000. It was also the plea of the applicants in O.A. 592/2002 filed before the CAT Madras Bench that the above scale was granted to persons similarly situated in other Departments like the Railways, Mines etc. It transpires from the above that the Pay Commission had recommended the upgraded scale of Technical Assistants to Rs. 5000-8000 and it was implemented in these Departments from 1.1.1996 without any conditions or change in the Recruitment Rules, qualifications, etc. The fact that some of the Institutions were specifically mentioned had created an anomalous situation and the matter had been taken up with the Ministry of Finance. It is seen from the correspondence in the file produced by the respondents that as far as CIFNET was concerned the Ministry had issued letter dated 20.5.2003 revising the pay scale of Technical Assistants and Physical Training Instructor totally amounting to 8 categories w.e.f. 20.5.2003. In response to the above decision, the CIFNET pointed out that as regards the 8th post of Draughtsman the scale had already been revised from Rs. 4500-7000 to 5000-8000 w.e.f. 1.1.1996. Hence the same may be done in other cases also. Thereupon it was clarified by the Ministry that the upgraded pay scale was effective to other categories also w.e.f. 1.1.1996. When the CIFNET again pointed out the discrepancy that the post of Draughtsman was given the financial benefits also from 1.1.1996 and the others may also be granted financial benefits from 1.1.1996,

they were informed by Annexure R-2(G) that retrospective upgradation is not permitted by the Implementation Cell and it is a policy decision. Hence it is evident that there is certain amount of apparent discrimination by excluding the post of Draughtsman which had already been grouped under the same Technical category by granting the upgraded pay scale with retrospective effect while all the other categories have been granted the revised pay scale w.e.f. 1.1.1996 but on notional basis. Though this discrepancy was pointed out by Bench during the hearing to the applicants and the respondents, no satisfactory reply was forthcoming from the respondents and they have not produced any records justifying such a discriminatory treatment either on the basis of dissimilarity in the earlier pay scale or different nature of the duties and responsibilities. ~~The so called policy~~ In any case, it is quite obvious that the non-granting of the upgraded pay scale to the Technical Assistants and similarly placed categories in some of the institutions under the Ministry had arisen out of an anomaly in the 5th CPC recommendations and it was due to the delayed response of the Ministry in taking up the anomalies in the various offices under its control at the appropriate juncture and also not considering the matter in totality taking into account the position in all the subordinate offices functioning under the Ministry. This was the observation that was made by the Tribunal in O.A. 659/2004 also as the applicant therein who was a Technical Assistant in the Directorate of Cashewnut and Cocoa Development had come before

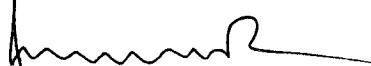
this Tribunal stating that similar categories were given upgraded pay scale in another subordinate office of the same Ministry viz. Directorate of Areca nut Development and the stand taken by the respondents was that there was no specific recommendation of the Pay Commission as far as that directorate was concerned. In the instant case also the same problem has arisen as the Ministry has been taking up the cases of posts belonging to each institutes under them for rectification of anomalies in an isolated manner. In this case there is a further discrimination among the post of Technical Assistants and Draughtsman in the same organisation namely CIFNET the latter getting financial benefits from 1.1.1996 whereas the former have been granted notional benefits only.

8 The so called policy decision referred to by the respondents clearly appears to be an afterthought. They have not produced any orders or instructions issued in accordance with the policy decision and even if a policy decision had been taken it has to be applied in all Departments and not to the applicants alone. This court has been consistently holding in all such cases wherever the revision of pay scales has been made effective at a later stage arising out of anomalies identified by the Pay Commission recommendations, the financial benefits have also to accrue w.e.f. 1.1.1996 the date when the Pay Commission recommendations came into effect. We do not find any reason or justification to deviate from such a decision in the case of the applicants, more so, when they have been

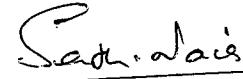
discriminated against in respect of similar category of persons working under the same Ministry.

9 We therefore direct the respondents to grant the applicants financial benefits on the upgradation of their pay scales to Rs. 5000-8000 w.e.f. 1.1.1996 instead of on notional basis. These benefits will be made available to the applicants within a period of three months from the date of receipt of this order. No costs.

Dated 23.10.2006



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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