

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
T. A. No.

602/89

199-

DATE OF DECISION 8.10.90

K.R.Venugopalan

Applicant (s)

M/s P.Radhakrishnan &
V.J.Mathew

Advocate for the Applicant (s)

Versus

Secretary to Govt. of India, Respondent (s)
M/o Agriculture & Co-opn. & 2 others

Mr. N.N.Sugunapalan

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. A.V.Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. To be circulated to all Benches of the Tribunal? N

JUDGEMENT

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 6.10.89, filed under section 19 of the Administrative Tribunals Act, the applicant who is working as Physical Training Instructor-cum-Deputy Warden in the Central Institute of Fisheries Nautical and Engineering Training (CIFNET), has prayed that his pay scale as Physical Training Instructor-cum-Deputy Warden should be upgraded to Rs. 550-900 at par with similar posts in other Ministries of the Central Government and he should also be given the revised pay scale corresponding to the upgraded scale of pay. He has also prayed that he should be given arrears of salary on the fixation of his pay between 1967 and 1976 and that his initial pay on his appointment in the CIFNET should be re-fixed under FR 26. The brief facts of the case are as follows:

2. The applicant joined the National Discipline Scheme ^(NDS) as an Instructor, Junior Grade-I in the scale of Rs. 110-210 on 5.2.1962.

He was promoted to Senior Grade-II and then as Instructor Grade-I with effect from 1.7.1965. He held that post till the posts under the National Discipline Scheme were abolished with effect from 1.11.76. He joined the Cochin Port Trust on an ad hoc basis for one year when he received termination notice of three months from 1.8.76. During the period of notice he also applied for an alternative employment and was offered an appointment to the post of P.T.Instructor-cum-Deputy Warden, a Class III post, in the scale of Rs. 425-700. The applicant joined the post on 11.10.76 and was regularised with effect from 14.3.80.

His service in the National Discipline Scheme from 5.2.62 to 28.7.76 was treated as qualifying service and the interruption of service before he joined CIFNET was condoned. His main contention is that the P.T. Instructors in various departments of the Central Government like Coal Mines, Labour Welfare organisations, Forest Research Institute of the Ministry of Agriculture, enjoy a higher pay scale of Rs.550-900, Physical Education Teachers in various departments get a scale of Rs. 550-700 and the Drill Instructor under the Ministry of Home Affairs gets a scale of pay of Rs. 550-750. He should not be discriminated by being given a lower pay scale of Rs. 425-700. With effect from 1.1.86, he has been allowed the revised pay scale of Rs. 1400-2300 on the basis of the Fourth Pay Commission's Report, while other P.T. Instructors in the scale of Rs. 550-900 have been given the revised pay scale of Rs. 1640-2900. On the basis of the recruitment qualifications and additional burden of Deputy Warden, he has got every claim to the higher pay scale. He has been representing about it since 1985 and had given all necessary information called for. According to him, the 2nd respondent on 11.11.85 recommended to the Ministry (Annexure-8) a higher pay scale of Rs. 550-900 for his post. He was informed on 8.4.88 (Annexure-10) that the upgradation of his post would be taken up only after the outcome of the Expenditure Finance Committee Memo is known. When he represented again that

the upgradation of the pay scale had nothing to do with the decision of the EFC, he was asked to meet the 2nd respondent, i.e. Director, CIFNET, but till now, there has not been any favourable redress of his grievance.

3. The applicant's second grievance is that when he left the post in the NDS, he was drawing a basic pay of Rs. 226 in the scale of Rs. 150-240. After a long drawn effort, the applicant was allowed re-fixation of his pay between 1967 and 1976 with arrears on the basis of the revision of pay scales, consequent upon the Report of the Third Pay Commission. He has also prayed that, based on the revised pay in the NDS, at the time of his joining the CIFNET, his initial pay should also be re-fixed under FR 26. His representation made on 19.12.88 also has remained un replied.

4. The respondents have stated that the applicant had applied  for employment in the CIFNET, during the notice period of termination in 1976. The applicant was considered in 1976 when he had been declared surplus by the Ministry of Education and Social Welfare. He accepted the offer and joined CIFNET on 11.10.76. It is, therefore, clear that the applicant accepted the terms and conditions including the pay scale of the post. He was regularised on 14.3.80 and satisfactorily completed the probation on 13.3.82. They have conceded that the qualifications prescribed for the post held by the applicant was a Degree of a recognised University or equivalent, Post Graduate Degree or Diploma in Physical Education and 3 years experience of imparting practical physical training. They have clarified that it was the normal practice that one of the Instructors discharge the duties of Warden without any additional remuneration. They have also conceded that he submitted a representation on 23.3.85 claiming higher pay scale and that a proposal was sent to the Ministry for upgrading his pay scale to Rs. 550-900. The Ministry of Agriculture asked for certain



further information about the pay scale of similar posts in other departments. They have also conceded that upgradation of the applicant's post was recommended in the EFC Memo and that the applicant was informed to await the outcome of the EFC memo. They have stated that the post of P.T.Instructor-cum-Deputy Warden in other centres of the CIFNET at Madras, Vizag, carried the pay scale of Rs. 425-700. Similarity of designation and qualification would not warrant identity of pay scales. They have also indicated that on re-fixation of his pay in his parent cadre in the NDS with effect from 1.1.67, the 2nd respondent recommended to the Ministry of Agriculture should be on 24.10.89 that his pay as P.T.Instructor-cum-Dy.Warden ~~16~~ fixed at Rs. 470 under FR 27. They have also indicated in the letter at Ext.R15 making this recommendation that, at the time of leaving NDS his pay was Rs. 675.

5. In the counter affidavit filed by respondent-2, it has been stated that so far as arrears of pay due to him for the revision of pay scales between 1967 and 1976 is concerned, CIFNET is not involved.

6. The applicant in the rejoinder has admitted that there was some mistake in accounting of the Mess account when he was in charge, but that should not be relevant for upgradation of the pay scale. He has conceded that he was not in charge of ^{the} Mess between 1980 and 1982. He has also conceded that for the period between 1967 and 1976 arrears have been paid on 16.2.90, but he is claiming interest thereon now. Further, on the basis of his last pay of Rs. 625 ^{before} he joined CIFNET, he claims that his pay in CIFNET should be re-fixed in the scale of Rs. 550-900 and at least his last pay in the NDS should have been protected.

7. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The main relief claimed by the applicant is that the post of P.T. Instructor-cum-Deputy Warden, CIFNET which he had accepted without demur

in the scale of Rs. 425-700 should be upgraded to that of Rs.550-900 before the pay scales were revised on the basis of the recommendations of the Fourth Pay Commission. After the revision, the post held by him was given the revised pay scale of Rs. 1400-2300, whereas the post of P.T. Instructors in other institutions in the scale of Rs. 550-900 were given the pay scale of Rs. 1640-2900. The applicant is claiming the revised scale of Rs. 1640-2900 after the revision of pay scales. He has relied upon the doctrine of 'equal pay for equal work' for his claim.

8. We find it difficult to accept the contention of the applicant that merely because of the similarity of designation of P.T. Instructor his Class III post of Rs. 425-700 should be given the higher scale of Rs. 550/900 given to the Physical Education Teachers and Drill Instructors in other Departments. One of the latest rulings of the Supreme Court on a similar matter is available in **Harbans Lal & Others Vs. The State of Himachal Pradesh & Others, Judgements Today 1989 (3) SC 296.** In that case, the carpenters employed in the Himachal Pradesh State Handicraft Corporation claimed wages payable to carpenters in government service. The Supreme Court held as follows:

".....In the first place, even assuming that the petitioners' jobs are comparable with the counterparts in the government service, the petitioners cannot enforce the right to "equal pay for equal work". The discrimination complained of must be within the same establishment owned by the same management. A comparison cannot be made with counterparts in other establishments with different management, or even in establishments in different geographical locations though owned by the same master. Unless it is shown that there is a discrimination amongst the same set of employees by the same master in the same establishment, the principle of "equal pay for equal work" cannot be enforced. This was also the view expressed in **Meva Ram Kanojia Vs. A.I.I.M.S., 1989 (2) SCC 235 at 245.**" (emphasis added)

9. The learned counsel for the applicant relied on the dictum given by the Supreme Court in **Randhir Singh Vs. Union of India, AIR 1982 SC 897**, where the driver-constables in Delhi Police Force were allowed the same pay scale of drivers in other Departments of the Delhi Administration. The learned counsel's argument is that parity of pay scales available to similarly designated posts in other Departments would entitle the applicant to the claimed upgradation. Randhir Singh's case was discussed by the Hon'ble Supreme Court in Harbans Lal's case cited above in the context of subsequent rulings of the Supreme Court in a number of cases where the qualitative difference in the matter of reliability, responsibility etc. was found to be a reasonable ground to allow different pay scales to posts carrying similar duties and designations. A similar view was expressed by the Hon'ble Supreme Court in **Federation of All India Customs and Central Excise Stenographers Vs. Union of India & Others, (1988) 7 ATC 591**. In that case, the Personal Assistants and Stenographers to the Heads of Department in Customs and Central Excise Department of the Ministry of Finance claimed parity of wages with the Personal Assistants and Stenographers attached to Joint Secretaries and Officers above them in the Ministry of Finance. Rejecting the claim of parity, the court observed as follows:

"....In this case the differentiation has been sought to be justified in view of the nature and the types of the work done, that is, on intelligible basis. The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less--it varies from nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object sought for, as reiterated before a certain amount of value judgment of the administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the court unless it is demonstrated that either it is irrational or based on no basis or arrived mala fide either in law or in fact. In the light of the averments

2

made in the facts mentioned before, it is not possible to say that the differentiation is based on no rational nexus with the object sought for to be achieved. In that view of the matter this application must fail and it is accordingly dismissed without any order as to cost." (emphasis added)

10. In the instant case before us, we cannot accept complete identity of duties, responsibilities and quality of performance between the post of P.T. Instructor-cum-Deputy Warden in CIFNET and posts of Physical Education Teachers and Drill Instructors in various other institutions including ^{the} Forest Research Institute of Ministry of Agriculture. The designations may be the same, the qualifications for recruitment may also be the same, but there may be difference in the number of hours put in, the number of trainees who have to be instructed, the intellectual and cultural levels of the trainees which may demand a higher quality. In such matters an expert body like the Pay Commission or the subjective judgement of the employing Department cannot be questioned in judicial forum unless there is gross discrimination. Since it has been brought out that the P.T. Instructors in other Centres of the CIFNET are also being given the same pay scales as that allowed to the applicant, we cannot say that there has been any hostile discrimination against the applicant. The rulings of the Supreme Court in **Tersem Lal & others Vs. State Bank of Patiala & others, ATR 1989 (1) SC 236**, and in **J.P.Chaurasia & others, AIR 1989 SC 19** support this stand. In the latter case, the Supreme Court held that the quantity of the work may be the same but the quality may be different, that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission and that the courts should not try to tinker with such equivalence unless it is shown that it was made with extraneous considerations. As far back as in 1979 the Bombay High Court in **Ganesh Vithoba Kulmeti & others Vs. State of Maharashtra, Bombay & others** ^{1980 SLJ 531} rejected the claim of Laboratory Attendants in the Public Health Department of the State to have parity with the Laboratory Attendants in the Education Department as they belonged to two different services with different types of work and other service conditions.

11. In the light of the aforesaid analysis, we hold that the applicant has not been able to establish valid grounds to claim parity of pay scales with the P.T.Instructors and similar posts in the old

pay scale of Rs. 550-900. However, if the respondents in their administrative wisdom and judgement wish to allow a higher pay scale to the applicant, this judgement would not stand in ~~his~~ ^{their} way.

12. As regards payment of arrears for the period between 1967 and 1976, the applicant has contended that he has received the same, but he is claiming interest now. Since there is no *prima facie* case of any deliberate or culpable delay in payment of arrears brought out before us, the claim of interest cannot be accepted. We are left with the third prayer of the applicant that on the basis of the revised last pay drawn by him in the NDS at Rs. 625 before he joined CIFNET his pay at CIFNET should be protected. Though in the original application he invoked FR 26, in the rejoinder he seeks protection. The revised pay scale of the post in the NDS held by him was Rs. 440-750 whereas the post of P.T. Instructor held by him in CIFNET was Rs. 425-700. In accordance with FR 26(c), when a government servant after officiating in a post with a higher pay scale of pay is re-appointed to a lower post, the period of officiation in the higher post will count for increment in lower post subject to certain restrictions. Since in the instant case the applicant was discharged from the NDS as surplus and cannot be held to have been "re-appointed" to the post of P.T.Instructor at CIFNET, strictly speaking, FR 26 will not apply. However, it appears that in accordance with the DGP&T's letter of 10th December, 1971 quoted at page 72 of **Swamy's Compilation of F.R.S.R., Part I, General Rules, Tenth Edition**, even surplus staff are entitled to all the benefits admissible to government servants transferred from one ~~Government Department~~ to another. The extracts from the instructions are as follows:

"Transfer of the surplus staff through the Surplus Cell of the Ministry of Home Affairs is in public interest and as such, these officials will be entitled to all the benefits admissible to Government servants transferred from one Government Department to another. Their seniority will, however, be determined with reference to the date of their joining the duties in the Department."

In accordance with Government of India's Order No.9 below FR 22 (page 78 of Swamy's Compilation as above), under FR 22 (a) (ii) "when a Government servant is appointed to a post which does not involve assumption of duties and responsibilities of greater importance than those attached to the post already held by him, then he will draw as his initial pay, the stage of the time scale which is equal to his substantive pay ~~in respect~~ of the old post or, if there is no such stage, the stage next below that pay **plus** personal pay ~~equal~~ to the difference.....". FR 22 (a)(ii), though not printed in the Tenth Edition of Swamy's Compilation, is available on page 76 of the Ninth Edition of that Compilation. FR 22(a)(ii) reads as follows:

"(ii) when appointment to the new post does not involve such assumption, he will draw as initial pay the stage of the time-scale which is equal to his substantive pay in respect of the old post, or, if there is no such stage, the stage next below that pay, plus personal pay equal to the difference and in either case will continue to draw that pay until such time as he would have received an increment in the time-scale of the old post or for the period after which an increment is earned in the time-scale of the new post, whichever is less. But if the minimum pay of the time-scale of the new post is higher than his substantive pay in respect of the old post, he will draw that minimum as initial pay; "

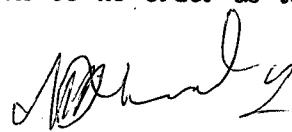
Thus, the applicant, even if he was deemed to be a surplus staff from NDS, must have his last pay drawn in the NDS protected under FR 22(a)(ii) read with Government of India's Order.

13. In accordance with item 2(a) in the Tabular Annexure to Government of India's Order No.5 below FR 27 (page 158 of Swamy's aforesaid Compilation of Tenth Edition), fixation of pay of quasi permanent Government servants appointed to officiate in other posts is to be regulated under FR 22 etc. "as if pay drawn in the quasi permanent post is substantive pay". In

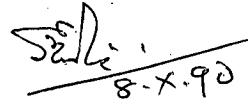
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accordance with Annexure-1 order dated 30th May 1966, the applicant had been appointed in the NDS in a quasi permanent capacity with effect from 1st July 1965. Accordingly, his pay in the NDS will have to be considered to be his substantive pay to be protected under FR 22(a)(ii).

14. In the facts and circumstances, we allow this application only to the extent of directing the respondents that ^{the} ~~his~~ initial ^{of the applicant &} pay in the CIFNET should be re-fixed on the basis of his revised [&] pay in the NDS and given due protection on the lines indicated above. The other reliefs claimed by him cannot be granted. There will be no order as to costs.



(A.V.Haridasan)
Judicial Member


8-X-90

(S.P.Mukerji)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

R.A.No.121/90 In R.A. No. 602/89 109
TXXXXXX

DATE OF DECISION 12.12.1990

K.R.Venugopalan Applicant (s)

Mr.P.Radhakrishnan Advocate for the Applicant (s)

Versus

Secretary, Ministry of Respondent (s)
Agriculture & Coop. New Delhi and others

----- Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In the Review Application the applicant has prayed that even though the Original Application has been rejected by us, a direction should be given to the respondents to take a decision on the recommendation and analysis of the Director, CIFNET, sent to the Ministry. The applicant had not sought any relief in this respect. There is no error or omission in the judgment on the face of record. The Review Application may be rejected by circulation if Hon'ble Member (J.II) agrees.

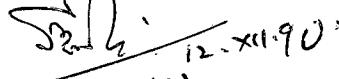
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S.P.Mukerji, V.C.

Hon'ble Member (J.II): I agree. Sd/-
A.V.Haridasan, J.M.

ORDER pronounced in the open court.


(A.V.Haridasan)
Judicial Member

12.12.1990


(S.P.Mukerji)
Vice Chairman