

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION : 30.10.1989

P R E S E N T

HON'BLE SHRI S.P MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI A.V HARIDASAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO. 238/87

1. P.I Sayed Shaik Koya
2. K.I Attakoya
3. K.R.B Ismail

.. Applicants

v.

1. Union of India, represented by Secretary to Government, Ministry of Human Resources (Department of Education) Development, New Delhi.
2. The Administrator, Union Territory of Lakshadweep, Kavarathi.
3. The Principal, Jawaharlal Nehru College, Kavarathi, U.T of Lakshadweep

.. Respondents

Mr M.R Rajendran Nair

.. Counsel for the applicant

Mr P.V Madhavan Nambiar, SCGSC

.. Counsel for the respondents

O R D E R

Shri S.P Mukerji, Vice-Chairman

In this application dated 11.2.1987 filed under Section 19 of the Administrative Tribunals Act the three applicants who have been working as Laboratory Assistants in the Jawaharlal Nehru College, Kavarathi, under Union Territory Administration of Lakshadweep have prayed that the applicants may be declared to be entitled to revised pay scale corresponding to the old scale of Rs.165-305 from the date of their appointment or with effect from the date when others in similar scale of pay were granted the revised scale of pay. They have also prayed that the impugned order dated 9th December, 1986 (Annexure-X) rejecting the proposal sent by the Administrator of Union Territory of Lakshadweep should be set aside. The brief facts of the case are as follows.

2. The posts of Laboratory Assistants were in the

..2..

scale of Rs.75-95/- till 27.5.1970 when it was revised to the scale of Rs.125-300. When the applicants were appointed as Laboratory Assistants in the J.N College during January/February 1974 they were allowed the scale of Rs.125-300. On 28th May 1974(Annexure -III) the Government of India issued orders revising the pay scale of Rs.125-300 of Laboratory Assistants to the scale of Rs.165-305 . It may be noted that though the order was issued on 28th May 1974 the revised scale was made effective from 27th May, 1970 when the old scale of Rs.125-300 had come into force. It was also indicated in that order as follows:-

" The new scale is to be made effective from 27th May 1970, thereby replacing the old scale already effective from 27th May 1970 and would be subject to revision as decided by the Government of India on the basis of recommendation of the IIIrd Pay Commission ". (Emphasis added)

The Third Pay Commission unfortunately did not indicate any pay scale corresponding to the pay scale of Rs.165-305 and accordingly there was no revision of the pay scale of the applicants. However on 21st December, 1976 the Government of India issued orders(Annexure-IV) revising the pay scale of Laboratory Attendants/Assistants from Rs.125-300 to Rs.290-500. The revised pay scale was to take effect from the date of issue of the order. On 3rd March, 1983 (Annexure-V) the Government of India issued still another order revising the pay scale of Laboratory Assistants from the then existing scale of Rs.290-500 to that of Rs.330-530 but indicated that the revised pay scale would be effective from the date of issue of the order , i.e, 3rd March, 1983.

3. In the above context the first applicant represented on 20.12.80 when the pay scale of Rs.125-300 was revised to Rs.290-500 stating that since his pay scale as Laboratory Assistant was Rs.165-305 he was not given the pay scale of Rs.290-500 and he requested that his revised

62

pay should be fixed in the scale of Rs.330-560. When the pay scale was further revised on 3.3.83 from Rs.290-500 to Rs.330-530 the first applicant represented that the revision should take effect from 1.1.74 , otherwise he would have to refund about Rs.10,000/- . The Union Territory Administration of Lakshadweep in their letter to Government of India dated 24.8.1983 (Annexure-VIII) recommended that since the Laboratory Assistants of J.N College have been drawing pay and allowances in the pre-revised scale of Rs.165-305, revised pay scale of Rs.290-500 given with reference to the old scale of Rs.125-300 was not made applicable to them. The Administration recommended that they should be given the pay scale of Rs.330-530 with effect from 1.1.73 without arrears. This was not accepted. The applicants' case is simple. They have argued that as Laboratory Assistants in a College as distinguished from Laboratory Assistants/Laboratory Attendants in Schools, they were in the pay scale of Rs.165-305 right from their date of recruitment. The Third Pay Commission did not recommend any revised pay scale for Rs.165-305. The Government of India, however, allowed a pay scale of Rs.290-500 to Laboratory Assistants/Attendants who were in the scale of Rs.125-300. Since they were in the higher scale of Rs.165-305 they were not given the revised scale of Rs.290-500 which was later revised to Rs.330-530. They therefore claim that they should be given at least the pay scale of Rs.330-530 with effect from 1.1.73. The respondents have taken the plea that the pay scale of Rs.165-305 was given as an interim measure pending the recommendations of the Third Pay Commission in lieu of the old scale of Rs.125-300. Therefore this interim pay scale of Rs.165-305 is not relevant for determining their revised pay scale from 1.1.73.

12

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We have already quoted from Annexure-III dated 28th May, 1974 by which the old scale of Rs.125-300 was revised to Rs. 165-305. Since the scale of Rs.165-305 was given effect to from 27.5.1970 when the scale of Rs.125-300 was introduced for the first time, by no stretch of imagination can it be said that the pay scale of Rs.165-305 was an ad interim pay scale . Since this pay scale was given effect to from the date of birth of the old scale of Rs.125-300, i.e., from 27.5.70, it cannot be denied that the scale of Rs. 165-305 was a replacement scale for Rs.125-300. That is, for the Laboratory Assistants of J.N College, the old scale of Rs.125-300 did not exist and their unrevised scale before the Third Pay Commission has to be recognised to be Rs.165-305.

5. Further para 2 of Annexure-III as extracted above clearly indicate that the new scale (Rs.165-305) which replaced the old scale (Rs.125-300) would be subject to revision on the basis of the recommendation of the IIIrd Pay Commission. According to the applicants who were allowed the new scale of Rs.165-305 from their date of recruitment before the Third Pay Commission recommendations ^{were} available, would be entitled to the revised pay scale ^{as} on the basis of the Third Pay Commission's Report.

6. The difficulty arises because the Third Pay Commission did not recommend any revised pay scale corresponding to the pay scale of Rs.165-305 which was allowed to the applicants. The revised pay scales corresponding to the unrevised pay scales approximating the pay scale of Rs.165-305 have been given by the applicants as follows:-

2

<u>Old Scale</u>	<u>New Scale</u>
175-240	380-560
150-240	
130-280 ..	330-560

7. The Government of India under the Revised Pay Rules, 1973 allowed a revised pay scale of Rs.290-500 corresponding to the pay scale of Rs.125-300 for the posts of Laboratory Assistants/Attendants. In view of what has been stated above since the applicants were not in the unrevised pay scale of Rs.125-300 but in the replacement scale of Rs.165-305 which was subject to the report of the Third Pay Commission, they cannot be forced to accept the pay scale of Rs.290-500. The Union Territory Administration rightly did not give them the pay scale of Rs.290-500, but allowed them to continue in the old scale of Rs.165-305 with interim relief, DA,ADA, CA, SA etc. The Government of India themselves perhaps recognised the inequity of giving them the pay scale of Rs.290-500 and in their order dated 3.3.83 (Annexure-V) further revised the pay scale of Rs.290-500 to Rs.330-530, but gave this scale with effect from 3.3.83 when the revised pay scale under the Revised Pay Rules were to be effected from 1.1.73.

7. We are fully convinced that being in the unrevised pay scale of Rs.165-305, the applicants cannot be given the revised pay scale of Rs.290-500 when those in the scale of Rs.150-240 or Rs.130-280 ^{with} ~~were~~ less than the maxima and minima of the pay scale of Rs.165-305, have been given the revised pay scales of Rs.380-560 or 330-560 respectively. We do not however take on the role of an expert body in determining the revised pay scale and would rather go by the decision of the Govt. of India themselves in allowing the revised pay scale of Rs.330-530 to those who were given the revised pay scale of Rs.290-500 which replaced on revision the old scale of Rs.125-300. Though being in the unrevised scale of Rs.165-305

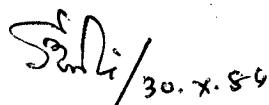
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the applicants deserve a higher scale than Rs.330-530, in order to put a stop to further litigation we would uphold the pay scale of Rs.330-530, ^{already accepted} for the applicants with the direction that this pay scale should be allowed to them with effect from their date of recruitment, i.e., January/February, 1974 with the condition that if thereby there is any decline in their emoluments, no recovery should be made and their total emoluments should be protected, if necessary, by allowing them a protection pay to be absorbed in future increments of their emoluments.

8. In the facts and circumstances we allow this application to the extent of directing that the applicants should be given the revised pay scale of Rs.330-530 with effect from their date of recruitment as Laboratory Assistants in J.N. College and if there is any fall in their emoluments, the same should be protected by the grant of personal pay to be absorbed in future increments of their emoluments. There will be no order as to costs.



(A.V HARIDASAN)
JUDICIAL MEMBER


S.P. Mukerji
30.X.84

(S.P MUKERJI)
VICE CHAIRMAN

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