

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

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Original Application No: 759/88

Transfar Application No:

DATE OF DECISION: 22.7.1994

J.V.Joshi

Petitioner

Shri G.S.Walia

Advocate for the Petitioners

Versus

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Union of India & Ors.

Respondent

Shri P.M.Pradhan.

Advocate for the Respondent(s)

CORAM :

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The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,

The Hon'ble Shri M.R.Kolhatkar, Member(A).

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of  the Tribunal ?

*M.R.Kolhatkar*  

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(M.R.KOLHATKAR)  
MEMBER(A).

(9)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH.

Original Application No. 759/88.

J.V.Joshi. .... Applicant.

V/s.

Union of India & Ors. .... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,  
Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearances:-

Applicant by Shri G.S.Walia.

Respondents by Shri P.M.Pradhan.

JUDGMENT :-

(Per Shri M.R.Kolhatkar, Member(A) Dt. 22.7.1994.

The applicant was appointed as X-ray Technician in Cottage Hospital, Silvassa, Dadra & Nagar Haveli which is a Union Territory, w.e.f. 27.12.1976 in the pay scale of Rs.260-430. It is the contention of the applicant that his pay fixation in terms of IIIrd Pay Commission effective from 1.1.1973 was wrongly done and he ought to have been fixed in the pay scale was to the post of Rs.330-560 which/the pay scale applicable in other Union Territories. According to the applicant, as a result of this anomaly, in terms of IVth Pay Commission also the corresponding pay scale given to the applicant was Rs.975-1540 as against Rs.1350-2200/-. According to the applicant, the Administration was aware that the pay scale actually given compares unfavourably with the pay scale in other Union Territories and in this connection he relied on a copy of the letter dt. 21.4.1979 on the subject of "Revision of Pay Scales of Technical Staff under Medical and Health Department" addressed by Chief Medical Officer

Dadra & Nagar Haveli to the Deputy Secretary to the Government of India, Ministry of Health and Family Welfare where it is stated that the duties and responsibilities of these posts are similar and incumbents on these posts have the requisite educational qualifications and satisfy all other norms as applicable to the corresponding posts under other U.Ts./C.G.H.S./ Delhi Administration/Govt. of Goa, Daman and Diu etc. ; specifically pay scale of Rs.330-560 was recommended for the post of X-ray Technician Class.III. The applicant states that he had also from time to time sent representations either individually or collectively. There are several representations made in 1982 vide pp 47 to 58. The matter was also taken up by the Administrator, Dadra & Nagar Haveli with the Health Minister vide page 59. In 1987 after the decisions on the IVth Pay Commission were announced, further representations came to be made; later on, the applicant came to be selected for the post of X-ray Technician in the Union Territory of Daman in the pay scale of Rs.1200-2040 as against the scale of Rs.975-1540 in Dadra & Nagar Haveli and the applicant had requested for acceptance of his resignation in case the pay scale as in Daman could not be given to the applicant. The prayer of the applicant is to give him the revised pay scale not only w.e.f. 27.12.1976 when he came to be appointed, but also to make a declaration as to the proper pay scale attached to the post of X-ray Technician w.e.f. 6.3.1970 when the Central Pay Scales were first applied to Dadra & Nagar Haveli and the post of X-ray Technician was fixed in Rs.110-180. The applicant also wants fixation of his pay scale and arrears of

salary and consequential benefits. All these reliefs and 39(d) are sought in terms of Articles 14, 16 of the Constitution.

2. The Respondents have stated that different Union Territories have different Geographical conditions and the qualifications prescribed for the posts in different Union Territories are also different and, therefore, there is no question of discrimination and that there is no question of violation of fundamental rights in terms of Article 14 and 16 and 39(d). The applicant has also relied on the communication from the Union Territory of Pondicherry which indicates that the post of X-ray Technician from 1.1.1986 carries a pay scale of Rs.975-1540 as in case of Dadra & Nagar Haveli and there is a separate post of Radiographer which carries separate pay scale of Rs.1350-2200. The Respondents have not dealt with the correspondence referred to by the applicant at the level of the Administrator or at the level of Chief Medical Officer or the correspondence with the Collector relating to the request for acceptance of the applicant unless the pay scale as in Daman is given to him.

3. At the stage of arguments, the learned counsel for the Respondents has stated that the conditions in the Union Territory of Dadra & Nagar Haveli are quite different from conditions in Union Territory of Delhi and Chandigarh which are bigger Territories and the pay scales ~~sanctioned~~ in those Territories cannot be claimed by the incumbents of corresponding posts in smaller Union Territories like Dadra & Nagar Haveli. The Respondents have also relied on the Supreme Court

Judgment in the case of State of West Bengal And Others V/s. Madan Mohan Sen and Others (1993 SCC (L&S 1063) in which the Hon'ble Supreme Court after relying on an earlier decision in State of M.P. V/s. Pramod Bhartiya (1993) 1 SCC 539) held that the fact of similarity in academic qualifications and physical requirements/<sup>was</sup> not decisive and what has to be seen is whether persons who claim parity in pay perform similar duties, functions and responsibilities. The applicant has relied on OA No.53/89 decided by this Tribunal on 7.12.1993.

4. In our view these Judgments by the Supreme Court have no applicability in the instant case. It is not in dispute that the X-ray Technicians in the Government Hospital in the Union Territory of Dadra & Nagar Haveli perform the same functions and discharge the same duties and responsibilities as X-ray Technicians in other Union Territories. Even assuming that conditions in Dadra & Nagar Haveli are different from those in Chandigarh/ <sup>and</sup> Union Territory of Delhi, there is no reason why the X-ray Technicians in Dadra & Nagar Haveli should not get the same pay scale as X-ray Technicians in the Union Territory of Daman which is only 35 Kms from Dadra & Nagar Haveli and which under earlier dispensation was being administered similarly. In fact, the applicant was selected for a post of X-ray Technician in Government Hospital in Daman and there is documentary evidence indicating that he was offered a pay scale of Rs.1200-2040, but he was not relieved on the ground that the proposal for revision of the existing pay scale of Rs.975-1540 was under consideration. We therefore, consider that the applicant succeeds.

(B)

- 5 -

5. Regarding the claim of the applicant to declare that the pay scale of X-ray Technician in the Union Territory of Dadra & Nagar Haveli for all purposes ~~be~~ deemed to have been revised w.e.f. 6.3.1970 when the pay scales were made applicable to Union Territory of Dadra & Nagar Haveli, We are unable to accept the claim because first of all the applicant was not employed as on 6.3.1970. He entered the service only on 27.12.1976. Secondly, any claim to revise any pay fixation and the arrears of pay from the date of initial appointment has to be considered in terms of time limit laid down in section 21 of the Administrative Tribunals Act. Considering all the circumstances therefore, we dispose of this OA by passing the following order :

O R D E R

1. The Original Application is allowed.
2. The Respondents are directed to allow the pay scale of Rs.1200-20-2040 to the applicant w.e.f. 1.1.1986 the date of coming into force of the revised pay scales in terms of recommendations of the IVth Pay Commission. The applicant should be given arrears of pay scales so revised ~~with applicable rate of interest in the case of Provident Fund.~~
3. No orders as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)  
MEMBER(A)

M.S.Deshpande  
(M.S.DESHPANDE)  
VICE-CHAIRMAN

B.