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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

88

Original Application No: 283/89

Transfer Application No:

DATE OF DECISION 11-1-93

SHRI A.D.PATHAK Petitioner

SHRI D.V.GANGAL Advocate for the Petitioners

Versus

Union of India and ors. Respondent

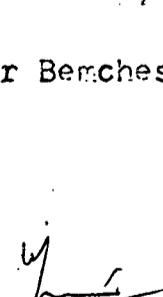
Shri P.M.Prakash Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri JUSTICE S.K.DHAON, Vice-Chairman.

The Hon'ble Shri M.Y.PRIOLKAR, MEMBER (A)

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. Whether it needs to be circulated to other Benches of the Tribunal ?


(M.Y. PRIOLKAR)
M/A

NS/

(6)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

ORIGINAL APPLICATION NO: 283/88

Shri A.D.Pathak

.... Applicant

v/s

The Union of India
and others

.... Respondents.

CORAM : HON'BLE JUSTICE SHRI S.K.DHAON, Vice-Chairman.

HON'BLE SHRI M.Y.PRIOLKAR, MEMBER (A)

Appearance :

Shri D.V.Gangal, Adv.
for the applicant.

Shri P.M.Pradhan, Counsel
for the respondents.

JUDGEMENT

(PER : M.Y.PRIOLKAR, M/A)

DATED : 11-1-93

The grievance of the applicant in this case is that he was selected as B.C.G. team leader by the Haveli Administration of Dadra and Nagar on 19.8.1970 and given the pay scale of Rs.137-205, though the rules, according to him, provided for the pay -scale of Rs.175-275. Even this lower pay scale of Rs.137-205 is stated to have been subsequently reduced to Rs.110-180. It is further alleged that instead of the correct pay scales applicable to this post of Rs.425-640 with effect from 1.1.1973 and Rs.550-750 with effect from 11.8.1981, respectively, he was given the lower pay scales of Rs.260-400 from 1.1.1973 and Rs.330-560 from 11.8.1981. After the Fourth Pay Commission's Report this pay scale is stated to have been revised to Rs.1400-2300 but the applicant has been granted pay scale of only Rs.1200-2040.

2. According to the applicant, while working as a junior clerk in Dadra and Nagar Haveli Administration, he applied in response to an open advertisement for the post

of B.C.G. team leader and was selected and appointed to that post on 19.8.1970 in the scale of Rs.137-205 when his basis pay as Junior Clerk was Rs.150, although the ~~payscale~~ of the post of B.C.G. team leader was Rs.175-275 which should have been further revised from 15.12.1971 to Rs.250-380, from 1.1.1973 to Rs.425-640, from 11.8.1981 to Rs.550-750 and from 1.1.1986 to Rs.1400-2300. The respondents have stated that the pay scales of Rs.175-275 is mentioned in the recruitment rules for this post and this pay scale was according to the revised Gujarat Civil Services Pay Rules which were made applicable to the Union Territory of Dadra and Nagar Haveli with effect from 1.6.1967 vide Ministry of Home Affairs letter dated 15.12.1970. The applicant gave option on 19.7.1973 electing the revised pay scales of Central Government from 6.3.1970. According to the respondents the Central Pay Scale applicable to the B.C.G. team leader was Rs.110-180 at the relevant time and the applicant having himself exercised the option electing the Central pay scale from 6.3.1970 on 19.7.1973, there was no question of Gujarat Pay Scale being made applicable to him. His pay was fixed in the Central Pay Scale of Rs.110-180 as on 19.8.1970, i.e. the date of his appointment as the B.C.G. team leader. The overpayment due to the fixation of Central payscale viz. Rs.489.80 was also effected as pay and allowances under the old Gujarat Scale was higher than the Central payscale. The respondents have also stated that the applicant's request for protecting his basis pay in the cadre of clerk was also rejected on 18.8.1972 as the applicant was not having any lien on the post of a clerk. The respondents have also stated that as per Government of India sanctions, the applicant was granted the pay scale of Rs.260-400 from 1.1.1973 and Rs.330-560 from 29.6.1974. With effect from 1.1.1986, after the Fourth Pay Commission's Report, the applicant is placed in the regular scale of

Rs.1200-2040. The applicant's pay is stated to have been correctly fixed in these pay scales on the ~~respective~~ dates in accordance with ~~rules~~ of pay fixation.

3. It is seen from the copy of recruitment rules notified on 11.8.1971 for the post of B.C.G. team leader (Annexure D to the application) that the Scale of Pay of this post has been given therein as Rs.175-275 with the rider "likely to be revised in the Central Scale". It is also clear from the Government of Gujarat Finance Department, notification dated 19.6.1969 that under the Gujarat Civil Services Pay Rules 1969 which came into force from 1.6.1967, ~~that~~ the pay Scale of the post of B.C.G. Team Leader earlier was Rs. 137-205 and it was revised to Rs.175-275 from 1.6.1967. In fact, the Government of India, Ministry of Home Affairs letter dated 15.12.1970 addressed to the Administrator Dadra and Nagar Haveli Administration, a copy of which was produced by the learned counsel for the respondents, conveyed the approval of the President to the revision of pay Scales of, among other posts, the post of B.C.G. team leader from Rs.137-205 to Rs.175-275 with effect from 1.6.1969 in accordance with Gujarat Civil Services Pay Rules, 1969. The approved pay Scale of the post of B.C.G. team leader in Dadra and Nagar Haveli as on 19.8.1970 when the applicant was appointed to that post was, therefore, Rs.175-275. Evidently, the pay scale of Rs.137-205 for this post stated in the appointment letter dated 14.8.1970 issued by the Collector, Dadra and Nagar Haveli was an error and the pay Scale should have been correctly mentioned as Rs.175-275. The option given by the applicant on 19.7.1973 electing the Central Pay Scale from 6.3.1970 instead of the Gujarat Pay Scale was obviously

with reference to this lower Gujarat Pay Scale of Rs.137-205 mentioned in the appointment letter. May be the might have opted to retain the correct Gujarat Pay Scale of Rs.175-275 if the lower pay scale of Rs.137-205 had not been wrongly shown in the appointment letter. We do not, therefore, find any merit in the contention of the respondents that the applicant himself having exercised the option for the Central Pay Scale on 19.7.1973 from 1970, there was no question of the Gujarat Pay Scale being made applicable to him. Having wrongly shown a lower Gujarat pay scale in the appointment letter and obtained on that basis the applicant's option in 1973 without rectifying the error till then, it is only fair that the respondents should now give a fresh option to the applicant to opt for the Gujarat scale of the Central Scale from the prescribed date i.e. 6.3.1970 which will cover his appointment as B.C.G. team leader on 19.8.1970 on the basis of the correct Gujarat pay scale of Rs. 175-275 applicable to that post at that time.

4. The respondents have also filed a copy of the Ministry of Finance, Department of Expenditure notification dated 29.6.1974 under which the pay Scale for the post of B.C.G. team leader in Dadra and Nagar Haveli has been revised from 1.1.1973 to Rs.260-400 from the existing Rs.110-180. The subsequent pay scales are also stated to be as per the orders of the Ministry on the recommendations of the Pay Commission. The applicant claims the higher pay scale of Rs. 250-380 and the corresponding higher scales subsequently for the post of B.C.G. team leader on the basis of the letter dated 15.12.1971 (Annexure E) from the Director General of Health Services in which the Central Scale for the post of B.C.G. team leader is given as Rs.250-380. In support of this claim,

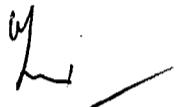
the applicant relies on the judgement dated 24.8.1987 of the New Bombay Bench of this Tribunal in T.A.Nos. 125/86 and 126/86 in which higher pay scales were allowed retrospectively to the posts of Staff Nurse and Projectionist in Dadra and Nagar Haweli Administration on the doctrine of "Equal Pay for Equal Work". The Tribunal had found that these two posts were discriminated against, as compared to posts in other Union Territories, though they were identical in all respects. In the present application however, in our view, no case has been made out by the applicant that in any of the Union Territories and/or any other part of the Union of India, the B.C.G. team leader having the same qualifications and experience and performing similar duties as that of the applicant has been granted any higher pay scale. According to the respondents, the pay scale of Rs.250-380 communicated by the Directorate General of Health Services was applicable only in that Directorate and not in any of the Union Territories. They have also stated that the B.C.G. team leader in the Epidemiological section of the Directorate General of Health Services was prescribed the qualifications of Matriculation with 5 years experience in Tuberculin testing and B.C.G. vaccination and the B.C.G. team leaders were also supposed to carry out field work in connection with the research studies on B.C.G. vaccination etc and to participate in the training of Medical Officers and B.C.G. team leaders of the State Governments, but the B.C.G. team leaders of Union Territories were not required to carry out such duties. It is clear, therefore, that the principle of equal pay for equal work will not apply in this case

and the applicant's claim for higher pay scale of Rs.250-380 from 15.12.1971 has to be negatived. The applicant will thus also not be entitled to the corresponding higher revised scales subsequently as claimed by him on the basis of fitment of scales.

5. The respondents have also contended that this application which is for higher pay scale from 1970 but filed only in 1988 is barred by the provisions of Section 21 of the Administrative Tribunals Act, 1985. The applicant had been representing repeatedly but without any response from the respondents. According to the respondents, the applicant's request for protecting the basic pay in the cadre of clerk and for higher pay scale of Rs.250-380 had been rejected on 18.8.1972 and 9.1.1973 respectively. It is seen, however, that he was subsequently informed by letter dated 24.10.1973 that "matter regarding pay scale of Rs.250-380 and other matters are under active consideration." But there was no further reply in spite of regular reminders and representations right upto 1988. Besides, as we have held earlier, the applicant's option for electing the Central pattern of pay scales has been obtained on a lower ~~equivalent~~ pay scale wrongly indicated in the appointment order. We, therefore, are of the view that this is a fit case to be considered on merits and we have done so.

6. On the basis of the foregoing discussion, the applicant succeeds only in part. We direct that the applicant be given a fresh opportunity to opt for the Central pattern or the Gujarat Pattern as on 6.3.1970 making it clear that the Gujarat pay scale applicable to him from 19.8.1970 in the post of B.C.G. team leader would be Rs.175-275 and not 137-205 as was the case at the time of obtaining his earlier option. If he elects the Gujarat pay scale, his further fitment

in the subsequent approved Central Pay Scale from 1.1.1973 will be on the basis of the pay drawn in the Gujarat Pay Scale of Rs.175-275 and further pay fixations in revised Central pay scales will be in accordance with the rules governing such pay fixation and he will be entitled to arrears of pay also as well as any other consequential benefits as may be admissible. The prayer for higher Central Pay scales is, however, rejected. There shall be no order as to costs.


(M.Y.PRIOLKAR)
MEMBER(A)


(S.K.DHAON)
Vice-Chairman

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