

(14)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

C.A.595/87.

1. Civilian Gazetted Officer's Association, National Defence Academy, Khadakwasla,
PUNE - 411 023.

& 46 Others.

.. Applicants in
C.A.No.595/87.

C.A.161/89.

1. Civilian Gazetted Officers' Association, National Defence Academy, Khadakwasla,
PUNE - 411 023.

& 55 Others.

.. Applicants in
C.A.No.161/89.

v/s.

1. Union of India, through Secretary to the Ministry of Defence, New Delhi.
2. Under Secretary to the Government of India, Ministry of Defence, New Delhi.
3. The Director General, Military Training, Army Head Quarters, New Delhi.
4. The Commandant, National Defence Academy, Khadakwasla, PUNE - 411 023.
5. The Principal, National Defence Academy, Khadakwasla, PUNE - 411 023.
6. Deputy Commandant, Chief Instructor, National Defence Academy, Khadakwasla, PUNE - 411 023.

.. Respondents in
C.A Nos.595/87 and 161/89.

Coram : Hon'ble Vice Chairman Shri U.C. Srivastava.
Hon'ble Member(A) Shri M.Y. Friolkar.

Appearances:

Shri N.K. Iyer, Advocate
for the Appilicants.

Shri R.K. Shetty, Advocate
for the Respondents.

JUDGMENT

DATED: 26-1-1989

IN PER : Hon'ble Shri U.C. Srivastava, Vice Chairman

The applicants in these two connected petitions are Lecturers, Professors and Readers in the National Defence Academy located at Khadakwasla District Pune, though the Officers Association has also joined with them as one of the petitioners. The main reliefs claimed by them are

1. Implementation of revised University Grant Commission (UGC) pay scale to them with effect from 1.1.1986.
2. The posts which have not been filled from 1983 to be filled in by promotions.
3. The accommodation may be allowed to them in accordance with rules.
4. The work load which has been increased vide letter issued in December 1988 to be declared illegal and workload as existed before the Court.
5. The pay scale in respect of promotion, existing promotion may be fixed in the revised scale of pay without delay.
6. The applicants have ventilated grievance through this petition that the academic teaching staff at the academy have little in common with their counter parts in the Colleges/Universities except for identical designation. The teaching staff at the academy renders numerous extra duties in addition to their teaching work. Yet the pay scale of their counter parts is on high side and they are on lower pay

:- 3 :-

scale and stagnation for about 2 decades against which they have been making representations ever since the introduction of UGC pay scale in Colleges/Universities in 1973-74. It still continues.

2. The U.G.C. pay scale was implemented so far as teaching staff of National Defence Academy is concerned which according to the applicants were result of their agitation and representation yet, this implementation did not give them the desired reliefs. Earlier relief was given to a section only but later on it was given to others also and it was conveyed vide letter dtd. 30.6.1987 that the Lecturers who were recruited in relaxation of qualifications will earn increments in the U.G.C. pay scale only after acquiring the said qualifications. The Ministry of Defence set up a Screening Committee to review the cases of Readers and Professors and have granted them the U.G.C. scale of pay with effect from 1.1.1983 and the Professors and Readers who were already retired but were in service on 1.1.1983 will also be granted the same scale with effect from 1.1.1983. The benefit is available to those who are retired who will also be granted the same scale by Screening Committee. It also provides that the post of Readers/Professors be filled in through direct recruitment failing which by deputation or transfer. The post of Vice Principal and the Principal will be filled in through promotions failing which by direct recruitment. Vide letter dated 20.1.1983 the revised scale of pay to the Civilian Academic Staff at Academy and Army Cadet College wing at Dehradun was conveyed. It was provided that the revised scales would be

payable to those who fulfil the qualification prescribed by U.G.C. for similar post in Universities and that the Vice Principal, Professors and Readers would continue to get special allowance of Rs.150/-.

The Principals of both the academies would be provided with free furnished bungalows. The complaint of the applicants regarding workload is that the Principal vide order dated 31.12.1988 has increased the work load of Lecturers and Readers and instead of 21 periods per week it was increased to 24 periods per week so far as Lecturers are concerned. Prior to this introduction some meetings and conferences took place. The applicants have relied upon the Mahajani Committee Report in the year 1968 which had laid down the actual needs of the Cadets and the requirements of the teaching staff and recommended workload of Professors and Readers at 12 periods per weeks and that of Lecturers to be 18 periods per week with strength of 25 cadets per class.

3. The recommendations mentioned above were partially implemented in late 1984 but the research qualification was added subsequently, referred to above, denied the benefit of same and blocked promotional avenues of large number of academic staff. There was no such condition of research qualification in the advertisement when all these persons applied and were appointed.

4. The applicants represented against the same and it appears that as a result thereof revised pay scales were applied to all Lecturers without any reservation vide a letter dtd. 1985 but no relaxation in respect of

-: 5 :-

qualification was granted to the Readers even though relaxation for the Readers working in the Universities was granted. The Respondent No.1 vide its letter dtd. 30.6.1987 part of which is also under challenge and contains the Presidential Order made revised pay scales available to all the Teachers except to Readers with effect from 1.1.1983 instead of 25.3.1983. By this letter the **respondents** asserted the implementation of U.G.C. pay scales to the applicants alongwith certain specification as regards qualification. According to applicant this revised letter is silent regarding other service matters in respect of the claims made by them by their representation. The benefit of U.G.C. scale was extended to all the Readers also including those who did not possess U.G.C. qualification subject to the condition that their cases would be examined by Screening Committee. It was on this basis that recommendations of Screening Committee were issued on 29.12.1987.

5. The respondents have pleaded that the UGC pay scale is applied to the applicants by way of concession. In the report of 3rd Pay Commission there was no reference to the teaching staff of academy but there is no denial of the fact that Screening was done. The Teachers of the teaching staff at the College of Military Engineering, Pune have been recommended the U.G.C. pay scales by the Ministry. The pay scale of Group A Administrative Officer was recommended by the 4th Pay Commission. The respondents have further pleaded that the 3rd Pay Commission was applicable to the applicants and as such the revised U.G.C. pay scale was not applicable to them. The qualifications mentioned

in the recommendation of U.G.C. were essential part of it.

The respondents have asserted that the option was given to the applicant as to whether they would like to be governed by the 4th Pay Commission to which there was no response and the applicants have stated that there was no question of the acceptance of the report as they were governed by the U.G.C. pay scale which was not available at that time.

6. Rule SRO 279-1968 which provided for appointment of Reader by promotion from amongst the Lecturers fulfilling the minimum qualifications while Rule SRO 6/71 provided that Professors were to be promoted from amongst Readers provided that they fulfilled the qualifications but no DPC for promotion to the post of Professors was proposed and as such no promotions were given between 1983-88 though it should have been convened every year. According to the applicants prior to amendment in the Recruitment Rules in the year 1988 the vacancies which had come into existence till then are to be filled in accordance with the rules as they existed prior to the Rules of 1983 and in this connection they have made reference to the case of T.R. Kapur and Another V/s. State of Haryana AIR 1987 SC page 450.

7. The respondents' contention is that UGC scales was given to them by way of concession as such there was no question of constituting D.P.C. and promotion could be given if vacancies arise and filling of same is considered necessary and that too in accordance with the qualifications laid down and ~~prescription~~ for the same provided in the rules. It was further contended that SRO dtd. 22.12.1971 regarding

recruitment rules no longer exist as it has been superceded by the SHO dtd. 21.3.1988 prescribing pay scale qualifications and recruitment, regularisation, academic course as decided by the Government of India vide letter dtd. 30-6-1987. The recruitment rules ~~have been~~ which have been framed under Article 309 of the Constitution of India have been pleaded to be valid and free from any vice of unconstitutionality and provide what is needed or was wanting and it has been pleaded the Rules ~~not~~ provide the method of promotion for the posts of Principal and Vice Principal and the Professors and pay scale could not be made a condition for it.

8. The applicants have also made complaint regarding work load. According to them Teachers of at every level who are to prepare ~~between~~ ^{lectures}, take tutorials, give other guidance are also required to perform extra curricular duties apart from ~~but~~ ignoring all this the work load has been increased. Their complaint in this application is regarding the allotment of quarters also it has been contended that houses are not allotted in accordance to the rules and policy of pick and choose is adopted.

9. On behalf of the applicants the plea that equal treatment has not been given to them as Government servant alongwith similarly placed other government servants and that they have been discriminated with other Lecturers, Readers and Professors working in the Universities on similar posts and that UGC pay commission which was given to them after considerable fight and deliberation without any condition that it was being given for the time being by way of concession has been taken away and Justice has not

been done to them by 4th Pay commission which has wiped their character status and category of teaching staff and their placement as Administrative Officer all in violative of Articles 14 and 16 of the Constitution of India. It was contended arbitrariness and discrimination is apparent. In this connection reference to certain cases was also made. The decision of this Bench in C. Krishnamurthy v/s. Union of India C.A.635/87 decided on 18.3.1991 directing the respondents to consider the applicant who was working as Professor in Electrical Engineering College of Military Engineering prayer for grant of the scale w.e.f. 1.1.1973 i.e. the date which was accepted for other Professors of Military Establishment were relied on. The said case has no applicability to the facts of this case. In that case the cabinet ultimately decided to give them the same pay scale to the Professors of Electrical Engineering and that of College of Military Engineering with that granted to Professors of other Engineering Colleges and yet the date from which it was given was the date on which cabinet took a decision and not from the date it was given to other Professors ^{to} from whom they were equated without their being any rationale behind it. Reference to other cases highlighting the doctrine of Equal pay for Equal work was also made.

10. It is to be borne in mind that the Doctrine of equal pay for equal work is not an abstract one and it is open to the state to prescribe different scale of pay for different posts having regard to the educational qualification duties and responsibilities of the post. The Principle of equal pay for equal work is applicable when employees holding

-: 9 :-

the same rank performs similar functions and discharge similar duties and responsibilities are treated differently. The application of doctrine ~~is~~ arises where employees are equal in every respect but they are denied the quality in the matters relating to the scale of pay. The principle has been reiterated by the Supreme Court repeatedly and some of the cases reference to which was made are Randhir Singh V/s. Union of India, AIR 1982 SCC 618. (AIR 1982 SC 879) Dhirendra Chamoli V. State of U.P., (1986) 1 SCC 637; V.J. Thomas V. Union of India 1985 Supl SCC 7 (AIR 1985 SC 1055); P. Savitri V. Union of India AIR 1985 SC 1124; Bhagwan Dass V. State of Haryana AIR 1987 SC 2049 and Jaipal V. State of Haryana, 1988 SC 1054 and State of U.P. J.P. Chaurasia AIR 1989 SC page 19.

11. In the case V. Markendeya and Others Vs. State of Andhra Pradesh and Others 1989 SC 1308 after considering earlier the Court observed

" Where two class of employees perform identical or similar duties and carrying out the same functions with the same measure of responsibility having same academic qualifications, they would be entitled to equal pay. If the State denies them equally in pay, its action would be violative of Arts. 14 and 16 of the Constitution, and the Court will strike down the discrimination and grant relief to the aggrieved employees. But before such relief is granted the Court must be consider and analyse the rationale behind the State action in prescribing two different scale of pay. If on an analysis of the relevant rules, orders, nature of duties, functions, measure of responsibility, and educational qualifications required for the relevant posts, the Court finds that the classification made by the State in giving different treatment to the two class of employees is founded on rational basis having nexus with the objects sought to be achieved, the classification must be upheld. Principle of equal

-: 10 :-

pay for equal work is applicable among equals, it cannot be applied to unequal. Relief to an aggrieved person seeking to enforce the principles of equal pay for equal work can be granted only after it is demonstrated before the Court that invidious discrimination is practised by the State in prescribing two different scales for the two class of employees without there being any reasonable classification for the same. If the aggrieved employees fail to demonstrate discrimination, the principle of equal pay for equal work cannot be enforced by Court in abstract. The question what scale should be provided to a particular class of service must be left to the Executive and only when discrimination is practised amongst the equals, the Court should intervene to undo the wrong, and to ensure equality among the similarly placed employees. The Court however cannot prescribe equal scales of pay for different class of employees."

In the said case higher classification and experience based on length of service and different pay scale for different cadres was involved.

12. If the classification while prescribing different scales of pay scale is founded on reasonable nexus the principle of 'equal pay for equal work' will not be applicable but if the classification is founded on unreal basis or there is no reasonable nexus or rationale behind the classification would be un reasonable and thereby would be violative of Article 14 and 16 of Constitution of India and the principle of 'equal pay for equal work' must then come into play.

13. It is true so far pay scale is concerned it is a matter which lies in the hands of Executive and the Pay Commission and not the Courts. But the Courts jurisdiction comes in when it is found that there is breach of Article 14 of the Constitution of India and equals are not treated equally and discrimination between the employees interse,

-: 11 :-

said to be performing same duties and functions and unreal and unreasonable. It is the totality of the circumstances which is to be considered in applying the coveted principle of 'Equal pay for equal work' which also gets support from Directive Principles of State Policy viz. Article 39 of the Constitution of India.

14. The army is the most disciplined force in the Country. The Teachers and Professors teaching in the Institution in which cadets come to study and get theoretical and practical training get written and unwritten training in discipline at every stage. The Teachers and Professors face students or cadets who know that they are going to join a disciplined force and from the beginning to end stick to it and can at no stage do anything against it without the risk of being out from academy and without any recourse to any mode to resist it as may be prevalent elsewhere. In this respect the Teachers and Professors are free from tension and worry with which their counterparts elsewhere viz. in Civilian life are placed. The Professors and Teachers in the National Defence Academy have to perform some administrative functions and apparently required also have to participate in extra curricular activities take Teachers elsewhere. They too have to prepare Lecturer for delivering the same to the cadets and they too have to coach them but in the institute necessarily and invariably. The work which they perform may be akin to their counterparts in University and more or less they also are to possess similar educational qualifications as Teachers and Readers and Professors as per their allegations. In the 3rd Pay

:- 12 :-

Commissions Report they were treated to be the Teachers and ultimately the Government yielded and granted them the U.G.C. pay scale may it awaiting next pay commissions report or contemplated change in rules and qualifications which has been given to various others. The 4th Pay Commission it appears did not consider their position and equated them with Administrative Officer. Obviously their position was to be considered in the totality of the circumstances including the extra and special benefit which is set to get while others did not get. According to the learned Counsel for Respondents the other benefits, facilities in terms of money or which can be equated in terms of money like free residence in pollution free area availability of goods at cheaper rate etc. and free from tension and quantity of work which may not be the same are factors which were taken into account before next pay scales qualifications and service rules.

15. But it cannot be denied all that this a matter which is to be taken into consideration by the Government and by the Pay Commission again. Accordingly in case a fresh pay commission sits their case can be reconsidered. This is a matter for the pay commission to consider as and when it sits again but it is not known when a fresh pay commission will be appointed. But the Government can always consider all this as such in view of the facts said above and the fact the U.G.C. Pay scale was granted was may it be as a result pressure or concession which accepted it not only for the Teachers but also for Engineers and others but which was subsequently taken away. The Government will consider this demand for pay scales in the light of the totality of the circumstances including duties, functions, responsibilities,

extra benefits privileges, facilities.

16. Coming to the question of bringing forward of Statutory Rules in 1988 it is to be seen Article 309 of the Constitution of India confers the powers and appropriate legislature to regulate the recruitment and conditions of service of persons appointed for the purpose of the affairs of Union or any other state. In exercise of the powers conferred under Article 309 Statutory service has been framed by the President in which the President is competent to do. The validity of these rules ultimately has been challenged by applicants on the ground that the same acts retrospectively which can not be done. The other challenge is that the posts which were lying vacant are to be filled in in accordance with the rules as they existed when vacancy occurred under Article 309 of the Constitution the Government has got full powers to frame service Rules and so long as they do not violate any constitutional provision they are valid and enforceable. The Constitution nowhere puts a bar on framing of rules having retrospective effect. It has not been shown as to how these rules are arbitrary and will result in creating discrimination. If it is desired to have better standard and excellance in the education to be imparted and qualifications for those who will impart the same for achieving the defect has a rationale behind it and we have not been shown as to how it is arbitrary or discriminatory.

17. As has been observed earlier rules with retrospective effect can always be framed, in the case of D.S. Vadera V. Union of India AIR 1969, held that the rules framed under the Proviso to Article 309 by the President, or by such

:- 14 :-

person as he may direct are to be have full effect both prospectively and retrospectively.

18. It has been admitted by the applicants that the Universities for the post of Lecturers, Readers and Professors qualifications have been prescribed. It has not been canvassed that any where the qualifications go with the scale. Slightly so as it can not be contended that higher qualification can be dependant on higher pay scales or a particular pay scale only. In the case of J. Rangaswamy V. Government of Andhra Pradesh AIR 1990 SC page 535 it was observed where for Professor the possession of Doctor Degree was made necessary qualification it was observed that the "post in question is that of prescription of the Doctorate as a necessary qualification therefore is nothing unusual. The petitioner also stated before us that the to the best of knowledge there is no any Doctorate course any where in India in the Radiological Physics held by him is more relevant than a Doctorate in Nuclear Physics has been prescribed. There is nothing *prima facie* preposterous about requirements. It is not for us to assess the comparative merit of such doctorate of the B.A.R.C. diploma held by the Professor and decided and directed what should be the qualification to be prescribed for the post in question. It will be open to the petitioner, if so advised, to move the College, University, Government, Indian Medical Council or other appropriate authorities for a review of the prescribed qualifications and we hope that, if a doctorate in Nuclear Physics is to absolutely irrelevant for the post in question as is sought to be made out by the petitioner, the authorities concerned will take expeditious steps to revise the necessary

qualifications needed for the post appropriately. But on the qualifications as they stand today, the petitioner is not eligible to the post and cannot legitimately complain against his non-selection."

19. It is **open** for the rule making authority to prescribe the particular qualification and there is no wrong in it though it is open to the challenges to approach the appropriate authority for its review. Regarding qualification applicant have approached the Government but did not agree to it. The qualification to prescribed is keeping in par with the qualification prescribed in Universities and with a particular object which is sought to be achieved in such Institutions like National Defence Academy which type of institution in some respect may be a class by themselves. In the case of T.R. Kapur V. State of Haryana AIR 1987 SC 415 at page 422 where it was held that right to be considered for promotion is a condition of service. The Court observed.

"It is well settled that the power to frame rules to regulate the conditions of service under the proviso to Art. 309 of the Constitution carries with it the power to amend or alter the rules with a retrospective effect. It is equally well settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may not be."

It was further held that:-

"an authority competent to lay down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively."

It was, however, clarified that :-

"unless it is specifically provided in the rules, the employees who are already promoted before the amendment of the rules cannot be reverted and their promotions cannot be recalled."

20. In the case of State of Maharashtra V. Chandrakant Anant Kulkarni AIR 1981 SC 1990 it was observed that mere chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion did not tantamount to a change in the condition of service. A right to be considered for promotion is a term of service, but mere chances of promotion are not.

21. In the case of K. Jagadeesan V. Union of India AIR 1990 SC 1072 it was held that the post of Mechanical Engineer in Geological Survey of India were amended and it was provided that promotion to the post of Director (I.E.) a degree in Engineering was a requisite qualification. It is held that it can not be said that it would be to allow the amendment with retrospective effect as far as the delinquent employee does not possess a Degree in Engineering but eligible for promotion under Provisional Rule was concerned more over the employee was not reverted from the post which where educational excellance is needs a particular standard is intended he occupies on the ground of any lack of any qualification. The only effect is that his chances of promotion or his right to be considered for promotion to the higher post is adversely affected. This cannot be regarded as retrospective effect being given to the amendment of the rules carried out by the impugned Notification and the challenge to the said notification on that ground must fail.

-: 17 :-

22. If any post for which qualification have been prescribed and the process for same had not started and was complete before new rules came into effect the appointment or selection will be made in accordance with new rules or the notification prescribing qualifications. There is no parallel in such appointment or in which yearly vacancy arise and such vacancy is to be filled within a period but it has not been done then in future the same will be done in accordance with year of vacancy.

23. It has also been canvassed before us that the accommodations have not been allotted in accordance to rules and regulations. The case of the respondents that certain houses at the National Defence Academy was constructed only for Civilian Academy Staff keeping in view the pay scales applicable to them prior to grant 4th Pay Commission. There is no denial as this assertion made in the counter affidavit. According to those accommodation which had already been reserved for civilian academy staff who obviously are also to be allotted accommodation cannot be given to the applicants. We have not found any averment that among the Teachers, Professors and Readers from pick and choose policy is awarded obviously allotment are to be made in accordance with a particular principles and is expected that the same will be done accordingly.

24. It was then strenuously contended that the Principal of the Academy on his own accord has all of sudden increased the work load vide letter dated 31.12.1988 issued in the month of December, 1988 and this increase of work load is unjust and against the norms and the Mahajani Committee of the year 1968 which had laid down certain norms

for it. The Respondents have stated that Conference in this behalf took place and thereafter orders for same increase in the periods to be taken every week were issued. This was done after taking into consideration the relevant factors. The Mahajani Committee report was given in 1968.

25. In the Mahajani Committee Report it has also been observed that attainment of requisite educational standards and acquire mental, moral and physical qualities is essential to his progressive and continued development. The committee also recommended while NDA Commandant has been designated to appoint visiting Professors from outside on tenure basis. Promotion to the Senior Lecturers, Readers and Head of the Department is to be made by Committee headed by the Commandant. The recommendations also provide the timetable to programme so as to provide much more facilities for receptivity and assimilation by cadets of National Defence Academy.

26. It is clear that this increase was after discussion with the Army Standing Establishment Committee. The Defence Personnel is the most disciplined branch of the country and obviously persons who are trained in the academy learn discipline to become member of disciplined force. The Teachers, Lecturers and Professors too have their contribution towards the same. From the year 1968 much changes have taken place and the strength of the cadre has also increased. The education and techniques or all directives has developed. It is also obviously the duty also teachers and Professors also increase their contribution towards it. The curriculum of the number of hours which a Teacher is required to be exclusively within the jurisdiction of the authorities concerned as the Courts

- : 19 :-

have no say in the matter. In case the work load is increased obviously the Teachers may be required to do little more work but they can be compensated by ~~initiate better cadets~~ or compensated by the Government in ~~some~~ other manner. The increase in working hours cannot be said to be too much or heavy. Obviously adjustment with other duties can always be possible and for it they can approach the Government or the Department that extra curricular activities if they consume more time which may affect their teaching work the same may be truncated. Such matters are normally outside the purview of the Courts jurisdiction unless there is breach of some law or constitutional provisions. None has been alleged in these cases, and it is not possible to interfere in the same. However, in case they approach the Government, government will consider the question of compensating them or reducing some other duties to some extent in case same is really desirable.

27. But for our observation that the government will consider the question of pay scale and work load as observed by us ^{in this judgment} ~~within jurisdiction~~ these two applications are dismissed as no case for interference has been made out. There will be no order as to costs.