

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this 4th the day of March, 2003

Coram: Hon'ble Mr. Govindan S. Tampi - Member (A)
Hon'ble Mr. K. V. Sachidanandan - Member (J)

O.A. 855 of 1999

1. Mrs. Sunita Satish Mulay,
wife of Satish Mulay,
Laboratory Technician,
P & T Dispensary No.1, Bajirao Road,
Pune.
R/o Flat No.5,
'Suvidha Apartments',
Near Canara Bank, Biburwadi,
District Pune.
2. Shri Janrao Govind Ranu,
S/o Govind Rano,
Laboratory Technicians,
P & T Dispensary No.1,
Bajirao Road, Pune.
R/o at : 5/52, P & T Colony,
Old Gultekadi, Pune,
District Pune.
3. Shri Mangesh Moreswar Subhandh,
S/o Moreswar Subandh,
Laboratory Technicians,
Post and Telegram Dispensary No.1,
R/o A & P Ale Tal Junner,
District Pune.
(By Advocate Shri S.P. Kulkarni) - Applicants

Versus

1. Union of India
through Senior Superintendent of
Post Offices,
(Pune City East Division),
Marketing Yard Post Office,
at P.O. Pune 411 037.
2. The Postmaster General,
Pune Region, Pune.
3. Chief Postmaster General,
Maharashtra Circle,
Old G.P.O. Building, Fort,
Mumbai.
4. The Director General (Posts),
Department of Posts,
Ministry of Communications,
Government of India, Dak Bhavan,
20, Asoka Road,
New Delhi 110 001.

.....2/-

5. Director,
Post Audit & Accounts,
Nagpur.
6. Deputy Director General (Medical),
(South Central Region) P & T,
O/o Chief Postmaster General,
A.P.Circle, Hyderabad.
(By Advocate Shri V.S.Masurkar)

O R D E R

By Hon'ble Mr.K.V.Sachidanandan - Member (J)

The Applicants were appointed by Department of Posts as Laboratory Technicians in the Post and Telegraph Dispensary at Pune. Their dates of appointment and the pay scale drawn by them at the time of appointment is reproduced as under:-

(a) Shri S.S.Mulay was appointed on 29.12.1983 as Assistant Engineer (Recruitment), O/o General Manager, Pune in the pay scale of Rs.330-560 (Rs.1350-2200) upto 31.12.1995.

(b) Shri G.R.Janrao was appointed on 14.10.1984 as Assistant Engineer (Recruitment), O/o General Manager, Pune in the scale of pay of Rs.330-560 (Rs.1350-2200) upto 31.12.1995.

(c) Shri M.M.Subandh was appointed on 28.11.1996 as Senior Superintendent of Post Offices, Pune East Division, Pune in the pay scale of Rs.1350-2200.

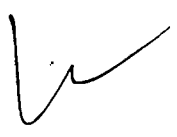
which is covered in the Recruitment Rules circulated by the Post and Telegraph Board, Ministry of Communications, Government of India, New Delhi. The prescribed essential qualifications for the above post was Matriculation with Diploma in Medical Laboratory Technology with at least one year's experience in Laboratory work or Science Graduate in Group 'B' stream. The pay scale prescribed as per Recruitment Rules was fixed as Rs.330-560/-. All the Applicants are Graduates and they fulfil the requisite conditions as per Recruitment Rules and rightly appointed in the successive pay scale. The Post & Telecommunications were brought into operation in 1986 and the P & T Dispensary was transferred under the control of Department of

....3/-

Posts sometime after 1986 and Applicants were brought under the control of Senior Superrintendent of Post Offices, East City Division, Pune. The duties and responsibilities of the Laboratory Assistant (Lab.Asst.for short) are inferior to Laboratory Technicians. The very terrminology of designation could be regarded as revealing the differentia. The Respondents are however interpreting the Recruitment Rules by deeming the duties of Laboratory Assistants as analogous to Lab Technicians and holding that the scale given to Lab Assistants (Non-Diploma holders in Medical Lab Technology) as the same although the scale of Rs.1350-2200/- was correctly given from 1.1.1986 as a replacement scale for Rs.330-560/- in accordance with the recommendations of the Fourth Pay Commission which was accepted by the Respondents. The Applicants averred that there is no question for erroneous grant of replacement of Rs.1350-2200 instead of Rs.1200-2040/-. Probably on erroneous misreading of Para XXIL of the C.C.S. (Revised Pay) Rules, 1997, page 36, 52 111), misinterpreting horizontal Para (2) and deeming Applicants as "Matriculate with some experience". The Applicants submit that the scale of Rs.1200-2040/- was in replacement of Rs.330-560/- is totally misconceived and erroneous. At no point of time and under no circumstances the scale of Rs.1200-2040 was recommended by the Fourth Pay Commission and since no such recommendation exists, the question of its acceptance and implementation does not arise. The scale of Rs.1200-2040/- was in replacement of lower scale of Rs.290-500 and not in replacement of Rs.330-560/- (wbich was factually and rightly

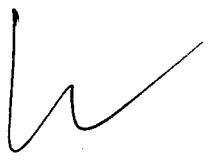
replaced by Rs.1350-2200/- and this was correctly fixed. There is no scope for holding such replacement as erroneous. The Applicants are eligible to draw pay in the scale of Rs.330-560/(Rs.1350-2200) followed by Rs.4500-125-7000 and not Rs.4000-6000 on the basis of the designation as well as Recruitment Rules and functional by Lab Technicians in various Health Services. The Applicants have been appointed in the current scale of pay and they have never made any representation to get their scale fixed. Holding the replacement scale of Rs.330-560/- as erroneous and contemplating recovery of the impugned orders thereof is illegal and non-sustainable. Annexure-A-1 (b) dated 1.10.1997 contemplating recovery is arbitrary and illegal. Reduction of pay after 11 years is not justified. Aggrieved by the same, the Applicant has filed OA 259 of 1998 and this Tribunal directed the Respondents vide Order dated 7.12.1998 not to take any action in pursuance of the order dated 1.10.1997. It is open to the respondents to issue show cause notice to the Applicants on the question of fixation of their pay and also regarding the alleged recovery of excess amount said to have been recovered from the applicants. After issue of the show cause notice to the Applicants and considering their reply the respondents were to pass an appropriate order regarding fixation of pay and if necessary regarding recovery of excess amount, if any, said to have been paid to the applicants. Further if the applicants were still aggrieved by the order of the respondents they were at liberty to challenge the same in accordance with law. All questions on merits were left open. Aggrieved by the said order, the Applicants have sought the following relief in the present OA.

....5/-



- (a) This Hon'ble Tribunal be pleased to pass the order for call of records for considering the issue (OA).
- (b) Hold and declare impugned order dated 4.5.1999 as non-speaking, unreasoned and arbitrary.
- (c) Quash and set aside order dated 4.5.1999 (Exhibit -A-1).
- (d) Direct Respondents to restore the pay fixed as per IV Pay Commission as on 1.1.1986 (which reduced arbitrarily vide order dated 1.10.1997) and reduced pay being paid arbitrarily).
- (e) Direct Respondents to maintain status-quo as to the scale of pay Rs.1350-2200 already given since 1.1.1986 or thereafter till the final outcome of this OA.
- (f) Hold and declare that applicants being Diploma Holders are entitled to the scale of Rs.1350-2200 and not Rs.1200-2040 as replacement scale of Rs.330-560/-.
- (g) Direct Respondents to pay arrears of fixation of pay as on the basis of Rs.1350-2200 (1.1.1996 till to date) within 2 months.
- (h) Direct Respondents to refer issue of pay scale anomaly of Lab Technicians to Anomaly Committee of 4th/5th/Pay Commission or Expert Body (To be constituted specially) and till then maintain status-quo.
- (i) Hold and declare that applicants being Diploma Holders are entitled to the scale of Rs.4500-7000
- (j) Any other and such further relief as may be deemed fit and proper by this Hon'ble Tribunal.
- (k) Cost if awarded be paid to Applicants.

2. The Respondents have filed detailed reply-statement contending that the Applicants were working as Laboratory Technicians at P & T Dispensaries No.I & II. Applicants are presuming that the pay of the post erroneously fixed to Rs.1350-2200/-w.e.f. 1.1.1988 instead of Rs.1200-2040 which is

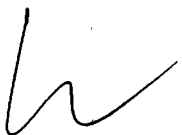


replacement of old pay scale Rs.330-560/- is correct. The Department of Posts, New Delhi under No.8-1/95-PE dated 1.10.1997 clarifying that the pay scale for the post of Lab.Technician was prescribed as Rs.330-560/-. On implementation of the recommendations of the Fourth Pay Commission, the pay of the Lab.Technicians in the scale of Rs.1350-2200/- fixed erroneously (instead of fixing the pay scale of Rs.1200-2040) which was the replacement scale of erstwhile pay scale of Rs.330-560/-. The Respondents submit that the Applicants are differently situated and they are praying for fixation of pay at various stages and therefore the present joint application is not maintainable in law. In reply to Para 4.4 of the OA the Applicants have agreed that they were appointed as Lab.Technicians in the scale of pay of Rs.330-560/- recommended by the Third Pay Commission w.e.f. 1.1.1975. The said pay scale of Rs.330-560/- was replaced to Rs.1200-2040 as per the Fourth Pay Commission w.e.f. 1.1.1986 and not as Rs.1350-2200 as demanded by the Lab Technicians. On the implementation of the Fifth Pay Commission, the pay of the officials has been further refixed in the scale of pay of Rs.4000-6000/- w.e.f. 1.1.1996 which is replacement of old pay scale of Rs.1200-2040/-. The Applicants further state that the scale of pay of Rs.1350-2200/- was correctly given w.e.f. 1.1.1986. There is no misrepresentation of replacement of pay scale of Rs.330-560/- by Rs.1200-2040/- as the orders from Department of Posts dated 1.10.1997 are very clear. From comparison of scale of pay with the designation in Navy, Army and

.....7/-

CGHS Lab.Technicians is not correct as the recruitment rules and conditions, duties responsibilities etc are different and distinct. The Applicants cannot claim parity of pay with the unequals. Vide order dated 7.12.1998 in OA 259/1998 this Tribunal directed the Respondents to issue show cause notice on fixation of pay and also regarding alleged recovery of excess amount said to have been recovered from the applicant. The essential qualifications for recruitment as Lab.Technicians was prescribed as Matriculation with DMLT with at least one year experience in Laboratory work. The Applicants comparison of unequals is certainly not in violation of Articles 14 and 16 of the Constitution. The OA therefore deserves to be dismissed.

3. Heard Shri S.P.Kulkarni learned counsel for the Applicant and Shri V.S.Masurkar learned counsel for the Respondents. They have taken us through the pleadings, materials and evidence placed on record. The learned counsel for the Applicants argues that the alleged recovery sought to be made from the Applicants are not in consonance with the Fifth Pay Commission's recommendations. It is erroneously fixed. Learned counsel for the Respondents on the other hand submitted that it was not erroneous but it was correctly fixed. The Applicants have no legal right to resist the refixation of pay scale which has been erroneously fixed on an earlier date. The OA is misconceived and it is accordingly dismissed.



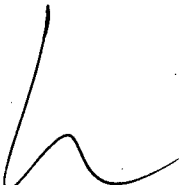
.....8/-

4. We have given due consideration to the arguments advanced by the learned counsel of parties and the pleadings/material placed on record.

5. The applicants were appointed as Lab. Technicians in the pay scale Rs.330-560 recommended by the 3rd Pay Commission w.e.f. 1.1.1975. The said pay scale of Rs.330-560 was replaced by Rs.1200-2040 as per the IVth Pay Commission w.e.f. 1.1.1986 and not as Rs.1350-2200. On implementation of the Vth Pay Commission, it is seen that the pay of officials has been further refixed in the scale of Rs.4,000-6,000. The pay scale of Rs.1350-2200 was correctly given w.e.f. 1.1.1986 to the applicants on receipt of orders of Department of Posts, New Delhi vide No.8-1/95-PE.I dt. 1.10.1997, the pay of the applicant was refixed in the scale of Rs. 1200-2040 and the recovery on account of over payment w.e.f. 1.1.1986 calculated yearwise and sought to be recovered. O.A. No.259/98 filed by the applicant before this Tribunal was disposed of vide orders dt. 1.2.1998 with a direction to the Respondents to issue on fixation of pay and also of alleged recovery said to have been recovered from the applicant. This was done. Therefore, it is evident that the pay scale of the Lab Technicians prescribed was Rs.330-560 and on replacement it should have been 1200-2040, but inadvertantly, erroneously it was fixed at Rs.1350-2200. It is an admitted fact that the replacement scale of Rs. 330-560 is Rs.1200-2040 and not Rs.1350-2300. On going through the facts of the case, we are of the view that this was an inadvertance which resulted in a wrong fixation of pay which hitherto, the applicants are enjoying which is now sought to be corrected, which the Respondents are always at liberty to do so. Any other attempt on the part of the

applicant is on a plea that a comparison of scale in Navy, Army and CGHS Lab Technicians should have been taken into consideration and their pay should have been fixed thereof. On going through the Recruitment Rules and materials placed on record, we hold that the designation in Navy, Army and CGHS Lab Technicians is not on par with the Recruitment Rules, Conditions of duties and responsibilities etc. of the applicants herein are similar and comparable. Therefore, their pay fixation cannot be equated with that of the applicants. The concept of the equal pay for equal work cannot be strictly adhered to different categories of persons as mentioned by the applicants, since the Recruitment Rules, conditions are totally different in the mentioned categories and that of the applicants herein. Since they are not equally placed, the question of seeking equal pay for equal work does not arise in this case. In a decision reported in 2002 SCC (L&S) 56 - Union of India Vs. Pradip Kumar, the Hon'ble Supreme Court has held that this contention cannot be acceded to unless it is evaluated by an expert body. Therefore, the question of equal pay for equal work does not arise in this case and therefore, the Respondents are justified in re-fixing the pay which was erroneously fixed on an earlier occasion which cannot be found faulted. Therefore, with respect to the relief sought in that respect has to be dismissed. Regarding the recovery sought to be made for excess amount paid to the applicant, we are of the view that it cannot be recovered since the petitioner received the higher pay scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to them. The order of refixation will

...10.

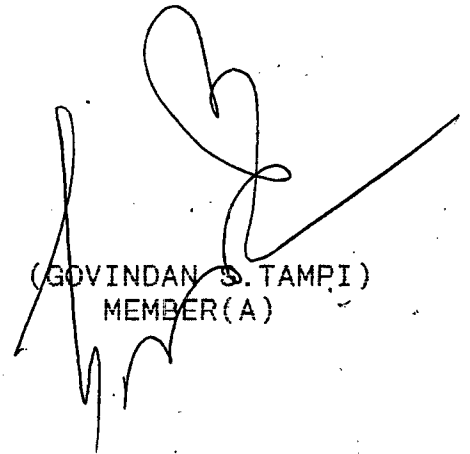


have only prospective effect. We also rely on a decision reported in 1994 (2) SCC 251 in Shyambabu Verma Vs. Union of India, wherein the Hon'ble Supreme Court has held that such excess amounts cannot be recovered since the applicants have not made any mis-representation or is due to the fault of theirs. In the circumstances, we are of the view that the recovery cannot be effected.

6. In the circumstances, the OA is dismissed on merits. No order as to costs.



(K.V.SACHIDANANDAN)
MEMBER(J)



(GOVINDAN S. TAMPI)
MEMBER(A)

mb/B.