

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 128/99

Date of Decision : 25th feb, 2003

T.Vaity & Ors.

Applicant

Shri S.P.Saxena

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri R.R.Shetty for
Shri R.K.Shetty

Advocate for the
Respondents

CORAM :

The Hon'ble Shri B.N.Bahadur, Member (A)

The Hon'ble Shri S.L.Jain, Member (J)

- (i) To be referred to the reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? *no*
- (iii) Library *yes*

S.L.Jain
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.128/99

Dated this the 25th day of Feb., 2003.

CORAM : Hon'ble Shri B.N.Bahadur, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

1. T.Vaity
2. C.P.S.Pillai
3. G.N.Gramopadhye
4. M.S.Adkine
5. P.S.Ghorpade

...Applicants

Working as U.D.Cs.,
O/O Garrison Engineer,
Kirkee, Pune.

By Advocate Shri S.P.Saxena

V/S.

1. Union of India
through the Secretary,
Ministry of Defence,
New Delhi.
2. The Engineer-in-Chief,
Army Headquarters,
New Delhi.
3. The Chief Engineer,
Southern Command,
Pune.
4. The Chief Engineer,
Pune Zone,
Pune.
5. The Controller,
C.D.A. (S.C.),
Pune.

...Respondents

By Advocate Shri R.R.Shetty
for Shri R.K.Shetty

R.R.Shetty

..2/-

O R D E R

{Per : Shri S.L.Jain, Member (J)}

The applicants are seeking directions to the Respondent No.2 to hold D.P.C. in a fixed period of time and promote/upgrade the applicants to the post of Assistants if they are found suitable by the DPC with the declaration that the recommendations of the Vth Pay Commission in respect of upgradation of 10% of UDC posts to the post of Assistants are to be given effect w.e.f.1.1.1996 and not from 15.4.1998 and place them in the upgraded post of Assistants w.e.f. 1.1.1996 notionally and from 15.4.1998 with monetary benefits.

2. The applicants are Civilian employees working as UDCs in M.E.S. and posted in different offices. They were regularly appointed as Lower Grade Clerks, promoted to the post of UDC in MES, the next promotional post is Office Superintendent-II known after redesignation as Assistant. 10% of UDC cadre strength were in receipt of a Special Pay of Rs.70/- for performing arduous and complex duties which the applicants were receiving being senior UDCs. The said amount of Rs.70/- was enhanced to Rs.140/- after 5th Pay Commission, whose recommendations were accepted by the Government. The applicants received the Special Pay except Applicant No.5. The Special Pay of Applicant No.5 was stopped from 15.4.1998.

3. Vth Pay Commission, vide para 46.17, has recommended that UDC drawing Special Pay (10% posts of UDCs.) be upgraded to the level of Assistant in Grade of Rs.5,000-8,000 withdrawing the Special Pay which was accepted by the Government. They claim that as the recommendations are accepted given effect from 1.1.1996, they are entitled to the said recommendations w.e.f. this date (1.1.1996).

per:-

4. The Ministry of Defence conveyed sanction of the same for upgradation of 418 posts of UDCs (10% of the total authorisation the total posts being 4177 posts of UDCs) of MES to the grade of Assistants in the revised scale of pay of Rs.5,000-150-8,000 with corresponding reduction of equivalent posts in the UDC grade, the appointment to the same shall be effected through DPC to be conducted by Respondent No.2 based on All India seniority of Upper Division Clerks. In view of the said letter, the Respondent No.2 issued the letter dated 17.4.1998 to all the Chief Engineers of five Commands followed by letter dated 3.6.1998 the way in which it is to be implemented.

5. The Respondent No.3 issued the letter dated 19.6.1998 to all establishment/units directing them the excess amount of Special Pay paid beyond 15.4.1998 is to be recovered from the next salary without fail and asking compliance thereof by 14.8.1998. However, MES establishments/units continued to pay the Special Pay of Rs.70/- to the applicants and many others like the applicants till October/November,1998. The Respondent No.5 by letter dated 30.12.1998 has disallowed further payment of Special Allowance with direction to recover w.e.f.15.4.1998. The Respondent No.5 has already recovered Rs.530/- from Applicant No.2. The applicants claimed that upgradation to the post of Assistants and recovery of special pay is to be done simultaneously as per the letter of Respondent No.1 dated 15.4.1998 and 17.4.1998 respectively. But the respondents are now bent upon making recovery of the amount of Special pay @ Rs.70/- p.m. w.e.f.15.4.1998 without upgrading the applicants to the post of Assistants. No DPC has been held so far. Hence, this OA. for the above stated reliefs filed on 3.2.1999.

P. D. -

6. On 9.3.1999 the respondents prepared a panel of UDCs and Stenographers Gr.III for promotion to the Grade of Assistants (erstwhile Office Superintendent Gr.II) in MES (EX-R-1) wherein the Applicants No.1,2 & 3 and 4,5 are shown at Sr.No.45,46 & 57 (Appendix A) 40,29 (Appendix B).

7. The claim of the applicants is being resisted by the respondents stating that while implementing the said recommendations of Vth Pay Commission accepted by the Government, the select panel is issued at Ex.R-1 dated 9.3.1999. The promotion to the post of Assistant is subject to release of vacancies. The promotions will be considered and given effect w.e.f. the available vacancies only. In view of Rule 17(1) F.R. an officer shall begin to draw the pay and allowances attached to his tenure of a post only from the date he assumed the post. The applicants can not claim that they be promoted as Assistants w.e.f.1.1.1996 as it is a policy decision. The cut-off date for the implementation thereof cannot be challenged in Courts. The demand of the applicants has been substantially met and therefore the OA. does not survive. The recovery aspect of the Special Pay beyond 15.4.1998 will be given effect upon the actual taking up of position of promotee Assistants. The recovery of Special Pay will be effected in view of Govt. of India, Ministry of Defence order dated 16.2.1999 (Annexure-R-2). Hence, prayed for dismissal of OA. along with costs.

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8. The learned counsel for the applicants relied on AIR 1973 SC 1088 - Purshottam Lal & Ors. vs. Union of India & Ors. and argued that non-implementation of the Report of IInd Pay Commission in respect of certain posts, violates Article 14 & 16 of the Constitution. Implementation of the revised pay scales in a particular category of servants from a date later than that recommended by the Pay Commission and thus non implementation of its report only in respect of these persons amounts to violation of Article 14 & 16 of the Constitution.

9. The learned counsel for the respondents relied on recommendations of the Vth pay Commission and argued based on the recommendations that the respondents are within their rights to implement para 46.17. The portion relied by the respondents is worth mentioning which is extracted below :-

" The revised scales of pay mentioned in column 4 of this part of the Notification for the posts mentioned in column 2 have been approved by the Government. However, it may be noted that in certain cases of the scales of pay mentioned in column 4, the recommendations of the Pay Commission are subject to fulfilment of specific conditions. These conditions relate inter alia to changes in recruitment rules, restructuring of cadres; re-distribution of posts into higher grades etc. Therefore, in those cases where conditions such as changes in recruitment rules etc. which are brought out by the Pay Commission as the rationale for the grant of these upgraded scales, it will be necessary for the Ministries to decide upon such issues and agree to the changes suggested by the Pay Commission before applying these scales to these posts w.e.f. 1.1.1996. In certain other cases where there are conditions prescribed by the Pay Commission as pre-requisite for grant of these scales to certain posts such as cadre restructuring,

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redistribution of posts etc., it will be necessary for the Ministries/Department concerned to not only accept these preconditions but also to implement them before the scales are applied to those posts. It would, therefore, be seen that it is implicit in the recommendations of the Pay Commission that such scales necessarily have to take prospective effect and the concerned posts will be governed by the normal replacement scales until then.

Sl. Posts No.	Present Scale (Rs.)	Revised Scale	Paragraph No. of Report
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1.	2.	3.	4.	5.
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I. OFFICE STAFF WORKING IN ORGANISATIONS
OUTSIDE THE SECRETARIATE

(a)	-----		
(b)	-----		
(c)	-----		
(d)	-----		
(e)	-----		
(f)	-----		
(g) UDC	1200-30-1540-40- 2040 with special pay of Rs.70/-p.m.	5000-150- 8000 with out special pay.	46.17

10. The learned counsel for the applicant relied on an order passed in OA.NO.27/99 by CAT, Madras Bench wherein one of us (Hon'ble Shri B.N.Bahadur, Administrative Member) was the party to the said decision wherein it is held that order dated 15.4.1998 is set aside with direction to the respondents to upgrade the level of the applicants to that of Assistants without convening a fresh DPC and fixation of pay in the grade of Assistants w.e.f.1.1.1996.

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11. During the course of arguments, the learned counsel for the respondents stated that order in OA.NO.27/99 by CAT, Madras Bench is subject of writ in Hon'ble High Court of Judicature at Madras and operation of the said order has been stayed by the Hon'ble High Court of Judicature at Madras.

12. The learned counsel for the applicant relied on AIR 1973 SC 1088 - Purshottam Lal & Ors. vs. Union of India & Ors. and argued that implementation of the revised pay scale in particular category of servants from a date later than that recommended by the Pay Commission and thus non implementation of its report only in respect of these persons amounts to violation of Articles of 14 and 16 of the Constitution. The present case is just on different footing. In the present case the pay commission itself has vide its Notification allowed the Ministries/ Departments to give different dates for implementation of the orders. As such, the Government has not at all discriminated the applicants while implementing the revised pay scales.

13. The learned counsel for the respondents argued on the basis of an order passed by this Bench in OA.No.702/2000 decided on 21.9.2001 that the Tribunal has directed the respondents to consider and decide on the recommendations made and published in Part C of the Gazette of India within a period not exceeding six months. He further argued that while deciding the OA.No.27/99 by CAT, Madras Bench, the Notification mentioned in the Pay Commission's Report was not brought to the Notice of the Tribunal

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and as the implementation of the order is stayed by the Hon'ble High Court of Judicature at Madras, it cannot be claimed as a Precedent. After going through the order in OA.No.27/99, we find that the said Notification was in fact not subject of consideration before the Madras Bench. The fact of order staying the Madras Bench order is also now relevant.

14. In the preamble to this Part-B of the schedule, it has been stated that it may be noted that in certain cases of the scales of pay mentioned in column 4, the recommendations of the Pay Commission are subject to fulfilment of specific conditions. These conditions relate inter-alia to changes in recruitment rules, restructuring of cadres, re-distribution of posts into higher grades etc. Therefore, in those cases where conditions such as changes in recruitment rules etc., which are brought out by the Pay Commission the rationale for the grant of these upgraded scales, it will be necessary for the Ministries to decide upon such issues and agree to the changes suggested by the Pay Commission before applying these scales to these posts with effect from 1.1.1996. In certain other cases where there are conditions prescribed by the Pay Commission as pre-requisite for grant of these scales to certain posts such as cadre restructuring, redistribution of posts etc., it will be necessary for the Ministries/Department concerned to not only accept these pre-conditions but also to implement them before the scales are applied to those posts. It would, therefore, be seen that it is implicit in the recommendations of the Pay Commission that such scales necessarily have to take prospective effect and the concerned posts will be governed by the normal replacement scales until then.

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15. A perusal of this preamble shows that in the case of post of UDC wherein higher pay scales have been proposed by the Pay Commission, the Ministry concerned has to take a conscious decision and agree to the changes. Further, the conditions as prescribed by the 5th Pay Commission for the post of UDC are 10% posts of UDC in such organisations be upgraded to the level of Assistant. In view of this position, what is required to be seen is whether 10% posts of UDC in such organisation has been upgraded to the level of Assistant and the concerned Ministry/ Department has to take a conscious decision therefor. In our considered view, therefore, ends of justice shall be met if the respondents can examine the issue properly in terms of the recommendations made by the Vth Central Pay Commission and then decide the matter. We accordingly, direct the respondents to examine the demand of the applicant for granting them the revised pay scale of Rs.5000-8000 in terms of Para 46.17 of the Vth Central Pay Commission and as laid down in the Notification of the Government of India introducing the CCS (Revised) Pay Rules,1997. The decision shall be taken within a period of two months from the date of receipt of copy of this order and shall be communicated to the applicants by a speaking order within a fortnight thereof. The OA. is disposed of accordingly. No. costs.

S.L. Jain
(S.L.JAIN)

MEMBER (J)

B.N. Bahadur
(B.N.BAHADUR)

MEMBER (A)

mrj.