

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 150/2000

Date of Decision : 17-04-2003

B.L.Patel

Applicant

Shri I.J.Naik

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri V.S.Masurkar

Advocate for the
Respondents

CORAM :

The Hon'ble Shri A.S.Sanghvi, Member (J)

The Hon'ble Shri Shankar Prasad, Member (A)

- (i) To be referred to the reporter or not ? ~s
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? ~s
- (iii) Library ✓


(A.S.SANGHVI)
MEMBER (J)

mrj.

carrying out the same duties, they are discriminated in the pay scales and the principle of 'equal pay for equal work' is not observed in their case. They have been placed in the pay scale of Rs.1200-2040 while the teachers of Daman and Diu are given the pay scale of Rs.1400-2600 w.e.f.1.1.1986. According to the applicants, they possess the Diploma in Electrical Engineering, Diploma in Mechanical Engineering and Diploma in Electrical Engineering and their counter parts in the Union Territory of Diu and Daman are also possessing the same qualification. Their nomenclatures are, however, different. While the teachers in the Union Territory of Diu and Daman are known as Assistant Lecturers They are known as Technical Teachers, though their work is similar. They teach the same subjects in the High School and practically performing the same duties. Their main contention is that when they are equal in all respects, they ought not to have been discriminated in the pay scales and they ought to have been placed in the same pay scale as that of the teachers of the Diu and Daman. They have, therefore, prayed that the respondents be directed to place them in the pay scale of Rs.1400-2600 w.e.f. 1.1.1986 and also to give corresponding revised pay scale recommended by the Vth Pay Commission.

2. The respondents in the reply have denied that the applicants are similarly situated teachers and that their Recruitment Rules, work and condition, qualification etc. are same. According to them, the employees of the two different territories cannot compare themselves as one and the same for the

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.150/2000

Dated this the 17th day of April 2003.

CORAM : Hon'ble Shri A.S.Sanghvi, Member (J)

Hon'ble Shri Shankar Prasad, Member (A)

1. B.L.Patel

2. A.S.Chandrababu

3. S.N.Parmar

...Applicant

All Technical Teachers
serving in High Schools
of Administration of Dadra
& Nagar Haveli, Silvassa.

By Advocate Shri I.J.Naik

vs.

1. Administrator of U.T. of
Dadra & Nagar Haveli,
Administrator's Secretariat,
P.O.Silvassa.

2. The Deputy Secretary
(Education),
Administration of Dadra
and Nagar Haveli,
Silvassa.

...Respondents

By Advocate Shri V.S.Masurkar

O R D E R

{Per : Shri A.S.Sanghvi, Member (J)}

The applicants are Technical Teachers of High School of Administration of Dadra and Nagar Haveli and they are aggrieved by being not given the pay scales as that of the other Teachers of Union Territory of Daman and Diu. Their grievance is that though they are possessing the same qualification and are

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carrying out the same duties, they are discriminated in the pay scales and the principle of 'equal pay for equal work' is not observed in their case. They have been placed in the pay scale of Rs.1200-2040 while the teachers of Daman and Diu are given the pay scale of Rs.1400-2600 w.e.f.1.1.1986. According to the applicants, they possess the Diploma in Electrical Engineering, Diploma in Mechanical Engineering and Diploma in Electrical Engineering and their counter parts in the Union Territory of Diu and Daman are also possessing the same qualification. Their nomenclatures are, however, different. While the teachers in the Union Territory of Diu and Daman are known as Assistant Lecturers They are known as Technical Teachers, though their work is similar. They teach the same subjects in the High School and practically performing the same duties. Their main contention is that when they are equal in all respects, they ought not to have been discriminated in the pay scales and they ought to have been placed in the same pay scale as that of the teachers of the Diu and Daman. They have, therefore, prayed that the respondents be directed to place them in the pay scale of Rs.1400-2600 w.e.f. 1.1.1986 and also to give corresponding revised pay scale recommended by the Vth Pay Commission.

2. The respondents in the reply have denied that the applicants are similarly situated teachers and that their Recruitment Rules, work and condition, qualification etc. are same. According to them, the employees of the two different territories cannot compare themselves as one and the same for the

purpose of prescribing pay scales. The applicants were placed in the pay scale as per the recommendations of the successive Pay Commissions and as accepted by the Government. They cannot therefore be heard to say that they are entitled to parity in the pay scale of teachers of Diu and Daman. They have denied that there is such post of Technical Teacher in the territory of Diu and Daman and contended that Assistant Teacher's post is of the different category and having different qualification. Both the posts can not be compared as the same or very same. They also deny that the applicants are doing the same work as that of the Assistant Lecturers in the Union Territory of Diu and Daman and contended that Recruitment Rules of both the categories are quite distinct and different. According to them, the Administration had proposed upgradation of scale of pay of certain categories of teachers to Rs.440-750 as against the scale of Rs.330-560 but the same was not approved by the Govt. of India, Ministry of Education & Culture. According to them, the qualification prescribed for the posts in the scale of Rs.440-750 is B.A.B.Ed./BSc.BEd./B.Com B.Ed and the pattern of acquiring such Trained Graduate Teacher qualification is 10+2+3+1 i.e. total 16 years of study whereas the qualification prescribed under the RRs of Dadar and Nagar Haveli for the post of Technical Teacher is Diploma in Engineering and the pattern of acquiring such is 10+3 i.e. total 13 years of study. They have further contended that the qualification can not be compared with that of Trained Graduate Teacher and cannot be considered for the entitlement to the higher scale of Rs.440-750 which is revised to Rs.1400-2600.

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They have also contended that the Tribunal should not enter into question of revision of the pay scale as even the Vth Pay Commission has not recommended the parity of the pay scale. They have prayed that the OA. be dismissed with cost.

3. We have heard the learned counsel for both the parties at length and duly considered the rival contentions.

4. Shri I.J.Naik, learned counsel appearing for the applicant has laid great deal of stress on the contention that both the posts carry the same liability and the qualification required for the recruitment are the same. He has also placed reliance on the case of Smt.Usha Pandit vs. Union of India in OA. No.416/95 decided by this Tribunal on 4.12.2000 wherein question of the parity of the pay scale of Laboratory Technicians working in the Union Territory of Dadra and Nagar. Haveli with that of the Laboratory Technicians working in the Union Territory of Diu and Daman was considered by the Tribunal and Tribunal had directed the respondents to maintain the parity in the pay scales of both the posts. We, however, find that in the instant case same is not the position. The applicant though are claiming that their duties and responsibilities are the same, we find from the reply of the respondents that the qualification required for the purpose of appointment to the cadre of the Technical Teacher and that of the Assistant Lecturer in the Union Territory of Daman

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and Diu are quite different. The Assistant Lecturers who are placed in the pay scale of Rs.1400-2600 in the Union Territory of Daman and Diu are required to possess the qualification of B.A. B.Ed./B.Sc B.Ed./B.Com B.Ed. and are required to have acquired the experience of TGT of 16 years of Study. The applicants are only Diploma in Engineering having studied only 13 years, i.e. 10+3. It, therefore, can not be said that the qualification required for both the posts is same or identical. The Recruitment Rules are also different. Apart from these aspects, it is now well settled in view of the several judgements of the Supreme Court that the work of fixation of pay scale or revision of the pay scale is required to be left to the expert bodies and Tribunal or High Court should not lightly interfere with the pay scale. It is also observed by the Supreme Court that the evaluation of such job must be left to the expert bodies and unless there is any malafide, its evaluation should be accepted. Shri V.S.Masurkar, learned counsel appearing for the respondents pointed out that the cases of the applicants were considered by the IVth and Vth Pay Commissions but they have refused to give the parity as the cadres were distinct and separate. According to him, even the department recommended the case of the applicant for upgradation of the post but unfortunately the Ministry had not accepted the request of the applicants and recommendations of the department.

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5. So far as the decisions of the Supreme Court are concerned, we find that in the State of Haryana & Ors. vs. Jasmer Singh & Ors. - 1997 SCC (L&S) 210, the Supreme Court while considering the case of Randhir Singh vs. Union of India - AIR 1982 SC 877 and Meva Ram Kanojia vs. All India Institute of Medical Sciences & Ors. - ATJ 1989 (1) 654 has observed in para 8 as under :-

"It is, therefore, clear that the quality of work performed by different sets of persons holding different jobs will have to be evaluated. There may be differences in educational or technical qualifications which may have a bearing on the skills which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to efficiency in service which may justify the differences in pay scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached top of the pay scale. There may be various other similar considerations which may have a bearing on efficient performance in a job. This Court has repeatedly observed that evaluation of such jobs for the purpose of pay scales must be left to expert bodies and unless there are any mala fides, its evaluation should be accepted."

6. In the case of Union of India & Ors. vs. P.V. Hariharan reported in 1997 (1) SLJ 598 the Supreme Court had chided the Administrative Tribunals for not adhering to the principle that deciding the pay scales of the different cadres is the work of the expert body like Pay Commission and other and not resisting from interfering with the pay scales recommended by the Pay Commission and accepted by the Government, on the doctrine of equal pay for equal work. In para 5 of the judgement the Supreme Court has laid down as under :-

"Before parting with this appeal, we feel impelled to make a few observations. Over the past few weeks, we have come across several matters decided by Administrative tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of the pay scales."


7. We also note that in the case of M.K.Francis vs. Chairman, Atomic Energy Commission & Ors. in OA.No.1248/93 decided on 17.2.1999 and reported in 1993 (3) A.I.SLJ 347, this Tribunal has refused to interfere with the pay scales of the stenographers grade II of BARC and to give them parity in the pay scales with that of the Secretariat stenographers and have rejected the O.A. We also note that the Supreme Court in the case of Govt. of Andhra Pradesh & Ors. vs. P.Harihara Prasad reported in 2002 SCC (L&S) 1105 reiterated the same principle that it is the work of expert bodies like Pay Commission to fix

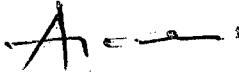
the pay scales of the employees and that the principle of equal pay for equal work cannot be applied when their services are to be governed by the respective rules applicable to them. Rejecting the claim of the parity in the pay scales by the employees of the subordinate offices with that of the employees of the State Secretariat, the Supreme Court has observed as under :-

"The employees of the subordinate courts and the employees of the State Secretariat are governed by different rules and therefore their pay scales and other conditions of services are to be governed by the respective rules applicable to them. Ordinarily, it is not permissible to go into the nature of duties of employees while exercising writ jurisdiction under Article 226 and on that basis direct grant of pay scales which are applicable to employees of different services. Therefore the issue of the writ of mandamus directing the parity of pay scales on the assumption that posts were identical and the status of employees performing the same nature of duties cannot be sustained in so far as the rights of the subordinate courts are concerned."

8. Again in the case of State of Haryana & Anr. vs. Haryana Civil Secretariat Personal Staff Association - 2002 (2) S.C.SLJ 207 and also in the case of Secretary to Govt. & Ors. vs. C.Muthu - 2002 SCC (L&S) 991, the Supreme Court has reiterated that work of refixing the pay scale are to be left to the expert body like the Pay Commission or the Government and the Tribunal or the High Court should not interfere in the same unless a clear case of hostile discrimination is made out. In the instant case, we do not find that any case of hostile discrimination is made out and as such cannot undertake to equate

pay scale of both the posts and evaluate the jobs for the purpose of pay scales and cannot direct the respondents to maintain the parity in the pay scales with that of their counter parts of Union Territory of Diu and Daman. We hold that no case for parity in the pay scales of the applicants with that of the Assistant Lecturers of Union Territory of Diu and Daman is made out. We, therefore, do not find any merit in the present O.A. The O.A. is accordingly dismissed with no order as to costs.


(SHANKAR PRASAD)
MEMBER (A)


(A.S. SANGHVI)
MEMBER (J)

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