

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO.115/2002 & 919/2001

THIS THE ^{17th} DAY OF ^{November} OCTOBER, 2002

CORAM: HON'BLE SHRI JUSTICE BIRENDRA DIKSHIR. VICE
CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY. .. MEMBER (A)

A.M. Shamsheer,
Asstt. Librarian,
Armed Forces Medical College,
Wanori, Pune-411 040.

.. Applicant

By Advocate Shri S.P. Saxena

Versus

1. The Union of India
through the Secretary,
Ministry of Defence,
DHQ PO, New Delhi-11.
2. The Director General of
Armed Forces Medical
Services, M-Block,
New Delhi-110 001.
3. The Commandant,
A.F.M.C. Pune-40.

... Respondents

By Advocate Shri R.R. Shetty.

O.A. NO. 919/2001

Mrs. Kalpana A. Bhat
Librarian, Armed Forces
Medical College,
Wanori, Pune-411 040.

.. Applicant

By Advocate Shri S.P. Saxena

Versus

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... Respondents

By Advocate Shri R.R. Shetty.

O R D E R
Hon'ble Smt. Shanta Shastry. Member (A)

Both the OAs involve identical issue. The advocates are also the same in both the OAs. We therefore, heard both the OAs together and have proceeded to pass the orders in both the OAs in one judgment.

O.A. NO. 115/2002

The relief sought in this application by the applicant is to place him in the pay scale of Rs.2000-3500 with effect from 24.7.1990 as Assistant Library and Information Officer and to fix his pay as per rule with further placement in the revised scale of Rs.6000-10500 with effect from 01.01.1996 and also to pay him the arrears of pay and allowances arising out of the above mentioned relief.

2. The applicant is working as Assistant Librarian as Group-C civilian employee in the office of Respondent No.3 at Pune. He was initially appointed as Assistant Librarian on 08.10.1988 on regular basis and was offered the prevailing scale of Rs.1200-2040.

3. The applicant submits that 4th Pay Commission

had recommended to constitute a committee to under take review of the pay scale. Qualification and recruitment level of responsibility of library staff in all Government of India offices/Departments/Ministries. Accordingly, the Government of India set up a review committee for the above purpose in September, 1987. The said committee submitted its report, the Government of India considered the same and decided to introduce the pay structure for the library staff as published in OM dated 24.7.1990 by the Ministry of Finance. The benefit of the OM was to be given with effect from 24.7.1990 as was communicated by OM dated 26.10.1990 of the same Ministry. In para 4 of the OM dated 24.7.1990 each Ministry was directed to initiate action to categorise the library under their control in consultation with the Finance Advisor in terms of the parameter indicated in Annexure-2 of the OM and based on the categorisation of library so determined, the designation and scales of pay of library staff were to be adopted. It was also advised that the action should be initiated on priority basis and results of the review were to be reported to the implementation cell in the department of Expenditure, Ministry of Finance. The procedure to be followed for categorisation of library was also laid down in the OM.

4. The respondents accordingly categorised the library of the Armed Forces Medical College i.e.

Respondent No.3, where the applicant is working as category III Library vide letter dated 23.5.2001. For this category of library in terms of OM dated 24.7.1990 the pay scale of Rs.2000-3500 has been prescribed for the post of Assistant Library & Information Officer, which is equivalent to the post being held by the applicant. According to the applicant, the respondents have not granted the aforesaid pay scale to the applicant in terms of the OM dated 24.7.1990. Therefore, the applicant has approached this Tribunal for seeking necessary direction in the matter.

5. The applicant further states that the Ministry of Finance conveyed sanction of the President to the revision of pay scales and designation of the post of Librarian Grade-I in the Directorate of Education, Air Headquarters and Assistant Librarian, Ministry of Defence Library and also changed all their designation in terms of OM dated 24.7.1990. This was vide letter dated 26th July, 1994. The applicant's contention is that when the Armed Forces Medical College is also under the Ministry of Defence, library staff of Armed Forces Medical College also should have been granted the benefit of the revised pay scales and designation as given to other organisation under the Ministry of Defence.

6. Further the applicant points out that in the

year 1993 the Department of Personnel & Training brought out model recruitment rules vide OM dated 22nd February, 1993. These model recruitment rules are based on the suggestion contained in the OM dated 24th July, 1990 of the Ministry of Finance. All the Ministries/ Departments have been requested to adopt these model rules with suitable modification if any depending upon their peculiar requirement and in case of any deviation from these model rule, approval of the department may be obtained.

7. As per the library of category III the library staff would consist of the following, namely Library & Information Assistant, Assistant Library & Information Officer, Library & Information Officer, Director (Library & Information) and Director. In the case of Armed Forces College, Pune, there are only two posts right from the inception of the library i.e. Librarian and the Assistant Librarian. These posts would be equivalent to the post of Assistant Library & Information Officer in the scale of Rs.3000-4500 and Assistant Library & Information Officer in the scale of Rs.2000-3500 and the applicant being Assistant Library & Information Officer, he is entitled to the scale of Rs.2000-3500. Further, the applicant contends that he possess the qualification prescribed in the OM of 24.7.1990 i.e. Graduate with Bachelor's Diploma in Library Science for direct recruits. In the OM, the

revised pay structure of various pay scales of Library Information Assistant namely Rs.1200-1800, Rs.1200-2040, Rs.1320-2040, Rs.1350-2200, Rs.1400-2300 and Rs.1400-2660 have all been clubbed together and one common scale of Rs.1400-2600 has been suggested as the revised pay scale. Since the applicant was in the pay scale of Rs.1200-2040 he also would have got the scale of Rs.1400-2600. However, as per the recruitment rules for the post of Assistant Library & Information Officer, the qualification prescribed are Degree of a recognised University or equivalent, Bachelors Degree or equivalent diploma in Library Science of a recognised University/ Institute or equivalent with two years professional experience in a Library or Diploma in Computer Applications from a recognised University, Master Degree in Library Science has been prescribed as a desirable qualification. The applicant possesses a Master Degree plus Bachelors Degree in Library Science as well as M. Lib. Thus, he fulfils the educational qualification prescribed both under the OM dated 24.7.1990 as well as in the model recruitment rules laid down by the DOP&T. Therefore, he is very much entitled to the pay scale of Rs.2000-3500 which is the prescribed pay scale for the post of Assistant Library & Information Officer as per the model recruitment rules.

8. The applicant further submits that he has been given promotion under the ACP scheme on 08.10.2000 and

has been granted the pay scale of Rs.5500-9000. According to the applicant even after categorisation of the Library, he has not been granted the revised pay scale as given in the model recruitment rules of the DOP&T.

9. The applicant has drawn our attention to a letter dated 09th June, 2001 addressed to Raksha Mantralaya. In this letter, it has been stated that the existing posts of Librarian and Assistant Librarian were placed in the pay scale of Rs.1400-2600 and in the revised pay scale of Rs.5000-8000 as per recommendations of the 5th Central Pay Commission provisionally. The promotion under the ACP Scheme was granted to the applicant on 08th October, 2000 in the revised scale of Rs.5500-9000. According to the sanction the AFMC library category is III. The existing posts of Librarian and Assistant Librarian are required to be redesignated as Library & Information Officer in the pay scale of Rs.3000-4500 and Assistant Library & Information Officer in the pay scale of Rs.2000-3500 (revised scale of Rs.6500-10500) respectively. However, the existing incumbent can be considered for these appointments in higher scale provided they fulfil the requirement laid down in Annexure-A CPRO 8/91. It has been further stated that based on the categorisation if the post of Head of Library gets upgraded by grant of one grade, the post will be initially upgraded by one

step only i.e. Library Information Assistant in the scale of Rs.1400-2600 shall be revised as Rs.5000-8000 to Senior Library Information Assistant i.e. Rs.1640-2900 revised as Rs.5500-9000. Subsequently, this upgradation to the proper higher grade i.e. Library & Information Officer in the scale of Rs.3000-4500 will be revised after three years in consultation with the Ministry of Finance.

10. The respondents submit that since the library of ARMC was categorised as per the guidelines given in the OM dated 24.7.1990 only in 2001, the applicant's case for granting revised scale can be considered only thereafter. Also the respondents submit that the applicant does not have any right which can be enforced by way of an OA before this Tribunal, there is no cause of action which had accrued in favour of the applicant. The respondents have already taken up the matter with the higher authorities on 09.10.2001.

11. According to the respondents, the applicant was placed in the pay scale of Rs.1400-2660 with effect from 24th July, 1990. The learned counsel for the respondents further points out that the model recruitment rules issued by the Ministry of Personnel, Public Grievances and Pension on 22nd February, 1993 pertains to various categories of Group 'A' & 'B' posts in library discipline. The applicant cannot therefore,

claim to apply their recruitment rules as he is a Group-C employee. The learned counsel states that as per the recommendation of the 5th Central Pay Commission, the orders of the Review Committee are to be implemented first i.e. the existing staff is to be placed in the pay scale as per categorisation and thereafter the recommendation of the 5th Central Pay Commission is to be granted. Therefore, the case for placing the existing staff in the scales recommended by the 5th Central Pay Commission has to be taken up separately. Such a reply was given by Respondent No.2 vide letter dated 26th April, 1999. Both the proposal was submitted for revision of pay scales by Respondent No.3 vide letter dated 23rd June, 1994. The learned counsel for the respondents also pointed out that the model recruitment rules are not binding as in the letter of 22nd February, 1993 itself. There was an advice to the effect that the Ministries/ Departments may consider the model recruitment rules and adopt them or modify them and in case they want to modify or differ, the DOP&T must be consulted. As far as AFMC is concerned, no recruitment rules have been framed in pursuance of the OM dated 24.7.1990 so far. Therefore, the applicant cannot claim any benefit of the model recruitment rules.

12. The learned counsel for the applicant further argued again that even if the categorisation has been done in the year 2001, the scales are to be effected

from 24.7.1990, as has been set out in the OM dated 26.7.1990 of the Ministry of Finance. Whether the library is small or big, what is material is the categorisation and therefore, the applicant is entitled for the revised pay scales as is given in the OM dated 24.7.1990 and in the model recruitment rules, as the applicant fulfils the necessary qualification. Since the model rules have not been amended or adopted yet, one has to go by the guidelines given by the DOP&T.

13. We have heard the learned counsel for both the sides and have given our careful consideration to the pleadings. We find that the OM dated 24.7.1990 prescribed a pay structure for the library staff as given at page 2 of the OM. This position was there on the report of the Review Committee on library staff purview of the Central Government. The committee was also set up in pursuance of the recommendations of the 4th Central pay Commission. The recommendations of the Review Committee were accepted. Also in this OM, it has been advised as to how the existing library staff is to be placed in the revised scale, how libraries are to be categorised etc. In para six it has been clearly laid down that all Ministries/Departments are requested to initiate action on priority basis and results of Review be reported to the Implementation Cell of the Department of Expenditure. In spite of such clear directions, the Ministry of Defence could categorise AFMC library Pune

only in the year 2001 i.e. after 11 years giving a go-bye to the words on priority basis. That apart, we find that the AFMC is under the control of Ministry of Defence, that very Ministry of Defence issued sanction of revision of pay scale for library staff in Armed Forces Headquarters and inter service organisation. The revision was granted to them vide letter dated 26th July, 1994. We cannot, therefore, understand the inordinate delay in even categorising the library of the AFMC, let alone sanctioning of the revised pay scale. This letter of 26th July, 1994 does not indicate anything about qualification or higher qualification possessed by the incumbent in those organisations. According to the applicant, even AFMC is an inter service organisation and therefore, the same letter dated 26th July, 1994 should have been made applicable to the AFMC at that time itself. The applicant has therefore, claimed that he is entitled to the revised pay scale with effect from 24.7.1990. We further find that the Ministry of Defence have categorised the AFMC in the year 2001 in terms of the OM dated 24.7.1990 which means that the Ministry is taking action as as per the OM and has not treated the OM as out-dated after the recommendations of the 5th Pay Commission were received, the OM stands as it is, there is no modification or supersession of the OM. This being so, in our considered view, since the respondents themselves have delayed the categorisation of the library of the AFMC

the applicant cannot be made to suffer on that ground. Since, however, the Ministry of Defence sanctioned the revised pay scale for other library staff under the Ministry on 26th July, 1994 according to us, the applicant is entitled to the benefit of the revised pay scale from 26th July, 1994 at least. Even if we were to ignore the model recruitment rules of the DOP&T in the OM itself in Annexure-1 the qualification and experience both for direct recruitment and promotion have been spelt out and the pay scale has been as Rs.2000-3500 for Assistant Library & Information Officer. We therefore, do not see how the applicant can be denied the benefit of the same. Another argument, which was put forth by the respondents was that there is a librarian also in the AFMC library and the present incumbent does not fulfil the qualification and therefore, while the applicant may get the revised higher pay scale. The incumbent librarian though senior to the applicant, would be left in a lower pay scale. In our considered view, this cannot be a consideration at all. We have to go strictly according to the OM of 24.7.1990. The applicant possesses the qualification and the experience required and therefore, he is entitled for the revised pay scale of Rs.2000-3500 as has been prescribed for category III librarian.

14. We accordingly direct the respondents to consider granting the revised pay scale as given to the

library staff under the Defence Ministry vide letter dated 26th July, 1994 and grant the revised scale of Rs.2000-3500 with effect from 26th July, 1994 with consequential benefits such as arrears due to difference in pay etc. This shall be complied with within a period of two months from the date of receipt of copy of this order. The OA is allowed. We do not order any costs.

O.A. NO. 919/2001

15. In OA No.919/2001 also the issue is the same as in OA No.115/2002 except that the applicant in this OA is the librarian. According to the applicant in the library of the AFMC there are only two regular posts, one is Librarian and another is Assistant Librarian. Although there is an officer from the Service, who looks after the library as incharge, for all practical purposes, the librarian is the incharge. The service officer does not possess the librarian's qualification. According to the applicant, she possesses the requisite qualification as has been stipulated in the model guidelines for the post of Librarian and Information Officer. According to this, the qualification prescribed for the post of Librarian are Master's Degree of a recognised University or equivalent with Master's Degree or equivalent Diploma in Library Science of a recognised University and five years professional experience in a supervisory capacity in a library of

standing, however, this is for direct recruit only. The post of Librarian is a promotion post and for promotion to the post of Librarian, the educational qualification is not the same as for direct recruitment. It is enough if the person possesses at least, a degree from a recognised University and a degree in Library Science from a recognised University which the applicant in the present case possesses. No specific educational qualifications have been prescribed or shown against the post of Library and Information Officer. Thus, the applicant fulfils the prescribed qualification and is therefore, entitled to be considered for granting of the higher scale of Rs.3000-4500 as is prescribed for the post of Library & Information Officer in Annexure-1 to the OM dated 24.7.1990.

16. The learned counsel for the respondents however, does not agree. According to him, the applicant does not possess the requisite educational qualification as she is only a graduate and not a post graduate.

17. We have heard the learned counsel for the applicant as well as the respondents. In our considered view, it has been clearly brought out by the learned counsel for the applicant that the applicant does possess the requisite qualification, the post graduation qualification is only for direct recruitment not for one

who has been promoted to the post. We therefore, hold that the applicant is entitled to the revised pay scale of Rs.3000-4500. The applicant shall be entitled to the same from 26th July, 1994 as in the case of the applicant in OA No.115/2002, with all consequential benefits such as arrears due to difference in pay etc., we order accordingly. We do not order any costs.

(SMT. SHANTA SHASTRY)
MEMBER (A)

(BIRENDRA DIKSHIT)
VICE CHAIRMAN

Gajan

Shri S.P.Saxena, learned counsel for the applicants.

Shri R.K.Shetty, learned counsel for the respondents.

2. Two OAs 115/02 & 919/01 were disposed of by a common order on 1.11.2002. However, OA 115/02 was disposed of with the following directions -

"14. We accordingly direct the respondents to consider granting the revised pay scale as given to the library staff under the Defence Ministry vide letter dated 26th July, 1994 and grant the revised scale of Rs.2000-3500 with effect from 26th July, 1994 with consequential benefits such as arrears due to difference in pay etc. This shall be complied with within a period of two months from the date of receipt of copy of this order. The OA is allowed. We do not order any costs."

OA 919/01 was disposed of with the following directions -

"17. We have heard the learned counsel for the applicant as well as the respondents. In our considered view, it has been clearly brought out by the learned counsel for the applicant that the applicant does not possess the requisite qualification, the post graduation qualification is only for direct recruitment not for one who has been promoted to the post. We therefore, hold that the applicant is entitled to the revised pay scale of Rs.3000-4500/-. The applicant shall be entitled to the same from 26th July, 1994 as in the case of the applicant in OA No.115/2002, with all consequential benefits such as arrears due to difference in pay etc. , we order accordingly. We do not order any costs."

3. The learned counsel for the applicant pointed out that respondents had carried the matters to the Hon'ble ~~Supreme~~ Court but these Writ Petitions are pending. No interim relief was granted to the respondents and the following directions were given -

".....However, both the Respondents will file undertakings in the form of affidavit that in the event these Petitions are allowed, both the Respondents will refund the difference to which they are entitled and which they will get under the orders of the Central Administrative Tribunal....."

Respondents ought to have complied with the directions of this Court but they have not done so till now. As a matter of fact, till now, they have not fixed the pay of the applicants and as such have deliberately and contumaciously committed contempt of court.

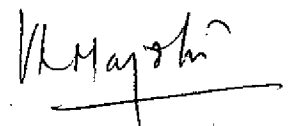
4. Learned counsel for respondents has sought three months time for compliance of directions of this Court.

5. It seems that the respondents are not serious in compliance of the directions of this Court. They have taken inordinately long time and despite observations/directions of the High Court in their Writ Petitions have yet not taken effective steps towards ^{implementing} the Tribunal's directions. Still showing indulgence, we are granting time to the respondents till 25.8.2004 for compliance of the directions of this Court failing which Respondent no.3 shall remain present in this Court to explain the reasons and circumstances why directions of this Court have remained uncomplied.

6. List this case on 3.9.2004.

7. Dasti to both sides.


(S.G. Deshmukh)
Member (J)


(V.K. Majotra)
Vice Chairman

mf

21.6.04

order/Judgment despatched
to Applicant/Respondent (s)
24/6/04
9A