

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH.

ORIGINAL APPLICATION NO : 784/2001

Dated this Thursday the 06th day of June, 2002.

National Institute of Virology & others

Applicants.

Shri K.K. Waghmare

Advocate for
applicant.

VERSUS

Union of India & Others

Respondents.

Shri A.B. Avhad

Advocate for the
Respondents No.2 &
3.

Shri Amit Kukade

Advocate for
Respondents No. 4
to 13.

CORAM : Hon'ble Shri Justice Birendra Dikshit, Vice Chairman
Hon'ble Smt. Shanta Shastry, Member (A).

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

Shanta Shastry
(Smt. Shanta Shastry)
Member (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.No.784/2001.

Dated this Thursday the 6th Day of June, 2002.

Hon'ble Shri Justice Birendra Dikshit, Vice Chairman
Hon'ble Smt.Shanta Shastry, Member (Administrative).

1. National Institute of Virology
Employee's Association
Having its registered office at,
20-A, Dr.Ambedkar Road,
Post Box No.11, Pune-1.
Through her representative
Mr.V.B. Sable.

2. Mrs.V.S. Bhide,
 3. Mr.U.B. Umarani,
 4. Mr.S.V. Nipunage
 5. Mr.T.L. Gangadhara Rao,
 6. Mr.B.R. Patil,
 7. Mr.P.B. Kulkarni,
- All are working as Technical
Assts. in National Institute
of Virology,
20-A, Dr.Ambedkar Road,
Post Box No.11, Pune-411001.

.. Applicants.

(By Advocate Shri K.K. Waghmare).

Versus

1. Union of India, through
the Secretary,
Ministry of Health &
Family Welfare, Nirman Bhawan,
New Delhi - 110 011.
2. The Director of General,
Indian Council of Medical
Research, Post Box No.4508,
Ansari Nagar,
New Delhi.
3. The Director,
National Institute of Virology,
20-A, Ambedkar Road,
Post Box No.11, Pune-411001.
4. Mrs.L.P. Chobe,
5. Mrs.V.J. Lad,
6. Mrs.M.S. Mavale,
7. Mr.P.V. Barde,

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8. Mr.A.B. Sudeep,
9. Mr.V.M. Ayachit,
10. Mrs.S.V. Gangodkar,
11. Mrs.R.G. Damle,
12. Mrs.P.G. Ray,
13. Mrs.V.A. Potdar

All private Respondents No.4 to 13,
are working as
Research Assistants in National
Institute of Virology,
20-A, Dr.Ambedkar Road,
Post Box No.11, Pune-411001.

.. Respondents

(By Advocate Shri A.B. Avhad, for
Respondents No.2 and 3 and Shri Amit
Kukade, Advocate for Respondents No.
4 to 13).

ORDER (Oral)

{ Per : Smt.Shanta Shastry, Member (A) }

The applicants are aggrieved by the impugned order dated 2.5.2001 issued by the Indian Council of Medical Research, New Delhi whereby Research Assistants/Statiscal Assistants/Technical Assistants have been redesignated.

2. The applicants were appointed between 1981-1985 initilly as Graduate Assistant/Lab. Assistant/Lab Recorder/Technicans based on the requisite qualification at the relevant time. They were thereafter promoted / directly appointed to the post of Research Assistant / Technical Assistant as the case may be and they were carrying duties accordingly. A committee had been appointed under the Chairmanship of Dr.Sengupta to consider the pay scales of Group "B" and Group "C" employees of the Council. On the basis of the report of the Committee Recruitment Rules were issued by the

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Respondent No.2 on 22.3.2000. Thereafter vide impugned letter of 2.5.2001, the Respondent No.2 redesignated those Research Assistants / Technical Assistants as Technical Assistants who do not possess post graduate qualification, their pay was fixed in the scale of Rs.5000-8000 and all those Research Assistants/Technical Assistants possessing post graduate qualification at the entry level were designated as Research Assistants and their pay was fixed in the scale of Rs.5500-9000. Accordingly some of the private respondents who had possessed post graduate qualification were redesignated as Research Assistants, this was done in 2 lots by orders dated 29.8.2001 and 10.9.2001. Similarly those Research Assistants who did not possess the post graduate qualification at the entry level were redesignated as Technical Assistants in the pay scale of Rs.5000-8000. The applicant No.2 and 4 made representations on 8.3.2001 and 19.3.2001 against their redesignation as Technical Assistants in the scale of Rs.5000-8000 but the said representations were not disposed off till the filing of the OA. Thereafter applicants made common representations on 11.9.2001 against their redesignation as Technical Assistants followed up by another one on 17.9.2001. According to the applicants none of their representations has been considered so far.

3. The contention of the applicants is that,

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applicants and private respondents were all working in the same cadre / post i.e. Research Assistants and Technical Assistants prior to their redesignation as Technical Assistants. According to the applicants the official respondents have followed a pick and choose policy. Applicants have further submitted that it is not correct that some of the private respondents possessed post graduate qualification at entry level at the time of initial appointment, some of them have acquired the said qualification whilst in service, thus redesignating them as Research Assistants and giving the higher pay scale is again arbitrary and it goes against the policy itself. Since they were performing the same nature of duties and were also working in the same post, therefore, on the principle of equal pay for equal work, the applicants No.2,5,6 and 7 instead of being redesignated as Technical Assistants ought to have been granted the higher pay scale of Rs.5500-9000 as granted to their juniors and private respondents. Further grievance of the applicants is that they have been redesignated with retrospective effect to their disadvantage which is again arbitrary and discriminatory.

4. In the case of Applicant No.2 she had been appointed directly to the post of Research Assistant with effect from 6.11.1992 after following up due process of interview and selection. Private Respondents No.4 to 6

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were also selected and appointed alongwith applicant No.2, therefore, redesignating applicant No.2 as Technical Assistant after she had put in 9 years of service as Research Assistant and fixing her in the scale of Rs.5000-8000 is again arbitrary and discriminatory as according to her she was the senior most compared to the private respondents. The applicants have further pointed out that the Recruitment Rules for the post of Research Assistants do not indicate horizontal transfer either from the post of Technical Assistant to Research Assistant and vice-versa. The post of Research Assistant had been treated as direct recruitment post whereas the most of the private respondents have not been recruited directly but rather by promotion through D.P.C. Applicants No.5, 6 and 7 were promoted to the post of Research Assistant through D.P.C. and have completed their probation period satisfactorily, therefore, redesignating them now as Technical Assistant is not proper.

5. The respondents in their reply have submitted that as a result of recommendation of the 5th Pay Commission to improve the quality of work, they have given higher pay scale for those possessing post graduate qualification. Learned Counsel for the official respondents submits that earlier there were no Recruitment Rules. In 1996 it was decided that National Council of Medical Research and National Institute of Virology i.e. Respondent Nos.2 and 3 would adopt the Recruitment Rule of Institute of

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Research in Reproduction (IRR). However, now Recruitment Rules have been framed on 22.3.2000. According to the respondents they have rightly classified the Research Assistant on the basis of higher post graduate qualification and Technical Assistant as lacking post graduate qualification and there is nothing wrong in the steps taken by the official respondents. The Recruitment Rules have been framed as per the guidelines of the Institutes and Centres under Respondent No.2. They were asked to revise the Recruitment Rules. Accordingly these revised Recruitment Rules have been made effective from 22.3.2000. According to respondents there is no discrimination. The respondents further submit that it is not correct to say that the Research Assistant and Technical Assistant performed same nature of job although they were appointed in the same pay scale. The candidates having post graduate qualification were handed over the work of Research and the candidates without post graduate qualification were doing purely technical job.

6. The respondents stated that representations were received from the applicants and the same were forwarded to the competent authority for disposal, however, the applicants have rushed to the Tribunal without waiting for reply to their representations. Learned Counsel for respondents also submits that there was no common seniority of Technical Assistant and Research Assistant however, there was inter-se seniority.

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7. We have heard the learned counsel for applicants, official respondents and the private respondents. In our considered view there is nothing wrong in improving the status of organisation and improving the educational qualification of the employees. However, we find in the present case that the respondents have changed the designations of those Research Assistants who were either directly recruited as Research Assistant or promoted as Research Assistant as per then prevailing eligibility conditions. In the case of the Research Assistants i.e. Applicants No.2,5,6 and 7 who have worked as Research Assistants for long, the respondents have now changed their designation to that of Technical Assistants in the lower scale of Rs.5000-8000. Not only that they have been redesignated with retrospective effect from the date of their appointment from 1.1.1996. In our considered view this amounts to change in the service conditions to the dis-advantage of the person who was recruited as Research Assistant as per then prevailing qualification no retrospective effect can be given in such matter. Also the persons' designation can be changed now. The respondents must retain applicant nos.2,5,6 and 7 in the post of Research Assistant in the old pay scale. The learned counsel for the applicant have also produced a copy of judgment of the Supreme Court of India in the case of K.Narayanan and others Vs. State of Karnataka and others, reported in (1994) 26 ATC 724. It was held in this case that Rules operate prospectively.

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Retrospectivity is an exception. Even where the statute permits framing of rule with retrospective effect the exercise of power must not operate discriminately or in violation of any constitutional right. The rule making authority should not be permitted normally to act in the past. It was further held in this case that demarcation of cadres or gradation in the same cadre on higher and lower qualification is a common phenomenon for fixing hierarchy in services. It is a valid basis of classification as held in State of Mysore v. P.Narasimha Rao, Union of India v. Dr.S.B. Kohli (Mrs), State of J & K v. Triloki Nath Khosa, P. Murugesan v. State of T.N. etc. However, the Apex Court observed that transfer from lower to higher cadre can not be by promotion but direct appointment only because an incumbent becoming eligible without any selection test or criteria may not be in consonance with service discipline. It is thus clear that giving retrospective effect to the detriment of service conditions of the applicants who were Research Assistants is definitely wrong and discriminatory. We therefore, hold that the applicants nos.2,5,6 and 7 are entitled to be retained as Research Assistants in their existing scale of Rs.5000-8000, they cannot be transferred as Technical Assistant. As far as other applicants who are working as Technical Assistants or rather who were initially appointed as Technical Assistant are concerned, in their cases there is no difference in that they remain

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Technical Assistant in their existing pay scale, therefore, no relief is required to be granted in their cases. The learned counsel for private respondents has justified the elevation of the Technical Assistant possessing post graduate qualification to the post of Research Assistant. The learned counsel for applicants contends that some of the private respondents though had not acquired the post graduate qualification at entry level had been promoted. It was clarified by learned counsel for private respondents that there was only one such case where a person who had obtained post graduate qualification after 1.1.1996 had been promoted, however, the same was withdrawn and Technical Assistants were designated as Research Assistants who were in possession of post graduate degree prior to 1.1.1996, therefore, this contention does not survive. In the result, the O.A. is partly allowed as discussed above, without ordering any costs.

Shanta f-
(Smt. Shanta Shastry)
Member (A).

B. Dixit
(Birendra Dikshit)
Vice Chairman.

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

REVIEW PETITION NO. 37/2002
IN
ORIGINAL APPLICATION NO. 784/2001

THIS THE 29TH DAY OF AUGUST, 2002

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

National Institute of Virology
Employees Association, Pune & Ors. .. Applicants

Versus

Union of India & Ors. .. Respondents

O R D E R

Hon'ble Smt. Shanta Shastri. Member (A)

This review petition is filed against the judgment dated 06.6.2002 in OA No.784/2001. The review petitioners submit that during the course of the hearing when the applicants had contended that some of the private respondents, though had not acquired Post Graduate qualification at entry level, had been promoted, the learned counsel for the private respondents had clarified that there was only one such case where a person who had obtained Post Graduate qualification after 01.01.1996 had been promoted. According to the review petitioner this is not correct. The learned counsel for the private respondents had suppressed the material fact that one more private respondents No.11 namely Shri R.G. Damle, who had also obtained Post Graduate qualification after 01.01.1996 had been promoted as Research Assistant with effect from 23.6.2000 and given the higher pay scale. Further,

private respondents 12 and 13 were promoted as Research Assistants, whereas, according to recruitment/promotion rule dated 22.3.2000 the post of Research Assistant can only be filled by direct recruitment from among the candidate sponsored by employment exchange or through open advertisement. They were initially appointed as Technician in 1991 and thereafter promoted to the post of Research Assistant with effect from 23.6.2002 i.e. subsequent to coming into existence of the recruitment rules. In view of this position, the review petitioners have prayed for modifying the judgment dated 06.6.2002 and to direct the official respondents to redesignate the applicants 3 and 4 as Research Assistant at par with private respondents No.12 and 13 and to grant the pay scale of Rs.5500 9000 to all the applicants at par with private respondents No.11, 12 and 13.

2. We have considered the ground taken at the time of hearing. The applicants did not contest the statement of the learned counsel for the respondents during the hearing. The grounds taken now were will within the knowledge of the applicants at the time of hearing, but they failed to agitate the same. The ratio laid down is clear that those who had obtained Post Graduate qualification prior to 01.01.1996 were entitled for being designated as Research Assistant and not those who had not got after 01.01.1996. Therefore, such a

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person will not be entitled to the benefit of the judgment. The applicants are trying to reargue the matter. In our considered view, therefore, this review petition is not maintainable and is rejected.

Shanta S

(SMT. SHANTA SHASTRY)
MEMBER (A)

B. Dikshit

(BIRENDRA DIKSHIT)
VICE CHAIRMAN.

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