

Central Administrative Tribunal
Mumbai Bench

Original Application No.387/2001.

Dated this Friday the 30th Day of July, 2004.

Coram : Hon'ble Shri Anand Kumar Bhatt, Member (A)
Hon'ble Shri Muzaffar Husain, Member (J).

1. Atulkumar R. Kumbhare,
C-19, Tribhuvan Coop. Hsg.
Socy Ltd., Near Jalaram Mandir,
Nehru Road, Dombivali (E),
Mumbai - 421 201.
2. Chandra Bhushan Tiwari,
60/16, NCH Colony,
Kanjur Marg (W),
Mumbai - 400 078.
3. Chandan Singh Bhandari,
T/39/1, Coastal Quarter,
R.C. Church, Colaba,
Mumbai - 400 005.
4. Raghunath Tukaram Shinde,
A/10, Madhuri Building,
Gunsagar Nagar, Station Road,
Kalwe (W)-400 605.
Dist. Thane.
5. Devidas Bajirao Godbole,
New Type III, Qtr.No.199,
CPWD Colony, Seminary Hills,
Nagpur - 440 006.
6. Ramesh Namdeo Patil,
Prabhakar Niwas - 1/3,
Vijay Nagar, Nalasopara (E),
Tal.Vasai, Dist.Thane.
7. Mohanlal Sharma,
293, Laxmi Housing Society,
Last Bus Stop, Ahmedabad,
Gujarat - 380 003.
8. Mrs.Nirmala S. Vedamani,
Type III 1/2,
Air Force Academy,
Hyderabad - 43.
9. K.V. Vijayanarayanan,
P-122/1, Pratap Nagar,
Post : INS Shivaji,
Lonavala - 410 402.
10. Kashinath J. Naik,
Flat No.201, 1st floor,
Mohidin Building,
Opp. Lake Vadém,
Vasco-da-Gama,
Goa - 403 802.

All the applicants are working as
Family Welfare Extension Educators,
in Family Welfare Centres under
Armed Medical Services of Ministry
of Defence.

.. Applicants.

(By Advocate Shri G.S. Walia).

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1. The Union of India, through
The Secretary,
Ministry of Defence,
South Block, New Delhi.
2. The Director General,
Armed Forces Medical Service,
M-Block, New Delhi-110001.
3. The Secretary,
Government of India,
Ministry of Health and Family
Welfare (Department of Family
Welfare), Nirman Bhavan,
New Delhi - 110 011. Respondents.

(By Advocate Shri V.S. Masurkar).

ORDER

{ Per : Hon'ble Shri Muzaffar Husain, Member (J) }.

Applicants being aggrieved by the impugned action of the respondents have approached this Tribunal seeking following reliefs.

- "8.a) This Hon'ble Tribunal may be pleased to direct Respondents to grant pay scale of Rs.1600-2660/- w.e.f. 01.01.1986 and Rs.2000-3200/- w.e.f. 01.01.1988 to Applicants, on principles of equal pay for equal work.
- b) Applicants may be held entitled to the arrears of pay after fixation of their pay in the respective grades with interest @ 18% p.a. on delayed payments.
- c) Any other and further order as this Hon'ble Tribunal may deem fit, proper and necessary in the circumstances of the case.
- d) Joint Original Application may be allowed to be filed.
- e) Cost of this Original Application be provided for."

It has been stated by the applicants that they are working as Family Welfare Extension Educator (in short FWEE) in Family Welfare Centre in Armed Forced Medical

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Services, under Ministry of Defence have been discriminated in respect of their pay scale. It is the claim of the applicants that they should be granted the pay scale of Rs.1600-2660/- with effect from 1.4.1986 and Rs.2000-3200/- with effect from 1.4.1988, as these pay scales have been granted to their counterparts working in Railways. The applicants after knowing the grant of higher pay scale to their counterparts working in the Railways submitted their representation through their Department Association and individually for cadre review in the Family Welfare Organisation to the Armed Forces in which they stated that the category of the FWEE has been taken as a General Group 'C' category and the pay scale is granted keeping in view the existing pay scale of Rs.425-700/- whereas the Group 'C' posts in other Departments/Ministries having pay scale of Rs.425-700/or lower pay scales, have been granted better pay scale of Rs.1640-2900/-. The applicants further stated that keeping in view the genuine demands of the FWEEs, the case of Cadre Review was considered in detail by the Ministry of Defence in consultation with Ministry of Health & Family Welfare and ultimately a decision was taken for cadre review in the Family Welfare Organisation and the proposal for upgradation of Group 'C' employees were asked by Respondent Nos.1 and 2. The different Family Welfare Centres have sent the proposal, recommending scales for FWEEs under Defence at par with their counterparts in the Railways with effect from 1.1.1986 and further with effect from 1.1.1988. Though

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the Ministry of Defence has approved the pay scale of FWC staff with their counterparts in the Railways, the case is still pending with the Ministry of Health & Family Welfare and their associated finance since 15.7.1993. They have also stated that by letters dated 10.4.1992 and 22.7.1993 the proposal for granting proper grades to the applicants' cadre was approved. However, by letter dated 8.1.1997 the proposal was rejected without giving adequate and sufficient reasons. The post of Family Welfare Extension Educator was not covered by the 5th Pay Commission recommendations. Again the pay scale was not fixed properly and they were fixed in Rs.4500-7000/which is also the pay scale of Lady Health Visitor, who was earlier in the lower grades. Thereafter by letter dated 27.4.1998 the matter was referred to the Anomaly Committee and the Committee has recommended pay scale of Rs.5000-8000/- to the applicants. The act of the Respondents of not fixing proper scale of Rs.5500-9000/-(entry level) and Rs.6500-10500/-(provisional) and Rs.7500-12000/- (provisional) is a continuous cause of action as the applicants continue to work in the same post.

2. The Ministry of Health and Family Welfare has approved the higher pay scale for FWEE working in the Ministry of Railways, it was incumbent upon the respondents to provide for an overall cadre review of the category in the Family Welfare Organisation in all the departments e.g. Railways and Armed Forces and their counterparts working in the Railways are performing same

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kind of duties and are governed by the same set of terms and conditions and as such are entitled to grant of same pay scale on the principle of equal pay for equal work. Hence the applicants are entitled to grant higher pay scale to their counterparts. The action of the respondents in not granting the pay scale equal to their counterparts in the Railways is arbitrary, illegal, unconstitutional, discriminatory and as such teh same is liable to be set aside and hence this O.A.

3. The respondents have resisted the claim of the applicants by filing written statement. They have stated that the proposal for Cadre Review of FW staff was initially examined by Ministry of Health and Family Welfare as they were then funding the Family Welfare Programme under Ministry of Defence. However, consequent to shifting of funding liability to Ministry of Defence with effect from 1994-95, the proposal was examined by Ministry of Defence and it was not accepted. They have also stated that though the Family Welfare Staff of Railways and Ministry of Defence were paid their pay and allowance out of the budget given by the Ministry of Health & Family Welfare till 1994, they were governed by different sets of rules existing in their own organisation. As such order of one organisation granting the promotion to the employee are not binding on the other organisation. The application is devoid of merit, therefore, the same is liable to be dismissed.

4. Heard learned counsel for the applicants and respondents and perused the material placed on record.

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Learned counsel for the applicants contended that once the Ministry of Health and Family Welfare has approved higher pay scale for the FWEE working in the Ministry of Railways, it was incumbent upon the respondents to provide for an overall Cadre Review of the category in the Family Welfare Organisation in all the departments e.g. Railways and Armed Forces. The applicants and their counterparts working in the Railways are performing same kind of duties and are governed by the same set of terms and conditions and as such are entitled to grant of same pay scale on the principle of equal pay for equal work.

5. Learned counsel for the applicants has also placed reliance on the decision of Central Administrative Tribunal, Chandigarh Bench in O.A.No.105/PB of 2003 Bharat Bhushan Uffa Vs. Union of India decided on 6.11.2003 and argued that the case is squarely covered by the decision of the Chandigarh Bench. Learned counsel for the respondents has not shown any other decision to the contrary.

6. We have considered the arguments raised by the learned counsel for the applicants and gone through the decision of the C.A.T., Chandigarh Bench relied upon by the learned counsel for the applicants. The learned Bench of this Tribunal in its order dated 6.11.2003 observed as under:-

"Both sides have admitted that Recruitment Rules obtaining prior to 1986 are relevant for consideration of the claims of the applicants. Annexure R-9 is a copy of Ministry of Defence, Family Planning Organisation (Class II posts) Recruitment Rules, 1970. These Rules prescribe the qualification of "Graduate with at least one year experience in Community/Social

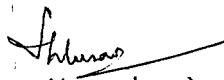
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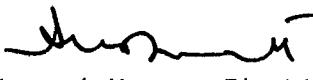


work." As per Annexure R-11, dated 3.5.1983, qualification for the related post in the Railways has been prescribed as 'Graduates with Commerce, Economics, Statistics, Mathematics or Social Service as one of the subjects.' Superficially the qualifications for the cadre of Family Welfare Organisation in the Ministry of Defence and that of the Ministry of Railways as stated above appear to be dissimilar. Similarity of Recruitment Rules was the basic pre-condition for accepting the proposal as an anomaly under the Recruitment Rules. On a closure look it would appear unequivocally that the qualifications prescribed for the post of FWEE in the Recruitment Rules under the Ministry of Defence, are superior and more stringent qualifications, inasmuch as one year experience in community/social work has been additionally prescribed to the requirement of graduation. Qualifications for the related post in the Railways, though prescribe certain subjects in graduation, these do not prescribe the additional requirement of any experience in community/social work. As such the Recruitment Rules for the post of FWEE under the Ministry of Defence are certainly superior to those prescribed for the post of FWEE under the Ministry of Health and Family Welfare/Railways. As the applicants seem to possess superior qualifications for the post of FWEE under the Recruitment Rules, as compared to their counterparts in the Ministry of Health and Family Welfare/Railways, they meet the pre-condition as an anomaly and certainly deserve to have the higher pay scale of Rs.5000-8000 as available to FWEE under the Ministry of Health and Family Welfare/Railways."

7. On perusal of the order of the C.A.T., Chandigarh Bench, it is observed that the case of the applicants is squarely covered by the decision of the Bench stated above. We are bound by the decision of Chandigarh Bench being coordinate Bench. Accordingly we follow the decision and pass order on the same line.

8. In the result, the O.A. is allowed. The respondents are directed to consider the case of the applicants in the light of the decision of the C.A.T., Chandigarh Bench quoted above. No order as to costs.


(Muzaffar Husain)
Member (J)


(Anand Kumar Bhatt)
Member (A).