

Recd at  
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CENTRAL ADMINISTRATIVE TRIBUNAL  
~~PRINCIPAL JUDGE~~ BOMBAY BENCH  
~~XXXXXX~~ BOMBAY.

O.A. / ~~XXXXXX~~ 164 / 1992 Decided on : 12.7.92

Shri Gopalbhai C. Patel ... Applicant(s)

( By Shri D.V. Gangal, Advocate )

versus

Union of India ... Respondent(s)

( By Shri M.I. Sethna, Advocate )

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THE HON'BLE SHRI JUSTICE K.M. AGARWAL, CHAIRMAN

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1. To be referred to the Reporter or not ? **Yes.**
2. Whether to be circulated to other Benches of the Tribunal ? **No.**

*Km*  
( K.M. AGARWAL )  
Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

OA No.164/92

THIS THE 10<sup>th</sup> DAY OF JULY, 1997.

HON'BLE MR.JUSTICE K.M.AGARWAL,CHAIRMAN

Shri Gopalbhai C.Patel  
Carpentry Teacher  
Higher Secondary School,Naroli  
At Govt. Residential Complex  
E/3 Block, Silvassa  
Dadra & Nagar Haveli  
Pin: 396 230

.... Applicant

(BY ADVOCATE SHRI D.C.GANGAL)

vs.

1. Union of India,through  
Secretary to the Govt.of India  
Ministry of Human Resources Development  
(Deptt.of Education)  
New Delhi-110 001.

2. Collector,Dadra and  
Nagar Haveli, Silvassa  
Pin: 396 230

3. Assistant Director of Education  
Dadra and Nagar Haveli  
Silvassa: 396 230. ...

Respondents

(BY ADVOCATE SHRI WADARKAR FOR  
SHRI M.I.SETHNA)

ORDER

As the learned Judicial and the Administrative Members constituting the Division Bench have disagreed about the entitlement or otherwise of the applicant to claim upgraded pay scale of Rs.1400-2600 with retrospective effect pursuant to letter dated 6.11.1990(Exhibit B) of the Government of India, the matter came up before me as the third Member for resolving the disagreement. The question before me is:

"Whether the applicant is entitled to the upgraded pay scale of Rs.1400-2600 from any date earlier to one mentioned in the letter dated 6.11.1990(Exhibit B) of the Government ?"

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2. Briefly stated, the applicant joined his duties as a Carpentry Teacher on 12.7.1968 in the Government High School of Union Territory of Dadra & Nagar Haveli in the pay scale of Rs.115-245. In 1973, the Government introduced Central Pay scales with effect from 6.3.1970 for various employees under the Union Territory of Dadra & Nagar Haveli. The pay scale of the applicant was equated with that of Central Primary School Teacher which was Rs.118-225. There was another post of Carpentry Demonstrator, lower in rank and pay scale than that of Carpentry Teacher. It appears that by accidental slip, the pay scale of the Carpentry Demonstrator was equated with the Central Pay scale of Rs.145-330, which was higher than the Central Pay scale of Rs.118-225 given to the applicant as Carpentry Teacher. The applicant, therefore, represented for similar pay scale of Carpentry Demonstrator, if not more. During the pendency of his representation, the applicant filed a Writ Petition in Bombay High Court in or about 1984 for the said relief. The Writ Petition was transferred to the Bombay Bench of this Tribunal in 1990 and was re-registered as TA No.158/86. It was disposed of on 14.2.1990 with the following directions:

"In the circumstances, we are of the view that proper assessment of the issue has to be done by the first Respondent without further delay as it is patent that the matter has been unduly delayed. Such assessment has to be done having regard to the settled proposition of law that there shall be no discrimination among the employees in the various Union Territories, doing the same job of which the job requirements are the same and for which the qualifications for recruitment are also identical and with due respect to the doctrine of 'equal pay for equal work' as enshrined in the Constitution of India as propounded by the law laid down by the Supreme

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Court. This shall be done within four months from the date of receipt of copy of this order."

Pursuant to the said directions of the Tribunal, the Central Government took a decision to upgrade the pay scale of Carpentry Teacher from Rs.1200-2040 to Rs.1400-2600 with immediate effect, i.e., with effect from the date of order, 5.11.1990 (Exhibit A) and at the same time to downgrade the pay scale of Carpentry Demonstrator from Rs.1400-2600 to Rs.1200-2040 with effect from the date the existing incumbent vacated the post. (See orders dated 5.11.1990 and 6.11.1990 filed as Exhibits A & B). Not satisfied with decision of the Government, the applicant filed Contempt Petition No.35/90 for appropriate action against the respondents for the alleged contempt committed by them. The Contempt Petition was dismissed on 1.7.1991 with liberty to the applicant to file fresh OA, if so advised. The operative part of the order passed in Contempt Petition was as follows:

"It is submitted by the counsel of the applicant that the revision of pay should have been allowed with retrospective effect. since no such direction has been given in the final order, if the petitioner feels aggrieved on that account the remedy open is to file an original application in accordance with law. We are clear that the respondents cannot be proceeded with for violation of the final order on that ground."

The present OA was, thereafter, filed for giving retrospective effect to the decision taken by the Government vide its orders dated 5.11.1990 and 6.11.1990 (Exhibits A&B).

3. According to the learned Judicial Member, the claim was barred by time, as also hit by the principle of res-judicata and, therefore, not tenable. On merits as well,

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the claim was found to have no merit. On the contrary, the learned Administrative Member took the view that the application could not be dismissed on the ground of limitation or res-judicata and that the claim deserved to be allowed. Accordingly, the first and foremost question that arises for consideration is about the date of entitlement of the applicant for the upgraded pay scale, prospective or retrospective in effect. If it is held to be retrospective, the question of limitation or res-judicata may have to be looked into, but not now.

4. After hearing the learned counsel for the parties and perusing the record, it appears that either due to oversight or accidental slip, the pay scale of Carpentry Demonstrator was fixed on the higher side as compared to that of the Carpentry Teacher. Admittedly, before the introduction of Central Pay scales, the pay scale of the Carpentry Demonstrator was lower than that of the Carpentry Teacher. Instead of contesting the claim, the mistake was admitted and also tried to be corrected by the impugned decisions, Exhibits A&B. This conclusion finds support from the fact that the Government has also decided to downgrade the pay scale of Carpentry Demonstrator from Rs.1400-2600 to Rs.1200-2040 by the same order dated 5.11.1990 (Exhibit A).

5. Errors and omissions never give rise to any right. Accordingly the higher pay scale given to Carpentry Demonstrator by mistake, would not give rise to any claim by a Carpentry Teacher for higher pay scale with retrospective effect. Had the discrepancy or mistake been detected earlier and corrected, the applicant could not grudge that he was

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discriminated or not given equal pay protection. The applicant must remain satisfied with the upgrading of his pay scale prospectively, or from 5.11.1990, the date of order, Exhibit A.

6. In the circumstances aforesaid, my answer to the question referred is as follows:

"The applicant is not entitled to the upgraded pay scale of Rs.1400-2600 from any date earlier to one mentioned in the letter dated 6.11.1990(Exhibit B) of the Government."

7. Let the papers be now placed before the Division Bench for further orders in accordance with law.

  
(K.M.AGARWAL)  
CHAIRMAN

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