

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 399/92

Date of Decision: 23 DECEMBER 1997

K. Mukundan & 6 Ors. Applicant.

Mr. I. J. Naik Advocate for
Applicant.

Versus

U.O.I. & Ors. Respondent(s)

Mr. V. S. Masurkar Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R G Vaidyanatha, V.C.

Hon'ble Shri. P.P. Srivastava, Member(A)

(1) To be referred to the Reporter or not? *W*

(2) Whether it needs to be circulated to *W*
other Benches of the Tribunal?

Reported
V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PREScot ROAD, MUMBAI 400001

O.A.NO. 399/92

DATED : 23/12 DAY OF DECEMBER, 1997

CORAM : Hon. Shri Justice R G Vaidyanatha, V.C.
Hon. Shri P P Srivastava, Member(A)

1. K. Mukundan

2. N G Patel

3. K K Patel

4. P.B. Patel

5. J T Tamboli

6. Alban Guedes

7. Raju Jacob

All working ad Instructor
in Technical High School Centre,
Daman 396220

(By Adv. I J Naik)

..Applicants

v/s.

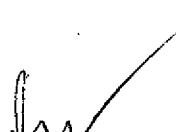
1. The Principal
Technical High School Centre
Daman 396220

2. The Director of Education
Administration of Daman & Diu
Office of the Collectorate
Daman 396220

3. The Chief Secretary
Administration of Daman & Diu
Office of Chief Secretary
Daman 396220

4. The Administrator
Union Territory of Daman & Diu
Office of the Governor
Panaji Goa PIN 403 001

5. The Under Secretary
Ministry of Human Resource and
Development (Dept. of Education)
Government of India
New Delhi



6. Union of India
through Chief Secretary
Administration of Daman & Diu
Daman 396220

(By Adv. Mr. V S Masurkar
Central Govt. Standing Counsel) .. Respondents

ORDER

[Per: R G Vaidyanatha, Vice Chairman]

1. This is an application Under Section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard both sides.

2. The applicants who are working as Instructors in Technical High School Center at Daman have come up with the present application claiming certain scale of pay which are granted to their counter parts in the Union Territory of Dadra and Nagar Haveli. Their case in brief is as follows:

.. The applicants are working as Instructors in the various technical training institutes run by the Administration of Daman and Diu. They have the necessary qualification for their job. Originally they were placed in the pay scale Rs.260-6-326-EB-8-350. Subsequently they have been placed in the pay scale of Rs.950-20-1050-EB-25-1500 as per the 1986 Rules. Earlier there was a Union Territory of Goa, Daman and Diu.



Subsequently Goa was bifurcated and formed into an independent state. The counter parts of the applicants who are working as instructors in Goa are getting higher pay scales. Even instructors working under the Administration of Dadra, Nagar Haveli and Instructions in Maharashtra, and Gujarat states are also getting higher scales of pay. The applicants who are doing the same work and who are having the same qualification are also entitled to same scales as Instructors in the above States and Union Territories. The applicants made number of representations to the Government but in vain. Now the counter parts in Dadra and Nagar Haveli are getting revised pay scale of Rs.1200-2040 from 1.11.86. It is, therefore, prayed that the applicant's pay scale may be fixed originally in the scale of Rs.330-450 in lieu of old scale of Rs.260-430 and then the pay be again revised in the pay scale of Rs.1200-2040 with effect from 1.1.1986.

3. The respondents have filed a reply denying the allegations made by the applicants. They stated that the applicants are not entitled to any higher scale of pay as claimed in the application. They have stated that right from the beginning the instructors in the area covered by Daman and Diu and the area covered by Dadra and Nagar Haveli were having different scales of pay and in spite of successive Pay Commission Reports, there is no



recommendation for having same pay for the Instructors in these two Union Territories. It is also stated that the qualifications for the post of Instructors in the two Union Territories are different. The pay commissions have always recommended different pay scales in the two Union Territories for the post of Instructors.

4. The short point for consideration is whether the applicants have made out a case for having parity of pay scales as obtaining to Instructors in the Union Territory of Dadra and Nagar Haveli.

5. Learned counsel for the applicants placed reliance on 1984 G.H.C. (N.O.C.) 112 [T.R.S. NAIR Vs. STATE OF GUJARAT AND ANOTHER]. In that case the question was whether the stenographers in non-Sachivalaya departments should have same scale of pay as Stenographers in Sachivalaya. On the facts and circumstances of that case and the common method of recruitment and common qualification etc., it was held that there was discrimination in giving different pay scales to the two sets of Stenographers which violates Article 14 of the Constitution of India. On that ground it was held that the Stenographers in both Sachivalaya and non-Sachivalaya should get equal pay.

6. On the other hand the learned counsel for the respondents invited our attention to an un-reported

judgment of the Supreme Court in Civil Appeal No.11486 and 11487 of 1996 [UNION OF INDIA Vs. S. YOGANAND & ORS.]. The Supreme Court observed that many factors are to be taken into consideration for deciding the question of equal pay for equal work.

7. Learned counsel for the respondents has also invited our attention to two more authorities on that point. In AIR 1989 SC (19) [STATE OF UTTAR PRADESH Vs. J.P. CHAURASIA & ORS], the Supreme Court observed that many factors are to be taken into consideration for deciding the question of equal pay for equal work. It is further stated that equation of posts or equation of pay must be left to the executive government and it must be determined by the expert bodies like the Pay Commissions. The Supreme Court cautioned that the Court should not try to fix the pay scales of different categories of employees only on principle of equal pay for equal work unless it is shown that it was made on extraneous consideration.

.. In (1988) 7 ATC 591(SC) [FEDERATION OF ALL INDIA CUSTOMS AND CENTRAL EXCISE STENOGRAPHERS (RECOGNISED) AND ORS Vs. UNION OF INDIA & ORS.] a similar question arose about equal pay for equal work. There also number of guidelines have been given as to how this question should be decided.



8. In the present case the only material placed before the Court is that the applicants who are working as Instructors in Technical High School in the Union Territory of Daman and Diu are getting less pay than their counterparts in Union Territory of Dadra and Nagar Haveli, Goa and other States.

9. The question of vice of discrimination under Article 14 on the question of equal pay of equal work always pre-supposes both the services being under the same Government or same master. If one State is giving a higher pay scale it does not make another State to give the same pay scales to its employees. Article 14 is not attracted to such a case. In this connection we are reinforced in our view by a decision of the Apex Court reported in 1989(5) SLR 774 [HARBANS LAL AND OTHERS Vs. THE STATE OF HIMACHAL PRADESH AND ORS] where the Supreme Court has clearly observed for purpose of Articles 14 and 16 on the question of equal pay for equal work the alleged discrimination must be amongst the same set of employees, under the same master in the same establishment. It is further observed that the comparison cannot be made with counter parts in other establishments when different managements or even in establishments in different locations though owned by the same master. That was a case where a carpenter in a Government Corporation was complaining about discrimination with reference to



counter part in the regular Government service. In the present case the applicants are alleging disparity in pay scales amongst the employees of Union Territory of Daman and Diu on the one hand and the Union Territory of Dadra and Nagar Haveli on the other hand. Both are separate cadres and separate services and for all services there is no common cadre between the two Union Territories. Under these circumstances if there is a difference in pay scale in the cadre of any employee it cannot be agitated under Article 14 of the Constitution of India.

10. As already stated the Supreme Court has observed that this is a matter which has to be decided by 'the executive depending upon expert study like Pay Commission or some other expert body. Learned counsel for the respondents brought to our notice that right from the beginning viz., 1973 and even after successive Pay Commission Recommendations there is no recommendation for a common cadre or common pay scale for the employees in both the Union Territories. It may be that the applicants are agitated because their counter parts in the other Union Territories are getting more pay but this is a matter for the Government to decide by taking into consideration all the circumstances into consideration. If necessary the Government can refer the matter to the Pay Commission or appoint an expert body to give its opinion. It is not a matter where the Tribunal can



interfere and give a direction to the Government to give a particular scale of pay to the applicants and other Instructors.

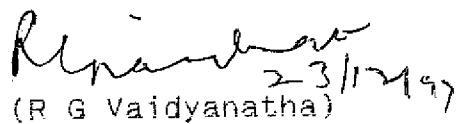
11. We, therefore, hold that the facts and circumstances of the case do not make out a case for interference by this Tribunal for giving any direction regarding higher pay scale for applicants and other Instructors. We only observe that the applicants can make one more representation by giving all reasons for claiming higher pay scale and Administrator of Union Territory of Daman and Diu and the Government of India to consider the same and take an appropriate administrative decision by itself or by obtaining the opinion of an expert body like the Pay Commission or some other Committee.

12. In the result the application is dismissed, subject to the observations made in para 11 above about reconsideration of the matter by the Government. No costs.



(P.P. Shrivastava)

Member (A)



R.G. Vaidyanatha
23/12/97

Vice Chairman

trk