

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 842/92

14.9.98

Date of Decision:

J.B.Patil & Ors.

.. Applicant

Shri G.S.Walia

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri V.D.Vadhavkar for Shri M.I. Sethna. .. Advocate for
Respondent(s)

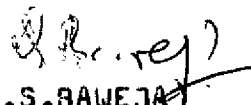
CORAM:

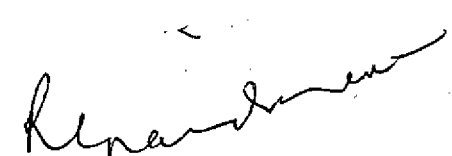
The Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

The Hon'ble Shri D.S.Baweja, Member (A)

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

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


(D.S.BAWEJA)
MEMBER (A)


(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO.842/92

Presented this the 14th day of September 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member (A)

1. J.B.Patil
2. V.D.Pundlik
3. V.P.Desuandikar
4. R.D.Pota
5. R.P.Bhinde

All are working as
Senior Technicians,
Instrumentation Division,
under Central Water & Power
Research Station, Khakakwasla,
Pune - 411 024.

By Advocate Shri G.S.Walia

... Applicants

V/S.

1. Union of India through
Secretary,
Ministry of Water Resources,
Shramashakti Bhavan, New Delhi.
2. Director,
Central Water & Power
Research Station,
Khadakwasla Research Centre,
Pune.

By Advocate Shri V.D.Vadhavkar
for Shri M.I.Sethna

... Respondents

O R D E R

(Per: Shri D.S.Baweja, Member (A))

This application has been filed jointly by five applicants working under Central Water & Power Research Station, Pune. The applicants were initially recruited as Electricians in the pay scale of Rs.380-560 which was equivalent to the pre-Third pay commission scale of Rs.175-280. The applicants were further promoted on various dates as Radio Technicians. The details of initial recruitment and promotions are as under :-

<u>Name of the Applicant and Sl.No.of the Applicant</u>	<u>Date of Recruit- ment</u>	<u>Date of Promotion</u>
1. J.B.Patil	5.8.1969	27.9.1974
2. V.D.Pundlik	6.11.1974	19.5.1976
3. V.P.Deswandikar	22.4.1975	31.7.1978
4. R.P.Bhide	10.3.1978	21.7.1982
5. R.D.Pote	21.7.1978	18.8.1982

2. The main case of the applicants is that as per the recommendations of the 3rd Pay Commission under Chapter 14, page 146, Para 40, the engineering staff with diploma as a qualification for recruitment entry have been allowed scale of Rs.425-700 and next higher grade of Rs.550-900. These recommendations of the 3rd Pay Commission had been accepted by the Govt. of India and therefore the applicants were entitled to be placed in the scale of Rs.425-700 as Electricians and thereafter on promotion as Radio Technicians which is the next grade as per the promotion channel, the grade of Rs.550-900 should have been allowed. However, the applicants were not allowed these scales. The applicants have further submitted that a high level committee was set up to review the pay scale and cadre of the Research Station and the committee gave its recommendations in 1979. Based on the recommendations of this committee, the applicants were allowed the scale of Rs.425-700 from the date of issue of the letter, i.e. 20.8.1979. The committee also recommended the same scale of Rs.425-700 for the post of Radio Technician. The applicants contend that they were entitled for the scale of Rs.425-700 from 1.1.1973 and therefore allowing this scale from 20.8.1979 is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India.

3. The applicant No. 1 has stated that he made a representation about the entitlement of the scale of Rs.425-700 as per the 3rd Pay Commission's recommendations in 1974 and thereafter the matter was pursued further. It is stated that an appointment was also sought with the Joint Secretary, Department of Irrigation, Ministry of Agriculture to represent the case of the applicant and the appointment was allowed on 29.5.1978 and it was assured that necessary justice will be given to the applicants. It is also further stated that the Research Station also took up the issue of the applicants with regard to grant of pay scales as stated earlier recommending their ~~case~~ strongly but the higher authorities did not accept the claim of the applicants. Feeling aggrieved, the applicants filed OA.NO.204/89. This OA. was finally disposed of on 27.9.1991 with a direction to the respondents to consider the claim of the applicants within a period of three months. Respondents have considered the representation of the applicants in pursuance of the directions in order dated 27.9.1991 and their claim had been rejected as per the order dated 19.6.1992. The present OA. has been filed on 10.8.1992 after rejection of their claim as per the impugned order seeking the following reliefs :- (a) to set aside the impugned order dated 19.6.1992, (b) to direct respondents to allow the scale of Rs.425-700 from 1.1.1973 with all consequential benefits of back-wages, seniority and increment etc., (c) to direct respondents to grant the scale of Rs.550-900 on promotion as Radio Technicians with all consequential benefits, (d) to direct the respondents to allow the pay scale

equivalent to Rs.550-900 as per the recommendations of the Fourth Pay Commission from 1.1.1986.

4. The respondents have filed the written reply. At the out-set, the respondents have opposed the application on two grounds. The first ground is that except Applicant No. 1, all other applicants have been specifically recruited in the grade of Rs.380-560 as per the recruitment rules and therefore they are stopped from raising the issue of allowing of higher scale of pay from the date of recruitment. The second ground is with regard to the limitation. The respondents have pointed out that the first cause of action arose when the recommendations of the ~~Third~~ Pay Commission were implemented ^{from 1.1.73} and the second cause of action arose when the recommendations of high level committee were recommended from 20.8.1979. It is further stated that the applicants ~~sought legal~~ ^{only} remedy ~~first time~~ ^{in 1989} and the present application has been filed now in 1992. ~~In view of these~~ ^{respondents plead} ~~facts~~ that the OA. is barred by limitation. As regards the merits, the respondents have submitted ^{replacement} that the applicants have been allowed the ~~scale~~ of Rs.380-560 as per the recommendations of 3rd Pay Commission based on the fact that the scale of the Electrician was 175-280. The respondents have further contended that the 3rd Pay Commission had recommended a scale of Rs.425-700 only in respect of those who working in the grade of Rs.180-380. Since the applicants ~~were~~ ^{therefore} not in this scale, their claim of scale of Rs.425-700 is ~~not~~ sustainable.

The respondents have further submitted that high level committee was set up after the recommendation of 3rd Pay Commission to go into the issue of pay scales as well as rational division of the cadre of the employees of the Central Water & Power Research Station in 1976. This committee gave its recommendations in 1979. Based on the recommendations, the scale of Rs.425-700 had been allowed to the Technicians from 20.8.1979. As per the recommendations of this committee, the scale of Radio Technician had been ^{also} given as Rs.425-700 from the same date although from 1.1.1973 higher scale of Rs.380-560 had been allowed. The respondents maintain that their action is not arbitrary or discriminatory and there is no violation of provisions of Constitution of India.

5. The applicants had filed a Misc.Application No. 773/93 making a prayer to direct the respondents to furnish some documents and to clarify on certain points made in the written reply. The respondents have filed a written reply for this Misc.Application bringing the documents on record as well as on the points giving clarifications raised in the Misc.Application. The grounds advance in written reply have been reiterated.

6. The applicant has not filed any rejoinder reply to the written statement of the respondents.

7. We have heard Shri G.S.Walia, learned counsel for the applicant and Shri V.D.Vadhavkar proxy to Shri M.I.Sethna, learned counsel for the respondents. The arguments advanced during the hearing have been carefully considered and the material brought on record has been also gone into carefully.

8. The applicants have relied upon the following judgements in support of various grounds taken in the OA. :- (a) Purshottam Lal & Ors. vs. Union of India & Anr., AIR 1973 SC 1088, (b) Budhan Choudhry & Ors. vs. State of Bihar, AIR 1955 SC 191, (c) Union of India & Ors. vs. Shri Bijoy Lal Ghosh & Ors., 1998 (1) SC SLJ 560, (d) P.R.Kasanda & Ors. vs. Union of India & Ors. OA.NO.1187/90 CAT, Principal Bench, New Delhi. The respondents have relied upon the judgement of the Hon'ble Supreme Court in the case of Union of India & Anr. vs. P.V.Hariharan & Anr. 1997 SCC (L&S) 838.

9. From the particulars of the date of recruitment furnished by the applicants and confirmed by the respondents, it is noted that the applicants belong to two different groups. Applicant No.1 had been recruited on 5.8.1969, i.e. before the implementation of the recommendations of 3rd Pay Commission from 1.1.1973. Applicants No. 2 to 5 had been recruited subsequent to the implementation of the recommendations of 3rd Pay Commission. This distinction based on the dates of recruitment is material to the present case when considering on merits and therefore needs to be kept in view while ^{on} deliberating the issue subsequently.

10. Before going into the merits of the claim of the applicants, the technical objections raised by the respondents should be gone into first to find out whether the present application

deserves to be dismissed on this objection alone. The respondents have opposed the present application ^{as} being not maintainable on two grounds. The first ground is that the applicants No. 2 to 5 had been recruited in the grade of Rs.380-560 and therefore cannot claim the benefit of 3rd Pay Commission scale of Rs.425-700 from the date of recruitment after several years. The second ground is that the application is barred by limitation as the first cause of action arose in 1973 and the second cause of action arose in 1979. As brought out earlier, the applicants had also filed OA.NO. 204/89 which was decided on 27.9.1991 with the direction that representation of the applicants may be disposed of. The present application has been filed impugning the order which has been passed by the respondents after considering the representation of the applicants as per the direction of the Tribunal. The impugned order is dated 19.6.1992 and the present OA. has been filed on 10.8.1992. Keeping this in view, the question of limitation as well as the ^{application of} principle of estoppel should not arise as the present OA. has been filed after the earlier OA. filed in 1989 which had been disposed of with certain directions. The consideration of the issue on merits in the present ^{however} OA. ^{is} closely related with the grounds raised by the respondents and therefore we are of the opinion that these grounds of limitation and estoppel need to be considered irrespective of the fact that the present OA. has been filed ^{in time} challenging the impugned order passed in compliance with the directions issued in the earlier OA. This ~~view~~ is based on the

following considerations :- (a) Applicants No. 2 to 5 have been recruited subsequent to the implementation of the 3rd Pay Commission recommendations, (b) High Level Committee had been set up in 1976 to go into the issue of the pay scale of the Research Station and the recommendations of the Committee had been implemented in 1979, (c) subsequent to the 3rd Pay Commission, the 4th Pay Commission had been also set up and the recommendations had been implemented from 1.1.1986, i.e. before filing the first OA. in 1989. During the pendency of OA., 5th Pay Commission recommendations have also been implemented from 1.1.1996, (d) the claim is not only for pay scale of Rs.425-700 from 1.1.1973 but ~~even~~ there is a claim for higher grade for the next post of Radio Technician.

11. Taking the first ground of the estoppel, as indicated earlier, except Applicant No. 1 who was in service on 1.1.1973 when 3rd Pay Commission recommendations were implemented, the other applicants had been all recruited subsequently in the grade of Rs.380-560. The main thrust of the arguments of the applicants in support of their claim is that they have been discriminated arbitrarily by not implementing the recommendations of the 3rd Pay Commission as accepted by the Government of India and the learned counsel for the applicants was at pains to reiterate that their claim is not based on "Equal pay for equal work". Based on this, the case of the applicants is not of an implementation of the pay scale as per the recommendations of the 3rd Pay Commission and acceptance of the same by the Govt. of India but that of being recruited in the grade of Rs.425-700 instead of Rs.380-560. The respondents

have brought out that the Electricians were in the grade of Rs.175-280 before the recommendations of the 3rd Pay Commission and as per the recommendations of the 3rd Pay Commission, the replacement scale of Rs.380-560 had been allowed. The recruitment of the Applicants No. 2 to 5 had been done from the market specifically in the grade of Rs.380-560 and respondents contend that the therefore the applicants are estopped from raising the issue of allowing the grade from the date of recruitment. Since the applicants have raised the issue alleging discrimination and violation of Articles 14 and 16 of the Constitution of India, the plea of the respondents of estoppel may not be sustainable. However, looking at the matter from another angle if the claim of the applicants is accepted, then this benefit will itself involve discrimination and violation of Articles 14 & 16 of the Constitution of India. If the grade of Rs.425-700 was allowed as per the recommendations of the Pay Commission, then the recruitment of the Technicians should have been done in this grade. In case the recruitment was done in this grade, then the candidates who did not perhaps offer themselves for recruitment in the grade of Rs.380-560 would have applied in case the recruitment was done in the ^{higher} grade of Rs.425-700. In that event, it is quite likely that they would have been more qualified and meritorious candidates than the applicants and Applicants No. 2 to 5 might have not stood chance of being selected. In view of this, if the applicants ^{are} deemed to have been recruited in the grade of Rs.425-700, then such a relief would certainly be a cause of discrimination to the

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candidates who would have otherwise applied for the post. Therefore, looking^{at} the matter from this angle, the claim of the applicants No. 2 to 5 for granting a scale of Rs.425-700 from the date of recruitment is not sustainable. The principles of estoppel would certainly apply in their case as they cannot turn around after several years to claim that they should have been recruited in the grade of Rs.425-700.

12. The second issue is ^{that the} application being barred by limitation. The relief claimed by the applicants is that of ^{granting of} pay scale of Rs.425-700 w.e.f. 1.1.1973 with consequential benefits of back wages and seniority as well as grant of pay scale of Rs.550-900 as Radio Technician. As indicated earlier, the relief of grant of scale of Rs.425-700 from 1.1.1973 applies to the Applicant No. 1 while for the others the same will apply from the date of recruitment as per the dates indicated earlier. Therefore, in respect of Applicant No. 1 the cause of action ^{first} ~~arose~~ ^{arose} from the date when orders were issued for implementation of the recommendations of 3rd Pay Commission and in respect of ~~the~~ others from the dates they have been recruited. The second ~~cause~~ ^{cause} of action arose when the recommendations of the High Level Committee were implemented from 20.8.1979 granting the scale of Rs.425-700 to the post of Electrician. From the material brought on record, it is noted that Applicant No. 1 had made some representations about grant of scale of Rs.425-700 in 1974 and thereafter pursued the matter and the last reference is made to the

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meeting with the Joint Secretary, Department of Irrigation on 29.5.1978. There is no averment for any further representation made thereafter.

Reference only has been made to the letter sent by the Director of Central Water & Power Research Station in 1986 recommending the case of the applicants, i.e. after a period of six years after the recommendations of the High Level Committee ~~_____~~ were implemented. The applicants first agitated the matter only in 1989.

The applicants have not filed any rejoinder as indicated earlier and therefore there is no controverting of the plea of limitation raised by the respondents in the written reply. In the OA, the applicants have stated that the application is within the period of limitation as perscribed under Section 21 of the A.T.Act. This statement of the applicants may be correct if the reference is taken from the date of issue of the impugned order. However, for the purpose of limitation, ^{respect of} in the reliefs prayed for, the applicants are required to explain as to why the matter had not been agitated for seeking the legal remedy in case there was no response from the department for almost 10 years after the recommendations of High Level Committee were implemented. From the facts as revealed in the OA., it is obvious that the applicants have been keeping quiet after the recommendations of High Level Committee were implemented. Subsequently, 4th Pay Commission was also set up and its recommendations were also implemented from 1.1.1986. The applicants have not come out with any averment as to whether the matter was represented by their Union

before the 4th Pay Commission with regard to their grievance. Keeping these facts in view, we are of the opinion that the application is barred by limitation. Inordinate and unexplained delay or laches by itself is a ground to refuse a relief irrespective of the merits of the claim. In this connection, we refer to the judgement of the Hon'ble Supreme Court in the case of Delhi Veterinary Association vs. Union of India & Ors., 1984 (2) SLR 144. In this case, the issue involved was with regard to the recommendations of pay scales of 3rd Pay Commission. The petition was filed by Delhi Veterinary Association. The Delhi Veterinary Doctors of the Association had pleaded that the Veterinary Assistant Surgeons posted under Development Commissioner, Delhi Administration have been allowed lower grade in 3rd Pay Commission when compared with a similarly placed Doctors in the Union Territory of Chandigarh, on the basis pay scale prevailing in the adjoining State of Punjab and also in the Union Territories of Arunachal Pradesh and Mizoram. The petitioner had sought the relief of entitlement of same scale as ^{to} ~~given~~ the Veterinary Surgeons ^{of Chandigarh administration} ~~stating~~ that they had the same qualification and had undergone the same process of recruitment. The Hon'ble Supreme Court did not decide the issue of pay scale as claimed as the 4th Pay Commission had been set up by that time. The Hon'ble Supreme Court observed that the question of discrimination raised cannot be decided in isolation and this is a matter to be decided by

Government on the basis of recommendations of the 4th Pay Commission. The petitioner, however, urged that since the 4th Pay Commission would not be making any recommendation in respect of the period between 1973 and the date on which the new pay scales to be fixed on the recommendation of the 4th Pay Commission^{would come into force}, the Court should consider whether the Veterinary Assistant Surgeons were entitled to any retrospective benefit in respect of the said past period. The Hon'ble Supreme Court rejected the plea of the petitioner, stating in Para 10 that "Having regard to the long delay in approaching this Court after the fixation of their pay scale earlier, we do not propose to grant any relief in respect of that period". In the present case also, before filing of the application in 1989, the 4th Pay Commission's recommendations had been already implemented from 1.1.1986. During the pendency of the O.A., 5th Pay Commission had been set up and its recommendations have been also implemented from 1.1.1996. The applicants have approached the Tribunal after several years after the first cause of action arose^{in 1973} as well as the second cause of action in 1979. Keeping in view what is held by the Hon'ble Supreme Court in the above referred judgement, we come to the conclusion that the claim of the applicants for allowing the scale of Rs.425-700 from 1.1.1973 is barred by limitation. Since the post of Radio Technician is stated to be in line of promotion for the cadre of technicians, the relief prayed for entitlement of scale of Rs.550-900 on promotion as Radio Technician also suffers from same^{vice} and is barred by limitation."

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13. Apart from the application being not maintainable on the two grounds as deliberated above, we are also of the view that no judicial interference is called for on the facts of the case keeping in view the law laid down by the Hon'ble Supreme Court in several judgements. The applicants have claimed that they are entitled for the pay scale of Rs.425-700 claimed in view of the recommendations of the 3rd Pay Commission in Chapter 14 page 146 Para 40 and the same ^{having} been accepted by the Govt. of India as per the Gazettee Notification brought on record as Exhibit-'B' at page 22. On going through Exhibit-'B', we notice that the recommendations accepted with regard to pay scale do not refer to the recommendations in Chapter 14. The recommendations of the 3rd Pay Commission referred to the applicant are of general nature and it is not clear whether these recommendations had been accepted by the respondents in toto. The applicants have not brought any other material to establish their claim. Respondents, on the other hand, have stated that in the absence of any specific recommendations, the Electricians who were in the grade of Rs.175-280 were allowed the replacement scale of Rs.380-560. The respondents have further stated that the cadre as Radio Technician in the Research Station was ^{only} set up in 1972 and the same was not covered by the recommendations of the 3rd Pay Commission. As gathered from the written statement, the recommendations of the 3rd Pay Commission in respect of the staff of the Central Water and Power Research Station perhaps did not cover adequately with regard to pay scales and

therefore a High Level Committee ~~was~~ set up which had gone into the issue of this case and had made recommendations ^{are} ~~which~~ implemented from 20.8.1979. As noted from the letter dated 20.8.1979, the scale of Radio Technician and Senior Radio Technician which was Rs.180-380 had been revised to Rs.380-~~540~~ from 1.1.1973 and further revised to Rs.425-700 from the date of issue of the letter. In respect of Electrician, ^{is} the existing scale shown as Rs.380-560. This clearly shows that the Radio Technician and Senior Radio Technicians were not covered by the 3rd Pay Commission and there were no specific recommendations for this category. The High Level Committee had given the same scale to all the 3 categories from the date of issue of letter. The respondents have further stated that from 1983, the cadre of Electrician, Radio Technician and Senior Radio Technician have been merged and the cadre of Senior Technician in the grade of Rs.550-750 had been provided as a channel of promotion. From these facts, it is ^{closely} obvious that the issue of pay scale is ~~(L)~~ linked with the categories ~~and the case of~~ Electricians for granting the pay scale of Rs.425-700 from 1.1.1973 cannot be looked at in isolation. Further, it is also noted that in respect of Radio Technician, the posts are to be filled up partly by promotion and partly by direct recruitment. Any changes in the pay scale of the Technicians ~~will be closely~~ related to the other categories which ~~are~~ stated to be in the channel of promotion and cannot be considered in isolation.

The issue of fixation of the pay scale is a matter to be gone into by the Pay Commission. In the present case, the High Level Committee had already gone into the issue of pay scale subsequent to 3rd Pay Commission. Thereafter reports of 4th and 5th Pay Commission have been also implemented. In fact, the 5th Pay Commission in its report in Chapter 19 Vol. II at page 1475 in Para 90.28 has observed that High Level Committee was constituted in 1976, to go into the pay scales of the Central Water & Power Research Station. As indicated earlier, the recommendations of this Committee were implemented in 1979. These observations of the 5th Pay Commission reflect that the recommendations of High Level Committee had formed the basis of review to carry out all the various scales of staff in the subsequent Pay Commissions. In this connection, we refer to the judgement of Hon'ble Supreme Court in the case of Union of India & Anr. vs. P.V. Hariharan & Anr., 1997 (1) SC SLJ 598. It will be relevant to reproduce the observations made by the Hon'ble Supreme Court in Para 5 as under :-

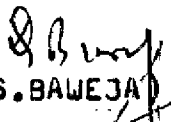
"..... We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay

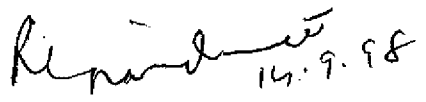
Commission, which goes into the problem at great depth and happens to have a full Picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being mis-understood and mis-applied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales."

In the present case, the matter of pay scale of the applicants has been already gone into by the High Level Committee, subsequent to 3rd Pay Commission followed by 4th Pay Commission and recently by 5th Pay Commission. Keeping in view the observations made by the Hon'ble Supreme Court, we do not consider that any case has been made out by the applicants which calls for anjudicial interference."

14. The applicants have quoted several judgements as detailed in Para 8 above. In view of what has been discussed above, we do not consider it necessary to review ^{all} the judgements cited. The judgements cited by the applicants are mainly on the ground that non implementation of the report of Pay Commission for certain categories is violation of Articles 14 and 16 of the Constitution of India. In the present case, as indicated earlier, the situation is entirely different. There is no discrimination with regard to implementation of the recommendations of the ^{3rd} Pay Commission and the High Level Committee had also gone into the matter.

15. In the light of the above, we come to the conclusion that the present application is not only barred by limitation but is also devoid of merits. The OA. is accordingly dismissed. In the facts and circumstances of the case, there will be no order as to costs.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN

mrj.