

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 782/93

5-8-99
Date of Decision:

S.L.Khompi & Ors.

Applicant.

Shri S.P.Saxena

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.R.Shetty for Shri R.K.Shetty

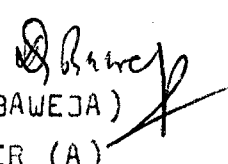
Advocate for
Respondent(s)

CORAM:

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

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? ✕


(D.S.BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 782/93

Dated this the 5th day of August 1999

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

1. S.L.Khompi
2. S.D.Yerundkar
3. A.S.Agashe
4. D.J.Adsule
5. A.G.Kamble
6. P.U.Dekate

All are working as Junior
Research Assistants in
Sil Engineering and Material
Testing Wing, Pune. (By Advocate Shri ... Applicants
S.P.Saxena)
V/S.

1. Union of India
through Secretary,
Ministry of Defence,
New Delhi.
2. Engineer-in-Chief,
Army Head Quarter,
D.H.Q., P.O.,
New Delhi.
3. Commandant,
College of Military
Engineering,
Dapodi, Pune.

... Respondents

By Advocate Shri R.R.Shetty
for Shri R.K.Shetty

O R D E R

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

This application has been filed jointly
by six applicants who are working as Junior Research
Assistants in Soil Engineering and Material Testing
Wing (S.E.M.T.Wing) under the College of Military
Engineering (C.M.E.) Pune. The main case of the

applicants is that they are engaged in the work of conducting scientific research and investigation in designing and evaluation and their duties are at par with the Junior Research Assistants in various other organisations under the Govt. of India. Further, their educational qualifications for recruitment are similar to the Junior Research Assistants in other organisations. The Junior Research Assistants in the other organisations have been allowed scale of Rs.425-700 on the recommendations of the 3rd Pay Commission corresponding to the existing grade of Rs.210-425 while the applicants had been granted the scale of Rs.330-560 in the replacement of existing scale of Rs.150-300. The applicants made a representation against the placement in a lower pay scale but the representation was turned down on the ground that as per policy of Government, no representation will be entertained in respect of pay scale for a period of 5 years from the date of implementation of Pay Commission recommendations. After expiry of 5 years, the applicants again made a representation and Respondent No. 3, i.e. Commandant, College of Military Engineering strongly recommended the case of the applicants for placement in the higher scale of Rs.425-700. However, even this recommendation was not considered and the applicants received a reply stating that the matter is under consideration.

(v)

In the meantime, 4th Pay Commission recommendations were also received and the applicants immediately approach^{ed} the implementation cell of 4th Pay Commission and also held a meeting with the Secretary, Ministry of Defence. However, all these efforts did not produce any result and the applicants were again given the replacement scale of Rs.330-560 of Rs.1200-2040. The applicants accepted this pay scale under protest and made again representation for review of their case for allowing the higher pay scale as allowed to the Junior Research Assistants in the other organisations. Finally, the case of the applicants was rejected as per letter dtd.5.3.92 by the Army Headquarters/stating that the educational qualification and experience prescribed for the other organisations is much higher than that of the applicants and there is no anomaly in allocation of lower pay scale to the applicants. Feeling aggrieved by rejection of the demand of the applicants for allocation of the pay scale, this OA. has been filed on 5.8.1993.

2. The applicants based on the above grounds have sought the following reliefs :- (a) to direct respondents to place the applicants in the scale of Rs.425-700 from 1.1.1973 on the recommendations of 3rd Pay Commission corresponding to the pay scale of Rs.210-425. (b) Allow corresponding scale of pay as recommended by 4th Pay Commission. (c) to allow payment of arrears arising due to difference

in pay scale right from 1.1.1973 or from the date of appointment whichever is later. (d) direct respondents to upgrade the pay scale of Junior Research Assistants by one level after they have put in 10 years of service as Junior Research Assistant.

3. The respondents in the written statement have opposed the application ^{maintainable} as not ~~on~~ on two technical grounds. The first being that application suffers from delay and laches and is hopelessly time barred as the applicants have claimed revision of pay scale from 1.1.1973. The second is that only Applicant No. 1 had been recruited in 1971 before the implementation of 3rd Pay Commission recommendations while the other applicants had been recruited subsequent to 1.1.1973. The applicant was specifically recruited in a grade and on being appointed in the pay scale as per the recruitment notification and having accepted the appointment, cannot seek revision of pay subsequently from 1.1.1973. As regards merits, the respondents contend that Government is the sole authority with regard to laying down of pay scales for various posts and such an authority cannot be challenged. The respondents further submit that the doctrine of "equal pay for equal work" is not sustainable as the same is applicable within the same establishment and not with reference to the staff working in another establishment. The respondents

further state that the qualification laid down for Junior Research Assistant in respect of the applicants is B.Sc. or Diploma in Engineering while in other organisations, it is B.Sc with minimum of 55% of marks and therefore the qualifications are not identical with that of Junior Research Assistants in other organisations as claimed by the applicants. The applicants have been allowed replacement scale as recommended by the 4th Pay Commission and are not entitled for the higher scale of pay as claimed by the applicants. It is also submitted that those who had been allowed scale of Rs.425-700 on acceptance of 3rd Pay Commission recommendations were those who were earlier in the scale of Rs.210-425 while the applicants as Junior Research Assistants were in the scale of Rs.150-300 and therefore cannot seek parity of higher scale of Rs.425-700. With these submissions, the respondents plead that the applicants have no case and the OA. deserves to be dismissed.

4. The applicants have not filed any rejoinder reply.

5. We have heard the arguments of Shri S.P. Saxena, learned counsel for the applicants and Shri R.R.Shetty on behalf of Shri R.K.Shetty, learned counsel for the respondents. The material brought on record have been also carefully gone into.

6. The applicants have not brought out their dates of recruitment but the relief has been claimed for higher scale of pay from 1.1.1973. The respondents, ^{have} however, given the details of dates of appointment of the applicants in the written statement. From these details, we find that only Applicant No. 1, S.L.Khompi was appointed on 31.8.1971 before the implementation of recommendations of 3rd Pay Commission on 1.1.1973. Applicants No. 2, 3 and 4 were appointed during 1974. Applicant No. 5 was appointed in 1980 while Applicant No. 6 was appointed as late as in 1990. From this, it will be seen that all the applicants except Applicant No. 1 have been recruited subsequent to recommendations of 3rd Pay Commission. This distinction based on the dates of recruitment has a ^{significant} bearing for going into the merits of the present case and therefore need to be kept in view as deliberated subsequently.

7. Before going into merits of the reliefs prayed for, we will take up the technical objections raised by the respondents opposing the application to find out if the present OA. is maintainable. The first ground taken by the respondents is that the application suffers from delay and laches ^{is} time barred and is also devoid of jurisdiction as the revision of pay scale is claimed from 1.1.1973. As indicated earlier, the applicants

have not filed any rejoinder to rebut this ground of the respondents. However, in the OA. in item 3 under heading "Limitation", the applicants have sought to make out a case that the applicants are filing this OA. within the limitation period. The applicants have indicated that their demand for higher pay scale in pursuance of the recommendations of the 3rd Pay Commission had been rejected only as per letter dated 5.3.1992 (Annexure. 'A-1'). It is further stated that as per para 5 of this order, the applicants made another representation on 20.11.1992 and this representation had not been decided by the respondents and therefore the present application filed on 5.8.1993 is within the period of limitation prescribed. The applicants have also stated that they have been pursuing the upgradation of pay scale since the implementation of the recommendations of 3rd Pay Commission and inspite of ^{their} repeated representations, the only reply given was that the matter is under consideration. It was only when the respondents gave a final reply as per letter dated 5.3.1992 from Army Headquarters and conveyed to them as per letter dated 24.3.1992 ^{they have sought legal remedy} The applicants have also pleaded that in case the Tribunal comes to a conclusion that the limitation period starts from 24.3.1992, then the delay caused in filing the application on 5.8.1993 be condoned. We have carefully considered the rival contentions and the material brought on record and are of the opinion that the present application suffers



both from being barred by limitation as well as lack of jurisdiction. The applicants have sought the relief of placing them in the scale of Rs.425-700 from 1.1.1973 treating them corresponding to the scale of Rs.210-425 instead of Rs.150-300. The cause of action therefore arose when the recommendations of the 3rd Pay Commission were implemented and the applicants were not allowed the scale of Rs.425-700 as claimed by Applicant No. 1. In respect of other applicants, the cause of action arose when they were recruited as Junior Research Assistant on different dates, as indicated earlier, subsequent to implementation of the recommendations of the 3rd Pay Commission. The applicants have made a plea that they have been repeatedly making representations but no decision had been received by them from the respondents and only when in 1992 the respondents gave a final reply rejecting their claim, they sought legal remedy. On going through the material on record, we no doubt agree that the applicants have been representing the matter from time to time and the Commandant, College of Military Engineering had been also sending his recommendations to the higher authorities for considering the case of the applicants. However, repeated representations will not extend the limitation when the matter is challenged ^{for} seeking legal remedy.

The delay in seeking legal remedy is to be explained with reference to arising of the cause of action originally and not from the reply to the representation after almost 20 years. If the applicants had made a representation and respondents failed to take any decision on the same, the applicants could have sought legal remedy as provided for in Section 21 of the Administrative Tribunals Act, 1985 after waiting for a period of six months. It was applicants' choice to keep waiting for the respondents' reply and went on making repeated representations. As held by the Hon'ble Supreme Court in the case of Administration of Union Territory of Daman & Diu & Ors. vs. R.D. Valand, 1996 SCC (L&S) 205, successive representations will not extend the limitation. In the matter of Pay Scales which are normally laid down by an expert Body such as Pay Commission, the question of limitation is very significant as issue of pay scales arising out of recommendations of Pay Commission cannot be kept pending for years together. In the present case, the applicants are aggrieved by the action of the respondents with reference to the recommendations of the 3rd Pay Commission in 1973. Thereafter, 4th Pay Commission recommendations had been implemented in 1986. Even after several years of implementation of 4th Pay Commission's recommendations, the applicants have filed the present OA. in 1993. In this connection,



we refer to the judgement of the Hon'ble Supreme Court in 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 by 3rd Pay Commission. The petition was filed by the Association of Veterinary Doctors of the Delhi Administration alleging that they have been allowed lower scale of pay on the recommendations of the 3rd Pay Commission when compared with the similarly placed Veterinary Doctors in some of the Union Territories. The petitioners had sought the relief of entitlement of same pay scale as given to the Veterinary Doctors of the Union Territories on the plea 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 the 4th Pay Commission had been already set up by that time and the report was expected. The Hon'ble Supreme Court has also held that the question of discrimination cannot be decided in isolation and this is a matter to be decided by the Government on the recommendations of the Pay Commission. The petitioners had also made a submission before the Hon'ble Supreme Court that the 4th Pay Commission may not give recommendation with regard to their pay scale for the earlier period and therefore made a plea that the Court should consider whether the petitioners are entitled to the benefit of higher pay scale retrospectively from the date of implementation of the 3rd Pay Commission.



The Hon'ble Supreme Court rejected the plea of the petitioners in para 10 of the judgement stating "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 the applicants are claiming the higher pay scale based on the recommendations of the 3rd Pay Commission in 1973 and thereafter 4th Pay Commission recommendations have also been implemented before the applicants filed the present OA. In fact, during the pendency of present OA., the recommendations of 5th Pay Commission have also been implemented from 1.1.1996. In view of what is held by the Hon'ble Supreme Court in the above cited case, we are of the considered opinion that the relief of granting higher pay scale based on the recommendations of the 3rd Pay Commission sought by filing OA. in 1993 is highly barred by limitation and the OA. deserves to be dismissed on ~~the~~ ground alone.

8. The respondents have also taken a ground that the present OA. is beyond jurisdiction of the Tribunal as the matter relates to seeking relief of higher pay scale w.e.f. 1.1.1973. We find merit in this submission. As per Section 21 (2) (a) of the Administrative Tribunals Act, any grievance arising by an order passed in a period beyond three years before the setting up of the Tribunal is beyond the jurisdiction of the Tribunal. In the present OA. the matter is under challenge with regard to



the grant of higher pay scale based on the 3rd Pay Commission recommendations which were implemented from 1.1.1973. Though the applicants have claimed that their representation had been rejected in 1992, we are of the opinion that the matter has to be looked at on merits with reference to the orders issued for implementation of the pay scales in 1973 which gave a cause of action to the applicants. We are therefore of the opinion that the present DA. is not within the jurisdiction of Tribunal and on this account also not maintainable.

9. The third ground raised by the respondents is that except Applicant No. 1 all the other applicants have been recruited subsequent to implementation of the recommendations of 3rd Pay Commission specifically in the grade of Rs.330-560 as per the Recruitment Rules and after having accepted the appointment and joining the post, they cannot raise an issue for grant of higher pay scale based on the recommendations of the 3rd Pay Commission from the date of recruitment. Keeping in view the facts of the present case, we find considerable substance in the contention of the respondents. We have already brought out that except Applicant No. 1, out of the others, three applicants have been recruited in 1974, one in 1980 and one as late as in 1990. The applicants have filed this DA. alleging discrimination stating that though they have the same qualification for recruitment and are carrying out the same nature of research work,

they have been allotted lower pay scale while Junior Research Assistant in other organisations have been allowed higher pay scale. Since the applicants have raised this issue alleging discrimination, the plea of the respondents of estoppel may not be sustainable. However, looking ^{at} the matter from another angle, the claim of the Applicants No. 2 to 6 if allowed from the date of recruitment will itself result in discrimination. If the grade of Rs.425-700 is allowed to the Applicants No. 2 & 5 as prayed for, then this would mean that the recruitment of the Junior Research Assistant was done in this grade. In case, the recruitment was to be done in this grade, then the same should have been notified as per the recruitment rules. Many candidates who perhaps might have not applied for the recruitment in the grade of Rs.380-560 based on their qualification and experience would have applied in case the recruitment was done in higher grade of Rs.425-700. In such an event, it is quite likely that there would have been more qualified, experienced and meritorious candidates than the Applicants No. 2 to 5 available and the applicants might have not had a chance to be selected. In view of this, if the applicants are allowed higher pay scale of Rs.425-700 from the date of recruitment, then this would mean that the recruitment was done in the grade of Rs.425-700. Granting such a relief will certainly be a case of discrimination in the matter of recruitment. In this

connection, we refer to the judgement of the Hon'ble Supreme Court in the case of The District Collector & Chairman Vizianagaram & Anr. vs. M. Tripura Sundari Devi, 1990 (4) SLR 237. In this case, the petitioners had been found not possessing the required qualification and had been erroneously appointed. They challenged the matter when their services were terminated. The Hon'ble Supreme Court in para 6 of the judgement has observed as under :-

"6. It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint person with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact."

Keeping in view the observations made earlier as well as what is held by Hon'ble Supreme Court, we have no hesitation to subscribe to the contention of the respondents that Applicants No. 2 to 5 after having joined in the grade of Rs.325-560 as per the recruitment rules cannot agitate the matter of claiming their recruitment in the grade of Rs.425-700 based on the recommendations of the 3rd Pay Commission.

(1)

10. We have held earlier that the present OA. is not maintainable on account of being barred by limitation as well as being beyond the jurisdiction of the Tribunal. Even on merits, we are of the view that no judicial interference is called for on the facts as brought out in the OA. and keeping in view the law laid down by the Hon'ble Supreme Court in the matter of fitment and grant of pay scales on the recommendations of the Pay Commission. As brought ^{out} earlier, the respondents have opposed the present OA. stating that the matter with regard to laying down pay scales is within the sole authority of Government and no judicial interference can be made in deciding such a policy. The respondents have also pleaded that no discrimination on the principle of "equal pay for equal work" can be alleged by comparing with the staff in another establishment as different pay scales can be laid down depending upon the qualifications. In support of this contention the respondents have also relied upon a number of judgements of the Hon'ble Supreme Court and the Tribunal as brought out in para 2 of the written statement. In this connection, we will cite a few of the recent judgements of the Hon'ble Supreme Court as under :-

(a) Union of India & Ors. vs. Makhan Chandra Roy etc.
JT 1997 (5) S.C. 144.

(b) Union of India & Anr. vs. P.V. Hariharan & Anr.
1997 SCC (L&S) 838.

(c) Associate Banks Officers' Association vs. State
Bank of India & Ors., 1998 SCC (L&S) 293.

In the case of Union of India vs. M.C.Roy, the Hon'ble Supreme Court has held that what enhanced pay scale should be given to a particular employee is within the domain of the executives who are authors of the revised pay scales and the Tribunal should not have taken over this task and ventured in this forbidden field. In the case of P.V.Hariharan & Anr., the Hon'ble Supreme Court has held that unless a clear-cut case of hostile discrimination is made out, there should be no judicial interference with pay scales fixed by the Government on the recommendation of Pay Commission. In the case of Associate Banks Officers' Association, the Hon'ble Supreme Court has held that when the principle of "equal pay for equal work" is sought to be extended to compare pay scales in one organisation with pay scales in another organisation, although between employees doing comparable work, the stretching of the doctrine, if at all it is to be done, must be done with caution lest the doctrine snaps. Mere difference is not discrimination. It will be ^{also} useful here to reproduce an extract from para 5 of the judgement in the case of P.V.Hariharan & Anr. 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."

11. Looking at the present case in the back ground of law laid down by Hon'ble Supreme Court, we find that the applicants have based their case of discrimination only by making some averments with regard to nature of duties performed by them and bring^{ing} some documents on record. The applicants have claimed that they are engaged in research work while the respondents have denied the same. The applicants have also not brought out any material as to the nature of duties being performed by the Junior Research Assistants in other organisations who have been allowed higher pay scales. The comparison of the nature of duties performed and equation of posts or equation of pay is a matter that can be gone into by an Expert Body. Mere averments made in an affidavit by the interest^{ed} party that they are performing the same duties as that of those allowed higher scale of pay is not enough to determine the entitlement of a particular pay scale. It will be appropriate here to reproduce the following observations of their Lordships of Supreme Court as under in the

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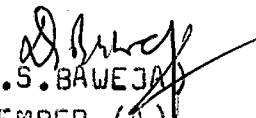
judgement in the case of State of U.P. & Ors.
vs. J.P. Chaurasia, (1989) 1 SCC 121 :-

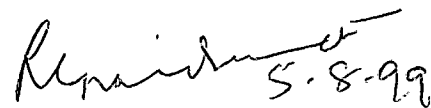
"The first question regarding entitlement to the pay scale admissible to Section Officers should not detain us longer. The answer to the question depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the court should normally accept it. The Court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration."

From the correspondence brought on record (page 39), it is noted that the matter has been already examined by the Expert Classification Committee ^{which} ~~who~~ has not recommended higher pay scales for the applicants. The matter has been also examined by the Ministry as brought out in the reply dated 5.3.1992 and their nature of job and educational qualifications have not been found at par with the Junior Research Assistants in other organisations who have been allowed higher pay scales. As brought out earlier, subsequent to

3rd Pay Commission, the 4th Pay Commission^{had} also given its recommendations and the applicants have not brought out whether this issue had been taken up before the 4th Pay Commission. Keeping in view the law laid down by the Hon'ble Supreme Court as detailed above in the matter of pay scales connected with the recommendations of Pay Commission, we do not find that the applicants have made out any case calling^{for} judicial interference.

12. In the result of the above, we find that not only the application is barred by limitation, being beyond the jurisdiction of the Tribunal but also lacks merits. The OA. is accordingly dismissed with no order as to costs.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN

mrj.