

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 517/94

Date of Decision: 19 MARCH, 1998

G. S. PANDIT

Petitioner/s

MR. V M BENDRE

Advocate for the
Petitioner/s

V/s.

U.O.I. & ORS

Respondent/s

MR. P M PRADHAN

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri JUSTICE R.G. VAIDYANATHA, VICE CHAIRMAN

Hon'ble Shri P.P. SRIVASTAVA, MEMBER (A)

- (1) To be referred to the Reporter or not? 1c
- (2) Whether it needs to be circulated to ✓
other Benches of the Tribunal?

Ram Dutt

V.C.

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

O.A.No. 517/94

~~Prmanee~~

DATED : THIS 19th DAY OF MARCH, 1998

CORAM : HON. SHRI JUSTICE R.G. VAIDYANATHA, V.C.
HON. SHRI P.P. SRIVASTAVA, MEMBER(A)

Govind Sadashiv Pandit
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Room No.5, Lokmanya Tilak Road,
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(By Adv. Mr. V.M. Bendre)

..Applicant

v/s.

1. Union of India
through the Secretary
Ministry of Communication
Dak Bhuvan
Sansad Marg
New Delhi 110001

2. Director General of Posts,
Dak Bhavan, Sansad Marg,
New Delhi 110001
(By Adv. Mr. P M Pradhan,
Central Govt., Standing Counsel)

..Respondents

ORDER

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[PER: R.G.Vaidyanatha, Vice Chairman]

1. This is an application filed under section 19 of
Administrative Tribunals Act, 1985. Respondents have
filed reply. We have heard the learned counsel appearing
for both the sides.

2. The applicant is a retired Postal employee. He was
again reemployed on hourly basis by the Postal department
for sorting work. The Postal department also employs
officials from Reserved Trained Pool and they also engage
college students and others for this work who are also
paid wages on hourly basis. The applicant's wages are

fixed at Rs.4.40 per hour. But the wages of other officials drawn from Reserved Trained Pool are revised and enhanced to Rs.9.22 per hour. It was earlier Rs.8.70 to those people till 1.7.92 and from 1.7.92 it is revised to Rs.9.22. The applicant's case is that this discrimination in the rates of wages between the reemployed pensioners and other people from Reserved Trained Pool is discriminatory and violation of Article 14 of the Constitution of India. It is also stated that the Madras Bench of this Tribunal has held that both reemployed pensioners and officials drawn from Reserved Trained Pool should be paid wages at the same rates. Therefore, the applicant has approached this Tribunal for a direction to the respondents to pay him wages at Rs.8.70 from the date of his joining in the sorting department till 1.7.92 and then at Rs. 9.22 per hour from 1.7.92 till the date of filing the application.

3. In the reply the respondents have stated that the applicant being a pensioner he is entitled to basic pension and also dearness relief on that pension. The Reserved Trained Pool candidates are recruited against leave vacancies and they are also employed for sorting work due to pressure of work and they are paid wages on hourly basis. However, in view of the decision of Government, whenever the D.A. is revised to the Government employees the Reserved Trained Pool candidates' daily wages are fixed at a higher rate. It is stated that since the pensioners get the Dearness



Relief on pension they are not entitled to get the benefit of dearness relief again in the form of hourly wages for reemployment on sorting work. It is therefore stated that there is no discrimination at all since the applicant is a pensioner, a different and distinct class, than the Reserved Trained Pool candidates. It is therefore ^{stated} that the applicant is not entitled to the enhanced rate of hourly wages.

4. At the time of arguments the learned counsel for the applicant maintained that the applicant is entitled to same wages as the Reserved Trained Pool candidate and any discrimination between their wages violates the provision of Article 14 of the Constitution of India. He also relied on the decision of the Madras Bench and another decision of this Tribunal following the same in support of his contention that the pensioners who are reemployed should get the same wages as Reserved Trained Pool candidates. On the other hand the learned counsel for the respondents contended that the pensioners and the Reserved Trained Pool candidates come from two different and distinct categories and therefore Article 14 of the Constitution of India is not attracted. He also relied on a decision of the Bangalore Bench of this Tribunal which has taken a different view than the Madras Bench. He also relied upon the decision of the Supreme Court in support of his contention that one person cannot get the benefit of Dearness Relief ^{twice} in both the capacities.



5. There is no dispute that the wages of the pensioners who are reemployed as sorting agents is less than Reserved Trained Pool candidates who are engaged to do the same work. No doubt the Madras Bench of this Tribunal in O.A.No.533/90 took the view that both the pensioners and Reserved Trained Pool candidates should get the same wages. That decision was followed by this Bench in O.A.No. 61/90 and by an order dated 6.4.94 the application was allowed by following the decision of the Madras Bench.

6. On the other hand the Bangalore Bench of this Tribunal in O.A.No.10/94 and connected cases, by the order dated 13.4.94, upheld the stand of the Postal Department by holding that there is no discrimination in giving different wages to retired Postal employees who are reemployed for sorting work and those candidates who are drawn from Reserved Trained Pool for sorting work. The Bangalore Bench noticed that the two categories of the officials come from different and distinct sources and therefore there is no question of discrimination at all.

7. In view of the conflicting decisions between the Madras Bench and the Bangalore Bench, the normal course open to us is to refer this matter for a decision of a Full Bench. But in our view in the facts and circumstances of this case it may not be necessary to refer the question to a Full Bench since there is a decision of the Supreme Court which has a bearing on the point under consideration.



8. In 1995(2) SCC 32 [UNION OF INDIA & ORS. Vs. G.VASUDEVAN PILLAY & ORS.] a question arose viz., whether a pensioner is entitled to the benefit of dearness relief on his reemployment. That is a case where some ex-service men ^{had} ~~have~~ been reemployed by the Government of India. Ex-service men were getting pension which included the dearness relief. The reemployed persons were denied the benefit of dearness relief on pension in their pay pocket and the dispute was taken to the Supreme Court. After analysing the relevant provisions the Supreme Court observed in para 8 as follows:

".... In our view this category of pensioners can rightfully be treated differently from those who do not get re-employed; and in the case of the reemployed pensioners it would be permissible in law to deny D.R. on pension inasmuch as the salary to be paid to them on reemployment takes care of erosion in the value of the money because of raise in prices, which lay at the back of grant of D.R., as they get dearness allowance on their pay which allowance is not available to those who do no get re-employed."

In para 9 the Supreme Court observed as follows:

"We, therefore, hold that the ex-service men were rightly debarred from Dearness Relief on their pensions after they got themselves re-employed to any civil post under the Government of India".

The reasoning is simple. Dearness relief is granted to meet the increase in cost of living. If a pensioner is reemployed and in the re-employed job he is given Dearness Allowance, then he cannot get dearness relief on



pension. As for as the present case is concerned the applicant is getting pension with dearness relief and therefore he would not get the benefit of increase in hourly wages due to increase in cost of living. The reasoning is that one cannot get the benefit of dearness relief ^{twice} on pension and dearness allowance in the reemployed post. In the present case the wages of the Reserved Trained Pool candidates were enhanced or revised because of the revision of D.A. payable to the regular staff with effect from 1.7.92. Therefore, the hourly wages of the Reserved Trained Pool was revised as a consequence of the revision of rates of D.A. to the regular staff from 1.7.92. Therefore, the revision of wages of Reserved Trained Pool candidates was only because of revision of D.A. to regular employees. The applicant is entitled to dearness relief on pension from time to time as per Pay Commission Recommendations and therefore ^{he} will also get higher pension from time to time and he cannot have any grievance merely because the wages of Reserved Trained Pool candidates are revised due to increase in D.A. If the applicant is also granted wages as ^{given} entitled to the Reserved Trained Pool candidates, then it would be granting dearness relief once along with pension and again along with wages on hourly basis. This is not permissible in view of the law laid down by the Supreme Court in VASUDEVAN PILLAY's case.

9. In our view the pensioner has something to fall back. He is getting pension and dearness relief. He is



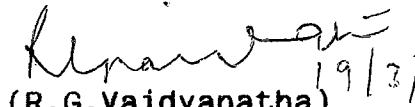
reemployed to get some additional monetary benefits. As far as Reserved Trained Pool candidates are concerned they do not have regular job. ^{even} Some college students are employed for sorting job. They are not regular Government servants, they have no permanent tenure in the post. If these persons are given some increase in the wages consequent on increase in D.A. to regular staff, the applicant who is a retired pensioner cannot compare himself with them.

10. In the circumstances we hold that pensioners are a separate class and the Reserved Trained Pool candidates are also a separate class and therefore there is no question of there being discrimination to attract the vice of Article 14 of Constitution of India. The stand of the department that Reserved Trained Pool candidates who are still to be absorbed in service are given more wages because of increase in cost of living/D.A. and the applicant is not entitled to that rate because he is already getting increase in the Dearness Relief along with his pension is fully justified and does not call for interference ^{by} of this Tribunal.

11. In the result the application is dismissed. In the circumstances of the case there would be no order as to costs.


(P.P. Srivastava)

Member(A)


(R.G. Vaidyanatha)

Vice Chairman