

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH.

ORIGINAL APPLICATIONS NO.: 316/94 & 1109/96

Dated this Friday the 4th day of February 2000.

Shri S.P. Rai & Others

Applicant

Shri I.J. Naik

Advocate for the
Applicant.

VERSUS

Union of India & Others

Respondents.

Shri V.S. Masurkar

Advocate for the
Respondents.

CORAM :

Hon'ble Shri B.N. Bahadur, Member (A)
Hon'ble Shri S.L. Jain, Member (J)

- (i) To be referred to the Reporter or not ? YES
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? No
- (iii) Library. YES

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(B. N. BAHADUR)
MEMBER (A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application Nos.316/94 &
Original Application No.1109/96

Dated this *Friday* the *4th* Day of *February* 2000

Coram : Hon'ble Shri B.N. Bahadur, Member (A)
Hon'ble Shri S.L. Jain, Member (J)

Shri S.P. Rai,
Deputy Director of Agriculture,
Fort Area, P.O.Moti Daman-396220.

.. Applicant in
OA 316/94

(By Advocate Shri I.J. Naik)

Vs.

1. The Administrator,
Administration of Union Territory
of Daman & Diu,
Fort Area, Moti Daman.
2. The State of Goa,
through
The Chief Secretary,
Secretariat,
P.O. Panaji, Goa-403001.
3. Union of India, through
The Secretary, Ministry of
Home Affairs, Central Secretariat,
North Block, New Delhi.
(By Advocate Shri V.S. Masurkar)

.. Respondents

Original Application No.1109/96

1. R.S. Suthar,
 2. B.L. Patel,
 3. N.P. Shah,
 4. R.K. Kapdi,
 5. V.D. Godse,
 6. B.M. Solanki,
 7. T.S. Sharma
- All Surveyors, Department of Forest,
Survey & Land Reforms, Dadra & Nagar
Haveli, Silvassa.

.. Applicants in
OA 1109/96

(By Advocate Shri I.J. Naik)

Ans

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Vs.

1. The Administrator of U.T. of Dadra & Nagar Haveli, Administrator's Secretariat, P.O. Silvassa-396 230.
2. Union of India, through The Secretary, Ministry of Home Affairs, Central Secretariat, North Block, New Delhi.

.. Respondents in
OA 1109/96

(By Advocate Shri V.S. Masurkar)

O R D E R

[Per : Shri B.N. Bahadur, Member (A)]

We are considering, and disposing herein, 2 OAs since, in both the OAs the issues involved are similar. These OAs bear Nos. 316/94 and 1109/96. Needless to say, wherever any facts or conclusions need to be distinguished, this will be done.

2.....In OA No. 316/94, the applicant Shri S.P. Rai is working as Deputy Director of Agriculture with the UT Administration of Daman and Diu. He seeks the relief, in substance, that he should be provided the pay scale of Rs. 3000-4500 from 1.6.1987 as per 4th Pay Commission recommendations. This relief is also sought for the period from 25.11.1986 till 31.5.1987 viz. for which period the applicant worked in the erstwhile Union Territory of Goa, Daman & Diu. Consequent reliefs are also sought.

3.....The grievance of the applicant is that in the Union Territory of Dadra & Nagar Haveli, under the same Administration the Deputy Director Agriculture gets the scale of Rs. 3000-4500,

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whereas the present applicant has been provided the lower pay scale of Rs.2200-4000.

4.....The applicant claims that the nature of duties and responsibilities performed by the aforesaid two Deputy Directors is identical. The applicant has described, in his application, the historical background of his postings etc. and the background of the delinking of the Union Territory of Daman & Diu from the composite Union Territory of Goa, Daman & Diu in 1987.

5.....One of the ground taken is that the applicant works ^{under} the same Development Commissioner, as in the other Union Territory and when a similar Administration exists there cannot be any discrimination. He adds that the Union Home Ministry is the ~~extra~~ ^{ms} controlling authority and on this ground also seeks equal treatment in the matter of pay scales. The applicant avers that representations made by him have gone unanswered and that in the action of Union Territory of Daman & Diu in not giving higher pay scales to which the applicant is entitled is discriminatory and illegal and suffers from non application of mind.

6.....In the other (O.A.1109/96) the applicant is one Shri R.S. ~~Sutar~~, Surveyor working with the Union Territory Administration of Dadra & Nagar Haveli. (D&NH) Here the relief sought, in substance, is a claim to be place in the pay scale of

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Rs.1200-2040, which scale is applicable to the other Surveyors of Union Territory Administration of Daman & Diu. The applicant attaches copies of recruitment rules in both the cases and draws support upon from these to claim benefit on the accepted principle of equal pay for equal work.

7.....Applicant avers that ^{the B.B.} ~~an~~ action of the Union Territory Administration of Dadra & Nagar Haveli / Central Government in placing him in the pay scale of Rs.950-1500 is illegal, and shows non application of mind, since the duties and responsibilities etc. which the Surveyors of U.T. of Dadra & Nagar Haveli have been performing are similar to those performed by their counterparts in the UT of Goa, Daman & Diu. Other general arguments made in the first O.A.(316/94) have been repeated in this case also.

8.....To summarise: In the first OA, (316/94) the applicant, a Deputy Director of Agriculture with Union Territory, Administration of Daman & Diu seeks parity in pay scales with Deputy Directors of Agriculture working under the Union Territory of Dadra & Nagar Haveli. On the other hand, in the second OA (1109/96) the applicant ~~has~~ who is Surveyor with the Dadra & Nagar Haveli Administration seeks parity with his counterparts working in the Union Territory Administration of Daman & Diu.

9.....The Respondents have filed written statement in each OA

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in which following averments are made:—

OA 316/94

(i) The prayer is barred by limitation in as much as it challenges orders dated 25.11.86 and 12.8.87 (A-1).
The facts relating to historical evolution of the Administration, and the implications of the division of Union Territory of Goa, Daman & Diu on 30.5.1987 are explained. Daman & Diu formed a separate Union Territory after this date, whereas Dadra & Nagar Haveli also found the separate Union Territory but did not formed a part of erstwhile Union Territory of Goa, Daman & Diu. The recruitment rules framed by erstwhile Union Territory of Goa, Daman & Diu are applicable to Daman & Diu, and have been made applicable to Shri S.P. Rai.

(ii) It is stated that the applicant has no claim to the scale of Rs.3000-4500, as ^{the scale is applicable in Dadra} ~~it belongs to~~ another Union Territory (Dadra & Nagar Haveli). It is not material that it ^{is} under the same Administrator as Union Territory of Daman & Diu.

(iii)....Qualifications are materially different in as much as number of years of service required is 8 years in Government of Dadra & Nagar Haveli and 3 years in Daman & Diu for promotion to the post of Deputy Director/equivalent scale post.

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OA 1109/96

10.....The Respondents have also filed a reply in ^{Ans} ~~this~~ OA (1109/96), where all averments and allegations of the applicant are denied. It is stated that the cause of action arose when the different scale were prescribed and paid to the applicant, and to the Surveyors belonging to different Union Territories with effect from 1.1.1986, alleging that the application is delayed by 9 years with reference to the relief date. The Respondents prayed that it be dismissed on grounds of delay and laches, and being hit by limitation.

11.....The Respondents stated that the dis-parity in the pay scales of Surveyors in Daman & Diu Administration Dadra & Nagar Haveli have existed even since the recommendations of 3rd Pay Commission. They alleged that such grievances as are being made should have been taken up with the 4th Pay Commission or 5th Pay Commission and only on such recommendations can parity ~~to~~ be provided. Even originally when Surveyors in Dadra & Nagar Haveli were in the pay scale of Rs.260-400, whereas in Daman & Diu they were placed in the scale of Rs.330-560 (revised pay scales respectively are Rs.950-1500 and Rs.1200-2040).

12. The recommendations of the 4th Pay Commission have been followed in accordance with present pay scale, and even though

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functions and responsibilities of Surveyors are similar, the pay scales are different in view of the facts given in para 9 of written reply. This is what has been importantly indicated in the reply. There has been no ~~inclination~~ ^{B.S.} or ~~any~~ illegal ~~omission~~, and further revision, if any, has to be done by Government of India. The Respondents further states that there is no discrimination or violation of principles of "equal pay for equal work".

13.....We have heard Learned Counsel on both sides. Learned Counsel for the applicant took us over the facts of the case and first made the point that there was no difference of fundamental nature between the 2 Union Territories, which were controlled by the same Ministry in the Government of India and had the same Administrator. He claimed that there was discrimination in placing the applicants in both OAs in pay scales that were lower to their counterparts in the other Union Territories. In the case of Shri S.P. Rai (OA 316/94), Shri I.J. Naik, Learned Counsel for the applicant prepared a chart of duties for our consideration to make the point that these were similar in both Union Territories. According to him recruitment rules ~~recruitment rules~~ ^{B.S.} were same also. We have seen the authorised papers taken on record. Learned Counsel argued in the case of Shri R.P. Sutar (1109/96) that here also the functions and duties ~~the~~ were the same, and placing them in different scales in the two UTs ~~that~~ was violative of the Constitution. He placed

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reliance on the copies of Recruitment Rules that were relevant in his submission.

14..... Learned Counsel for the applicant places reliance on a fairly large number of cases which he cited in both the OAs, as below:-

- (i) Jingran's case 1988 SCCL 5785
- (ii) Dhirendra Chamoli & Another Vs. State of UP 1986 SCC(L&S)187
- (iii) Union of India & Others Vs. Debashis Kar & Others 1995 SCC(L&S) 1303
- (iv) Pramod Bhartiya's case.
- (v) Jaipal Vs. State of Haryana 1988 SCC(L&S)785
- (vi) P.Savita & Others Vs.Union of India & Others 1985 SCC(L&S) 826.
- (vii) Order in OA 16/94 DTD. 22.2.99 of CAT (Mumbai).

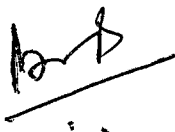
15..... Arguing the case on behalf of the Respondents, their Learned Counsel, Shri V.S. Masurkar, took us over the details of the facts of these cases, including recruitment rules cited in both cases. While stating that he did not challenge the powers of the Tribunal for a judicial assessment in such cases, he made the point that successive Pay Commissions ^{BMS} had given ~~from the~~ reports since the position of alleged discrimination brought out

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and it was squarely ^{the} responsibility of the applicant alleging discrimination to prove it, as per settled law. Counsel for the Respondents went on to say that there was no certified order or any authentic document to show the duties in relevant cases. In the absence of such documents, no discrimination can be proved. Further, he argued that the recruitment rules are only one aspect of the claim, in any case, and cannot form the sole basis of deciding that the posts in the two UTs had to be provided with the same pay scales.

16..... Counsel for the Respondents alleged that it was for the applicants to provide evidence that they approached the Pay Commission or any other authority in this matter. He referred to Annexure A-5 filed by Shri R.S. Sutar and made the point that this application was addressed to the President of India and not to the Pay Commission. Further, for a benefit that has been claimed with effect from 1986, the OAs were filed very belatedly. Counsel for the Respondents argued that just because the Administrator and the Ministry were common, it did not form any basis for the conclusions that all persons similarly designated should be provided the same pay scales. He also made the point that he cannot be automatic parity of similarly designated persons in all Union Territories. The following judgment were cited by the Counsel for Respondents in support of his contentions and arguments.



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- (a) 1996 (2) SCSLJ 501 Chandigarh Admn. Vs. Kishan Bhandari.
- (b) Pramod Bhartiya's case.

The Learned Counsel for Respondent said that the decision in OA No.16/94 of this Bench of the Tribunal dated (22.2.1997) (relied on by applicant's Counsel) could not form the basis of providing the relief sought.

17..... Now let us take up the facts and arguments in OA 316/94
The ~~first of the~~ ^{B.B.} arguments of the Counsel for the applicant is seen into two broad directions, the first in generality to state that the principle of equal pay for equal work must operate because the controlling Ministry is the same and the Administrator is the same etc. The second relates to the pointed assertions that recruitment rules are similar and that duties are also similar. We take up the second part first and find that in Damara & Diu the minimum qualifications for promotions from the grade of Rs.2000-3500 (AAO) is for 3 years service requirement in that grade. On the other hand in Dadra Nagar & Haveli the requirement is for a five years period of service. This is the major difference in requirements for promotion to the higher grade. It must be stated immediately that the difference is not peripheral or merely technical and will hit the claim of the applicant to a parity of scale, in any judicial assessment, even if duties are the same.

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18..... We now turn our attention to the facts ⁱⁿ ~~the~~ the OA 109/96

and focus our attention to the important point of comparison of recruitment qualifications of the post of Surveyor/Field Surveyor in the respective Union Territories viz. those of Dadra and Nagar Haveli and of Goa, Daman & Diu. The relevant notifications are ^{available} ~~at~~ Annexure A-2 and A-3 of OA 1109/96. We have perused these recruitment rules and find that the minimum recruitment qualifications of the posts of Surveyors in Dadra & Nagar Haveli and of Field Surveyor in Goa, Daman & Diu are similar. The only difference is that in the former, inter-alia, requirement is "SSC or equivalent" whereas the relevant requirement in Daman & Diu is "Matriculation or equivalent with Mathematics as a subject". This point was feebly touched upon by Respondent's Counsel but no substantial difference is seen nor is it a point made that applicants do not have Mathematics as a subject, and it was this that was coming in their way.

19. We first deal with the point of limitation raised by the Respondents in both OAs. It is obvious that the cause being agitated is ^a continuing cause of action, and hence will not be hit by limitation. If, however, some relief has to be granted the delay in filing of the OA will be taken care of by adjusting the date of relief from a later date.

20. We have perused the various judgments cited by both learned counsels ~~cited~~ and find some support for the case of the

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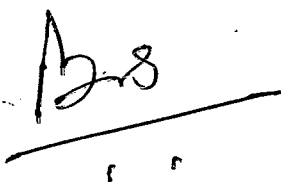
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applicants. There is no doubt that rulings in the case of Debashis Kar and P. Savita are relevant, in that assessment can be made on two important points viz. those of recruitment qualifications prescribed and the nature of duties. We find here that the judgment in the case of S.S.Yadav and others vs. The UT of Dadra and Nagar Haveli pronounced in OA 16/94 on 22.2.1999 is of direct relevance and help in deciding the two OAs presently before us. In deciding this OA, the Tribunal has carefully considered the law settled by Apex Court, including the limitations of Courts and Tribunals.

21. In this judgment, the Mumbai Bench of the Tribunal have examined a similar case in which the applicants working as Stockmen in the UT of Dadra & Nagar Haveli have claimed equal pay compared to their counterparts in the UT of Daman & Diu. The Tribunal has importantly examined the recruitment qualification prescribed in the recruitment rules as also the duties prescribed for the post of applicants in that OA. This indeed is what we have done in Paras 17 & 18 above, and we are convinced that the decision in OA 16/94 referred to above, the reasoning therein and the position settled can form the basis of decisions in the two OAs before us.

22. We must, here reproduce some relevant parts of the judgment which we consider as being relevant here. It has been

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stated in para 4 as below:-

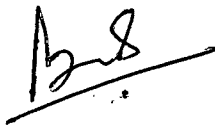
"4. After hearing both counsels and perusal of the materials on record, the only point to be considered is whether applicants have made out a case for getting higher pay scales on the ground of equal pay for equal work? It is well settled that Courts and Tribunals cannot interfere in the case of revision of payscale or fixation of payscales for different categories of post. Hence Pay Commissions who have to determine the pay scales for different categories depending on nature of duties, mode of recruitment etc. The Courts and Tribunals cannot evaluate these items as to what is the proper pay for a particular post. To find out the equality between the two sets of officials under two different states or Administration, we have examined their structure and Constitution.

5. It is also well settled that if the payscales of comparable employees are not equal though they are doing equal work then Courts or Tribunals may interfere if it finds that the difference in payscale invites the vice of article 14 and 16 of Constitution of India. Then there is a Constitution Mandate under Article 39(d) which states that State shall ensure equal pay for equal work. Therefore we have to exercise limited jurisdiction, if the applicants counterparts are getting a particular payscale whether the applicants should also be paid equal pay for equal work?".

23. Also it may further be stated that whereas it may not be justified to claim equal pay for all similarly designated persons in all UTs merely because of designation. We nevertheless agree with the remarks made in the para 6 of the judgment in the case of S.S. Yadav. We reproduce it below.

"6. It is also noted that both the Union Territories come under the control of Union of India after liberation from Portuguese dominion. Further both the Union Territories come under the control of one Administrator and under control of one Government hence there cannot be discrimination in payscales when they are doing same work with the same qualification and experience and in the same department".

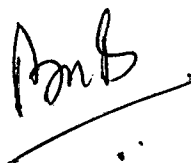
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In this connection we have seen the case of Krishen Bhandari referred to by Counsel for Respondents and find that in that case comparison was being drawn between posts in a UT and a State; here both administrations are UT administrations and this is a definite difference.

24. To recapitulate the findings as to whether the recruitment qualifications and the nature of duties of the posts are the same in the two cases; We find that in the case of applicant Shri S.P.Rai in OA No.316/94, there is a material difference in the number of years of service required for eligibility for promotion to the scale of Rs.3000-4400. This means that no relief can be given to him in a judicial assessment like ours. (It is another matter if the Administration were to consider it and take a different decision in any future exercise).

25. In the case of Shri Suthar and others, we have discussed the question of similarity of duties and recruitment qualifications in para 18 above and hence they would have to be provided with reliefs sought. In providing the relief also specifically in regard to date of effect, we would also depend on the basis arrived at by this Tribunal in its decision on OA No.16/94.



26. Thus, we make the following orders in the two OAs before us:-

ORDER IN OA 316/94

OA No.316/94 is hereby dismissed, with no order as to costs.

ORDER IN OA 1109/96

(a) All six applicants in this OA are held to be entitled to the pay scale of Rs.1200-2040 ^{Rs.1200-2040} ~~to these~~ applicants with effect from 1.9.1996 i.e. from the month in which they filed the O.A. Their pay should be fixed at the appropriate stage in their new pay scales, depending upon their stage of pay in old pay scale. Applicants should be paid arrears on the above basis from 1.9.1996 in the new pay scale. The applicants are also entitled to all consequential benefits, available as per rules.

(b) Respondents are required to comply with this order within a period of 4 months from the date of receipt of a copy of the order.

(c) There will be no order as to costs.

S.L. Jain
(S.L. Jain)

Member (J)

B.N. Bahadur
(B.N. Bahadur)

Member (A).

H.