

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 416/95

DATE OF DECISION: 4/12/2000

Smt.Usha Pandit & 5 Ors.

Applicant.

Shri S.V.Marne

Advocate for
Applicant.

Versus

Union of India & 3 Ors.

Respondents.

Shri R.K.Shetty

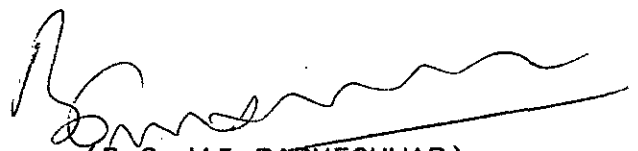
Advocate for
Respondents.

CORAM:

Hon'ble Shri B.S.Jai Parmeshwar, Member(J)

Hon'ble Smt. Shanta Shastry, Member(A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library.


(B.S. JAI PARMESHWAR)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:416/93
DATED THE 4th DAY OF DEC. 2000

CORAM:HON'BLE SHRI B.S.JAI PARMESHWAR, MEMBER(J)
HON'BLE SMT.SHANTA SHASTRY, MEMBER(A)

1. Smt.Usha Pandit wife of
Late Shri Simon Motilal Macwan,
Laboratory Technician under the
Chief Medical Officer,
Silvasa, residing at
Cottage Hospital, Silvasa,
Dadra and Nagar Haveli.
 2. Smt.Geetaben Bhanpalbhai Shah,
Laboratory Technician under
the Chief Medical Officer,
Silvasa, residing at
At & Post P.H.C.Khanvel,
Union Territory of Dadra & Nagar Haveli
 3. Shri Karuparthi Nageswara Rao,
Laboratory Technician, under
the Chief Medical Officer,
Silvasa, residing at
At & Post P.H.C., Khanvel.
 4. Shri Badal Kumar Barik,
Laboratory Technician, under
the Chief Medical Officer,
Silvasa, residing at
Cottage Hospital, Silvasa,
Dadra & Nagar Haveli.
 5. Smt.Ina D Desai,
Laboratory Technician, under
the Chief Medical Officer,
Silvasa, residing at
At & Post Naroli, P.H.C.
 6. Shri Vinodkumar Srivastava,
Laboratory Technician, under
the Chief Medical Officer,
Silvasa, residing at
At & Post Primary Health Centre,
Mandeni, Dadra & Nagar Haveli.
- ... Applicants

By Advocate Shri S.V.Marne

V/s.

...2.

:2:

Union of India, a through

1. The Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi.
2. The Secretary,
Ministry of Health & Family Welfare,
Government of India,
New Delhi.
3. The Administrator of Union
Territory of Diu, Daman,
Dadra & Nagar Haveli
Administration, At & Post
Silvasa - 396 230.
4. The Health Secretary &
Development Commissioner,
Union Territory of Diu, Daman Dadra
and Nagar Haveli Administration,
At & Post Silvasa - 396 230.
5. The Chief Medical Officer,
Union Territory of Diu, Daman
Dadra and Nagar Haveli,
Administration,
At & Post Silvasa - 396 230. ... Respondents

By Advocate Shri R.K.Shetty.

(ORAL) (ORDER)

Per Shri B.S.Jai Parmeshwar, Member(J)

Heard Shri D.V.Gangal, learned counsel for applicant and
Shri R.K.Shetty, the learned standing counsel for respondents.

2. The deceased husband of applicant No.1^{was} and the applicant
Nos.2 to 6 have been working as Laboratory technicians in the
Union Territory of Dadra & Nagar Haveli. They submit that as on
31/12/79, their pay was Rs.150-300.

3. The recommendation of the IIIrd Pay Commission came into
force from 1/1/73. The corresponding scale of pay of Rs.150-300
was Rs.330-560. The recommendation of the IVth pay commission
came into force from 1/1/86. The corresponding scale of
pay for the laboratory technician was Rs.1200-2040.

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4. The grievance of the applicants is that they were fixed in the scale of pay of Rs.260-430 w.e.f. 1/1/73 instead of the scale of pay of Rs.330-560 and Rs.975-1540 w.e.f. 1/1/86 instead of 1200-2040.
5. The applicants rely on the order dated 24/8/87 in TA No.125 and 126/86. The said application concerned with Staff Nurse and Projectionists.
6. They rely on the order dated 11/1/93 passed in OA-283/88. They also submit that the order passed in TA - 125 and 126/86 have been confirmed by Hon'ble Supreme Court in SLP 178 - 179/88 decided on 18/1/88.
7. Further they submit that they have been extended the benefit of Vth pay commission by order dated 27/4/98.
8. The applicants submit that they are possessing the same qualification as the para medical staff working in CGHS, Union Territory of Diu & Daman. They rely upon the Doctrine of equal pay for equal work to claim the higher scale of pay on the basis of qualifications.
9. The applicants have furnished their service particulars in Annexure A-7, page-68.
10. They have filed this application for the following reliefs:-
 - 8(b) To call for the records of the case from the Respondents and after examining the same issue a writ of certiorary quashing the equation of pay of Rs.150-300 with Rs.260-430 and further equal to 975-1540.
 - (c) To issue a writ of mandamus directing the Respondents to grant the pay scale of Rs.330-560 and 1200-2040 from 1/1/1973 and 1/1/1986 respectively.
 - (d) To grant pay fixation and arrears arisen out of the above prayers.
 - (e) To hold and declare that the equation of pay scale of Rs.150-300 as Rs.260-430 equal to 975-1540 is illegal.

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11. The respondents have filed their written statement. In their written statement they have stated that the application is barred by time., that this Tribunal has no jurisdiction for considering the fixation of pay of the applicants as on 1/1/73. That the representation of the applicants for fixing their pay is pending consideration before the Vth Central Pay Commission.

12. That they have not produced any material to show ~~that~~ their duties and responsibilities in relation to their Counterparts either at Daman and Diu or at Goa, That the recruitment rules prescribed by the administration of Dadra and Nagar Haveli, the pay of Rs.260-430 for the post held by the applicants as prescribed. That during the subsequent revision their pay was fixed at Rs.975-1540 against the corresponding pre-revised scale of 260-430. That the grievances put forth by the applicants before the Administrator is under consideration of the Ministry and they have not yet been finally decided. They further submit that the applicants were in the scale of pay as under:-

Prior to 1/1/1973	Pay Scale Rs. 150 - 300
w.e.f. 1/1/1973	" Rs. 260 - 430
(3rd Pay Commission)	
w.e.f. 1/1/1986	" Rs. 975 - 1540,

13. As the scale of pay given to laboratory technician is according to periodical revision and it has not been given wrongly but given as per the recommendations of the Government of India in respect of Union Territories. Therefore, the applicants are not entitled to any reliefs claimed in the OA.

14. The applicants pray for their fixation of pay w.e.f. 1/1/73. The learned counsel for the respondents contended that this Tribunal has no jurisdiction to consider fixation of pay or otherwise w.e.f. 1/1/73. In this connection, he relied upon the order passed in OA-7/95 and batch of this Bench decided on 22/6/2000. This relief is barred by limitation and outside the purview of the Tribunal.

15. Further he relied upon the decision of Hon'ble Supreme Court in the case of Mallikarjun^{Raw} reported in AIR 1990 SC 1251 to contend that the Court or Tribunals cannot issue any directions to executive in respect of sphere which is exclusively under the term of the executives. Further, he relied upon the decision of the Hon'ble Supreme Court in the State of Andhra Pradesh V/s. V.C.Subbarayudu reported at 1998 (3) AISLJ 5.

15a As against this, the learned counsel for applicants contended that the respondents be directed to provide corresponding scale of pay depending upon the qualification and experience of the applicants. He relied upon the letter dated 27/4/98 wherein the respondents themselves stated that the Laboratory Technicians working in Medical and Public Health^{Departments} of Union Territories of Dadra and Nagar Haveli were possessing the required educational qualifications and the required experience to extend the benefit of Vth Pay Commission.

16. Relying on this letter, the learned counsel for applicants submitted the position ~~as regards~~ the qualification remains the same on 1/1/86 and also on 27/4/98. Even today there is no change in the qualification of the applicants. When this is so, the respondents failed^{adhere to} to^{adhere to} recommendation of IVth Pay Commission i.e. to fix their pay in the scale of pay of Rs.975-1540.

17. Infact, at one stage we were inclined to give directions to respondents to consider the representations submitted earlier and to take a decision to extend the benefits of the IVth Pay Commission.

18. Then the learned counsel for the applicants submitted that the said course of action may not get the desired benefits to the applicants. The respondent authorities have not taken any decision even though the Administrator and the Air Chief Marshal recommended their cases long back and therefore the Tribunal may consider the case on merits and if the Tribunal is satisfied that the applicants are possessing the same educational qualifications and experience and are performing same duties as that^{of} the other Union Territories as well as CGHS, the benefits may be extended to them.

19. The Administrator as well as Air Chief Marshal had recommended the case. The respondents themselves accepted and passed the order dated 27/4/98 specifically stating that the qualifications and experience of the Laboratory Technicians working in Union Territory of Dadra and Nagar Haveli are^{the} same as that of their counter parts in the CGHS and other Union Territories.

20. The claim of the applicants for fixation of pay on the recommendations of the IIIrd Pay Commission w/.e.f. 1/1/73 is hereby rejected.

21. The applicant No.1 is reported to be dead in the year 1994. His pay shall be notionally fixed in the scale of 1200-2040 dw.e.f. 1/1/86 and monetarily from 1/4/94.

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22. The respondents shall fix the pay of the applicants Nos.2 to 6 at Rs.1200-2040 as recommended by the IVth Pay Commission w.e.f. 1/1/86.

23. As the applicants have approached this Tribunal in the year 1995, we feel that the pay of the applicants should be notionally fixed from 1/1/86 and monetary benefits shall be given to them only w.e.f. 1/4/94 i.e. one year prior to filing of this application. The applicants have filed this application on 16/3/95.

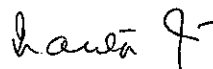
24. Hence the following directions are given:-

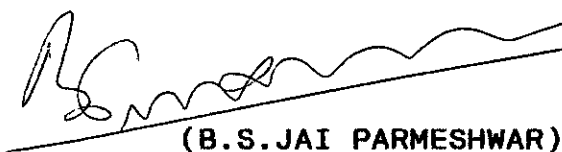
(a) The pay of the applicant No.1 shall be fixed notionally in the scale of Rs.1200-2040 w.e.f. 1/1/86 and monetary benefits w.e.f. 1/4/94 and on that basis, his retiral benefits shall be revised according to the rules and shall be paid.

(b) The pay of the applicants nos.2 to 6 shall be notionally fixed in the scale of pay of Rs.1200-2040 w.e.f. 1/1/86 and they shall be paid monetary benefits only from 1/4/94.

(c) Time for compliance; four months from the date of receipt of copy of this order.

With the above directions, the OA is partly allowed and the parties are directed to bear their own costs.


(SHANTA SHASTRY)
MEMBER(A)


(B.S. JAI PARMESHWAR)
MEMBER(J)
4/12/2000