CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NOs.1313/95 & 88/98

Dated this the 17th day of September 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Shri M.P.Singh, Member (A)

1. Mrs. Rajinder Kaur Rathod, (Applicant in OA.1313/95)

2. Miss Uma Sanhotra (Applicant in OA.88/98)

Tutor,
National Defence Academy,
Khadakwasla, Pune.

By Advocate Shri S.P.Saxena

vs.

1. Union of India
through the Secretary,
Ministry of Defence,
South Block, New Delhi.

2. The Commandant,
National Defence Academy,
Khadakwasla, Pune.

3. The Principal,
N.D.A., Khadakwasla,
Pune.

4. The Registrar,
Jawaharlal Nehru University,
New Delhi. ...Respondents

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

O R D E R

{Per : Shri S.L.Jain, Member (J)}

These are (OA.NOs.1313/95 & 88/98) the applications by which the applicants have sought the relief of direction to the respondents to implement the scales vide Exhibit-'A-1' giving effect to the revised pay scales of the U.G.C. to the applicants w.e.f. 1.1.1986.

2. The applicant in OA.NO.1313/95 and OA.NO.88/98 has been working as Tutor and qualified as M.A.,B.Ed. and B.A. in the respondents Institute "N.D.A." which is a Training Institute w.e.f.May,1980 and 30.1.1980 respectively. They claim that although the designation is Tutor, they are taking lectures like any other Lecturer in the Hindi Department in view of the duties assigned to them. The U.G.C. revised pay scales by letter No. F.1-21/87-u.s dated 22.7.1988 were to be granted w.e.f. 1.1.1986 to Lecturers, Readers, Professors, Principles of colleges, Vice Chancellors, Tutors/Demonstrators (Existing incumbents only) vide Exhibit-'A-1' issued by the Govt. of India, Ministry of Human Resource Development, Department of Education w.e.f. 22.7.1988. The scale prescribed for the Tutors is Rs.1740-3000. The Government of India considered the matter regarding giving effect to the said letter dated 22.7.1988. Vide letter dated 2.4.1993 and the scales were made applicable in National Defence Academy w.e.f. 1.1.1986 in respect of all except the Tutors which is

discriminatory on the part of the Government. They submitted the representation which was rejected vide order dated 7.5.1994. Hence, these OAs. for the above said reliefs.

3. The claim of the applicants is being resisted by the respondents on several grounds which are being dealt with below.

4. During the course of arguments, the learned counsel for the applicants based his claim on an order passed by Central Administrative Tribunal, Allahabad Bench in OA.NO.537/89 on 16.2.1996.

5. Exhibit-'A-1', Notification dated 22.7.1988 which deals with Revision of pay scale of Teachers in Universities and Colleges and other measures for maintenance of standard in Higher Education. The relevant portion of the said Notification is as under :-

> " I am directed to say that vide this Department's letter of even number dated June 17,1987, the decisions of the Government of India on the revision of pay scales of Teachers in Universities and colleges with effect from January 1, 1986....."
>
> (Emphasis supplied by us)

6. On perusal of the order passed by Central Administrative Tribunal, Allahabad Bench in OA.NO.537/89, M.S.Gosain & Ors., we find that case relates to Demonstrators who were posted in Army Cadet College, the Executive Committee of Jawaharlal Nehru University, (hereinafter referred to as JNU) recognised the said

college in the year 1974 terms of Section 5 (13) of Jawaharlal Nehru University Act with the stipulation that the condition of service of faculty would be at par with that of JNU. Thereafter the ACC Transitory Ordnance 1974 was promulgated by JNU in exercise of its power under Section 35 of the Act. Clause 2 of the Ordnance provides that in respect of admission of students, course, studies, fees, qualifications, academic administration, conduct of examinations etc, the Rules framed by the ACC may continue to remain in force to the extent they are not in consistant with the provisions of JNU Act and statute of the said University and such rules shall be deemed to part of the Ordnance promulgated by Executive Council, subject to such adoption and modification as the Vice-Chancellor may make for the purposes of bringing them in accord with the provisions of the Act and statute. Thus, the Army Cadet College was for all pruposes a recognised college of Jawaharlal Nehru University. The present institute, "National Defence Academy" is neither a University not a college and also not so recognised. The above referred case of M.S.Gosain & Ors. is based on the said finding along with on principle of "Equal Pay for Equal Work".

7. The learned counsel for the applicants stated that his case is not based on the principle of "Equal Pay for Equal Work". In such circumstances, the judgement relied by the learned counsel for the respondents (2001 (1) S.C. SLJ 20, Union of India & Ors. vs. Pradip Kumar Dey) is not relevant for consideration which was cited by the respondents to demolish the claim of the applicant on the said principle.

8. The learned counsel for the respondents also cited JT 1996 (7) SC 438, Sita Devi & Ors. vs. State of Haryana & Ors. and argued that if a higher scale is provided to a more qualified employee, though performing similar duties, it does not amount to discrimination. Before the said principle is being applied, it is necessary to examine the pleadings of the parties that whether the applicants are claiming the said scale in view of same qualifications and the claim is resisted on the ground that the higher scale is being provided to others on the basis of higher qualification. We do not find the pleadings of the parties as such. Hence, the said authority is also of no assistance to the respondents.

9. There is no doubt about the proposition that revision of scales of pay in the NDA is not the functions of Courts of Law including that of Central Administrative Tribunal but as argued by the counsel for the applicants that he is not claiming revision of pay scales but his case is based on the implementation of the orders already passed in which their cadre is over-looked by Ministry of Defence wrongly. Hence, the said defence is also of no assistance.

10. It is being argued on behalf of the respondents that the UGC scales are recommendatory and not mandatory. Therefore unless the Ministry of Defence specifically accepts the recommendation of the U.G.C., reiterated by the Ministry of Human

Resource Development, there cannot be any scale of pay for the post of Tutor in the N.D.A. at Khadakwasla. In this respect, it is suffice to state that when U.G.C. scales are being accepted when recommended for particular cadre, there must be some reason not to accept the scale particularly for the post of Tutor. There appears to be the reason that the cadre is dieing one.

11. The respondents have also raised the plea that the post of Tutor does not exists now. Hence, the OA. does not survive. Suffice to state that the said point is subjudice before the Hon'ble High Court of Bombay and it is made clear that the applicants were Tutors are entitled to any relief if granted by this Tribunal only till the post exists and not thereafter.

12. Vide Exhibit-'A-1' letter dated 22.7.1988, Govt. of India, Ministry of Human Resource Development recommended the pay scale of Tutors but the Govt. of India, Ministry of Defence omitted in Exhibit-'A-2' letter dated 2.4.1993 regarding Tutors. The learned counsel for the applicant argues that Ministry of Defence herein not accepting the recommendations vide Exhibit'A-1' was within it's authority and has rightly done so. The learned counsel for the applicants argued that the letter Exhibit-'A-1' issued by Ministry of Human Resource Development, Department of Education which is a Nodal Ministry for Education. The Defence Ministry is bound to follow it. On this question, it is suffice to state that till NDA is not a college, Ministry of Defence was justified in not taking into consideration the post of Tutor particularly when the post was a dieing post.

13. In the result, we do not find any merit in the OA. It is liable to be dismissed and is dismissed accordingly with no order as to costs.

(M.P.SINGH)
MEMBER (A)

(S.L.JAIN)
MEMBER (J)

mrj.

True Copy

(एच. ए. देशपांडे)
उप निबंधक,
केंद्रीय प्रशासकीय अधिकरण,
मुंबई न्यायपीठ, मुंबई.
गुलेस्तान बिल्डींग, किस्कांड रोड,
फोर्ट, मुंबई-400 001.

Dch Regr SC

original to TA of 13/3/95