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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.944/97.

Dt. of Decision : 25-03-99.

R.Jayachandran

.. Applicant.

Vs.

1. The Central Water Commission,
Rep. by its Chairman,
Seva Bhavan, R.K.Puram,
New Delhi-66.

2. The Union of India,
Rep. by its Secretary,
Min. of Water Resources,
Shram Shakthi Bhavan,
New Delhi.

.. Respondents.

Counsel for the applicant : Mr.R.Briz Mohan Singh
Counsel for the respondents : Mr.B.N.Sharma, Sr.CGSC.

CORAM:-

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (JUDL.)

ORDER

ORAL ORDER (PER HON. SHRI R.RANGARAJAN : MEMBER (ADMN.))

Heard Mr.R.Briz Mohan Singh, learned counsel for
the applicant and Mr.Jacob for Mr.B.N.Sharma, learned
counsel for the respondents.

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2. The applicant in this OA was appointed initially as Professional Assistant (Hydromet) (PA for short) by direct recruitment in the Central Water commission, New Delhi, in October, 1987.

3. Posts of Professional Assistant (HM) and ~~Provisional~~^{for} Assistant (Stat) are also filled up by promotion from the lower category of Sr. Computer in the Central Water Commission/Ministry of Water Resources i.e., Sr.Computer is the feeder grade for promotion to the post of Professional Assistant (HM) and Professional Assistant (Stat).

4. Earlier the post of Sr.Computer carried two different pay scales viz., Rs.330-560/- and Rs.425-700/- in the ratio of 4:1. The differential pay scales to the same post of Sr.Computer were challenged in the CAT, Principal Bench, New Delhi by filing OA.1942/88. The differential pay scale for 80% and 20% posts of Sr.Computer was challenged before the Principal Bench of this Tribunal in the above referred OA. In pursuance of the judgment delivered by the Principal Bench in OA.1942/88 the Sr.Computer/Professional Assistant (petitioners borne on the cadre of Central Water Commission) were deemed to have been placed in the pay scale of Rs.425-700/- (pre-revised) w.e.f., 1-1-73 or from the date of their appointment as Sr.Computer with all consequential benefits.

5. Thus the position now is that the Sr.Computer and Professional Assistant(S)/Statistical Assistant/ Research Assistant are all in the grade of Rs.425-700/-.

6. As the pay scales of Sr.Computer is equalised with that of the post of Professional Assistant which is a promotional posts from the Sr.Computer, due to implementation of the judgement in OA.1942/88 a batch OAs

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were filed (OA.1776/88) on the file of the Principal Bench of this Tribunal contending that the post of Professional Assistant being promotional to the Junior post of Sr.Computer, the professional assistant post should be given higher pay scale and thus the anomaly ^{which} ~~sought in~~ due to the implementation of the judgement in OA.1942/88 by which both the posts were placed in the same pay scale should be removed.

7. The Principal Bench of this Tribunal after hearing the batch cases in OA.1776/88 delivered the judgement on 6-2-92 ^{and} ~~observed~~ as follows:-

"While it is true that the Tribunal should not take upon itself the question of determining equivalence of post or assessing the nature of duties and responsibilities the question of irrationality can surely be brought out. We are supported, in our view, by the Judgement of Punjab and Haryana Court in Harkishan Vs. State of Punjab & Anr. (1987 (5) SLR 539), whereat, Hon'ble Court ordered rationalisation of pay scales in the light of observations made. It was also held therein that, it was irrational to place a junior post and higher post in the same scale of pay. The posts of senior Computer is definitely a junior post as compared to that of professional Assistant, since the Senior Computers are promoted to the post of Professional Assistant after rendering three years service in the grade.

In the conspectus of the aforesaid facts in the cases referred to above, we direct the respondent to rationalise the pay scales of Professional Assistant to a grade or a scale higher than that of Rs.425-700/-, which is the scale of Senior Computer (feeder post). This rationalisation should be done within a period of four months from the date of receipt of a copy of this order. The rationalisation should take place atleast from 1.1.88 and the pay of the incumbents should be fixed notionally in the higher scale. The actual payments in the rationalised higher scales could take place prospectively. With the aforesaid directions and order, the case is disposed of."

8. In pursuance of the directions given in the Batch cases the scale of pay of the Professional Assistant was refixed in the scale of Rs.1400-2600/- from the earlier pay

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scale of Rs.1400-2300/-. The above office order dated 20-08-93 is enclosed as Annexure-2 to the OA.

9. Thereafter, the applicant filed representation dated 12-10-93 (Annexure-3) stating that the extended pay scale cannot be considered as higher pay scale than the Rs.1400-2300/- because it discriminates against Professional Assistant especially who enter the service directly as Professional Assistant. That representation was disposed of by the letter dated 28-12-93 (Annexure-4) rejecting his contention and observing that the new pay scale of Rs.1400-2600/- introduced by the Government is in consultation with the Ministry of Law and Department of P&T in respect of P.A.(H) and that scale ^{as pay} is a higher scale than that attached to the post of Senior Computer and higher pay scale granted is in conformity with the direction of the Tribunal in the batch cases in OA.1776/88.

10. Thereafter also the applicant filed another representation dated 8-5-95 and 27-11-95 (Annexure-5 and Annexure-7) for the same relief. The respondent organisation regretted their inability to comply with his request by order No.8/9/87-Estt.XI dated 10-7-95 (Annexure-6) and order No.8/9/87-Estt/XI dated 17-9-96 (Annexure-8).

11. This OA is filed praying for a declaration that the action of the respondents in not giving a pay scale higher than the scale attached to the posts of Senior Computer in pursuance of the judgement dated 6-2-92 of the Principal Bench batch cases in OA.1776/88 is illegal, discriminatory and irrational and violative of Article 14 and 16 of the Constitution of India by holding that the pay scale of Rs.1400-2600/- is not a higher and rationalised scale compared to that of Rs.1400-2300/- and for a consequential direction to the respondents to revise the

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pay scale of Professional Assistant to Rs.1600-2660/- in compliance with the judgement in the Batch cases in OA.1776/88 etc., with all consequential and attendant benefits.

12. A reply has been filed in this OA. The respondents after analysing the judgement of the Principal Bench of this Tribunal in OA.1776/88 etc. had stated that the Tribunal has restricted itself to consider only the rationality of the issue, rather than deciding on the merit of granting a higher pay scale to the post of Professional Assistant. As per the established procedure, the granting of higher pay scales to a particular grades/posts etc. involves policy decision of the Government and are entirely under the purview of the expert bodies like Pay Commission set up by the Government from time to time. The respondents have fully complied with the directions given in the batch cases by rationalising the pay scales of Professional Assistant and placing them in the higher scale of Rs.1400-2600/- than that of their pay scale of feeder posts viz., Sr.Computer which is in the pay scale of Rs.1400-2300/- (Revised). The respondents also contend that the OA is not maintainable as the batch case already filed for the same relief have been disposed of and action has been completed as per the directions given in the batch cases.

13. The main contention of the applicant in this OA are analysed as follows:-

The applicant submits that the scale of pay of Rs.1400-2600/-, in practical sense cannot be treated as a higher scale and much less a rationalised one, in view of the fact that there is no change in the minimum ^{or the} pay scales except a marginal enhancement only in the maximum of the

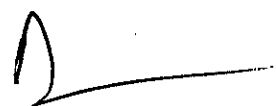
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scale that too after 5 years of working in that post. The respondents by placing the applicant in the pay scale of Rs.1400-2600/- had fulfilled the empty formality of implementing the judgement in the batch cases. Hence, the respondents have not complied with the directions and for complying the directions the applicant should be placed in the scale of pay of Rs.1600-2660/-.

14. No doubt, the minimum of the scale of pay is Rs.1400/-. But the maximum of the scale of pay is Rs.2600/- which is higher than Rs.2300/- that pay scale to the applicant was granted as per the direction in the judgement of the Principal Bench of this Tribunal in the batch cases. By placing the applicant in a pay scale whose maximum is higher than the maximum in the previous scale can it be said that the applicant had been given higher pay scale is a point for consideration.

15. We enquired from the applicant regarding the basis which makes him to come to the conclusion that even though the maximum pay is higher it cannot be considered as a higher pay scale when the minimum of that pay scale is same. The applicant took some time to examine this issue and submitted that he has no rule to quote nor any citation in this connection to bring to our notice.

16. The rationality of the pay scale whether higher or lower cannot be decided by a Tribunal. It is the duty of an expert body. In the 4th Pay Commission scales of pay two pay scales are available one is Rs.1400-2300/- and another one is Rs.1400-2600/-. The 4th Pay Commission probably thought that employees discharging higher responsibility should be given higher pay scale and that is why two pay scales with the same lower pay and different maximum pay has been included in their report. There is no



other reason in our opinion to give two pay scales as above by the 4th. Pay Commission. Hence, when the respondents submit that Rs.1400-2600/- is higher pay scale compared to Rs.1400-2300/- it cannot be said that the respondents are so observing without any reason. The respondents firmly believe that Rs.1400-2600/- is a higher pay scale compared to Rs.1400-2300/- and hence granted the higher pay scale of Rs.1400-2600/- to the Professional Assistant. Further the Principal Bench of this Tribunal had not indicated in the judgement in the batch cases any pay scale which should be given to the Professional Assistant. They have left it to the department to decide that issue in accordance with law as it is observed that the Tribunal cannot take upon itself the question of determining equivalence of post or assessing the nature of duties and responsibilities. It appears that the principal Bench in its wisdom thought that it is the duty of expert body and not that of the Tribunal to fix the pay scale. The pay scale fixed now for Professional Assistant by the department in our opinion is in accordance with the direction given by the Principal Bench in the batch cases. For reasons stated earlier one cannot come to the conclusion without any rule that the pay scale of Rs.1400-2600/- is not a higher pay scale compared to that of Rs.1400-2300/-.

17. The second contention of the applicant is that the maximum of the pay scale will give no benefit to the applicant as by then he would have been promoted to the higher pay scale. This is not ^{the} ~~a~~ reason for fixing a higher pay scale higher than Rs.1400-2600/-.

18. The applicant has given in para-6.11 a comparison, comparing the pay of a direct recruit and a promotee to the post of Professional Assistant from the

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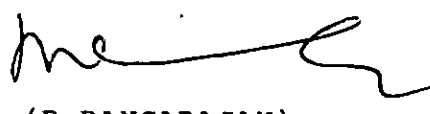
third year of service. The comparison in our opinion has no relevance as the pay fixation is not a parameter to be taken note of for fixing the pay scale. Further the pay fixation of a promotee is governed by FR 22 C and on that basis if a promotee gets more pay than the applicant, a direct recruitee, the applicant cannot ask for any stepping up of pay as per the judgment of the Supreme Court as the conditions prescribed under FR 22 C is not in favour of the applicant.

19. The applicant appears to suggest that a senior should always get more pay than a junior. There is no reason to conceive an idea like that as there are plethora of cases ~~whether~~^{where} a senior is getting less pay than junior due to the various reasons.

20. From the above appreciation of the case we find that there is no ground in this OA to give any relief to the applicant. It is not possible for us to come to the conclusion that the scale of pay of Rs.1400-2600/- is not a higher pay scale compared to that of Rs.1400-2300/-. As the applicant failed to quote any rule or citation to sustain his contention the Tribunal cannot exceed its jurisdiction in deciding an issue dehors the rules.

21. In view of what is stated above, we find that there is no merit in this OA and hence the OA is liable only to be dismissed and accordingly it is dismissed. No costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)


(R. RANGARAJAN)
MEMBER (ADMN.)

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Dated: The 23rd March, 1999.

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Copy to:

1. HON'D
2. HRRP M(A)
3. HRSJP M(J)
4. D.R. (A)
5. SPARE

1st AND 2ND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D. H. NASIR:
VICE - CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD:
MEMBER (A)

THE HON'BLE MR. R. RANGARAJAN:
MEMBER (A)

THE HON'BLE MR. B. S. JAI PARAMESWAR:
MEMBER (J)

DATED: 23-3-99

ORDER/JUDGEMENT

MA / RA / CE NO.

IN

O.A. NO. 944/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

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