

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR.

Date of order:

17.05.02

OA No.408/1999

R.N.Bajpai s/o late Shri Bankey Behari Bajpai r/o A-8 Jamuna Nagar, Sodala, Jaipur at present working as Technical Assistant (Statistical) in the office of Regional Director, Regional Office for Health and Family Welfare, D-49, Subhash Marg, Jaipur.

.. Applicant

Versus

1. Union of India through the Secretary, Ministry of Health and Family Welfare, Govt. of India, Nirman Bhawan, New Delhi.
2. Director General, Health Services, Govt. of India, Nirman Bhawan, New Delhi.
3. Sr. Regional Director, Regional Office for Health and Family Welfare, D-49, Batra Bhawan, Subhash Marg, C-Scheme, Jaipur.

.. Respondents

Mr. Rajendra Soni - counsel for the applicant

Mr. Bhanwar Bagri - counsel for the respondents

CORAM:

Hon'ble Mr. S.K. Agarwal, Member (Judicial)

Hon'ble Mr. H.O.Gupta, Member (Administrative)

O R D E R

Per Hon'ble Mr. H.O.Gupta, Member (Administrative)

The applicant is aggrieved of not granting him the pay scale of Rs. 5500-9000 w.e.f. 1.1.96 in accordance with the recommendations of the 5th Central Pay Commission. In relief, he has sought appropriate directions to the respondents to grant him pay scale of Rs. 5500-9000 w.e.f. 1.1.96 with all consequential

benefits including difference of pay and allowances alongwith interest.

2. The case of the applicant as made out, in brief is that:-

2.1 He was appointed to the post of Social Worker w.e.f. 24.8.65. Having post graduation qualification in statistics paper, he was allowed to work as Statistical Assistant in the year 1975 in the grade of Technical Assistant. He was allowed a pay scale of Rs. 1400-2300 w.e.f. 1.1.86 and having stagnated at the stage of Rs. 2300/-, he was granted in-situ promotion in the grade of Rs. 1600-2660 w.e.f. 1.4.91, as may be seen from the order dated 28/29.1.93 (Ann.A1). After implementation of the recommendation of the 5th Pay Commission, the Technical Assistants working in the Health Department of the same Ministry who had pay scale of Rs. 1400-2300 were placed in the scale of Rs. 5000-8000. The applicant, who was working in the pay scale of Rs. 1600-2660 was also placed in the scale of Rs. 5000-8000. He ought to have been allowed the scale of Rs. 5500-9000 which is the correct replacement pay scale of Rs. 1600-2660. He has already reached the maximum of the pay scale i.e. Rs. 8000/- w.e.f. 1.1.96.

2.2 On his representation, the matter was examined in the office of the respondent No.1 and information/proposals were calls for from the lower authorities, as may be seen from communication 20.5.98 (Ann.A3). Vide letter dated 9.6.98 (Ann.A4), the respondent No.4 also apprised the fact regarding consideration since 1998. He and respondent No.3 are requesting the respondent No.2 by way of

representation/letters dated 9.9.98 and 23.6.98 and further representation dated 28.10.98 to respondent No.1 but the matter of allowing correct pay scale to the applicant is pending before the respondent No.1 and 2 since 1998. The information sought by the respondent No.1 was furnished by the respondent No.3 vide letter dated 4.2.99 (Ann.A6).

3. The main grounds taken by the applicant are that:-

3.1 The action of the respondents for not allowing him higher pay scale as allowed to his counter-parts is arbitrary, illegal and unjustified.

3.2 The action of the respondents is against the principle of equal pay for equal work as the applicant is doing similar job with similar duties and responsibilities in comparison to their co-workers and they are getting higher pay scale than the applicant.

3.3 The action of the respondents is against the instructions issued from time to time by which they themselves have recommended the claim of the applicant.

3.4 The action of the respondents is also against their orders as they themselves allowed in-situ promotion in the higher pay scale of Rs. 1600-2660. He ought to have been replaced in the scale of Rs. 5500-9000.

3.5 The applicant is at the stage of retirement within two years and only one promotion has been allowed to the applicant during the entire service of 34 years.

4. The respondents have contested this application and briefly stated, they have submitted that:-

4.1 The present application is barred by limitation since the applicant's alleged grievance is of the year 1993 and he has claimed relief w.e.f. 1.1.96.

4.2 The applicant after getting stagnated as Technical Assistant in the pay scale of Rs. 1400-2300 was accorded in-situ promotion w.e.f. 1.4.91 and has been continued in the pay scale of Rs. 1600-2600 and he was placed at the maximum of Rs. 8000/- on 1.1.96 in the revised pay scale of Rs. 5000-8000. The next higher [Standard Commission (sic)] pay scale as per recommendation of 5th Central Pay Commission, the applicant reached the maximum of the scale i.e Rs. 8000/- as on 1.1.96 and subsequently he was allowed one stagnation increment w.e.f. 1.1.98 as per rules. The 5th Central Pay Commission has not recommended the revised pay scale of Rs. 5500-9000 to the Technical Assistants in the Regional Office of Health and Family Welfare. The 5th Pay Central Pay Commission has recommended the revised pay scale of Rs. 4500-7000 to the Technical Assistants in Regional Office for Health and Family Welfare. Therefore, the applicant's claim is misconceived and misleading.

5. The applicant in his rejoinder has further submitted that fixation of pay of an employee is recurring cause of action and the applicant has filed representation for giving benefits of the 5th Pay Commission and the same was not given in spite of notice of demand of justice dated 7.8.99 and the applicant has filed this OA. The present dispute is not of the year 1993 when the in-situ promotion was granted to him, but relates to the revised pay scale benefits of Vth Pay Commission recommendations.



The applicant was in the grade of Rs. 1600-2660 and not in the grade of Rs. 1600-2600. He is entitled to get higher pay scale of Rs. 5500-9000 w.e.f. 1.1.96 which has been given to other similarly situated persons. The Hon'ble C.A.T., New Delhi in OA No.1426/97, Sushma Sharma and Ors. v. Union of India and ors., which was decided on 22.1.98 had held that similarly situated officers should be paid equal pay scale as per 5th Pay Commission. He submitted his representation dated 28.10.98 (Ann.A9) for grant for same relief which has been granted by the C.A.T., New Delhi in the case of Sushma Sharma (supra). As may be seen from Ann.A10 vide order dated 21st March, 2000, the Statistical Assistants who were having pre-revised pay scale of Rs. 1400-2300 with a consequential replacement scale of Rs. 4500-7000 have been upgraded to Rs. 5000-8000 and these pay scale were made effective from 1.1.96.

6. The respondents have filed reply to the rejoinder reiterating their earlier stand. It has been submitted that the upgraded replacement scale to Group 'B' and 'C' statistical function posts located in Ministries/Departments of the Central Government has been granted in the following manner:-

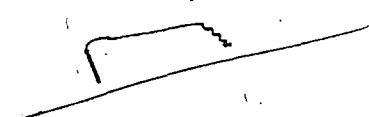
S.No.	IVth CPC scale	Upgraded scale	Replacement scale
	by 5th CPC		in 5th CPC

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1. Rs. 1400-2300	1600-2600	5000-8000
2. Rs. 1600-2660	1640-2900	5500-9000
3. Rs. 1640-2900	2000-3500	6500-10500

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The applicant is not holding a statistical functioning



post in Regional Office of Health and Family Welfare, Jaipur and he is not eligible for grant of upgraded scale of Rs. 5000-8000 and 5500-9000. He was placed in the scale of Rs. 4500-7000 (sic) based on the recommendation of the 5th Pay Central Pay Commission. The Pay Commission has not recommended pay scale of Rs. 5500-9000 to the Technical Assistants in the Regional Offices for Health and Family Welfare.

7. Heard the learned counsel of parties and perused the records.

7.1 The applicant is claiming a pay scale of Rs. 5500-9000 w.e.f. 1.1.96, the day the revised pay scale came into force based on the recommendations of the 5th Central Pay Commission (CPC). The applicant, alongwith other Technical Assistants, was granted the pay scale of Rs. 1400-2300 based on the recommendations of the 4th CPC. Thereafter, based on long service and having stagnated in this grade, he was granted in-situ promotion in 1991 in the pay scale of Rs. 1600-2660. After the recommendations of the 5th CPC, the category of TAs in the regional office of Health and Family Welfare were granted the pay scale of Rs. 4500-7000 being the standard conversion recommended by the 5th CPC. To the applicant, who was granted in-situ promotion and was holding a pay scale of Rs. 1600-2660, the respondents granted him the standard conversion of the pay scale of Rs. 1600-2660 as Rs. 5000-8000 as per the recommendations of the 5th CPC.

7.2 The contention of the learned counsel for the applicant is that the TAs in the department to which the applicant belongs and were earlier in the pay scale of Rs.

1400-2300, deserve to be granted the pay scale of Rs. 5000-8000 for the reason that the TAs in the other organisations headed by the D.G.H.S., have been granted this scale based on the recommendation of the 5th CPC. The 5th CPC as would be evident from para 69.11 and 69.12 of the report pertaining to D.G.H.S. organisations, granted higher pay scale on the sole ground that the Direct Recruitment qualification for those TAs is graduate. The respondents and the 5th CPC totally ignored the fact that for the TAs in the applicant's office of Health and Family Welfare, the qualification prescribed is Post Graduate in Mathematics.

7.3 He further submitted that the respondents in reply to the rejoinder, have admitted that everywhere in the Central Govt., the Group 'C'/'B' employees performing statistical functions have been upgraded. In these departments, the pay scale of Rs. 1400-2300, Rs. 1600-2660 and Rs. 1640-2900 have been granted one step higher replacement scale of Rs. 5000-8000, 5500-9000 and Rs. 6500-10500. His submission is that TAs in the Health and Family Welfare office are also by and large performing the statistical function and, therefore, deserve to be placed in the pay scale of Rs. 5000-8000 and, therefore, the corresponding promotional grade has atleast to be next higher grade which is Rs. 5500-9000. Since the applicant on in-situ promotion was placed in the next higher pay scale of Rs. 1600-2660 in 1991, he is required to be granted a pay scale of Rs. 5500-9000 w.e.f. 1.1.96.

7.4 The contention of the learned counsel for the respondents is that the Pay Commission did not recommend higher pay scale and, therefore, the applicant has no

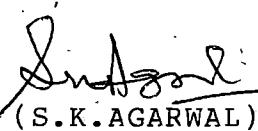
claim. Further that the TAs in the Health and Family Welfare office, which the applicant belong, have been given standard conversion of the pay scales since no specific recommendation for upgradation was made by the 5th CPC. He further submitted that TAs are not performing the statistical functions.

7.5 The learned counsel for the applicant further submitted that the orders for upgraded pay scale were published by the Govt. in late 1998 and 1999 and even in the year 2000 as may be seen from Ann.RJ/2. Also, the respondents themselves are seeking information for consideration of the case by the another Committee as may be seen from their letter dated 4.2.99 (Ann.A6). Therefore, the case cannot be said to be barred by the limitation as contended by the respondents.

8. We have given considerable thought to the contention of the rival parties. We are of the view that the matter requires consideration by the Govt. and, if necessary, by referring the case to the Anomaly Committee. Accordingly, this OA is disposed of with the direction to the applicant to file a fresh representation to the respondent No.1 alongwith a copy of this order with copy to the respondent No.3, for information, within one month from today and by Speed Post/Regd. AD post. In that event, the case of the applicant will be duly considered by the respondent No.1 and relief, if any, be granted to the applicant within 6 months from the date of receipt of representation. In case it is not possible to accede to the prayer of the applicant, he shall be so informed with reasons thereof within the said period.

(H.O.GUPTA)

Member (Administrative)

  
(S.K.AGARWAL)

Member (Judicial)