

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 05.04.02

OA No. 489/2000

Smt. Kusum George w/c Shri George Joseph, aged about 41 years, r/o C-25, Prem colony, Near Surya Nagar, Tonk Road, Jaipur, presently working on the post of Laboratory Technician P&T Dispensary No.2, Tilak Nagar, Jaipur

..Applicant

Versus

1. Union of India through the Secretary to the Govt. of India, Department of Posts, Ministry of Communications, Sanchar Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur
3. The Director, Postal Services, Jaipur Region, Jaipur.

.. Respondents

Mr. C.B.Sharma, counsel for the applicant

Mr. N.C.Goyal, counsel for the respondents

CORAM:

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

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

ORDER

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

The applicant is aggrieved of the order dated 5.10.99 whereby her pay scale is reduced to Rs. 1200-2040 w.e.f. 6.4.89 in spite of the fact that she was appointed in the pay scale of Rs. 1350-2200 w.e.f. 6.4.89 after due process of selection. In relief, she has prayed for appropriate directions to the respondents not to reduce



her pay w.e.f. 6.4.89 and to fix her in the pay scale of Rs. 1350-2200 and Rs.4500-7000 w.e.f. 1.1.96 with all consequential benefits by quashing the order dated 5.10.99 (Ann.A1) alongwith order dated 1.10.97 (Ann.A10). It has also been prayed for appropriate directions to the respondents to release the difference of pay and allowances after fixing w.e.f. 1.1.96 and not to recover the excess payment calculated w.e.f. 6.4.89 and arrears w.e.f. 1.1.96 which were adjusted in so called excess payment.

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

2.1 She was allowed to work on the post of Laboratory Technician against a vacant post on 1.4.82 after her name was sponsored by the Employment Exchange. In the year 1985, she was selected by a regularly constituted Selection Board. However, orders for regular appointment were not issued and she continued on the post as was earlier held by her. However, she was regularly appointed on the post of Laboratory Technician vide memo dated 6.4.89 (Ann.A3).

2.2 She performed all her duties to the entire satisfaction of the respondents. She drew her pay in the pay scale of Rs. 1350-2200 without any interruption till the implementation of the Fifth Central Pay Commission recommendations w.e.f. 1.1.96. Her pay as on 31.12.95 was Rs. 1560/- in the pay scale of Rs. 1350-2200. The Fifth Central Pay Commission in their recommendations have prescribed the pay scale of the Laboratory Technicians as Rs. 4500-7000 corresponding to the pre-revised scale of

Rs. 1320-2040 as per para 55:149 of the report (Ann.A4). In fact, the applicant was holding a higher pay scale than this and was entitled for higher pay scale of Rs. 5000-8000 as was allowed to the staff working in other ministries on the post of Laboratory Technicians. In the Gazette of India dated 30.9.97 (Ann.A5), the pay scale of Laboratory Technician is prescribed as Rs. 4500-7000. Besides this, the Central Government Health Scheme (CGHS) has also prescribed the same scale of the Laboratory Technician working in the Department.

2.3 With effect from 1.1.86, the Fourth Central Pay Commission also recommended the pay scale of Para-Medical Staff as Rs. 1350-2200 (Ann.A8) and on that basis the applicant was correctly appointed in the pay scale of Rs. 1350-2200, as may be seen from the Fourth Central Pay Commission report (Ann.A8). The pay scale of Rs. 1200-2040 was recommended to those who were having a prescribed pay scale of Rs. 330-560 by the Fourth Central Pay Commission and did not belong to Para Medical Staff. The respondents incorrectly lowered her pay scale and of other co-workers of the applicant in other circles, who approached the Hon'ble Central Administrative Tribunal, Jabalpur Bench for redressal of their grievance. The Hon'ble Central Administrative Tribunal, Jabalpur Bench held that the scale of Rs. of Rs. 1350-2200 has been erroneously allowed which can be rectified. A copy of the order of the Jabalpur Bench dated 29th April, 1997 is annexed as Ann.A9. Taking into consideration the decision, the respondent No.1 issued orders for pay scale to the Laboratory Technicians as Rs. 1200-2040 vide order dated 1.10.97 (Ann.A10). In pursuance to the order dated

1.10.97, the respondents reduced the pay of the applicant w.e.f. 6.4.89 and refixed her pay in the pay scale of Rs. 1200-2040 from the earlier pay scale of Rs. 1350-2200 without any information to the applicant and further granted a lower pay scale of Rs. 4000-6000 w.e.f. 1.1.96. After recommendations of the Fifth Central Pay Commission were accepted, no arrears of pay was paid to the applicant while implementing the report of the Fifth Central Pay Commission and the same were adjusted against the recovery calculated as per order dated 1.10.97.

2.4 She requested the respondents to intimate the reasons for such recovery, but the respondents did not inform her. Therefore, she approached this Hon'ble Tribunal by filing OA No.407/98 and vide order dated 7.4.99 (Ann.A12), this Tribunal ordered that reducing the pay of the applicant by the impugned order of the respondents is unwarranted and, therefore, set-aside. The respondents were directed to pass a fresh order after affording her an opportunity of hearing. The respondents did not allow the pay scale or restored the position in spite of specific direction of the Tribunal and without restoring the position respondent No.3 served a show-cause notice vide memo dated 21.9.99 and the same was replied by her stating that her pay should be restored first and as the pay scale has already been reduced, the notice is just a formality. Copy of the notice dated 21.9.99 and her reply dated 29.9.99 are annexed as Ann.A13 and A14. The respondents without giving any further opportunity ordered for refixation in the pay scale of Rs. 1200-2040 instead of the pay scale of Rs. 1350-2200 which was revised to Rs. 4000-6000 vide the impugned order.

2.5 The Contempt Petition filed by the applicant before this Tribunal for non-compliance of the order was closed vide order dated 7.4.2000 (Ann.A15).

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

3.1 The applicant is entitled for the pay scale of Rs. 4500-7000 or 5000-8000 as per the recommendations of the Fifth Central Pay Commission corresponding to the old pay scale of Rs. 1350-2200 on which she was initially appointed by the respondents.

3.2 She was entitled to draw higher pay scale on the basis of the pay scale drawn by her since appointment.

3.3 The action of the respondents is against the principles of promissory estoppel as they themselves appointed her in the pay scale of Rs. 1350-2200.

3.4 The claim of the applicant is justified on the facts and circumstances and also on the recommendations of the Fifth Central Pay Commission.

4. The respondents have contested this application. Briefly stated, the contention of the respondents is that she was erroneously given the pay scale of Rs. 1350-2200 on her appointment as Laboratory Technician w.e.f. 6.4.89, in stead of Rs. 1200-2040. Based on the directions of the C.A.T., Jabalpur Bench, the DG (P), New Delhi issued direction vide his letter dated 1.10.97 to rectify the pay scales and place all Laboratory Technicians in the pay scale of Rs. 1200-2040. Accordingly, her pay scale was rectified to Rs. 1200-2040. She filed an OA in C.A.T., Jaipur Bench, which was

disposed of vide order dated 7.4.99 with a direction to follow the principle of natural justice. Accordingly, the applicant was issued a show-cause notice and an order dated 5.10.99 was passed and her pay scale was fixed as Rs. 1200-2040/Rs. 4000-6000. The recommendations of the Fifth Central Pay Commission for a different pay scale in other Ministries cannot be given to Laboratory Technicians of P&T Dispensary. The pay scale of Laboratory Technicians in P&T dispensaries was Rs. 330-560 before the recommendations of Fourth Central Pay Commission were implemented. They were given the standard conversion pay scales of Rs. 1200-2040 and Rs. 4000-6000 based on the recommendations of Fourth and Fifth Central Pay Commission respectively. It is held by the Hon'ble Apex Court that the Tribunal cannot go into the question of pay scale of posts which is matter to be considered by expert bodies like the Pay Commissions.

5. Heard the learned counsel for the parties and perused the record.

5.1 During the course of argument, the learned counsel for the applicant submitted that as per the order dated 29th April, 1997, the Jabalpur Bench in OA No.74/96, 140/96 and 141/96, has held that no recovery could be made against the over-payments and whatever payments made in the pay scale of Rs. 1350-2200 shall not be recovered and the applicant shall be fixed in the pay scale of Rs. 1200-2040, since it was the Department which fixed the pay scale and made payments. He also brought to our notice the judgment dated 7.4.99 passed in OA No.407/98 filed by the present applicant, wherein this Tribunal held that no

show-cause notice or opportunity of hearing was afforded to the applicant before reducing her pay and before proposing recovery. The impugned order was set-aside and respondents were directed to pass fresh order regarding applicant's pay and emoluments after affording her opportunity of hearing. The contention of the learned counsel for the applicant is that once earlier order of reducing pay scale has been quashed, that order did not exist and the present impugned order dated 5.10.99 could only be issued after cancelling the earlier order as per the directions of the Jaipur Bench of this Tribunal. Any recovery could be made till the present impugned order is passed. He also contended that the pay fixation of the applicant has not been done in the pay scale of Rs. 1200-2040. He further repeated the arguments made in the OA with regard to the higher pay scale of Rs. 1350-2200.

5.2 We have given due consideration to the contention of the learned counsel for the applicant. The question of applicability of pay scale of Rs. 1200-2040 in spite of Rs. 1350-2200 w.e.f. the date of joining has been settled by the Jabalpur Bench and, therefore, the applicant could only be given the pay scale of Rs. 1200-2040 w.e.f. the date she joined. With regard to the other contentions of the learned counsel for the applicant, we are of the view that once the order of pay fixation/recovery was set-aside by the Jaipur Bench vide their order dated 7.4.99 delivered in OA No. 407/98, no recovery could be made till the impugned order dated 5.10.99 was passed. Regarding the proper fixation in the pay scale of Rs. 1200-2040, no specific averments are

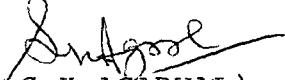
made. However, the applicant is required to be fixed in the pay scale of Rs. 1200-2040 giving corresponding revised pay scale of the Fifth Central Pay Commission based on the yearly implementation from the date she joined.

6. In view of above observations, this OA is disposed of with the direction to the respondents that the applicant shall be entitled to the emoluments in the pay scale of Rs. 1350-2200 including the corresponding standard revised pay scale till passing of the order dated 5.10.99. Recovery, if any, shall be made on excess payment, ^{if any} ~~if any~~, in the pay scale of Rs. 1200-2040/4000-6000 after issue of the impugned order dated 5.10.99.

7. With the above directions, this OA is partly allowed with no order as to costs.


(H.O.GUPTA)

Member (Administrative)


(S.K.AGARWAL)

Member (Judicial)