

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

May 17/11
22/11

O.A. No. 494/2000
T.A. No.

199

H/17/11
17/11

DATE OF DECISION _____

Kamal Prasad Agarwal & another Petitioner

Mr. P.V. Calla Advocate for the Petitioner (s)

Versus

Union of India and two others Respondent

Mr. B.N. Sandu Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman

The Hon'ble Mr. A.P. Nagrath, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(A.P. Nagrath)
Administrative Member

(G.L. Gupta)
Vice Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Original Application No. 494/2000

Date of the Order: 23.01.03

1. Kamal Prasad Agarwal
S/o Shri Raghuvar Dayal Agarwal
r/o 11/79, Malviya Nagar,
JAIPUR.

2. Barkhandi Lal
S/o Shri Med Ram
r/o Barkat Nagar Extension,
Jaipur.

: Applicants

rep. by Mr. P.V. Calla : Counsel for the applicants.

-versus-

1. The Union of India through the
Secretary to the Government
Ministry of Agriculture,
Department of Agriculture and
Cooperation,
Krishi Bhawan, New Delhi.
2. The Agricultural Marketing Advisor to the
Government of India,
Directorate of Marketing and Inspection
National Highway 4
New C.G.O. Building
Faridabad.
3. The Joint Agricultural Marketing
Advisor, Directorate of Marketing &
Inspection, New Secretariat Building
Nagpur

: Respondents.

rep by Mr. B.N.Sandu : Counsel for the respondents.

CDRAM: The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman

The Hon'ble Mr. A.P. Nagrath, Administrative Member.



ORDER

Per Mr. Justice G.L.Gupta:

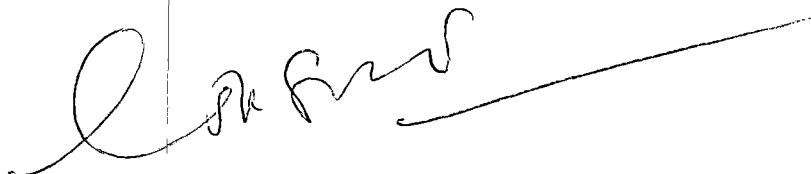
Both the applicants are Junior Chemists in the Regional Agmark Laboratory, Directorate of Marketing and Inspection under the Ministry of Agriculture. They are getting their pay in the pay scale of Rs.4000-7000 as recommended by the 5th Pay Commission. Prior to that, they were getting pay in the pay scale of Rs.1400-2300 on the basis of the recommendations of the 4th Pay Commission. They claim the pay scale of Rs.6500-10500 or Rs.5500-9000.

2. The case for the applicants is that the Junior Chemists working in the other departments are getting higher pay scale, so much so that some of them have been placed in the pay scale of Rs.6500-10500. It is stated that the educational qualifications for the Junior Chemists in the respondents' department and also in the other Government offices is the same and the nature of the job is also the same and disparity of the pay is ex-facie illegal and unsustainable. It is also stated that Respondent No. 3 has sent a note to the Secretary to the Government of India for providing higher pay scale to the applicants but no action has been taken.

3. In the counter, the respondents' plea is that the grant of pay scale is a matter to be considered by the expert bodies like the Pay Commission. The 4th Pay Commission after due consideration had provided the pay scale of Rs.1400-2300 to the applicants and the 5th Pay Commission has recommended the pay scale of Rs.4500-7000. It is averred that the educational qualification required for the post of Junior Chemists in the other departments is higher than the educational qualification required for the Junior Chemists under the Recruitment Rules (Annex. R.1) of this department. It is prayed that the application be dismissed.

4. In the rejoinder the applicants have tried to reiterate the facts stated in the O.A. Reply to the rejoinder has also been filed.

5.. The contention of Mr. Calla, was that a detailed letter was

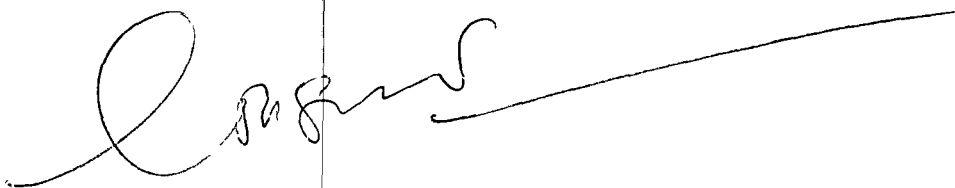


addressed to the Secretary to the Government of India, Annex.A-8 on 9.1.98 which shows that the department was satisfied that the applicants are entitled to the pay scale of Rs.6500-10500 or at least Rs.5500-9000, but the Government has not taken any decision in the matter. He submitted that keeping in view the nature of the job performed by the applicants, the respondents be directed to re-consider the case of the applicants for grant of higher pay scale.

6. We have considered the above contention. It is now settled legal position that the Court or the Tribunal cannot be justified in interfering with the pay scales fixed by the Government.

In the case of State of Haryana and another vs. Haryana Civil Secretariat Personal Staff Association (2002 SCC (L&S) 822), it was held that the claim of 'equal pay for equal work' is not a fundamental right of employee although it is a constitutional goal to be achieved by the Government. It was further observed that fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. The relevant observations at para 10 of the report are reproduced hereunder:

" It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter, several relevant factors, some of which have been noticed by this Court in the decided case, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. It is also to be kept in mind that the priority given to different types of posts under the prevailing policies of the State Governments also relevant factor for consideration by the State Government. In the context of the complex nature of issues involved, the far reaching consequences of a decision in the matter and its impact on the administration of the State Government, Courts have taken the view that ordinarily courts should not try to delve deep into administrative decision pertaining to pay fixation and pay parity. That is not to say that the matter is not justiciable or that the courts cannot entertain any proceeding against such administrative decision by the Government. The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and



relevant for a decision in the matter. Even in a case where the Court holds the order passed by the Government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The Court should avoid giving a declaration granting a particular scale of pay compelling the Government to implement the same.....

(emphasis supplied).

It is significant to point out that while deciding the aforesaid case, their Lordships noticed observation of this Court decided in the case of Secretary, Finance Department and others vs. West Bengal Registration Service Association and others (1993 SCC (L&S) 157) wherein the following observations had been made:

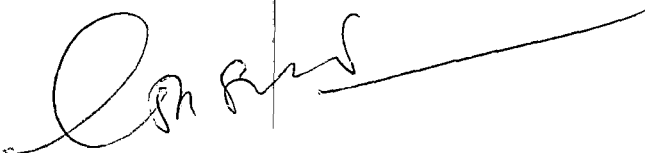
"12. We do not consider it necessary to traverse the case law on which reliance has been placed by counsel for the appellants as it is well settled that equation of posts and determination of pay scales is the primary function of the executive and not judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commissions, etc. but that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy, if they are unjustly treated by arbitrary State action or inaction. Courts must, however realise that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to under take some times on account of want of relevant data and scales for evaluating performances of different groups of employees.....

XXX XXX XXX
XXX XXX XXX

(emphasis supplied)

In the case of Union of India and others vs. Makhan Chandra Roy (1998 SCC (L&S) 104) the Supreme Court deprecated the interference by the Administrative Tribunal in determining the pay scales. It was observed that what pay scale should be given to a particular employee is within the domain of the authorities and the Tribunal should not venture in the 'forbidden field'.

In the case of Union of India and another vs. P.V. Hariharan and another (1997 SCC (L&S) 838) it was observed that unless a clear cut case of hostile discrimination is made out, there should not be judicial interference with the pay scales fixed by the Government on the recommendations of Pay



Commission. In that case, their Lordships passed severe strictures against the Tribunal which had passed an order to grant particular pay scale to the applicant therein. It was observed at para 5 of the report as under:

"5. Before parting with this appeal, we feel impelled to make few observations. Over the matter decided by the Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of 'equal pay for equal work' is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales. We have come across orders passed by Single Members, and that too quite often Administrative Members, allowing such claims. These orders have a serious impact on the public exchequer too. It would be in the fitness of things if all matters relating to pay scales i.e. matters asking for a higher pay scale or enhanced pay scale, as the case may, on one or the other ground, are heard by a Bench comprising at least one Judicial Member. The Chairman of the Central Administrative Tribunal and the Chairmen of the State Administrative Tribunals shall consider issuing appropriate instructions in the matter.

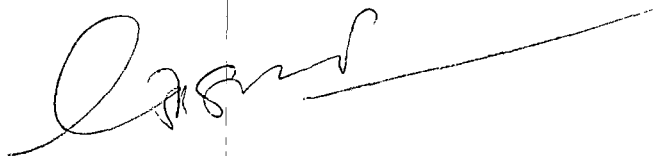
Copies of this order shall be communicated to the Hon'ble Chairman, Central Administrative Tribunal and to all the Hon'ble Chairmen of the State Administrative Tribunals for bringing this order to the notice of all the learned Vice Chairmen and members.

Similar observations were made by the Apex Court in the case of State of U.P. and others vs. J.P. Chaurasia and others (1989 SCC (L&S) 71)

7. Keeping in view the aforesaid observations of the Apex Court there can be hardly any justification on our part to consider the matter for grant of higher pay scale to the applicants.

8. It may be that the junior functionaries in the department recommended the grant of higher pay scale to the applicants, but that did not confer any ~~right~~ on the applicants to claim higher pay scale.

9. It is borne out from the reply that the matter was fully considered by the 5th Pay Commission and it recommended the corresponding pay



scale of Rs.1400-2300 i.e. Rs.4500-7000 only. It is further borne out from the reply that the applicants did not care to represent to the 5th Pay Commission for the grant of higher pay scale at par with Junior Chemists of the other departments. The reply indicates that the Government has not agreed to the grant of higher pay scale of Rs.5500-9000 to the Junior Chemists vide letter Annex. R.3.

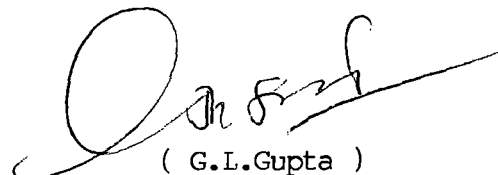
It is further clear from the reply that the educational qualification required for the Junior Chemists in the other departments is higher than the educational qualification required for the Junior Chemists in the office of the respondents. There is nothing on record to hold that the job requirement of Junior Chemists working in other departments is the same as that of the applicants.

10. Keeping in view the above facts, we are not satisfied that the applicants are entitled to get higher pay scale.

11. Consequently, we find no merit in this O.A. It is dismissed with no order as to costs.


(A.P.Nagarath)

Administrative Member.


(G.L.Gupta)

Vice Chairman.

jsv.