

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 873 of 2000
Original Application No. 342 of 2001

Jabalpur, this the 8th day of April, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

1. Original Application No. 873 of 2000 -

Shri Madhu Sudan Vijay, S/o. Shri
Dhanraj Vijay Vargiya, aged about
48 years, Resident of IV/18, TTC
Colony, Ridge Road, Jabalpur (MP). ... Applicant

(By Advocate - Smt. S. Menon, Sr. Advocate alongwith Ku.
P.L. Shrivastava)

V e r s u s

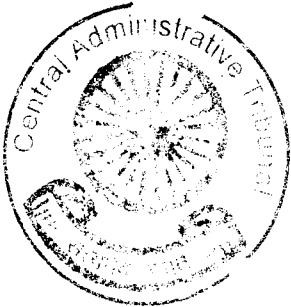
1. Union of India, Through Secretary,
Ministry of Communications,
Department of Telecommunication,
Sanchar Bhawan, New Delhi.
2. The Chairman, Telecom. Commission,
Sanchar Bhawan, 20, Ashoka Road,
New Delhi.
3. The Director General, Department of
Telecom., Sanchar Bhawan, 20, Ashoka
Road, New Delhi.
4. The Chief General Manager,
BRBRA Institute of Telecom.
Training, Ridge Road,
Jabalpur (MP). ... Respondents

(By Advocate - Shri B.da.Silva, Sr. Advocate alongwith Shri
S. Akhtar)

2. Original Application No. 342 of 2001 -

1. Shri Madhu Sudan Vijay, S/o. Shri
Dhanraj Vijay Vargiya, aged about
49 years, Resident of IV/18, TTC
Colony, Ridge Road, Jabalpur.
2. Shri Maganlal Patel, S/o. Shri
Chandrabhan Patel, aged about 48
years, Resident of II/20, P&T Colony,
Behind Krishi Upaj Mandi, Damoh
Naka, Jabalpur. ... Applicants

(By Advocate - Smt. S. Menon, Sr. Advocate alongwith Ku.
P.L. Shrivastava)



V e r s u s

1. Union of India, through the Secretary, Ministry of Communications, Department of Telecommunications, Sanchar Bhawan, New Delhi.
2. The Chairman, Telecom. Commission & Secretary, Department of Telecommunications, Sanchar Bhawan, New Delhi.
3. The Chief General Manager, Bharat Ratna Bhim Rao Ambedkar Institute of Telecom. Training, Ridge Road, Jabalpur. ... Respondents

(By Advocate - Shri B.da.Silva, Sr. Advocate alongwith Shri S. Akthar)

Common O R D E R

By Madan Mohan, Judicial Member -

The applicant No. 1 i.e. Shri Madhu Sudan Vijay has filed both the Original Applications claiming the following reliefs. For the sake of convenience, we are disposing of these Original Applications by passing a common order.

Original Application No. 873 of 2000 -

2. By filing this Original Application the applicant has claimed the following main reliefs :

"(i) Grant regular appointment/up-gradation to the post of Assistant Library and Information Officer in the scale of Rs. 2000-3500/- w.e.f. 24.7.1990 (the said scale now revised to Rs. 6500-10,500/- as per Vth CPC w.e.f. 1.1.1996) by making necessary modification to the memo. dated 14.2.1996/Annexure A-20, A-21 & A-22 respectively.

And be further be pleased to direct the respondents to consider the applicant for promotion to the post of Library & Information Officer in the scale of 3000-4500/- w.e.f. 24.7.1993 (the said scale have not been revised to Rs. 10,000 to 15,200/- as per the Vth CPC w.e.f. 1.1.1996).

(ii) That, appropriate directions be issued to the respondents for granting all the arrears of salary and other service benefits alongwith interest together with an amount of Rs. 25,000/- by way of compensation towards the mental agony and financial loss suffered by the applicant."

Original Application No. 342 of 2001 -

3. By filing this Original Application the applicants have claimed the following main reliefs :

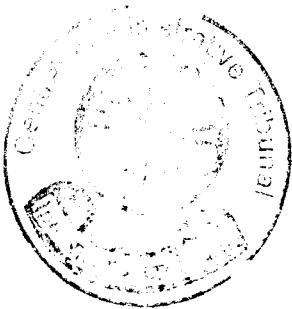
"(i) Direct the respondents, to grant the scale of pay, as recommended by the Vth Central Pay Commission and to grant such other relief, as deemed fit under the facts and circumstances of the present case."

Original Application No. 873 of 2000 -

4. The brief facts of the case are that the applicant was initially appointed on temporary basis on the post of Librarian vide order dated 7.12.1977 (Annexure A-1). On the recommendation of the DPC held on 17.12.1985 the applicant came to be appointed substantively vide order dated 29.4.1986. In pursuance of the Recruitment Rules, 1987 the applicant's post came to be regularised w.e.f. 25.2.1983 vide order dated 18.12.1987. A committee was constituted to undertake the review of pay scales, qualifications and recruitment level of responsibility of the Library staff and after careful consideration, recommendations were made by the Committee, keeping in view the over all policy, the Government decided to introduce pay structure to the Library staff together with upgradation of the post. Under para 4, categorisation of the Library were brought about and under para 4.2 it has been specifically mentioned that in case the existing incumbents namely the Library incharge happens to be in a lower scale of pay then the scale determined based on the categorisation, the said incumbent be considered for appointment in the higher scale, provided the said incumbent fulfills the recruitment qualification laid down for that post. The Bharat Ratna Bhim Rao Ambedkar Institute of Telecom. Training, Jabalpur is the premier institute of the Department of Telecommunications. It has a very well maintained Library managed by two regular Librarians and one Library attendant. The IVth Central Pay Commission, recommended a review committee to go into revisions of the pay scale of the Library staff of the Central Government Library. The Chhattopadhyaya Committee

was appointed by the Government and on the basis of its recommendation the Ministry of Finance issued the Office Memorandum dated 24.7.1990 and a subsequent clarification as regard to the date of effect dated 26.10.1990. After the issuance of the said OM of 24.7.1990 the respondent No. 4 in its letter of 23.5.1993 addressed to the Director General, Department of Telecommunications, New Delhi, brought out that as per Annexure-II of the said OM, the category of the Library at Jabalpur has been determined as Category-III and in so far as para 4.1 of the said OM is concerned, the designation/post of the Library incharge should be Library and Information Officer and the scale of pay ought to be Rs. 3000-4500/-. It was further clarified in the said letter that the existing incumbent is in a lower scale of pay and therefore in accordance with para 4.2 the said incumbent is to be considered for the appointment in the higher scale, as he fulfills the recruitment qualifications laid down in Annexure-I for the post of Library and Information Officer. In accordance with OM of 26.10.1990 these orders are to be implemented effective from 24.07.1990. The respondent No. 4 repeatedly placed the case of the applicant before the authorities concerned and the respondent Government of India vide memo dated 14.2.1996 informed the respondent No. 4 that a decision has now been taken to permit local officiating arrangement by promotion of present incumbent to the post of Assistant Library & Information Officer in the scale of Rs. 2000-3500/-. In pursuance of the said memo. the respondent No. 4 issued the order of 25.3.1996, whereby the post of the applicant came to be upgraded to the post of Asstt. Library & Information Officer in the scale of Rs. 2000-3500/- w.e.f. 12.3.1996 and on the basis of the said order, the respondent No. 4 issued yet another order of 25.3.1996 granting the promotion in the upgraded post on local officiating basis.

that
The applicant also mentioned that the order/came to be passed on 25.3.1996 in pursuance to the memorandum dated 14.2.1996 cannot be said to be in accordance with the spirit of the memorandum dated 24.7.1990. It is also the submission of the applicant that he fulfills the requisite qualification criteria laid down in the office memo and annexure appended thereto and there seems to be no justification whatsoever, in appointing/promoting the applicant on officiating basis and therefore, the order that has come to be passed by the authorities concerned cannot be said to be in accordance with the office memorandum dated 24.7.1990. Respondents Nos. 1 and 2 without proper application of mind repeated their requests to the respondent No. 4 to submit the status report of the Library of BRBRATT, Jabalpur. The letters which were sent by respondent No. 4 to the respondents Nos. 1 to 3 were based on the representation of the applicant, which he had submitted from time to time, requesting categorically that as he fulfills the necessary qualification he needs to be appointed/promoted on regular basis. The applicant further submitted that as per the recommendations of the IVth Central Pay Commission and office memorandum passed thereto dated 24.7.1990, resulted in a legitimate expectation that the applicant would be entitled to the benefits contained therein in as much as, he fulfills the necessary criteria and qualification which were postulated thereunder. It is required by the authorities concerned not to act to defeat the legitimate expectations without some over-riding reasons of public policy to justify its doing so. Despite of the facts that the applicant fulfills the qualifications as required, yet not granting him the regular promotion is not only violative of Articles 14 & 16 of the Constitutions but dehors the rule. The applicant has been denied the service benefits without

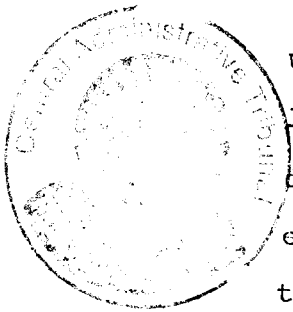


giving any cogent and tangible reasons and therefore, the order that has been passed by the authority concerned is not only improper, unjustified but wholly mechanical, arbitrary and malafide. The applicant has been performing the functions of the upgraded post i.e. Assistant Library & Information Officer and denying him the scale of pay and other service benefits which the post carries is not only violative of the principles of fairplay and equity but also violative of the constitutional provisions. The respondents Nos. 2 and 3 in not complying with the office memorandum dated 24.7.1990 in its true perspective, is nothing but an act which can be said to be based on extraneous consideration.

Original Application No. 342 of 2001 -

5. The brief facts of this case are that the in recommendations of the Vth Central Pay Commission/para 55.177, in so far as Library stream is concerned, is accepted by the Government of India vide First Schedule of the Gazette of India dated 30.9.1997. On the basis of the said order, the Ministry of Environment and Forest, already issued the order for upgrading the pay scale to the posts under the Library stream in Zoological Survey of India vide their letter of 14.5.1998. In so far as Senior Librarian and Information Assistants are concerned they have been placed in the revised pay scale of Rs. 6500-10,500/-. The applicant No. 1 has been functioning on adhoc basis on the post of Assistant Library and Information Officer while the applicant No. 2 is presently working on the post of Library & Information Assistant. The applicants requested the respondents for implementing the recommendations of the Vth Central Pay Commission as was done in the Ministry of Environment and Forest. The representations of the applicants were forwarded

to the Chairman by the respondent No. 3 vide letter dated 13.3.1998. The applicants submitted another representations on 22.9.1999 and 18.9.2000. In these representation it was categorically mentioned that the Librarians of the Department of Telecom., who are managing huge and technical library and having higher qualifications are receiving lower scale of pay as compared to their counterparts in other departments namely School Libraries, Libraries in Zoological Survey of India, etc. It was therefore requested that upward revision of the pay scale may be granted to the librarians of Department of Telecommunications specifically of the said Institute. The respondent No. 3 even recommended the upgraded revision of the scale for the applicants working with the respondent No. 3, and the same was forwarded vide letter dated 22.1.2001. The respondents vide memorandum dated 20.3.2001, though the copy of the same was not endorsed to the applicants, informed the respondent No. 3 that they are not entitled to the pay scale recommended therein in as much as it pertains only to school library. This contention of the respondents is wholly misconceived and devoid of substance in as much as the respondent has misinterpreted the applicability of the rule. The Central Civil Service (Revised Pay) Rules, 1997 apply to the persons appointed to Civil Services and posts in connection of the affairs of the unit whose pay is debitable to the Civil Estimate as also persons serving in the Indian Audit & Accounts Department and their contention that para 55.177 is not applicable is wholly incorrect and improper. The impugned memorandum is arbitrary in as much as the applicants are entitled to the said scale of pay as recommended by the vth Central Pay Commission and there seems to be no cogent reasons and justification for not granting the same to the applicant. The employees working in the

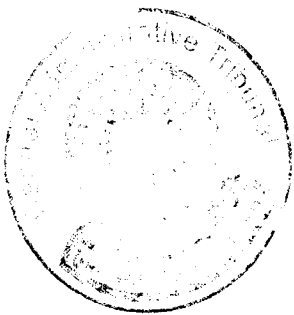


Library stream of Zoological Survey of India a Central Government undertaking are receiving the revised pay scale, while the applicants have been denied and therefore the action of the respondent is discriminatory and therefore is violative of the Articles 14 & 16 of the Constitution.

6. Heard the learned counsel for the parties in both the Original Applications and we also perused the records carefully.

7. During the pendency of the OA No. 342 of 2001 the respondents have issued the order dated 24.6.2003, whereby the applicant No. 2 in this OA i.e. Shri Maganlal Patel has been granted the benefits with effect from 1.1.1996. Copy of the said office order alongwith annexed documents are filed as Annexure A-X-1 to MA No. 1196 of 2003. Therefore the grievance of the applicant No. 2 Shri Maganlal Patel has been subsequently granted by the respondents and in this respect the OA has become infructuous. Now in this OA No. 342 of 2001 the matter remains only about applicant No. 1 i.e. Shri Madhu Sudan Vijay.

8. It is argued on behalf of the applicant Shri Madhu Sudan Vijay that in OM dated 24th July, 1990 (Annexure A-7 in OA No. 873/2000) of Government of India, Ministry of Finance, Department of Expenditure (Implementation Cell), it is mentioned therein that the undersigned is directed to refer to the recommendations of Fourth Central Pay Commission contained in para 11.63 of the Report wherein it was suggested that a Committee may be constituted to undertake review of the pay scales, qualifications and recruitment levels of responsibility of the Library Staff. In pursuance of the above suggestion, a Review Committee was set up by the



Department of Culture in September, 1987. After careful consideration of the recommendations made by this Committee and also keeping in view the overall policy, the Government have decided to introduce pay structure for Library staff. The ^{revised} pay of Assistant Library & Information Officer as provided in serial No. 7 of the said memorandum is Rs. 2000-3500/-. Our attention was drawn towards Annexure A-29/ (in OA No. 873/2000) letter dated 10.03.1995 written by D.E. (Admin), For CGM, of the Department of the applicant to ADG (STG), Department of Telecommunications, Sanchar Bhawan, New Delhi regarding upgradation of applicant to the post of Assistant Library & Information Officer and framing of recruitment rules. In this letter ^{it} is mentioned that the applicant fulfilled all the educational qualifications and experience required for the post of Assistant Library & Information Officer for direct recruitment as well as for the promotion as indicated in the Annexure-I of the MOF OM No. 19(1) IC/86 dated 24.7.1990. He possesses degree of M.Sc and B.Lib.Sc with Gold Medal. He has got experience of 16 years (working as Sr. Librarian w.e.f. 25.2.1983) in the scale of Rs. 1640-2900/- (pre-revised). He has also attended two training courses on Computers. The applicant was given local officiating promotion to the post of Assistant Library & Information Officer first time w.e.f. 12.3.1996 and subsequently for less than 180 days each time with a break. At present he is officiating w.e.f. 26.10.1998. Again our attention is drawn towards one letter dated 23.05.2000 in O.A. No. 873/2000) (Annexure A-31 /which is also written by AGM (Admin.), BRBATT, Jabalpur, regarding upgradation of the applicant to the post of Assistant Library & Information Officer and framing of recruitment rules. Our attention was drawn to letter dated 14.2.1996 (Annexure A-20 in OA No. 873/2000) which was sent by Director (ST-I) to the Chief General

Manager, Bharat Ratna Bhim Rao Ambedkar Institute of Telecom. Training, Jabalpur, regarding upgradation of the post of Sr. Librarian to that of Asstt. Library and Information Officer with respect to Ministry of Finance OM dated 24.7.1990. The applicant possesses all the requisite qualification for the said post, but he has not been given the due benefit so far.

9. The learned counsel for the respondents argued that the applicant is claiming promotion to the post of Library and Information Officer, carrying the scale of pay of Rs. 3000-4500/-. For appointment to the post of Library and Information Officer, the qualification and experience required is 5/8 years in the scale of Rs. 2000-3500/-. In the case of the applicant, he has only rendered 4 years 8 months in the feeder scale of Rs. 2000-3500/-. For the record, it is submitted that the matter of framing recruitment rules for the post of Assistant Library and Information Officer is under consideration with the Telecom Commission Headquarter. He further argued that the recommendations of the Vth Pay Commission has been accepted by the Government and with regard to the service of the applicants it has been duly implemented. The applicant by way of the instant application i.e. OA No. 342/2001 is seeking the recommendations of the Commission as contained in Para 55.177 notified by the Government of India, Ministry of Finance, Department of Expenditure dated 30.9.1997. The recommendations contained in the said para do not apply to the case of the applicants as it relates to School Librarians. The applicants are rendering services in the Bharat Ratna Bhim Rao Ambedkar Institute of Telecom Training, Jabalpur which prima-facie is not a School. The applicant has based his entire claim on the grounds that the benefit contained in

para 55.177 has been extended by the Ministry of Environment and Forests to the Librarians working for the Zoological Survey of India. He further submitted that the Ministry of Environment, before extending the benefit did not take the prior approval of the Ministry of Finance, Department of Expenditure, Implementation Cell, which is the Nodel Agency in respect of Pay and Allowances for the employees of the Central Government Ministries and Departments. In other words, the benefit has been wrongly extended by the Ministry of Environment and Forests and no right is created in favour of the applicants. It is also argued on behalf of the respondents that in OA No. 373/2000 the applicant Shri Madhu Sudan Vijay has sought relief No. (ii), whereby he has sought directions to be issued to the respondents for granting all the arrears of salary and other service benefits alongwith interest together with an amount of Rs. 25,000/- by way of compensation towards the mental agony and financial loss suffered by the applicant. There is no provision for granting such relief of compensation by this Tribunal.

10. We have given careful consideration to the rival contentions made on behalf of the parties and we find that the applicant possesses the requisite educational qualifications for the alleged post, but according to the arguments advanced on behalf of the respondents he did not possess the required experience of 5 years. It is lacking by few months in five years. We have perused the Office Memorandum dated 24th July, 1990 (Annexure -7/ of Government of India, Ministry of Finance, Department of Expenditure (Implementation Cell) wherein at serial No. 7 the qualification and experience of Assistant Library & Information Officer is mentioned as 3/3 years experience not 5/3 years as argued on behalf of the respondents. While according to the respondents themselves

they have admitted that the applicant's case i.e. Shri Madhu Sudan Vijay could not be considered because the applicant was having experience of only 4 years 8 months which is much more than 3 years as required under the OM dated 24th July, 1990. The applicant is also having M.Sc degree and Bachelors degree in Library Science. Hence the applicant is educationally qualified and is also having experience for the post of Assistant Library & Information Officer.

11. Hence we are of the considered opinion that according to the respondents version in para 2 of the reply submitted in OA No. 873/2000, wherein the respondents have submitted that the matter of framing recruitment rules for the post of Assistant Library and Information Officer is under consideration with the Telecom Commission Headquarter and as the grievance of the applicant No. 2 in OA No. 342/2001 has been fulfilled by the respondents, we find that ends of justice would be met if direct the respondents to reconsider the case of the applicant for grant of the reliefs claimed in both the Original Applications within a period of four months from the date of receipt of copy of this order by passing a detailed, speaking and reasoned order. We do so accordingly. Regarding the relief claimed by the applicant for compensation of Rs. 25,000/- as stated by the respondents that it cannot be granted by the Tribunal, seems to be legally correct. This Tribunal has no jurisdiction to grant compensation to the applicant.

12. In view of the observations made above, the Original Applications are disposed of. No costs.

13. The Registry is directed to place a copy of this order in the record of the connected file.

Sd/-
Judicial Member
"SA"

Sd/-
Vice Chairman

