

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

TA 59/2012

Reserved on: 3.04.2017
Pronounced on: 11.04.2017

**Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

Shri Satyapal Tyagi
S/o Shri Laxmi Narain Tyagi
R/o WZ-12, Village Budhella
Vikas Puri, New Delhi-110018 Applicant

(Through Shri Sanjay Sehrawat, Advocate)

Versus

1. Union of India through
The Secretary,
Ministry of Urban Affairs and Employment
Nirman Bhawan, New Delhi
2. The National Institute of Urban Affairs
Through its President
Ist and 2nd Floor Core 4-B
India Habitat Centre
Lodhi Road, New Delhi-110003 Respondents

(Through Shri Himanshu Jain for Ms. Sonia A Menon, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant was appointed as Research Analyst (RA) with the National Institute of Urban Affairs (NIUA) in October 1985 in the pay scale of Rs.450-900 (Scale as per 3rd Pay Commission). After implementation of the 4th Pay Commission recommendations, the applicant was granted the revised pay

scale of Rs.1600-2660 with effect from 1.04.1987 and thereafter, on the recommendations of the 5th Pay Commission, he was granted the pay scale of Rs.5000-8000. The applicant was granted pay scale of Rs.9300-34800 with Grade Pay Rs.4200/- after recommendations of 6th Pay Commission.

2. The prayer of the applicant is based on the following grounds:

(i) That the Hon'ble High Court vide judgment dated 1.07.2008 passed in W.P. (C) 4138/1996 directed that the claim of the petitioner shall be considered afresh. It directed as follows:

"In the light of the aforesaid discussion and without going into the other issues of discrimination raised by the petitioner, I deem it proper to remit the matter back to the respondents for reconsideration of the matter afresh after properly examining and evaluating the recommendations made by the Anomalies Committee in its report dated 14.12.1992. The decision in this regard shall be taken by respondents No. 1 and 2 within a period of two months from the date of this order. No further directions are required to be given as regards other reliefs claimed by petitioner No.3 in the present writ petition as petitioner No.3 has not pressed his claim so far the same is concerned with the pay scale of Accounts & Administrative Officer posted in NIUA."

The respondents thereafter, in compliance of the Hon'ble High Court's orders, passed order dated 19.09.2008. We reproduce below the contents of the order of the respondents dated 19.09.2008:

"A three member Committee was set up by NIUA to re-examine the case of Shri S.P. Tyagi as per the

directions of the Court with regard to the matter given in the subject. The three member Committee consisted of Ms. Usha P. Raghupathi, Professor, (Chairperson) with Shri Vijay Dhar, HUDCO Chair Professor and Ms. Nalini Shangloo, Research Officer, as members. The Committee met on 9th September, 16th September and 22nd September 2008 and examined all relevant papers. The Committee has concluded that the stand of NIUA remains the same as before i.e. Shri S.P. Tyagi's pay scale cannot be changed unless the Ministry agrees to re-consider his case for a change in scale.

The following points make NIUA's stand clear:

1. As per the Reply Affidavit dated 10.11.1997 of Dr. Vinod Tewari, Director, NIUA, on Writ Petition No.4130/96 filed in the High Court of Delhi at New Delhi, in page no. 11 it is stated that "In order to implement the 4th Central Pay Commission's recommendations in relation to the Core Staff of NIUA, it was necessary to bring their pay structure at par with the Central Government Employees. A Committee consisting of Director (Finance), Deputy Secretary (UD) in the Ministry of Urban Affairs & Employment, and Director (NIUA), identified the pre-revised pay scales for the Core Staff of NIUA , keeping in view their qualifications, experience, job contents, quality and quantity of work, which the staff members were required to perform. This exercise was completed in June 1987. Keeping in view the pre-revised scales of pay recommended by the Committee, the pay scales of the Core Staff of NIUA were revised correspondingly recommended by the 4th Central Pay Commission".
2. In the recorded discussions of the Committee, it was mentioned that "The post of Research Analyst does not correspond to any Central Govt. pay-scale. This post in NIUA carries the scale of pay of 450-900. The same scale was considered and accepted by the Committee. Since this scale is also required to be brought on the pattern of 4th Pay Commission scales, it is proposed that this post should be brought in the pay scale of Rs. 1600-2660" (p. 21 of Dr. Tewari's response).

3. On page no. 22 of Dr. Tewari's response it is stated that "keeping in view the nature of duties and responsibilities, quality of work experience etc. Research Analysts were placed in the higher pay scale of Rs.1600-2660" instead of placing them in the scale of Rs.1400-2300 which was given to Draughtsman, P.A., Programmer and In-charge Word Processing who were also in the pre-revised pay scale of Rs.450-900.
4. As per the Annexure to the Minutes of the Meeting held on 29.10.1987 in the Chamber of Secretary, MOUD to discuss the outstanding issues pertaining to the NIUA, the existing scale of pay for Research Analysts of Rs.450-900 at NIUA was placed against the corresponding scale of Rs. 1600-2660 of 4th CPC (as accepted by the Committee and Government of India).
5. As per Ministry of Urban Affairs & Employment's letter No. K-18016/14/97-UCD, dated 7th September, 1998, regarding 'Revision of pay scales of the employees of the NIUA' the Ministry has stated in para 2 that "Your attention is invited to the Ministry of Finance, Department of Expenditure's O.M. No.7 (34)/E-III-A/97 dated 2.12.97, according to which the revised scale of pay as incorporated in Part A of the First Schedule of the Central Civil Service (Revised Pay) Rules 1997 are extendable to the employees of the autonomous bodies like NIUA have already been revised by this Ministry vide its letter of even number dated 24.12.97. The representations now made by the various categories of the employees of the NIUA for upward revision of their pay scales, are with reference to the provisions of the Part B of the First Schedule of the above Rules. Since Part B is not applicable to the employees of the autonomous bodies, therefore, there is no question of consideration of further revision of pay scales of any of the employees of NIUA".

In addition to the above it must be stated here that:

- a) The Jha Committee was set up by Director, NIUA, in July 1992.

- b) The report of the Committee was tables in the 52nd meeting of the Governing Council held on 21st December 1992.
- c) The GC discussed the report and decided to obtain the views of the Ministry to get their comments on the Report.
- d) The Ministry in turn asked NIUA to first formulate its Recruitment Rules before considering any representations by NIUA staff.
- e) The Recruitment Rules of NIUA were framed and approved by the GC in its 64th meeting held on 24th June 1996 and by the Ministry on 5th February 1997, and the Rules were implemented w.e.f. 1st March, 1997.
- f) NIUA wrote two more letters to the Ministry dated 1st Nov. 2000 and 4th Dec. 2000 on the subject of Revision of Pay Scales of various posts in NIUA.
- g) The Ministry, vide letter dated 18th January 2001, rejected the demand of NIUA giving reference of their letter dated 7th September 1998 (ref. given above in point No.5)

From the above it is clear that the Committee Chaired by Dr. Gangadhar Jha was an internal Committee set up by the Director, NIUA. The recommendation made in case of Research Analyst and a few other posts were not accepted by the Ministry and therefore could not be implemented by NIUA. The stand of NIUA on the matter, therefore, remains unchanged.”

It is stated that this impugned order has not been passed in compliance of the true spirit of the judgment dated 1.07.2008.

(ii) The stand of NIUA that the desired pay scale cannot be given without the consent/ permission of the Ministry is wrong and misconceived and contrary to the directions issued by the central

government vide its letters dated 16.03.1985, 29.10.1986 and 2.12.1997. The OM dated 16.03.1985 has clarified as follows:

Issue	Clarification
(ii) The exact scope of proposals relating to emoluments structure i.e. adoption of pay scales allowances and revision thereof which would the prior approval of the Govt. of India in terms of para 2 (i) of O.M. dated 15.10.1984	(ii) No reference to the Govt. would be necessary in regard to adoption of scales of pay and allowances indexical to these adopted for corresponding posts as per the central Govt. orders issued from time to time.

- (iii) OM dated 29.10.1986 clarified that in case pattern of emoluments structure in the autonomous organization such as NIUA is identical to those of the Central Government employees, there is no objection to the autonomous organizations etc. adopting the Central Civil Services (Revised Pay) Rules 1986. This OM further stipulates that for those posts which have different pattern of emoluments, separate orders shall be issued.
- (iv) The OM dated 2.12.1997 reiterates the above position. It is stated that in view of this clarification, the impugned order dated 19.09.2008 is liable to be quashed.
- (v) In letters dated 15.04.1994 and 6.02.1998, NIUA, after considering the case of the applicant, had recommended to the Ministry to approve the revised pay scales.

- (vi) In an advertisement in the employment news dated 15-21 August 1998, for the post of Junior Analyst in the Ministry of Urban Affairs, pay scale indicated is Rs.6500-10500. The contention raised is that since this is the same post which he is holding, he cannot be denied the said pay scale. Similarly, the Ministry of Urban Development and Poverty Alleviation has issued office order dated 8.10.2001 in which the pay scale of Research Assistant is indicated as Rs.6500-10500 and Rs.1640-2900 (pre-revised).
- (vii) The Departmental Anomalies Committee had recommended the pay scale of Rs.1640-2900 in the light of the 4th Pay Commission recommendations but the respondents have completely ignored this recommendation.

Based on these grounds, the applicant has made the following prayers:

- (a) Issue a Writ of Certiorari and quash the decision taken by the Respondent No.2 in terms of its report dated 19.09.2008;
- (b) Issue a Writ of Mandamus commanding the respondents to grant to the Petitioner the pay scale of Rs.1640-2900/- w.e.f. 01.01.1986 as recommended by 4th Pay Commission and the Departmental Anomalies Committee (Annexure P-4) and subsequently commanding them to grant the corresponding pay scales as recommended by the 5th

and 6th Pay Commission as detailed in para 23 above.

(c) Consequently pass an appropriate order, direction or writ in the nature of mandamus directing the respondents to pay to the petitioner the entire arrears of pay that would be determined after removal of the pay scale anomaly as prayed in prayer clause (a) and (b) above with interest @ 18% per annum.

3. Learned counsel for the applicant argued that when the respondents received certain representations regarding anomaly in pay scales of NIUA staff, they had set up an expert committee to look into the existing anomalies and suggest a proper structure. It is stated that this Committee suggested the pay scale of Rs.1640-2900 for RA. Thereafter, vide letters dated 15.04.1994 and 6.02.1998, the NIUA requested the ministry to approve the revised pay scales but the Ministry rejected this claim.

4. The applicant had approached the Hon'ble High Court in Writ Petition (Civil) No.4138/1996 and the Hon'ble High Court had also made a specific direction to the respondents, which we have already cited above. The Hon'ble High Court had directed that final decision will be taken after properly examining and evaluating the recommendations made by the Anomaly Committee. The respondents set up a three member Committee for this purpose and after examining all aspects, gave specific reasons why the request of NIUA cannot be accepted.

5. In fact, in their reply, inter alia it is stated that new Recruitment Rules (RRs) were implemented with effect from 1.03.1997. However, the applicant's contention is that he had wrongly been given initially itself a scale which was not equivalent to that in government and thereafter, despite the report of the Anomaly Committee, the anomaly in his pay scale was not rectified.

6. The respondents in their reply have stated that NIUA has two type of staff members – Core Staff whose salaries and allowances etc. are met out of from grants-in aid received from the Ministry of Urban Development, Government of India and another category of employment is the Project Staff Members whose salaries and allowances etc. are met out of from project funds. The applicant is a member of Core Staff and thus his salary and allowances etc. are paid from the grants-in-aid received from the Ministry of Urban Development, Government of India.

7. Respondent has raised a preliminary objection to the maintainability of the present TA on the ground that the applicant has accepted the judgment dated 1.07.2008 passed by the Ld. Single Judge and also filed two Contempt Petitions against the respondents herein for non compliance of the judgment dated 1.07.2008. After the dismissal of the said two contempt petitions, the applicant chose to assail the order dated 1.07.2008 passed by the Ld. Single Judge by way of a Letters

Patent Appeal bearing no.273/2009 which was dismissed by the Hon'ble Division Bench vide order dated 29.05.2009.

8. The respondents stated that the said order dated 29.05.2009 was assailed by the applicant by preferring a Special Leave Petition bearing no.17050/2009 which was also dismissed vide order dated 21.02.2012.

9. The respondents further stated that it would be pertinent to mention here that in the said SLP bearing no.17050/2009 the applicant has also assailed the order dated 19.09.2008 passed by the Committee set up by the respondents wherein the Committee gave a decision that the pay scale could not be changed unless the Ministry agreed to consider the case of the applicant. It is worth mentioning that the applicant by virtue of the present application is re-assailing the same order dated 19.09.2008 before this Tribunal which cannot be allowed as no liberty to re-agitate the validity of the orders dated 19.09.2008 was secured by the petitioner from the Hon'ble Supreme Court.

10. The respondents have also stated that the present application raises question of determination of pay scale of a particular post, which primarily is an executive function, as has been held by this Tribunal, Hon'ble High Courts as well as the Hon'ble Apex Court, repeatedly that judiciary is ill-equipped for determination of such questions because it is a specialized subject which requires the help of expertise from different fields.

11. Regarding the report of the Committee of 1992 as well as the letters sent by NIUA for consideration by the Ministry, it is stated that the report of the Committee was forwarded to the Ministry of Urban Affairs and the Ministry requested NIUA to frame the RRs for the existing post. These RRs were framed subsequently and made applicable with effect from 1.03.1997, as stated earlier.

12. Finally, it is argued that the applicant through the present Application is rearguing the entire issue and seeking direction to implement the recommendations of the Anomaly Committee and further claiming arrears of pay with effect from 1.01.1986.

13. We have heard the learned counsel for the parties and gone through the pleadings available on record.

14. First of all, the respondents have rightly pointed out that having agitated the matter before the Learned Single Judge of the High Court and thereafter before the Hon'ble Division Bench and finally before the Hon'ble Supreme Court, the applicant cannot re-agitate the matter as his case was dismissed by the learned Single Judge, Division Bench as well as the Supreme Court. It is also clear that the order dated 19.09.2008 was also considered by the Division Bench of the High Court. This Application is, therefore, clearly not maintainable.

15. We also agree with the respondents that the Hon'ble Supreme Court in a catena of judgments has settled the law that Courts/ Tribunals should not enter into the sphere of

determination of pay scales because it is a specialized subject and should be left to the executive to decide based on recommendations of expert bodies like a Pay Commission. Furthermore, as would be clear from the order dated 19.09.2008, the post of RA does not correspond to any central government pay scale. Therefore, the question of parity does not arise. In addition, this letter also states that NIUA has also framed the RRs for all the posts in NIUA, which are in force from 1.03.1997. The applicant has not challenged these RRs either.

16. Viewed from all angles, we find that not only does this Application lack merit but it is also not maintainable. It is, therefore, dismissed. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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