

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1505 of 2003

New Delhi, this the 15th day of July, 2004

(14)

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)
HON'BLE MR.S.K. NAIK, MEMBER (A)

1. Shri Raghbir Singh
S/o Shri Narpat Singh
R/o 456, Sector-9,
R.K. Puram, New Delhi.
2. Shri Mahender Singh
S/o Shri Hira Lal
R/o A-478 Shakur Pur,
J.J. Colony, Delhi-34. ..Applicants

(By Advocate: Shri S.K. Gupta, proxy counsel for
Shri B.S. Gupta, Counsel)

Versus

1. Union of India
Through Secretary,
Ministry of Finance,
Department of Expenditure,
North Block,
New Delhi.
2. Secretary,
Department of Personnel & Training,
Ministry of Personnel & Training,
North Block,
New Delhi.
3. Secretary,
Ministry of Water Resources,
Government of India,
Shram Shakti Bhawan,
New Delhi.
4. Director,
Central Soil & Material Research Section,
Hauz Khas,
New Delhi-110 060. ..Respondents

(By Advocate: Shri Rajinder Nischal)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)

This OA has been filed by the applicant
whereby he is challenging the order dated 2.7.2002 and
also the decision dated 4.3.2003 which was issued on the
basis of the judgment of this Tribunal passed in OA
No.20/2003 on 6.1.2003.

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2. The facts, as alleged in brief are that the applicant No.1 joined the office of respondent as Grade-III w.e.f. 19.6.63 and by virtue of his hard work and seniority, he was promoted to the post of Laboratory Assistant Grade-II w.e.f. 19.11.1983 and finally promoted to the post of Laboratory Assistant Grade-I w.e.f. 19.12.1988. Similarly applicant No.2 joined as Laboratory Assistant Grade-III w.e.f. 17.9.1975 and promoted to the post of Laboratory Assistant Grade-II w.e.f. 19.11.1983 and finally to the post of Laboratory Assistant Grade-I w.e.f. 1.4.2002 and at present both are working as Laboratory Assistants Grade-I in the office of respondent No.4.

3. It is further submitted that the cadre of Laboratory Assistant Grade-I is a small cadre having the sanctioned strength as 5 in number and the post of Laboratory Assistant Grade-I is filled up by way of promotion failing which by direct recruitment and in terms of the direct recruitment entry Bachelor' Degree in Science or equivalent with Maths, Chemistry, Physics is the requirement as per the subjects and 5 years experience in conducting test and in the field and Laboratory connected with Geomechanics, Construction, Materials and other Allied Fields and for the purposes of promotion, the post has to be filled up from the feeder cadre of Laboratory Assistant Grade-II with five years service in the grade on regular basis.

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4. As per the nomenclature of the Laboratory Staff in the office of respondent No.4 there are three cadres/grades of the Laboratory Assistants namely Laboratory Assistant Grade-I carrying the pay scale of Rs.1400-2300 (pre-revised) Laboratory Assistant Grade-II carrying the scale of Rs.1320-2040 (pre-revised) and Laboratory Assistant Grade-III carrying the scale of Rs.975-1540 (pre-revised) and the post of Laboratory Assistant Grade-III is filled up 66.66% by direct recruitment and remaining 33.33% by promotion from Class-IV employees and the post of Laboratory Assistant Grade-II is filled up by promotion and the post of Laboratory Assistant Grade-I is filled up in accordance with the method prescribed.

5. From the post of Laboratory Assistant a person can be considered for promotion to the post of Research Assistant in the scale of Rs.6500-10500 for which 20% quota is fixed and one more cadre, i.e. the cadre of Supervisor is also considered for the purposes of promotion under this 20% quota along with the quota meant for Laboratory Assistant Grade-I and prior to the recommendations made by the Vth CPC, the post of Laboratory Assistant Grade-I and the Supervisor was carrying the pay scale of Rs.1400-2300 and there was no anomalous situation considered the individuals of different cadres for the purposes of promotion to the post of Research Assistant.

6. It is further submitted that before the Vth Pay Commission there was no anomalous situation and applicants were having no grievance at all. But as the

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Vth CPC made certain specific recommendations in relation to the category of Supervisors and ignoring the cadre of the applicants, i.e., Laboratory Assistant and in terms of the above specific recommendations horizontal and vertical relativity has been disturbed.

7. It is further stated that the applicant who belongs to Laboratory Assistant Grade-I were in the scale of Rs.1400-2300 like the cadre of Supervisors and as per the general recommendations made by Vth CPC both these categories were required to be placed in the scale of Rs.4500-7000 with the promotional avenue to the post of Research Assistant and recommended that the post of Supervisor should be bifurcated into two parts, namely, Laboratory Assistant Grade-I in the scale of Rs.1640-2900 (pre-revised) and Laboratory Assistant Grade-II in the scale of Rs.1600-2660 (pre-revised) and further in the category of Research Assistant it was suggested and recommended that the Research Assistant and Assistant Research Officer may be placed in the scale of Rs.2000-3500 and Rs. 2500-4000 respectively.

8. It is further submitted that the Research Assistant has been placed in the scale of Rs.6500-10500, Assistant Research Officer in the scale of Rs.7500-12000 and the cadre of Supervisor has been bifurcated into Grade-I and Grade-II in the pay scale of Rs.5000-8000 and Rs.5500-9000.

9. It is further submitted that on the basis of specific recommendations as contained in para 51.34 no higher pay scale was given to the cadre of Laboratory

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Assistant Grade-I and also the pay scale which was given to the category of the applicant and was not in consonance with the cadre of Supervisors and the relativity for the purpose of promotion is totally disturbed in both the ways.

10. On the basis of the representation, the office of respondent No. 4 recommended the case of the Laboratory Assistant to the office of respondent No.3 vide letter dated 30.7.2001 and ultimately as per the information of the applicants, the administrative authority, i.e., the office of respondent No.3 agreed to the proposal made by the respondent No.4 and sent the proposal to the office of respondent No.1 for its approval and necessary action.

11. Thereafter applicants filed an OA 20/2002 before this Tribunal which was decided on 2.7.2002 and this Tribunal came to the conclusion that no reasons whatsoever have been assigned in rejecting the claim of the applicants and hence directed the respondents vide order dated 6.1.2003 to pass the reasoned order in relation to the letter dated 2.7.2002 and now the office of the respondents have vide order dated 4.3.2002 rejected the claim of the applicants. The applicant in this OA has claimed the following reliefs:-

(i) To quash and set aside the order dated 2.7.2002 (Annexure A-1) and also the order dated 4.3.2003 (Annexure A-2).

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(ii) To direct the respondents to re-examine the matter and place the applicant who are working as Laboratory Assistant Grade-I in the scale of Rs.5500-9000 from the due date with all consequential benefits like difference of pay etc.

12. The OA is being contested by the respondents. The respondents in their reply pleaded that the Central Soil and Materials Research Station has three grades in the Laboratory Cadres viz. Laboratory Assistant Grade-I, Laboratory Assistant Grade-II and Laboratory Assistant Grade-III in the pay scale of Rs.1400-2300, Rs.1320-2040 and Rs.975-1540 (pre-revised) respectively. Prior to the implementation of the revised pay scales recommended by the 5th Pay Commission in respect of various posts under the Government of India, the two different posts in CSMRS viz. Supervisor and Laboratory Assistant Grade-I were placed in the same pay scale of Rs.1400-2300. Later on, 5th Central Pay Commission upgraded the pay scales of Supervisors to Rs.1600-2660 (pre-revised) (Rs.5000-8000) (revised) and Rs.1640-2900 (re-revised) (Rs.5500-9000) (revised) by bifurcating the cadre into two grades viz. Supervisor Grade-II and Supervisor Grade-I respectively whereas Rs.4500-7000 only was given to the Laboratory Assistant Grade-I. The incumbents of the posts of Laboratory Assistant cadre submitted a representation demanding the upgradation of their pay scales at par with those given by the 5th CPC to Supervisors.

13. The request for upgradation of pay scales to the cadre of Laboratory Assistants submitted by the Laboratory Assistant was examined. However, the demand

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could not be met and accordingly, the decision of Government was communicated. Thereafter the applicants filed OA No.23/2003 before CAT challenging the said OM soliciting the grounds on the basis of which their cases were turned down. The CAT vide order dated 6.1.2003 while accepting the decision of the respondents instructed that a speaking order should be passed within two months. Accordingly, a detailed speaking order dated 4.3.2003 mentioning therein the reasons for rejecting the demands of Laboratory Assistants.

14. It is further submitted that prior to 13.1.2001 the posts on the grade of Research Assistant were filled 20% by promotion of Supervisors with 5 years regular service in the grade failing which by direct recruitment and 80% by direct recruitment. On the other hand the posts in the grade of Supervisor (Scientific) were filled 100% by direct recruitment from the applicants having Master's degree in Science.

15. Hence upto 12.1.2001, there was no promotional avenue to Laboratory Assistant Grade-I is not comparable to the post of Supervisor as these two posts belong to different streams and have distinct channels of promotion. The pay scale of Supervisor was upgraded by the 5th CPC to Rs.1600-2600 (pre-revised) (corresponding to the revised scale of Rs.5500-9000 bifurcating the said grade into two grades viz. Supervisor Grade-II and Supervisor Grade-I respectively whereas Rs.4500-7000 (revised scale) was given to Laboratory Assistant Grade-I.

16. The post of Supervisor was filled 100% by direct recruitment for which minimum educational qualification of 3 years diploma after 10+2 had been prescribed. The 5th CPC have given due regard to the educational qualification of 3 years diploma after 10+2 while recommending the revised pay scale to Supervisors. On the other hand, although minimum qualification of a Bachelor's degree alongwith 5 years experience has been prescribed for direct recruitment to the post of Laboratory Assistant Grade-I, yet the post is filled only by promotion failing which by direct recruitment and minimum qualification prescribed for direct recruitment applicable in case of promotees. Therefore, in normal course the post of Laboratory Assistant Grade-I would be filled only by promotion for which no minimum qualification has been prescribed. Hence, the post of Laboratory Assistant Grade-I in CSMRS is also not covered by recommendation of 5th CPC contained in para 51.34 of the report as per which the scale of Rs.5000-8000 was recommended for posts of scientific staff requiring minimum qualification of a graduate degree.

17. It is further stated that the contention of the applicants is wrong to the effect that the Vth CPC had recommended that the post of Supervisor should be bifurcated into two parts, namely, Laboratory Assistant Grade-I in the scale of Rs.1640-2900 (pre-revised) and Laboratory Assistant Grade-II in the scale of Rs.1600-2660 (pre-revised). 

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18. The recommendations of Vth CPC enclosed as Annexure-6 of the OA does not mention that Laboratory Assistant Grade-I should be provided promotional avenues to the post of Research Assistant. It may also be mentioned that as per the comments against para 4.5 above, upto 12.1.2001, Laboratory Assistant Grade-I did not have any promotional avenues, however, Laboratory Assistant Grade-I has been made one of the feeder grades of Research Assistant from 13.1.2001.

19. The post of Laboratory Assistant Grade-I in CSMRS is even not covered by recommendation of Vth CPC contained in para 51.34 of the report as per which the scale of Rs.5000-8000 was recommended for posts of scientific staff requiring minimum qualification of a graduate degree, although minimum qualification of a Bachelors' degree along with 5 years experience has been prescribed for direct recruitment to the post of Laboratory Assistant Grade-I, yet, the post is filled only by promotion failing which by direct recruitment are not applicable in case of promotees. Therefore, in normal course the post of Laboratory Assistant Grade-I would be filled only by promotion for which no minimum qualifications have been prescribed. The minimum qualifications prescribed for direct recruitment to the post of Laboratory Assistant Grade-III includes 10+2. Fifth CPC had recommended that posts of Laboratory Assistant carrying minimum qualifications of Matric plus Certificate/Diploma or 10+2 with Science should be placed in the scale of Rs.975-1540 corresponding to the revised pay scales of Rs.3200-4900. The post of Laboratory Assistant Grade-III in CSMRS has, therefore, correctly

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been placed in the scale of Rs.3200-4900. The post of Laboratory Assistant Grade-I did not have any promotional prospects. It was only with effect from 13.1.2001 (the date of publication of revised R/Rules for the post of Research Asstt. in the Gazette) that the Laboratory Assistant Grade-I has been made one of the feeder grades for promotion to the post of Research Assistant, as such such the contention of the applicant that the respondents have given wrong information to the Vth Pay Commission is baseless.

20. As per the existing recruitment rules, the post of Laboratory Assistant Grade-I is filled by promotion from the incumbents of Laboratory Assistant Grade-II who have rendered 5 years regular service in the grade, failing which by direct recruitment. Direct recruitment to the post of Laboratory Assistant Grade-I has never been resorted to. However, this provision has been made only to substitute a person when there is no suitable official is available from the feeder grade. Due to non-availability of an incumbent against one SC category from the feeder grade, the vacant post during the year 2001 is being filled by Direct Recruitment. Even if the post is filled by Direct Recruitment the post of Laboratory Assistant Grade-I could not be granted higher pay scale of Rs.5000-8000 as this post is not covered by the recommendations of Vth CPC in respect of the common category of Laboratory Staff as per which the scale of Rs.5000-8000 could be extended only to such of those posts of Laboratory Technicians as are filled 50%

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by direct recruitment of graduates as such it is submitted that the OA has no merits and the same be dismissed.

21. We have heard the learned counsel for the parties and gone through the records of the case.

22. The learned counsel for the applicant pointed out that prior to 5th Pay Commission recommendations the applicants who are working as Laboratory Assistants Grade-I were amongst the feeder cadre for the post of Research Assistant, but the parallel cadre to be considered for promotion to the post of Research Assistant was Supervisor. However, in terms of the recommendations made by the 5th CPC horizontally and vertically relativity has been disturbed because prior to 5th CPC the applicants were getting pay scale of Rs.1400-2300 like the cadre of Supervisor but while discussing the job avenues of Supervisors the 5th CPC took into consideration the case of Supervisor and recommended that the same be bifurcated into two parts, i.e., Laboratory Assistant Grade-I in the scale of Rs.1640-2900 and Laboratory Assistant Grade-II in the scale of Rs.1600-2660 but no recommendations were made for the service cadre of the applicants.

23. It is further stated that the 5th CPC had also recommended that the post having qualifications of B.Sc. Graduates/Diploma in Engineering in the scale of Rs.1600-2660 and if some certain experience is required then with the aforesaid qualification, the pay scale of Rs.1640-2900 is to be given. But on the basis of the

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recommendations as contained in para 51.34 no higher pay scale of Laboratory Assistant Grade-I and also the pay scale given to the category of applicants was not found to be in consonance with the cadre of Supervisors. Thus relativity for the purpose of promotion has been totally disturbed horizontally and vertically, therefore, the applicants made a prayer that all the applicants working as Laboratory Assistants Grade-I be placed in the pay scale of Rs.5500-9000 which may have some parity with the scale of Supervisors.

24. The case of the applicants have been rejected vide impugned order wherein the respondents have taken the stand that the post of Laboratory Assistant Grade-I is not comparable to the post of Supervisor as these two posts belong to different stream and have distinct hierarchies so it has not been found possible to upgrade the pay scale of Laboratory Assistant Grade-I on the ground of similar upgradation having been extended to the post of Supervisor on account of a specific recommendation of 5th CPC.

25. It is further stated that the post of Laboratory Assistant is not covered by the recommendations of the 5th CPC as contained in para 51.34 of the report as per which the scale of Rs.5000-8000 was recommended for posts of scientific staff requiring minimum qualification of a graduate degree. Although minimum qualification of a Bachelors' degree along with 5 years experience has been prescribed for direct recruitment to the post of Laboratory Assistant Grade-I, however, the post is filled only by promotion failing which

by direct recruitment and minimum qualifications prescribed for direct recruitment are not applicable in the case of promotees. Therefore, in normal course the post of Laboratory Assistant Grade-I would be filled only by promotion for which no minimum qualifications have been prescribed.

26. In our view the stand taken by the respondents is totally justified because the Laboratory Assistant Grade -I the cadre to which the applicants belong, had been made a feeder cadre earlier along with the Supervisor for the post of Research Assistant that does not mean that they are to be paid similar salary as paid to the Supervisors particularly so when the recruitment qualifications of the post of Supervisor and that of Laboratory Assistant are totally different. Though the qualifications prescribed for direct recruitment of Laboratory Assistant-I is graduation along with 5 years experience but direct recruitment is resorted only in case when promotees for the post of Laboratory Assistant Grade-I is not available and the feeder cadre for the post of Laboratory Assistant Grade-I is altogether different and they possess different qualifications so in view of the same we find that it is not a case of discrimination at all.

27. Besides that since the matter had already been decided by the Expert Bodies like 5th CPC and the applicant have failed to establish that there is any hostile discrimination towards applicant as held by the

Apex Court in the case of Union of India and Another Vs.
P.V. Hariharan and Another reported in (1997) 3 SCC
568:-

"C. Service Law - Pay scale - Scope of judicial review - Unless a clear-cut case of hostile discrimination is made out, held, there should be no judicial interference with pay scales fixed by the Government on the recommendation of Pay Commission - Administrative Law - Judicial review of administrative action".

28. In view of the above, we find that the OA is without any merits and the same is dismissed. No costs.

S.K. NAIK
(S.K. NAIK)
MEMBER (A)

KULDIP SINGH
(KULDIP SINGH)
MEMBER(JUDL)

/Rakesh