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Central Administrative Tribunal, Principal Bench

O.A. No. 2149/2003

New Delhi the 21 day of April, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. S.A. Singh, Member (A)

Mr. Ganga Sahai
Statistical Assistant
Indian Grain Storage Management &
Research Institute,
Hapur.

...Applicant

By Advocate: Shri B.S. Mainee.

Versus

Union of India: Through

1. The Secretary,
Ministry of Consumer Affairs,
Food & Public Distribution,
Department of Food and Public Distribution,
Krishi Bhawan,
New Delhi.

2. The Secretary,
Ministry of Planning,
Department of Statistics,
Yojna Bhawan,
Sansad Marg,
New Delhi.

3. The Director,
IGMRI,
Hapur.

...Respondents

By Advocate: Shri Rajeev Bansal.

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ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The applicant has filed this OA for a direction to the respondents to place him in the pay scale of Rs.5000-8000 with effect from 1.1.1996 and grant him all consequential benefits.

2. The applicant joined the Ministry of Planning, Department of Statistics in 1985 as a Statistical Assistant (SA) in the pay scale of Rs.380-560. In accordance with the recommendations of the 4th Pay Commission, the pay scale was revised to Rs.425-700 with effect from 1.6.1983 to 31.12.1985. The applicant is presently working as SA in Grain Storage Management and Research Institute, Hapur. There are two posts of S.As., which were earlier in the pay scale of Rs.425-700 and after the 5th Pay Commission they were placed in the pay scale of Rs.4500-7000 instead of Rs.5000-8000. The Pay Commission has recommended in para 81.17 of its report that all posts of Senior Statistical Investigators/Assistants in the pay scale of Rs.1640-2900 may be placed in the scale of Rs.2000-3500 and all posts of Junior Statistical Investigators/ Assistants in the grade of Rs.1400-2300 be upgraded to the pay scale of Rs.1400-2600 which has been replaced by Rs.5000-8000 after the report of the 5th Pay commission (Annexure A-4). It was further recommended by the Pay Commission that all Junior Statistical Investigators/Statistical Assistants in the grade of Rs.1400-2300 be designated as Statistical Investigator Grade-I. These recommendations were accepted by the Government of India and Ministry of Planning and Programme Implementation, Department of Statistics has also issued an Office Memorandum dated 30.6.1988 in terms

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of which it was decided to upgrade the pay scale of all the categories of the posts indicated in para 4 of the said OM which included Junior Investigators/Statistical Assistants w.e.f. 1.1.1996. Various Ministries/Departments were accordingly requested to take necessary action to upgrade the scale of pay of various categories of Statistical Post holders subject to the conditions, as referred to in para 4 of the OM. The pay scale of SA Rs.1400-2300 which had normal replacement scale of Rs.4500-7000 has been upgraded to Rs.5000-8000 w.e.f. 1.1.1996. By this very memorandum all Ministries/Departments which have statistical function posts in Group 'B' and 'C' were also requested to submit their explanation on the creation of Subordinate Statistical Service (SSS) as recommended by the 5th Pay Commission (Annexure A-5). The Planning Commission in terms of the order dated 20.7.1999 and in pursuance of the Ministry of Planning and Programming recommendations upgraded the posts of Statistical Investigator Grade-II from Rs.4500-7000 to Rs.5000-8000 with effect from 1.1.1996. The respondent No.1, however, did not take any action to upgrade the post of the applicant in spite of a clear decision having been taken by the Government to accept the recommendation of the 5th Pay Commission and also noting that all other Ministries and Departments have also upgraded the post of Statistical Investigator Grade-II to the grade of Rs.5000-8000. Applicant's representation on 12.5.2000 for upgrading his pay scale also to Rs.5000-8000 has not been responded. The applicant issued several reminders in 2000, 2001 and 2002 dates of which are mentioned in para 4.6 of the OA and copies of which were filed collectively as Annexure A-8. But by letter dated 20.5.2003 the respondents rejected the representation of the applicant on arbitrary and erroneous ground that the department of IGMRI was likely to be closed without realizing that the applicant was a confirmed

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permanent employee and the benefit of upgradation is to take effect from 1.1.1996. Hence this OA.

3. In reply, the respondent stated that the Department of Statistics OM dated 30.6.1998 (Annexure A-5), regarding grant of upgraded pay scales to the holders of the statistical function posts (Group 'B' and 'C) as per the recommendation of the 5th Central Pay Commission was applicable in this case. As per this OM it has been decided to grant the upgraded scale of pay of Rs.5000-8000 in respect of Junior Investigator/Investigator/Statistical Assistants etc. (pre-revised scale of pay is Rs.1400-2300 and normal replacement scale of pay thereof is Rs.4500-7000) w.e.f. 1.1.1996 along with arrears of pay. But this was subject to the condition that their administrative ministry/department agreed in principle to the recommended changes as recommended by the 5th Central Pay Commission in the recruitment rules to the extent of direct recruitment and the educational qualification etc. and amend them with the approval of the competent authority. As per the 5th Pay Commission report of statistical functions post in the pay scale of Rs.1400-2300 and Rs.1640-2900 which were spread over different departments/Ministries and the offices of the Government of India would be constituted into a Subordinate Statistical Service. All the posts of Junior Statistical Investigators in the scale of Rs.1400-2300 were to be upgrade and given the replacement scale of Rs.1600-2600, all Junior Statistical Investigators/Statistical Assistants in the scale of Rs.1400-2300 would henceforth be called Statistical Investigators Grade-II. At the level of Statistical Investigator Grade-II recruitment may be taken up with graduation in Statistics as the minimum qualification. Under the S&R Division of the Department, there were only two posts of Statistical Assistants in IGMRI with pre-revised pay scale of

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Rs.1400-2300 and their replacement scale of Rs.4500-7000. These are isolated posts with no feeder grades and no promotional avenues. As per the recruitment Rules for the posts, the posts are to be filled by direct recruitment only. The essential qualification prescribed for the said post is degree with Statistics as one of the subjects. Thus the posts fulfilled the condition stipulated in para 81.17 of the 5th Pay Commission report as far as educational qualification is concerned. This has also been confirmed by the Department of Statistics. It may be stated that the Department of Statistics had circulated a draft notification for constitution of SSS vide OM dated 31.3.99 and has asked for the comments of the Ministries/Department which were having Group 'B' and 'C' statistical function posts including attached/subordinate offices by 15.4.99. The Ministries/Departments that intended to opt for inclusion in the Service were also to send certain information for the post and the incumbents. The matter was taken up in the Department on a submission of the representation by the applicant. In view of the recommendation of the Expenditure Reforms Commission for closure of the offices in the Storage and Research Division including the IGMRI offices, inclusion of the two posts of Statistical Assistant in the proposed Subordinate Statistical Service was kept in abeyance in 2002. Later the case was referred to the Department of Statistics which had opined that the recommendation regarding upgradation of pay scale of Group 'B' and 'C' statistical function posts was made in the context of constitution of SSS and it will not be appropriate for upgrading the pay scale of the said post without offering the same for inclusion in SSS. Implementation Cell of Department of Expenditure has opined that in view of the fact that the office of the IGMRI would be closed shortly it may not be prudent to consider upgradation of any of the posts therein. Reply was accordingly given

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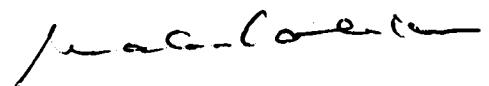
to the applicant on 20.5.2003 (Annexure A-1) that his representation has been turned down in view of the impending closure of IGMRI. The IGMRI offices and posts of Statistical Assistant have been allowed to continue till date and those offices/posts that were operated under the plan have been discontinued from 1.4.2003. One of the two posts of Statistical Assistant have been discontinued from 1.4.2003 and the applicant has been declared surplus. It was denied that the applicant has been arbitrarily, illegally discriminated against in not being given the upgraded pay scale of Rs.5000-8000. As on 1.1.1996, there were only two posts of SA in the scale of Rs.1400-2300 in the S&R Division in the Department of Food and Public Distribution and the two incumbents holding these posts were placed in the normal replacement scale of Rs.4500-7000 as the 5th Pay Commission recommended. The upgradation of the post to the pay scale of Rs.5000-8000 in terms of the 5th Pay Commission recommendations relating to the holders of the statistical function posts was made in the context of constitution of Subordinate Statistical Service. The upgradation in terms of the Department of Statistics and Programme implementation's OM dated 30.6.98 and 31.3.1999 is subject to offering for inclusion of the posts in the proposed service. The matter was taken up with the Department of Statistics and Ministry of Finance and they have turned down the proposal in view of the recommendations of the Expenditure Reforms Report for closure of offices in Storage and Research Division including IGMRI and directed that it does not consider it prudent to consider upgradation in any of the post therein. It was further submitted that the applicant was appointed as SA, IGMRI, Hapur w.e.f. 10.4.1987 and not from 1985. He was earlier appointed to the post of Field Investigator in the Food and Nutrition Board in the pay scale of Rs.380-640 on 26.6.1985. The post of Field

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Investigator was upgraded to the scale of Rs.425-700 equivalent to Rs.1400-2300. He was rendered surplus on closure of the Diet and Nutrition Survey Unit under the Food and Nutrition Board w.e.f. 30.9.1986 and was absorbed in the post of Statistical Assistant w.e.f. 10.4.1987. The applicant worked as Statistical Assistant in the IGMRI, a subordinate office under the Ministry of Consumer Affairs, Food and Public Distribution, Department of Food and Public Distribution has been rendered surplus with effect from 20.11.2003. Prior to 1.1.1996 the posts were in the pay scale of Rs.1400-2300 and they have been placed in the pay scale of Rs.4500-7000 with effect from 1.1.1996 which is the prescribed replacement scale as per the 5th Pay Commission. The department of Statistics had circulated a draft notification for constitution of SSS vide OM dated 31.3.1999 and had asked for the comments of the Ministries/Departments which were having Group 'B' and 'C' statistical function posts under them including attached/subordinate offices by 15.4.99. The Ministries/Departments that intended to opt for inclusion in the service were also to send certain information regarding the posts and the incumbents. In view of the recommendations of the Expenditure Reforms Commission for closure of offices in the Storage and Research Division including the IGMRI Offices, inclusion of the two posts of Statistical Assistant in the proposed Subordinate Statistical Service was kept in abeyance in 2002.

4. In view of the fact that the offices of the IGMRI are recommended for closure, it was not considered prudent to consider upgradation of any post therein at this juncture and the applicant was informed vide letter order dated 20.5.2003 in consultation with Department of Statistics and Ministry of Finance. The matter was referred to the Ministry of Finance again for reconsideration for their decision, but they refused to



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change their stand conveyed on 20.5.2003. Similarly the department of statistics and Programme Implementation has again not agree to the inclusion of the post in the SSS as the upgradation has been rejected by the Ministry of Finance as such it is prayed that the OA be dismissed.

5. In the rejoinder the applicant has reiterated his own allegations and has controverted the allegations of the respondents.

6. We have heard the learned counsel for the parties and gone through the record.

7. A perusal of the reply filed on behalf of respondents revealed that the department had considered the request of the applicant for upgradaiton of his post to the grade of Rs.5000-8000 favourably but was unable to do so because of the objection raised by the Ministry of Finance. The only reason given by the Ministry of Consumer Affairs, Food and Public Distribution, Department of Food and Public Distribution, the nodal ministry, which was controlling the department of the applicant in its letter dated 20.5.2003, Annexure A-1 for not acceding to the upgradation of the pay scale of SA in IGMRI offices is as under:-

“ I am directed to refer to your letter No.A-11001/85/E/IGMRI/2001/3242 dated 31.12.2002 on the above subject and to say that the matter has been examined in consultation with Department of Statistics and Ministry of Finance. They have turned down the proposal in view of the impending closure of IGMRI etc.”

8. It is fairly admitted by the respondents that the post of Statistical Assistant in the offices of IGMRI were covered by OM dated 30.6.1998 and 31.3.99 but they were deprived of the upgradaiton of the pay scale because the Department of Statistics and Ministry of Finance were not agreeable to the proposal. In view of the recommendation of the Expenditure Reforms Commission report for closure of offices in Storage and

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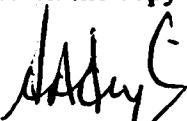
Research Division in the department including IGMRI, it was considered prudent not to consider upgradation of the post in any of the offices. The reply of the respondents has disclosed that in the meantime one of the two posts of SA in UGMRI have been abolished w.e.f. 1.4.2003 and the applicant has been declared surplus. While the pay scale of other statistical function posts was upgraded to Rs.5000-8000 in other ministries/departments, the same treatment was not given to the applicants and the sole ground for discriminating the applicant from other similar posts is that the Ministry of Finance and Department of Statistics had not agreed to the upgradation in view of impending closure of offices of IGMRI. The post of SA in the Subordinate Statistical Service was constituted as per the recommendation of the 5th Pay Commission. It has been fairly conceded by the respondents that the educational qualification and the functional requirement of the post of SI in IGMRI are similar to the functions of the Statistical Assistants who have been redesignated as Statistical Investigator Grade-I and Grade-II pursuant to the recommendations of the 5th Pay Commission and included in SSS. It does not appear fair, just and proper that the post of the applicant should not be similarly upgraded to Rs.5000-8000 simply because the Government was considering closure of the office of the IGMRI where the applicant was working where these posts existed. The respondents have not denied that this upgradation of the post as per recommendation of the Pay Commission was to be effective from 1.1.1996. One of the two posts of IGMRI were abolished in 2003, other is still in existence. The applicant has been rendered surplus because of the abolition of the post. However, the office is still in existence. The applicant is a permanent employee and has to be rehabilitated in some comparable post as per the Government policy and instructions in the matter. The benefit

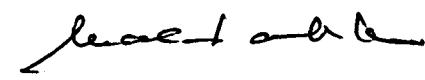
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of upgradation of the post would accrue to the applicant when he is considered for his rehabilitation on some other post in the department or Statistical Subordinate Service. There is a clear hostile discrimination with the applicant and the other persons working on the Statistical posts as on 1.1.1996 in not treating them at par with other Statistical Assistants in this department and other Government departments.

9. In view of the above discussion, we find ample force in the case of the applicant. Accordingly, we allow the OA and direct the respondents to consider the applicant and similarly situated persons working in the office of IGMRI to be placed in the upgraded scale of Rs.5000-8000 w.e.f. 1.1.1996 and pay them consequential benefits upon the upgradaiton. The respondents will implement this order within 3 months from the date on which the copy of the order is received. No costs.


(S.A. Singh)
Member (A)


(M.A. Khan)
Vice Chairman (J)

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