

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 1022 OF 2012

DISTRICT : MUMBAI

1. Shri Chandrakant Waman Mane)
Telephone Operator in the office of)
Dairy Development Commissioner,)
Worli, Mumbai.)
R/o: A/8, Gumpha Darshan C.H.S)
Samarth Nagar, Jogeshwari,)
Mumbai 400 060.)

2. Shri Anil Ramchandra Ranade,)
Telephone Operator, working in the)
Office of the Dairy Manager,)
Mother Dairy, Kurla.)
R/o: 303, New Shrivalaya CHS)
Panchpakhadi, Namdeo Wadi,)
Thane [W].)

3. Shri Sanjay Ramkrishna Harchekar)
Telephone Operator, working in the)
Office of the General Manager,)
Greater Mumbai Milk Scheme,)

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- Worli, Mumbai 400 018.)
R/o: E-17/37, Shahu Nagar,)
Mahim [W], Mumbai -7.)
4. Shri Prakash O. Pingle,)
Telephone Operator, working in the)
Office of the Chief Executive Officer,)
Aarey Milk Colony, Goregaon.)
R/o: Near Owners' Bunglow)
No. 1 Aarey Colony, Goregaon [E],)
Mumbai 400 065.)
5. Shri John Joseph D'silva)
Telephone Operator, working in the)
Office of the Dairy Development,)
Commissioner, Worli, Mumbai.)
R/o: C-17, Mahakali Kutir,)
Mahakali Caves Road, Andheri [E])
Mumbai 400 093.)
6. Kum. Nilam Dynaneshwar Chakke)
Telephone Operator, working in the)
Office of the General Manager,)
Govt. Milk Scheme, Pune.)
R/o: 686, Narayan Peth,)
Pune 411 010.)

7. Shri Rajkumar S. Sawant)
 Telephone Operator, working in the)
 Office of the General Manager,)
 Govt. Milk Scheme.)
 R/o: Chawl No. 23, Room No. 215)
 Gokhale Nagar, Pune 411 016.)
8. Shri Hemant S. Bhute)
 Telephone Operator, working in the)
 Office of the General Manager,)
 Govt. Milk Scheme, Pune.)
 R/o: Patel Chawl, 482, Pune Mumbai)
 Old Road, Front of Khadki Railway)
 Station, Khadki, Pune 411 033.)...**Applicants**

Versus

1. The State of Maharashtra)
 Through the Secretary,)
 Animal Husbandry, Dairy)
 Development & Fisheries Dept,)
 Mantralaya, Mumbai.)
2. The Dairy Development)
 Commissioner, M.S,)
 Khan Abdul Gaffar Khan Road,)
 Worli, Mumbai.)

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3. The General Manager,)
Government Milk Scheme, Pune.)
4. The Principal Secretary,)
Finance Department, Mantralaya,)
Mumbai.)...**Respondents**

Shri V.P Potbhare, learned advocate for the Applicants.

Shri A.J Chougule, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri R.B. Malik (Member) (J)

DATE : 02.05.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri V.P Potbhare, learned advocate for the Applicants and Shri A.J Chougule, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant, who have been working as Telephone Operator in Mumbai and Pune and are seeking parity with Telephone Operators in Nagpur.

3. Learned Counsel for the Applicant argued that as per G.R dated 13.12.1978, Staffing Pattern of Government Dairies with processing capacity of 1 lakh litres of Milk was fixed. Pay scale of Rs. 365-760 was provided for the post of Telephone Operator-cum-Receptionist. After the recommendations of 6th Pay Commission were accepted, Telephone Operator at Pune and Mumbai are not given the Pay in Pay Band of Rs. 9300-34800, which was given to the Telephone Operator in Nagpur. Learned Counsel for the Applicants stated that the Applicants had earlier filed before Aurangabad Bench of this Tribunal O.A no 707/1994 for getting pay scale of Rs. 1400-2300 for Telephone Operators in the 4th Pay Commission. This Tribunal directed the Respondents to decide the representation of the Applicant within 6 months. However, as the representation of the Applicants was not considered, the Applicants filed Contempt Petition no 833/2010 in O.A no 707/1994, which was dismissed on 19.8.2011. The Applicants were given liberty to challenge the decision of the Respondents, by filing a fresh O.A and hence the present Original Application.

4. Learned Counsel for the Applicant argued that the Telephone Operator-cum-Receptionist working in Mumbai, Pune and Nagpur discharge the same duties. They are recruited under the same Recruitment Rules. However, Telephone Operator-cum-Receptionist at

Nagpur are given a higher pay scale as compared to Telephone Operator-cum-Receptionist in Mumbai and Pune. This is discriminatory and is in violation of Articles 14 and 16 of the Constitution of India. Learned Counsel for the Applicants argued that as per G.R dated 13.12.1978, the Staffing Pattern of Government Dairies have been fixed. At that time the pay scale of the post of Telephone Operator-cum-Receptionist was fixed as Rs. 365-760, which was revised from time to time. However, the persons working in the same posts in Nagpur were given pay in higher pay scale. Though, the pay given to Telephone Operators in Pune & Mumbai were different, but after 6th Pay Commission, their pay is fixed in the Pay Band of Rs. 5200-20200 + Grade Pay of Rs. 2200. However, those working in Nagpur are getting pay in the Pay Band of Rs. 9300-34800 + Grade Pay of Rs. 4300.

5. Learned Presenting Officer (P.O) argued on behalf of the Respondents that there are two separate posts, viz. Telephone Operator and Telephone Operator-cum-Receptionists. The Applicants were appointed as Telephone Operator and the pay scales attached to the posts in different Dairies were different depending upon the milk handling capacity of the concerned dairy. The persons working in Mumbai were given pay in the scale of Rs. 965-1680- as the milk handling capacity was 4.5 lakh litres per day. The persons working in Pune, where

the milk handling capacity was 1 lakh litres per day, were given pay in the scale of Rs. 950-1500. By Government notification dated 15.5.1981, two posts of telephone operator cum-receptionists were created, one each for Government Milk Scheme at Nagpur and Miraj (Dist-Sangli). These posts were attached to Plants producing Milk Powder for export, and it was considered necessary to create posts of Telephone Operator-cum-Receptionists who could deal with foreigners, who were likely to visit these plants. The post at Nagpur only was filled while the post at Miraj could not be filled. Learned Presenting Office argued that after the implementation of 6th Pay Commission the following Pay is being paid:-


Sr No	Place	IVth Pay Commission	Vth Pay Commission	VIth Pay Commission
1.	Nagpur	1400-2300	4500-7000	5200-20200+G.P 2800
2.	Mumbai	975-1660	3200-4900	5200-20200 + G.R 2000
3.	Pune	950-1500	3050-4590	5200-20200+G.P 1900

Learned Presenting Officer argued that posts in Greater Bombay Milk Scheme were sanctioned by G.R dated 21.3.1977 and the post is Telephone Operator (not Telephone Operator-cum-receptionist). The post in Pune is Telephone Operator-cum-Enquiry Clerk. The post for Nagpur was Telephone Operator-cum-Receptionist. The

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educational qualification for the post of Telephone Operator-cum-Receptionist as per draft recruitment rules was a degree plus 3 years' experience in the same field. For the post of Telephone Operator and Telephone Operator cum-Enquiry Clerk the qualification is S.S.C, preferable with experience in the same field. Learned Presenting Officer argued that the pay scales of the posts in Mumbai and Pune were different as the Milk handling capacities of the Dairies were different. For Nagpur post, Recruitment Rules required higher qualification, considering the nature of duties. Learned Presenting Officer argued that there is no case of discrimination as alleged by the Applicants.

6. From the orders in Misc Application no 323 of 2010 in Contempt Application Stamp no 833/2010 in O.A no 707/1994 filed before the Aurangabad Bench of this Tribunal (Exhibit-I, page 42 of the Paper Book), it appears that the Applicant nos 6, 7 and 8 were working as Telephone Operators cum Enquiry Clerk in Pune. The Applicants no 1 to 5 are working as Telephone Operators in various offices at Mumbai. The Applicants are relying on G.R dated 13.12.1978, which is at Exhibit 'B', to claim that in each dairy with milk handling of 1 lakh litres per day, staffing pattern was fixed and one post of Telephone Operator-cum-Receptionist in the pay scale of Rs. 365-760 was sanctioned for such dairies. The Applicants are claiming that they were, therefore, working in the post of



Telephone Operator-cum-Receptionist. This claim has no basis as para 2 of the aforesaid G.R reads:-

“2. Orders regarding creation of staff on the above basis in respect of each individual dairy of 1 lakh litre capacity, both existing and new would be issued separately.”(emphasis supplied).

It appears that the Applicant nos 1 to 5 were appointed as Telephone Operators. The Respondents have placed on record copy of office order dated 30.9.1976 from Mother Dairy, Kurla, which mentions that Shri Chandrakant Waman Mane was appointed as Telephone Operator in one of the posts sanctioned by G.R dated 20.12.1975. A copy of G.R dated 21.3.1977, continuing temporary posts in Greater Bombay Milk Scheme, during the year 1977-78 is also on record. 1 post of Telephone Operator is continued. The Applicants, themselves have placed charts on record (Exhibit 'A') which show that the Applicants no 1 to 5 were appointed as Telephone Operators at Mumbai while the Applicants no 6 to 8 were appointed as Telephone Operators -cum-Enquiry Clerks at Pune. In the additional affidavit in reply by the Respondent no. 1 filed on 28.1.2016 in para 7, the pay scales attached to posts of Telephone Operator (Mumbai), Telephone Operator cum-Enquiry Clerk at Pune, and Telephone Operator-cum-Receptionists at Nagpur have been mentioned. In the sur-rejoinder, filed on behalf of

the Respondents on 9.9.2015, Recruitment Rules for the post of Receptionist are enclosed. (Exhibit SR-1 on P.80). It is seen that the educational qualification for the aforesaid post is a degree and 3 years experience in public relations. It is, therefore, clear that the Applicants no 1 to 5 were working as Telephone Operators only and they have not claimed that they fulfilled the qualification for the post of Telephone Operator-cum-Receptionist. Recruitment Rules for the post of Telephone Operators have been notified on 19.4.1985 and the required qualification is S.S.C. In the rejoinder / counter affidavit filed by the Applicants on 3.7.2013, it is admitted in para 2 that milk handling capacity of Greater Bombay Milk Scheme was 4.5 litres per day as given in the affidavit in reply dated 8.2.2013. However, for Pune dairy, it is mentioned as 1.5 lakh litres per day, which is at variance with information in para 6 of the affidavit in reply of the Respondents dated 8.2.2013. From those documents, it is quite clear that the posts of Telephone Operator at Mumbai were created in the pay scale of Rs. 290-540, while the posts of Telephone Operator cum Enquiry Clerk in Pune were created in the pay scale of Rs. 260-420. These pay scales have been revised from time to time and now they are in the Pay Band of Rs. 5200-20200 + Grade Pay of Rs. 2000 in Mumbai and Rs. 1900/- in Pune. The difference in pay scale was due to different milk handling capacity of dairies in Mumbai and Pune. It is not the case of the Applicants that such capacities were identical

in Mumbai and Pune. Difference in pay scale, cannot be called discriminatory.

7. The case of the Applicants is that by G.R dated 13.12.1978, the Government has decided a new Staffing Pattern for dairies having capacity of 1 lakh litres of milk. We find that it was made clear in this G.R that separate orders for creation of posts would be issued even for existing dairies. The Applicants were already working as Telephone Operators. On the basis of material on record, it cannot be concluded that they were eligible to be appointed as Receptionists. In any case, no posts of Telephone Operator-cum-Receptionist came to be created for Mumbai and Pune dairies. For the Nagpur Dairy, by memorandum dated 18.5.1981, Government decided to create, inter alia, one post of Telephone Operator-cum-Receptionist in the pay scale of Rs. 365-760, which was higher than the scale of the post of Telephone Operator in Mumbai and Telephone Operator-cum-Enquiry Clerk, Pune. This memorandum is in accordance with G.R dated 13.12.1978. Another post of Telephone Operator-cum-Receptionist was created for Miraj Dairy by memorandum dated 18.10.1995, in the same pay scale. This post was not filled. For Mumbai and Pune, it appears that posts of Telephone Operator-cum-Receptionist were never created. Regional Dairy Development Officer has prepared Draft Recruitment Rules for the post of Telephone Operator-cum-

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Receptionist (Exhibit AR-5 on page 119 of the Paper Book) which are based on Recruitment Rules for the post of Receptionist in Greater Bombay Milk Scheme sanctioned on 9.12.1969 (Exhibit SR-1 on page 80 of the Paper Book). It appears that a post of Receptionist was created by the Government in Greater Bombay Milk Scheme on 19.11.1963. The qualifications required for the post of Receptionist or Telephone Operator cum Receptionist are more stringent than those required for Telephone Operator. The difference in pay scale of these posts cannot, therefore, be called discriminatory. We have already held that the pay scales of the posts of Telephone Operator in Mumbai and Pune cannot be called discriminatory, as it is based on the milk handling capacity of the dairies.

8. The Applicants have not been able to establish that while fixing Pay Band and Grade Pay for the post of Telephone Operator in Mumbai, Telephone Operator-cum-Enquiry Clerk in Pune and Telephone Operator-cum-Receptionist in Nagpur, there has been any discrimination. There is no violation of the provision of Article 14 or 16 of the Constitution. Pay fixation is the work of the expert bodies like Pay Commission and the scope of judicial review in such cases is limited. In our opinion in the present Original Application there is no need for any interference by us in the matter of pay scale

fixed by the Government for the post of Telephone Operator cum Receptionist in Nagpur.

9. As a result, this Original Application is dismissed with no order

Sd/-
~~(R.B. Malik)~~ 0 2 1 1
Member (J)

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 02.05.2016
Dictation taken by : A.K. Nair.