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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH.

1. OA No. 2672/2003
2. OA No. 2748/2002
3. OA No. 2438/2003

New Delhi this the 13th day of April, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)
HON'BLE MR. S.A. SINGH, MEMBER (ADMNV)

OA No. 2672/2003

1. Shri Brij Pai,
S/o Late Shri K.L. Sharma,
R/o RZ-F 22 West Sagarpur, New Delhi.
2. Mrs. Savita Mittal W/o Shri Tilak Raj
3. Shri Surinder Singh
4. Shri Naresh Kumar
5. Shri Bharat Bhushan
6. Shri Mathew John
7. Shri Amitabh Badoia
8. Shri Deepak Pahwa
9. Shri Manoj Kumar
10. Shri Lakan Singh
11. Shri Vijay Kumar
12. Shri Raj Masih
13. Ranbir Singh Rose
14. Rajbir Singh

-Applicants

Versus

1. Union of India through
Secretary, Ministry of Finance,
Central Secretariat, New Delhi.
2. Govt. of NCT of Delhi
through,
Chief Secretary, Govt. of Delhi
Old Secretariat, Delhi.
3. Medical Secretary (H&FW)
Govt. of Delhi, 5, Sham Nath Marg,
New Delhi.

-Respondents

OA-2748/2002

1. The Central Govt. Hospital Radiographers' Welfare Association, 669, Bhai Parmanand Marg Colony (West) Delhi-110 008

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 Represented through
 Shri Vijay Kumar Verma, President

2. Manjeet Singh R. Behl,
 Dy. Advisor
 E-34, B, LIG Fiat,
 GTB Enclave,
 Delhi-110093.

-Applicants

Versus

1. Union of India
 Through the Secretary
 Ministry of Health & Family Welfare
 Nirman Bhawan,
 New Delhi-110 001.
2. The Director General Health Services
 Nirman Bhawan,
 New Delhi-110 011.
3. The Medical Superintendent,
 Safdarjang Hospital
 New Delhi.
4. The Secretary
 Ministry of Finance
 Department of Expenditure
 North Block
 New Delhi 110 011.

-Respondents

OA-2438/2002

1. Amit Dixit,
 305/2A, Krishna Gali No.6
 Maujpur Delhi.
2. Smt. Sunita Kumari Soni
 A-38, Hari Nagar Clock Tower,
 Delhi-110 064.
3. Samp George,
 A-1/90, Rohini Sector-17,
 Delhi-110 085.
4. Thomas Viju
 122B/4, Gautam Nagar
 New Delhi-110 049.
5. Tilak Raj
 F-47, Moti Nagar,
 Delhi-110015.
6. Rakesh Kumar
 X/2533, Raghuvan Pura No.2,
 Gali No.8, Gandhi Nagar,
 Delhi-110 031.
7. K.V. Verghese,
 G-203/G-2, Disha Colony,
 Near Seema Puri Depo,
 Delhi-110 095.

8. Bhart Veer
IX-Street No.1 Ajit Nagar,
Gandhi Nagar, Delhi-110 031.
9. Poli K.O
162-C, Pocket A-3
Mayur Vihar, Phase III,
Delhi-110 096.
10. Deepak Kumar Sharma
House No.89, Second Fioor,
Kilokri Delhi-110 014.
11. Satish Aggarwal
122-C Pocket 'E'
Flats Nand Nagri,
Delhi-110 093.
12. Gopal Banerjee
D-604, Avantika Rohini Sector-1,
Delhi-110 085.
13. Bhajan Lal Sharma
B-67, Harkesh Nagar,
Mathura Road,
New Delhi-110 020.
14. Ashok Kumar
974, Administration Flats,
Gulabi Bagh, Delhi-110 007.
15. Raj Kumar Sharma
A-20, Ashok Enclave,
Part-2, Faridabad,
Haryana.
16. Raju Sharma
B-2/B-229, Jank Puri,
New Delhi-110 058.
17. Vinod Kumar
24/8, Main 100 Foota Road,
Chhajupur Shahdara,
Delhi-110 032.
18. Ram Dass
B-14/16, Chitra Gupta Road,
Subhash Mohaila North Ghonda,
Delhi-110 053.
19. Sunita Rajput,
H-161, DDA Flats,
Nariana Vihar,
Delhi.
20. Mukesh Kumar
18/9-10, Trilok Puri,
Delhi-110 091.
21. Darshan Kavita,
G-209-A, HIG Flat,
Pratap Vihar,
Ghaziabad (U.P.)

22. Jagjit K. Kapoor,
B-43/12, Double Story,
Ramesh Nagar,
Delhi-110 015.

23. Anil Kumar
1/7052, Govind Marg,
Shivaji Park, Shahdara,
Delhi-110 032.

24. N.B. Lai,
House No. 7,8, Tilak Nagar, Hospital,
Tilak Nagar, New Delhi.

25. Ram Prakash Gupta
A-3/298, Paschim Vihar,
New Delhi-110 063.

26. Manoj Methew,
F-1-520, Ext.1,
Shalimar Garden,
Ghaziabad (U.P.).

-Applicants

Versus

1. Union of India
through the Secretary,
Ministry of Finance,
Department of Expenditure,
(Implementation Cell),
New Delhi.
2. Union of India
through the Secretary
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi.
3. Government of NCT of Delhi,
through the Secretary,
Department of Health & Family Welfare
(Technical Recruitment Cell)
9th Level: Sachivalayam I.P. Estate,
New Delhi-110 002.

-Respondents

(By Advocate: Shri D.K. Nag, Shri Manohar Lai &
Shri K.B.S. Rajan for applicants
Shri Vijay Pandita & Shri S.M. Arif,
for respondents)

O R D E R

By Mr. Shanker Raju, Member (J):

As in these three OAs issue emanates from common facts and question of law is identical the same are disposed of by this common order.

2. The brief factual matrix relevant for our purpose is reproduced as under.

3. In OA-2438/2002 order passed in pursuance of contempt on 1.7.2002 is assailed, which has revised the pay scale of Senior Radiographer w.e.f. 1.1.96 with consequent recovery.

4. Applicants are Senior Radiographers in various hospitals of Government of NCT of Delhi. Earlier they were in the pay scale of Rs.1350-2200 which, on the recommendations of the Vth Central Pay Commission was revised to Rs.5000-8000. Government of NCT of Delhi endorsed and issued a notification in the Gazette of India after due approval by the Cabinet. In OA-1219/1999 filed by the Technical Assistant and Technical Supervisors of the Department of Radiology by an order dated 8.8.2001 having found anomaly respondents therein were directed to consider the representation.

5. Respondents vide notification dated 1.7.2002, 15.7.2002 and 2.8.2002 revised the pay scale w.e.f. 1.1.1996 and withdrawn the pay scale given to the Senior Radiographer with consequent recovery.

6. In OA-2672/2003 notifications dated 1.7.2002 and 2.8.2002 have been assailed. The applicants working as Senior Radiographer with two years diploma in pursuance of Vth CPC recommendations have been fixed in the pay scale of Rs.5000-8000 which was allowed to them w.e.f. 1.1.96. However, on a subsequent notification the pay scale was withdrawn.

7. In OA-2748/2002 applicants were Radiographer and X-Ray Technician were in the pay scale of Rs.1350-2200 as per the recommendations of the IVth Central Pay Commission. However, by an order dated 23.10.97 this pay scale was replaced by Rs.4500-7000. However, they have been given the pay scale of Rs.5000-8000 as per the recommendations of Vth Central Pay Commission w.e.f. 1.1.96. On bringing back the pay scale to Rs.4500-7000 w.e.f. 1.1.96 present OAs have been filed. The operation of the order has been stayed by an order dated 23.10.2002.

8. Learned counsel for applicants S/Shri D.K. Nag, Manohar Lal and K.B.S. Rajan assail the order on the ground that in compliance of an order passed on 8.8.2001 by the Tribunal the anomaly in the pay scale of Technical Assistants and Supervisors has been removed in such a manner that pay scale of applicants has been reduced. It is also contended that the minimum qualification of two years diploma has been raised to three years diploma for the grade of Rs.5000-8000 as per the recommendations of the Vth CPC. Those in the scale of Rs.1320-2200 are to be placed in the pay scale of Rs.5000-8000 but the same has been lowered to Rs.4500-7000 without putting applicants to notice. It is stated that there is no recommendation by the Vth CPC to increase the minimum educational qualification to three years diploma in radiology technology.

9. Learned counsel for applicants allege hostile discrimination in so far as counter parts equally placed in all respect in various Central and State Departments are drawing the pay scale of Rs.5000-8000 and the applicants

have been singled out and further treated a class within the class in violation of Articles 14 and 16 of the Constitution of India. It is stated that terms and conditions of service have been altered by an executive order, over-riding the law laid down by the legislature which is not permissible.

10. Further drawing attention to an employment notice for recruitment it is stated that for the post of Senior Radiographer with qualification of two years' diploma the pay scale has been mentioned is Rs.5000-8000. It is further stated that recommendation of Vth CPC is unambiguous the entire grade of Radiographer has been bifurcated into two, (a) Radiographers with three intermediate degrees in between as Radiographers Grade I with the pay scale of Rs.2000-3500 under dynamic ACP II, (ii) Radiographer Grade II with the erstwhile pay scale of Rs.1640-2900 with corresponding replacement and (iii) Radiographer Grade III with the erstwhile pay scale of Rs.1350-2200 upgraded to Rs.1600-2660 with corresponding replacement scale of Rs.5000-8000, (b) (i) Assistant Radiographer Grade I with the pay scale of Rs.1400-2300 and corresponding replacement scale, tenable under the dynamic ACP scale; (ii) Senior Dark Room Assistant called Assistant Radiographer Grade II with the erstwhile pay scale of Rs.1200-2040, to be upgraded to Rs.1320-2040 and given the corresponding replacement scale; (iii) the Dark Room Assistant called Assistant Radiographer Grade III with the erstwhile pay scale of Rs.950-1500, a corresponding replacement.

11. As per the notification issued by Superintendent LNJP Hospital educational qualifications for Assistant Radiographer (Sports) is 12 with Science.

Accordingly, it is stated that respondents have erred in treating the qualification of Radiographer as mere two years certificate course to reduce their pay scale to Rs.4500-7000.

12. According to the learned counsel for applicants whereas the pay scale of Radiographer was Rs.1350-2200 the same was upgraded to Rs.1600-2260 with corresponding replacement scale of Rs.5000-8000.

13. The Pay Commission's recommendations in para 52.104 to 52.107 make it clear that the first promotion to the post from Radiographer Grade III a Senior Radiographer with the pay scale of Rs.5000-8000 and above there is no promotional post to dynamic ACP at Rs.2000-3500, which is replaced by Rs.6500-10500. Accordingly from the scale of Rs.4500-7000 there cannot be question of promotional post in the pay scale of Rs.5500-9000.

14. On the other hand, respondents' counsel Sh. Vijay Pandita and Sh. S.M. Arif vehemently opposed the contentions. According to the respondents in the light of the decision of the Apex Court in State of Haryana v. Civil Secretariat Service Association, 2002 (6) SCC 72 and also V.K. Sood v. Secretary Civil Aviation, 1992 Supp. 3 SCC 9 the function of prescribing qualification for the post and method of selection is left to the Executive and the Tribunal has no power to interfere. In OA-2438/2002 it is contended that on subsequent examination by the Government as pay scale of Rs.5000-8000 has been found to be wrongly extended to applicants same has been withdrawn. As per the qualification for the post i.e., two years diploma in

Radiography/Radiological Technique pay scale of Rs.5000-8000 could only be extended to those posts as carried minimum qualification of 3 years diploma in Radioiological Technology. While applying the directions in CP No.694/2001 in OA No.1912/99 the Health Department moved a proposal on 18.4.2002 for removal of anomaly and was sent to the Ministry of Finance. The DoPT has taken a decision to remove the anomaly placing senior Radiographer in the pay scale of Rs.4500-7000 and Junior Radiographer in the pay scale of Rs.4000-6000. This has been approved by the Department of Expenditure vide their letter dated 1.7.2002 and on a formal order the anomaly was removed and the Senior Radiographer pay scale was withdrawn w.e.f. 1.1.96. It is further stated that while according pay scale same has been subject to the decision of the Ministry of Finance. As such on rectification of a mistake principles of natural justice are not attracted.

15. In OA-2672/2003, Sh. Vijay Pandita contends that the anomaly has been removed in compliance of the directions in OA-1912/99. On account of approval by the Ministry of Finance a memorandum was issued on 1.7.2002. The anomaly has arisen because the pay scale for the post of Senior Radiographer has been wrongly upgraded to Rs.5000-8000 de hors the recommendations of the Vth CPC.

16. In OA-2748/2002 Sh. S.M. Arif contends that as applicants are not fulfilling the qualifications of three years diploma pay scale of Rs.5000-8000 cannot be granted to them. This pay scale was given to the Radiographer conditional subject to the final approval from the competency authority. Prior to Vth CPC recommendations applicants were

in the pay scale of Rs.1350-2250 but the recommendations of the Vth CPC contained in para 52.107 the pay scale of Rs.4500-7000 has been recommended. However, inadvertently applicants have been placed in the pay scale of Rs.1350-2200 revised to Rs.4500-7000. Normally replacement scales were recommended only for the post where no separate recommendations have been made. On clarification the pay scales have been rectified and the applicants are to be placed in the pay scale of Rs.4000-6000 and the pay scale of Rs.5000-8000 is admissible to those Radiographer who have three years diploma in Radiography Technique.

17. In the rejoinder pleas taken in the OAs are re-iterated.

18. We have carefully considered the rival contentions of the parties and perused the material on record. The Vth CPC while recommending the pay scales to the Radiographer of X-Ray staff in para 52.104 keeping in view the latest development in Radiology Technique reproduced the earlier pay scales which are Senior Dark room Assistants Rs.1200-2040, Radiographer Grade II Rs.1350-2200, Senior Radiographer Rs.1400-2300 and also Rs.1600-2660. In para 50.106 on demand of Radiographer and X-Ray Staff to upgrade the post in view of enhancement of entry level qualification analysing the recruitment rules made the following recommendations:

"52.107 On an analysis of the Recruitment Rules of various institutions engaging these personnel, we find that Radiographers usually enter service at three levels. As Dark Room Assistants in the scale of pay of Rs.950-1500 recruitment is 100% direct with qualifications of Matric plus certificate in Radiography. The next higher level is that of X-Ray Assistant/Sr. Dark Room Assistant (Rs.1200-2040)

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recruited 50% by promotion from among Dark Room Assistants and 50% by direct recruitment with the same qualifications Radiographers in the scale of pay of Rs.1350-2200 are recruited 20% by direct recruitment with Matric plus a 2-year Diploma course in Radiography, and 80% by promotion from among X-Ray Assistants. Higher posts of Technical Assistant (Radiography), Sr. Radiographer (SUP), Radio Therapy Technician etc. are usually filled by promotion from these lower grades. The Association of these employees has represented that a lot of hospitals and institutions have converted this minimum 2-year requirement of Diploma Certificate in Radiography to a 3-year Diploma in Radiological Technology. And accordingly the minimum entry for Radiographers with these qualifications should be placed in the scale of pay of Rs.2000-3500, keeping in view the nature of duties and educational qualifications and the existing levels in various hospitals and institutions, We recommend following entry levels for this category for future recruitments, as for Laboratory and OT personnel as follows:-

| S.No. | Existing Scales(Rs.) | Present Scales(Rs.) | Proposed Scales(Rs.) | Proposed Designation | Notes |
|-------|--|------------------------|----------------------------|------------------------------|--|
| 1. | Radiographer Technician/ Supervisor Sr. Radiographer | 2000-3500 | Radiographer | Dynamic ACP Scale | I |
| 2. | Radiographer Technician/ Supervisor/ Sr. Radiographer | 1640-2900 | 1640-2900 | Radiographer | No Change II |
| 3. | Radiographer 1350-2200 | 1600-2660 | Radiographer | Upgradation | III in view of DR qualifi- cation |
| 4. | - | 1400-2300 | Asstt. Radio- grapher-I | Dynamic ACP Scale | |
| 5. | Senior Dark Room | 1200-2040 | 1320-20040 | Asstt. Radio- grapher-II | Post Redesig- nated, pay scale ration- alised |
| 6. | Dark Room Asstt. Tech. Asstt. (X-Ray) | 950-1500 | 950-1500 | Asstt. Radio- grapher-III | Post redesig- nated |

The present incumbents in the posts of Radiographers, requiring a minimum of 2 yrs. diploma/ certificate after 10+2 may be placed at the level of Rs.1320-2040. Entry level qualification for Asstt. Radiographers will be atleast 10+2 with science, besides a certificate in Radiography. Since posts at Sl.No.1

form feeder to the latter, the gap may be bridged by placing Sr. Dark Room Assistants at the level of Rs.1320-2040, with an ACP at the level of Rs.1400-2300. Radiographer Technician/Supervisors and Sr. Radiographers being promotion posts, may be placed at the level of Rs.1640-2900. There will be one more level for 2nd ACP of Radiographers at the scale of Rs.2000-3500. Dark Room Attendants may be merged with the common category of group D. As Radiographers are trained to handle risks of radiation, a special radiation risk allowance is not recommended."

19. If one has regard to the above the entry level qualification has been recommended for future recruitment. It is also recommended that the present incumbents in the post of Radiographer with minimum of two years diploma should be placed at the level of Rs.1350-2040 but Senior Radiographer being the promotional post had been placed in the level of Rs.1640-2900 the equivalent of which is Rs.5500-9000. After this the Government accepted the recommendations and as per the Revised Pay Rules Radiographer in the pay scale of Rs.1320-2200 as per the recommendations of para 52.107 enhanced the revised pay scale of Rs.5000-8000 to Radiographer requiring two years diploma certificate have been placed in the pay scale of Rs.4000-6000. This in our considered view refers to the entry level qualification. We do not find any recommendation as to placement of three years diploma holders in the revised pay scale of Rs.5000-8000. The only recommendation which has been made is the replacement scale of Rs.1350-2200 to the Radiographer without any reference to the qualifications.

20. In Devender Singh's case on an anomaly in Technical Assistants and Technical Supervisors directions have been issued to consider their representations. The Department of Expenditure, Ministry of Finance vide their letter dated 1.7.2002 placed the Senior Radiographer in the

pay scale of Rs.4500-7000. A higher pay scale of Rs.5000-8000 w.e.f. 1.1.96 has been withdrawn. No doubt, in the matter of parity of pay scale and grant of pay scale the expert bodies have the domain and the Tribunal cannot interfere in a judicial review unless hostile discrimination violative of Articles 14 and 16 is made out.

21. It is equally settled that even while correcting the mistake and altering the service conditions as well as down grading the pay scale which causes civil consequences a prior reasonable opportunity as a pre-decisional hearing is to be accorded. The following cases substantiate the aforesaid plea:

i) **H.L. Trehan v. Union of India**; 1989 (9) ATC 650.

ii) **Bhagwan Shukla v. Union of India**; 1995 (2) SLJ 307.

22. From the perusal of recommendations of the Vth CPC in para 52.107 though we findy that both Radiographer and Assistant Radiographer have been subdivided into three categories of Grades I, II and III the post of Senior Dark Room Assistant has been upgraded to the pay scale of Rs.1320-2040 with ACP at the level of Rs.1400-2300 which comes equivalent to Rs.4500-7000. However, for Senior Radiographers being the promotional post have been placed at the level of Rs.1640-2900. Admittedly, the applicants have been appointed directly in the pay scale of Rs.1350-2200 and the notification issued by Government of NCT for the post of Senior Radiographer even in 2000 shows qualification of Matriculation plus two years' diploma with a pay scale of Rs.5000-8000. This clearly shows that the Radiographer and

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Senior Radiographer at the entry level still falls in the pay scale of Rs.5000-8000 with two years' diploma qualification. There is no whisper in the recommendations as to three years' diploma in Radiography and their placement in the revised scale of pay of Rs.5000-8000. The Government in the Revised Pay Rules on the basis of recommendations accepted the pay scale of Rs.5000-8000 to those Radiographer who were earlier in the pay scale of Rs.1350-2200 without any reference to the enhanced qualification. These Radiographers with a minimum of two years' diploma without any reference to the earlier pay scale at the direct entry level has been recommended Rs.4000-6000 at the entry level pay scale. This constitutes an anomaly. If as per the pay scale one Radiographer who is in the pay scale of Rs.1350-2200 irrespective of diploma qualification is to be placed in the pay scale of Rs.5000-8000. Recommendation of qualification of two years' diploma to the Radiographer and their placement in the pay scale of Rs.4000-6000 may refer to those with two years' diploma in Radiography at the entry level have also been appointed with the qualification of three years' diploma as well. We also find that in Devender Singh's case Technical Supervisors and Technical Assistants their anomaly has been ordered to be rectified but it nowhere involves rectification of an anomaly of Radiographer as well. The decision of the Government to place Senior Radiographer in Rs.4500-7000 with the stipulation that the pay scale wrongly extended had to be withdrawn and the conclusion that minimum qualification of three years' diploma in Radiography Technique is extended to the posts which are to be placed in Rs.5000-8000 certainly cannot be derived either from the recommendations of the Vth CPC or from the CCS Revised Pay

Rules. The only stipulation of placement of the present incumbent in the post of Radiographer being a generic term may not be applicable to those who are earlier in the pay scale of Rs.1350-2200 and this aspect has been over-looked. In this view of the matter we have also perused the Ministry of Finance's OM dated 1.7.2002, where the recommendations of CPC has been construed to the effect that two years' diploma holders in Radiography would be placed in the pay scale of Rs.4000-6000 whereas senior Radiographer in Rs.4500-7000 is not on the basis of recommendations. The Government has a right to revise the pay scale and the expert to recommend but in the event there is a ambiguity in the recommendations extraneous factors cannot be brought and the recommendations cannot be read in between the lines without any specific recommendation to come to the conclusion which deprives a class the legitimate benefits.

23. As per the recommendations applicants have been placed in the pay scale of Rs.5000-8000 and Rs.4500-7000. This has been withdrawn retrospectively w.e.f. 1.1.96 without any show cause notice. As the action visits applicants with civil consequences and the enhanced pay scale has been accorded to them without any misrepresentation, fraud and is not attributable. The aforesaid proposal/recovery though it is made subject to the decision to be taken by the Finance is a post decisional hearing and violates the mandate of principles of natural justice.

24. Another aspect which has to be looked into is invidious discrimination. The hostility in action is apparent as the counter-parts in various other Ministries

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and Departments despite having identical qualifications have been placed in the higher pay scale of Rs.5000-8000 a similar treatment has been denied to applicants which would amount to creating a class within the class which does not pass the test of reasonableness and violates principles of equality.

25: Having regard to the aforesaid discussion and conclusion arrived at, we are of the considered view that the issue requires reconsideration by the Government. Respondents are directed to re-examine the entire matter in the light of our observations and take a final decision within a period of six months from the date of receipt of a copy of this order. Till then status quo with respect to applicants in the context of the present pay scale be maintained and recovery shall not be given effect to. No costs.

(S.A. Singh),
Member (A)

Attested,

> Noy
(Shanker Raju)
Member (J)

16/4/09