

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

OA NO.1253/2002

This the 16<sup>th</sup> day of May 2005

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)  
HON'BLE MR. S.A.SINGH, MEMBER (A)

1. Kirat Ram son of Shri Bhonda Singh
2. Sumitra Goela w/o Shri Vijendra Kumar
3. Jai Bhagwan son of Shri Anti Ram

All C/o Raj Kumari Amrit Kaur College of Nursing,  
Lajpat Nagar, New Delhi-110024.

(By Advocate: Sh. Ranbir Yadav)

Versus

1. Union of India through Secretary,  
Ministry of Health and Family Welfare,  
Nirman Bhawan, New Delhi.
2. Director General of Health Services,  
Nirman Bhawan, New Delhi.
3. Secretary, Deptt. of Expenditure,  
Ministry of Finance, North Block,  
New Delhi.
4. Principal,  
Raj Kumar Amrit Kaur College of Nursing,  
Lajpat Nagar, New Delhi-110024.

(By Advocate: Sh. R.N.Singh proxy for  
Sh. R.V.Sinha)

ORDER

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

Three applicants Sh. Kirat Ram, Mrs. Sumitra Goela and Sh. Jai Bhagwan are Laboratory Assistants. They are seeking revision of their pay scale to Rs.4000-6000 w.e.f. 1.1.1996 as the 5<sup>th</sup> Central Pay Commission recommendations and in accordance with the orders of the Tribunal dated 6.7.1992 and 23.10.2000 passed in OA No.444/86 and 572/1999 respectively with notional benefits from 1.11.1982.

2. This OA was filed by 28 applicants. The OA so far as it related to the applicants Nos. 1 to 25 has been dismissed as withdrawn vide order dated 4.11.2004. The present applicants were applicants Nos. 26 to 28 in the OA. These remaining 3 applicants are working as Laboratory Assistant in Raj Kumar Amrit Kaur College of Nursing, New Delhi. Their allegation is that they have been placed in the revised scale of Rs.3200-4900 in accordance with the recommendation of the 5<sup>th</sup> Pay Commission. Initially the pay scale of Laboratory Assistant was revised from Rs.260-430 to Rs.290-500 on 3.3.1981 in the Directorate of Education in Delhi Administration. It was subsequently revised to Rs.330-530 w.e.f. 23.8.1983. The pay scale of Rs.4000-6000 has been granted to the Technicians, who were Matriculate and had some experience as per the recommendation of the 5<sup>th</sup> Pay Commission. The nature of the work and the duty which the applicants were discharging is highly skilled. Applicants, however, have not been granted the pay scale of Rs.4000-6000 w.e.f. 1.1.1996. Laboratory Assistant of some other hospitals and dispensaries under the Directorate of Health Services, Delhi Administration had filed OA-572/99 and 2082/99 for revision of pay scale to Rs.4000-6000 w.e.f. 1.1.1996 on the basis of the report of the 5<sup>th</sup> Pay Commission. The Tribunal has allowed their OAs by order dated 23.10.2000 and has granted revised pay scale of Rs.4000-6000 to the applicants of the OAs. further held that though applicants were entitled to revision of pay scale of Rs.290-500 w.e.f. 1.11.1982 only on notional basis of fixation of pay but they were not entitled to consequential arrears. The meeting of the Anomaly Committee was held but no decision in the case of the applicant has been taken. On 17.8.2001 the Additional Secretary Health revised the pay scale of Laboratory Assistants to Rs.290-500 w.e.f. 1.11.1982 notionally without any consequential arrears etc. The representation of the applicants to the grant of similar benefit has been rejected. Hence the OA.

32

12

3. Before the OA so far as it related to the applicants No.1 to 25 was dismissed as withdrawn, the then respondent No.4, namely, Principal & Medical Superintendent, Vardhman Mahavir Medical College, Safdarjung Hospital, New Delhi had filed a counter reply. Separate replies were not filed on behalf of respondent No.1 Union of India, Ministry of Health and Family Welfare, respondent No.2 Director General Health Services, respondent No.3, Department of Expenditure, Ministry of Finance and respondent No.5 Principal, Raj Kumari Amrit Kaur College. These official respondents had adopted the counter reply filed on behalf of respondent No.4 as their own reply. After the deletion of the names of applicants No.1 to 25 and dismissal of their OA as withdrawn and deletion of respondent No.4, a new memo of parties was filed in which Principal Raj Kumar Amrit Kaur College is now arrayed as respondent No.4. In the reply it was submitted that the applicants are not similarly placed with Lab. Assistants in Directorate of Health Services, Delhi Administration. Safdarjung Hospital is a subordinate office under Ministry of Health & Family Welfare and the Medical Superintendent is competent authority in respect of its employees but Vardhman Mahavir Medical College, Safdarjung Hospital, is a separate entity. The employees of Delhi Administration and DGHS and Safdarjung cannot be compared. The rules in respect of Lab Assistants of Raj Kumari Amrit Kaur College and Recruitment Rules of employees of Safdarjung Hospital are different. Hospitals and dispensaries under D.G.H.S. are different from those under Delhi Administration, so the decision of the Tribunal relied upon by the applicants, was not applicable to the present case. 5<sup>th</sup> Central Pay Commission had submitted the recommendations and the acceptance and implementation of those recommendations is a matter of policy of the Government of India. It was refuted that the applicants were entitled to the revision of the pay as stated in the application. The OA is also barred by limitation, delay and laches.

33

19

4. In the rejoinder, the applicants have reiterated their own case and have controverted the allegations of the respondents.

5. We have heard the learned counsel for the parties and have also gone through the relevant record.

6. Applicants Laboratory Assistants are working in the respondent Medical College. They are at present in the pay scale of Rs.3200-4900 and want parity in the pay scale with the Laboratory Assistants working in the Education Department and the Health Department/hospitals of Delhi Administration. Those Laboratory Assistants are in the pay scale of Rs.4000-6000 w.e.f. 1.1.1996. These applicants have stated that their educational qualification, nature of duties are at par and they perform the same function and shoulder same responsibilities which are performed by those Laboratory Assistants but in the matter of pay scale they have been discriminated. They have referred to judgments of this Tribunal in OA-572/1999 / OA-2082/1999 decided on 23.10.2000 wherein this Tribunal considered the case of Laboratory Assistants who were working in the hospital and dispensaries under the Directorate of Health Services of Delhi Administration and who were seeking parity in the matter of pay scale with their counter part working in the Directorate of Education. This Tribunal in OA-444/1986 has directed revision of pay scale of Laboratory Assistants to the pay scale of Rs.290-500 w.e.f. 1.11.1982 notionally without any entitlement to the consequential arrears of pay except for 2 months. The applicants allege that they were also entitled to the benefit of those orders as they are similarly situated and the parity in the pay scale on the basis of principle of equal pay for equal work. These applicants have cited R.D.Gupta and others vs. Lt. Governor, Delhi Administration and others (1987) 4 SCC 505 and Randhir Singh vs. Union of India and others (1982) 1 SCC 618 in support of their case. During the course of arguments they have also produced a copy of the recruitment rules of Para Medical Workers of Regional Leprosy Training and Research Institute, a note of Ministry of Finance, Department of

34

14

Expenditure which stated that it was with reference to the proposal of Ministry of Health for upgradation of certain posts in National Institute of Communicable Diseases on the analogy of similar upgradation of such posts in other institutes including NMEP. The note further showed that, inter alia, the post of Laboratory Assistant was upgraded from the pay scale of Rs.3200-4000 to 4000-6000 and 4500-7000 w.e.f. 1.1.1996. They have also produced a copy of the Gazette notification of Delhi Administration dated 2.6.1984 which showed that Laboratory Assistants in Medical Institutions under Delhi Administration were in the pay scale of Rs.260-430/-. Their selection and technical qualifications have also been provided which are not dissimilar to that of the applicants.

7. Learned counsel for respondents though reiterated that the applicants were not entitled to be given the benefit of the judgment of the Tribunal cited on behalf of the applicant but have not been able to distinguish the cases of the applicants of those cases with that of the applicants in the case in hand. The judgment and the material on record showed that the educational qualification for recruitment to the post of Laboratory Assistant in the respondent College and those in the Education Department and Health Services of Delhi Administration were similar. It has also not been denied that the educational qualification prescribed for the Laboratory Assistant in the recruitment rules applicable to the Medical Institutions under Delhi Administration and the educational qualification of the respondent of the Laboratory in the respondent College are parimateria. Both are discharging the same duties and functions. Counsel for respondents also does not allege that the Laboratory Assistants who have been granted pay scale of Rs.4000-6000 in the medical institutions, educational institutions and the hospitals of Delhi Administration are performing the duties of more arduous nature or their responsibilities are more onerous than that of the present applicants. It is also not argued that the applicants were not entitled to the parity in the pay scale with the Laboratory Assistant in the medical institutions, hospitals and educational institutions of Delhi Administration

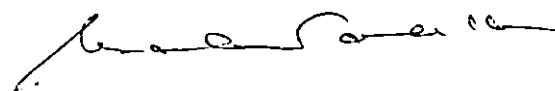
(35)

15

because those persons are employees of the Delhi Government while the applicants are employees of the Central Government.

8. Article 14 of the Constitution of India has enjoins the State not to deny any person equality before the law or equal protection of law. Article 16 of the Constitution declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The principle of equal pay for equal work though not the fundamental right guaranteed under the Constitution of India but there cannot be any hostile discrimination between the two groups of same category in the matter of pay and pay scale excepting on an intelligible differentia which has direct nexus with the objective it seeks to achieve.

9. The recruitment rules and the orders of the Government and the judgment of this Tribunal which have been placed on record undoubtedly show that the applicant Laboratory Assistants whose educational qualification and the nature of duties and responsibilities is similar to the Laboratory Assistants in the institutions of Government of India and Delhi Administration are subjected to hostile discrimination in the matter of grant of pay scales. The <sup>in</sup>equality between their pay scale and those of other Laboratory Assistants in question is not based on any differential intelligientia and does not have any nexus to the object which is sought to be achieved. The claim of the applicant to have parity with the applicants of OA No.444/1986 Pawan Kumar Tyagi vs. Delhi Administration decided by the Tribunal on 6.7.1992, the applicants Smt. Deepika Sharma and others vs. Delhi Administration in OA-572/1999 and Mrs. Baby Kutty vs. Delhi Administration in OA-2082/1999 is also supported by the judgment of the Hon'ble Supreme Court in the case of R.D.Gupta and others (supra), and Randhir Singh (supra). In fact the respondent College by its letter dated 22.4.2002 (Annexure P-9) has already recommended for upgrading the pay scale of the applicants and grant them pay scale of Rs.4000-6000. In the case of R.D.Gupta and others the Hon'ble Supreme court granted parity in the



(36)

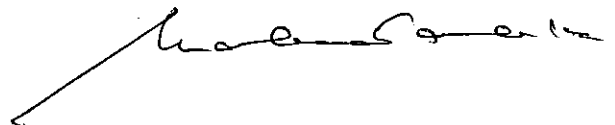
16

pay scale of all ministerial staff working in NDMC as per the report of SS Committee. In Randhir Singh's case the drivers of Delhi Police Force were granted parity on the principle of equal pay for equal work with driver working in Railway Protection Force rejecting the plea that the drivers of Delhi Police Force and other drivers belonged to different departments and that the principle of equal pay for equal work would not be applicable.

10. The respondents though have pleaded in the reply that the OA is barred by time but have not pressed it during the course of arguments. Even otherwise paying the applicant at sum lower than he is entitled to is a continuing wrong and recurring cause of action every month when the applicants receive lower sum as pay.

11. There is merit in the case pleaded in the OA. The applicants are entitled to be considered for revision of their pay scale to Rs. 4000-6000/- in parity with the applicants in the OAs relied upon. Though the applicants have prayed for grant of the revised pay scale at par with the applicants in the cases relied upon from 1.11.1982 but we find that the present application of the applicant suffers from delay and laches and having regard to the long lapse of time and financial implication involved in the matter it would not be fair and proper to direct the respondents to give the applicants even notional revision of the pay scale w.e.f. 1.11.1982. However, the applicant may be granted ~~notional~~ revision of pay at par with other Laboratory Assistants in question notionally w.e.f. 1.1.1996.

12. Accordingly the OA succeeds. The respondents are directed to revise the applicants' pay scale from Rs.3200-4900 to the pay scale of Rs.4000-6000, in parity with the pay scale of the applicants Laboratory Assistants in OA-572/1999, OA-2082/1999 and OA-444/1986 w.e.f. 1.1.1996. However, the applicants will not be entitled to receive consequential arrears of pay and allowances on the basis of that revision for the period from 1.1.1996 to 7.5.2002 the date on which the application was filed. They will receive the revised pay in

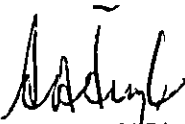



(37)

17

the revised pay scale as per above direction with effect from 8.5.2002 onward.

The order shall be implemented within three months from the date on which the copy of the order is received by the respondents. Parties shall bear their own costs.

  
( S.A. SINGH )  
Member (A)

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

'sd'