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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 521/2002
AND
O.A. NO. 522/2002

New Delhi, this the 07th day of November, 2002

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

OA NO.521/2002

M/s Technical Staff, Operation Theatre
Association, Delhi through its President
Shri Lalit Bali ... Applicant
(By Advocate : Shri P. Chakravorty)

Versus

1. Union of India
through its Secretary to the
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi-110011
2. Lt. Governor, Delhi
through its Secretary (Medical)
New Secretariat, Govt. of NCT of Delhi
I.P. Estate, New Delhi - 2 ... Respondents
(By Advocate : Shri Vijay Pandita)

OA NO. 522/2002

M/s Technical Staff, Operation Theatre
Association, Delhi through its President
Shri Lalit Bali ... Applicant
(By Advocate : Shri P. Chakravorty)

Versus

1. Union of India
through its Secretary to the
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi-110011
2. Lt. Governor, Delhi
through its Secretary (Medical)
New Secretariat, Govt. of NCT of Delhi
I.P. Estate, New Delhi - 2 ... Respondents
(By Advocate : Shri Vijay Pandita)

O R D E R

By Shri S.A.T. Rizvi, Member (A):

The applicant in both these OAs is the same as also
the respondents. The issues raised are also similar and
arise from the recommendations made by the Fifth Central Pay
Commission in regard to the Technical staff posted in the

Operation Theatres. We are, therefore, taking up both these OAs together for passing this common order.

2. OA No.521/2002 deals with the case of the Technical Assistants, while the other OA, namely, OA No.522/2002, deals with the case of Technical Supervisors. Both the posts find place in the staff posted in Operation Theatres in hospitals.

3. During the currency of the Fourth CPC's recommendations, Technical Assistants and Technical Supervisors were placed in the pay scales of Rs.1400-2300/- and Rs.1640-2900/- respectively. The still lower post of OT Technician was then placed in the pay scale of Rs.1200-2040/-. The post of OT Technician constituted the feeder grade for the post of Technical Assistant and like-wise the post of Technical Assistant formed the feeder grade for the post of Technical Supervisor. Thus, in the hierarchy, the OT Technician occupied the lowest post with the Technical Assistant being the next higher post and the post of Technical Supervisor being the ^{still} higher post next to the Technical Assistant. As a result of the recommendations made by the Fifth CPC, the post of OT Technician has been placed, according to the applicants in these OAs, in the pay grade of Rs.5000-8000. That being so, the next higher post of Technical Assistant could not have been placed in the pay scale of Rs.4500-7000/- and similarly the still higher post of Technical Supervisor could not be placed in the pay grade of Rs.5500-9000. Hence the grievance. The prayer made is that directions be issued to the respondents to place the post of Technical Assistant in the pay scale of Rs.5500-9000

and the post of Technical Supervisor in the pay scale of Rs.6500-10500/-.

4. Both the OAs have been contested by the respondents who have, in addition to the counter affidavit, submitted written arguments as well in support of their plea that there is nothing wrong with the pay scales granted in favour of Technical Assistants and Technical Supervisors.

5. We have heard the learned counsel on either side and have perused the material placed on record.

6. The reason assigned by the respondents in support of their case is that the Fifth CPC had recommended the pay scale of Rs.5000-8000 only in respect of such OT Technicians as were found to be duly qualified in terms of the recommendations made by the Fifth CPC in paragraph 52.78 of the Commission's report read with the Notification issued by the Government in Part-B of the CCS (Revised pay) Rules, 1997. In the aforesaid Notification, the post of OT Technician is shown to have been placed in the pay grade of Rs.5000-8000 with reference to the contents of paragraph 52.78 of the Fifth CPC's report. The respondents' case is that by reading the aforesaid Notification along with paragraph 52.78 of the Fifth CPC's report, it would become clear that the pay grade of Rs.5000-8000/- is to be given only to such among the OT Technicians who possessed the minimum qualifications of B.Sc plus Diploma/Certificate in the relevant subjects. Thus, according to the learned counsel appearing on behalf of the respondents, it will have to be inferred that the OT Technicians found wanting in

terms of the qualifications prescribed by the Commission will need to be placed in the pay grade of Rs.4000-6000 which is the replacement/revised scale for the Fourth CPC's pay scale of Rs.1200-2040/-.

7. In support of their case, the respondents have relied on the judgement rendered by this Tribunal on 5.12.2001 in OA No.3247/2001 (Rajbir Singh Vs. Govt. of NCT of Delhi and Others). The aforesaid OA was disposed of by the Tribunal with a direction to the respondents to decide the representation filed by the applicant in that OA. The order dated 1/8 July, 2002 (R-3) passed by the respondents in pursuance of the above direction did not favour the applicants' case and accordingly the plea for raising the pay grade of the post of Technical Supervisor to the pay grade of Rs.6500-10500/- was rejected. The Contempt Petition filed thereafter in the same OA got dismissed.

8. On behalf of the applicants, the main argument advanced is that as evident from the Notice issued by the Government of NCT of Delhi inviting applications for filling the posts of OT Technician, the post of OT Technician does carry the pay scale of Rs.5000-8000. We have perused the aforesaid Notice enclosed by the applicants along with the written submissions filed by them in reply to the written arguments submitted by the respondents. It is seen from the aforesaid Notice issued by the Government of NCT of Delhi as late as in February 2002 that the educational qualifications and experience prescribed for the said post is not the same as has been recommended by the Fifth CPC. On the other hand, the educational qualifications and experience

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indicated in the aforesaid Notice ^{clearly} ~~are~~ seem to be lower than the minimum qualifications of B.Sc plus Diploma/Certificate recommended by the Fifth CPC. The argument advanced by the respondents that only those OT Technicians would carry the pay grade of Rs.5000-8000 who possessed the minimum qualifications of B.Sc plus Diploma/Certificate does not, ^{therefore,} hold good. It is, therefore, not in doubt that the post of OT Technician has indeed been placed in the pay grade of Rs.5000-8000/-.

9. In order to buttress support for their case, the applicants have brought to our notice the decision rendered by this Tribunal on 30.5.2000 in OA No. 266/2000. The Tribunal in that case accepted the plea that those holding the post of OT Technician are entitled to be placed in the scale of Rs.5000-8000 w.e.f. 1.1.1996. A Writ Petition filed against the aforesaid order of this Tribunal has been dismissed by the High Court. That case related to the OT Technicians working in the Safdarjung Hospital which is a Hospital under the Government of India unlike the Hospitals in which the present applicants are working ^{which are} under the Government of NCT of Delhi. It has been correctly argued on behalf of the applicants that no distinction can be made between the pay grades applicable to the same post of OT Technician on the basis that one is working under the Government of NCT of Delhi and the other under the Government of India, ~~more~~so because the pay scales of the various posts under the Government of NCT of Delhi in the light of recommendations made by the Pay Commissions are determined in consultation with the Govt. of India.

10. The further argument advanced on behalf of the applicants places reliance on the provisions made in FR 22(I) (a)(1). The aforesaid FR, no doubt, lays down the procedure to be followed in determining the pay of a Govt. servant who is promoted to a post carrying duties and responsibilities of greater importance, but what is implicit in the aforesaid rule is that the post carrying duties and responsibilities of greater importance has got to be a post in the pay scale higher than the pay scale carried by the lower post. The argument advanced on this basis is that since the post of OT Technician undoubtedly carries the pay grade of Rs.5000-8000/-, the next higher post of Technical Assistant must necessarily be placed in the higher pay grade of Rs.5500-9000, and, by the same token, the still higher post of Technical Supervisor is required to be placed in the pay grade of Rs.6500-10500/-. The hierarchical position of the aforesaid posts not being in dispute, there is every reason, according to the applicants, to place the posts of Technical Assistant and Technical Supervisor respectively in the pay grades of Rs.5500-9000 and Rs.6500-10500/-.

11. The argument advanced on behalf of the respondents on the basis of the order passed by this Tribunal in OA No. 3247/2001 (Rajbir Singh vs. Govt. of NCT of Delhi and Others) cannot mean, according to the applicants, that the Tribunal had approved the decision conveyed by the respondents vide their Order dated 1/8 July, 2002 (R-3) rejecting the claim of Technical Supervisors to be placed in the pay grade of Rs.6500-10500/-. In the Contempt case filed in that same OA, the Tribunal was concerned only with the compliance of the order passed whereby the respondents

were directed to consider the representation and pass orders thereon. The Tribunal ^{had} ~~was~~ not then considered the merits of the aforesaid order (R-3). It cannot, therefore, be successfully argued that the Tribunal had agreed with the rejection of the claim of Technical Supervisor to be placed in the pay grade of Rs.6500-10500/-.

12. We have carefully perused the recommendations made by the Fifth CPC and find that in respect of the post of OT Technician, the minimum pay scale laid down was Rs.1600-2660/-, the replacement/revised scale of which is Rs.5000-8000/-. The aforesaid recommendations go on to prescribe two ACP pay scales also in respect of the post of OT Technician. These are Rs.1640-2900 and Rs.2000-3500/-, both pre-revised. The existing incumbents of the post of OT Technician are to be placed, according to the Fifth CPC's recommendations, in appropriate matching pay scales. There is no mention anywhere in these recommendations that those OT Technicians who do not possess the minimum qualifications of B.Sc plus Diploma/Certificate will continue to languish in the pay scale of Rs.4000-6000/- which is merely the replacement/revised scale of the old pay scale of Rs.1200-2040/- carried by the said post. In the Notification (R-2) issued by the Central Government also, nothing has been said about the OT Technicians who do not possess the minimum qualifications of B.Sc plus Diploma/Certificate. In actual practice, as we have already seen, the Government of NCT of Delhi has been working on the basis that the post of OT Technician does ^{not} ~~not~~ carry the pay grade of Rs.5000-8000.)

13. The learned counsel appearing on behalf of the respondents has also argued that the Supreme Court has, in several cases, laid down that the Tribunals should not proceed to issue orders fixing pay scales of posts on the ground that fixation of pay scales of various posts is within the realm of ^{the} Executives who decide such matters on the basis of recommendations made by ~~the~~ expert bodies and Commissions. That may be so, but judicial review of matters involving patent anomalies in pay scales is not ruled out. We have, as observed by us in the preceding paragraphs, come

✓ across a patent case of anomaly in the fixation of pay scales. We are accordingly constrained to interfere in the matter and we do so not by directing the respondents to revise the pay scales of the posts of Technical Assistant and Technical Supervisor to Rs.5500-900/- and Rs.6500-10500/- respectively but by directing them to consider the matter in the light of the observations made by us in the body of this order and to reconsider and pass a detailed, speaking and reasoned order as expeditiously as possible and, in any event, within a period of three months from the date of receipt of a copy of this order. We direct accordingly. While passing the orders as above, the respondents are further directed to take into consideration the contents of these OAs as also the written submissions filed on behalf of the applicants.

14. The OAs are disposed of in the aforestated terms.

There shall be, however, no order as to costs.

A copy each of this order be placed on the respective OA files.

S A T Rizvi
(S.A.T. RIZVI)
Member(A)

V.S. Aggarwal
(V.S. AGGARWAL)
Chairman