

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

1) C.P. NO.449/2003
in
O.A. NO.521/2002

2) C.P. NO.450/2003
in
O.A. NO.522/2002

This the 13th day of September, 2004.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Technical Staff Operation Theater
Association, Delhi (Regd.)

... Applicants
(in both CPs)

(By Shri P.Chakravorty, Advocate)

-versus-

1. Shri J.V.R. Prasada Rao,
Secretary to the Ministry of
Health & Family Welfare,
Government of India,
Nirman Bhawan, New Delhi-11.

2. Shri S.P.Aggarwala,
Principal Secretary (Medical),
Govt. of NCT of Delhi,
New Secretariat, I.T.O.,
New Delhi-110002.

... Respondents
(in both CPs)

(By Shri Vijay Pandita & Mrs. Promila Safaya, Advocates)

ORDER

Hon'ble Shri V. K. Majotra, Vice-Chairman (A) :

OAs 521/2002 and 522/2002 were disposed of by a common
order dated 7.11.2002 in the following terms :

“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 Executive who decide such matters on the basis of recommendations made by 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.5500-9000/- and Rs.6500-10500/- respectively but 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.”

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2. Later on time for implementing Tribunal's order was extended up to 30.10.2003.

3. The learned counsel of applicants contended that respondents have purportedly passed orders dated 6.8.2004 in compliance of Tribunal's directions, however, these orders are not reasoned and in keeping with the spirit of Tribunal's observations/directions. He particularly referred to the contents of paragraphs 6 and 9 of Tribunal's orders dated 7.11.2002 in support of the above contention. These paragraphs of the Tribunal's orders are extracted below :

“6. The reason assigned by the respondents in support of their case is that the Fifth CPC had

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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 R.1200-2040/-."

"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."

The learned counsel maintained that in the light of contentions raised above, respondents have caused willful and deliberate disobedience of Tribunal's observations/directions.

4. The learned counsel of applicants also submitted that the issue of pay parity and relativity of posts between the OT Technicians, which the applicants are, with the Lab Technicians, have been discussed in paragraph 52.78 of the Fifth CPC's recommendations. The recommendation on this issue of parity is as follows :

“.....In view of comparable qualifications and duties, we recommend parity of O.T. Technicians and Lab Technicians at the initial levels also. Accordingly, the following grades are proposed for O.T. staff in future.

- (i) O.T. Attendant – Rs.750-940 with 2 ACP levels of Rs.775-1025 and Rs.800-1150 with minimum 8th Standard qualifications at entry.
- (ii) O.T. Assistant – Rs.950-1500 with 2 ACP levels of Rs.1200-2040 and Rs.1400-2300 with minimum qualification of matric (with Science) plus certificate or 10+2 with Science for direct recruitment.
- (iii) O.T. Technician – Rs.1600-2660 with 2 ACP levels of Rs.1640-2900 and Rs.2000-3500 with minimum B.Sc. plus Diploma/Certificate in the relevant subjects. The existing incumbents in each organization in operation theatres as well as sterilization services will be placed in appropriate matching pay scales.”

The learned counsel maintained that clause (ii) above is particularly applicable to the applicants herein, however, the respondents have not accorded benefit flowing from the said clause.

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5. The learned counsel of respondents submitted that respondents have passed a detailed and speaking order on 6.8.2004 in pursuance of Tribunal's directions contained in order dated 7.11.2002 and that respondents have also tendered unconditional apology in the event of Court's conclusion that a willful or deliberate contempt has been committed. The learned counsel contended that if the applicants are aggrieved by respondents aforesaid orders, that would constitute a fresh cause of action.

6. We have considered the rival contentions. We are of the view that ultimately respondents have passed detailed and speaking orders in compliance of Tribunal's directions. Respondents have in the said orders provided reasons for rejecting the relief claimed by the applicants. While we accept the unconditional apology tendered by the respondents, certain contentious issues have been raised on behalf of the applicants, which cannot be dealt with in a contempt petition. They do constitute a separate cause of action.

7. Having regard to the above discussion, while we dispose of the CPs discharging notices to the respondents, applicants too shall have liberty to resort to legal recourse to challenge the orders passed by the respondents in compliance of Tribunal's directions.

S. Raju
(Shanker Raju)
Member (J)

/as/

V. K. Majotra
(V. K. Majotra)
Vice-Chairman (A)
13.9.04