

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.021/0469/2016

Date of reserving for orders: 24.10.2019

Hyderabad this the 21st day of January, 2020

**THE HON'BLE MS.MANJULA DAS, MEMBER (JUDL.)
THE HON'BLE MRS.NAINI JAYASEELAN, MEMBER (ADMN.)**

Between :



1. Nuclear Fuel Complex Scientific Assistants Association, Regd. No.1538/2012, recognized By Dept. Of Atomic Energy, rep., by its General Secretary G.Srinivas Rao, s/o G.Nagalingam, aged 49 yrs, NFCSAA office, ECIL post, Hyderabad-500 062.
2. Siba Prasad Monty, E.C.No.6494, s/o Basanta Kumarmohanty, aged 31 yrs, Occ:SD/D, O/o ZSP (04), NFC.
3. K.Srihari, E.C.No.6496, s/o K.Brahimaiah, Aged 37 yrs, Occ:SA/D, O/o ZOP, NFC.
4. V.Vinod, E.C.No.6499, s/o V.Vijayan, Aged 32 yrs, Occ:SA/D, O/o Melting.
5. Bhadran Binny, E.C.No.6500, s/o K.Bhadran, Aged 32 yrs, Occ:SA/D, O/o EPC (75).
6. S.Raju, E.C.No.6569, S/o S.Gyama, Aged 40 yrs, Occ:SA/D, O/o QA-MI/MT (62),
7. D.Praveen, E.C.No.6592, s/o late D.Narender, Aged 33 yrs, Occ:SA/D, O/o HPU.
8. M.Srinivasu, E.C.No.6593, s/o M.Rajaiah, Aged 30 yrs, Occ:SA/D, O/o ZFP (FT).
9. M.Ramesh, E.C.No.6769, s/o M.Mahalakshmi Rao, Aged 32 yrs, Occ:SA/D, O/o EPP (M)-73.

10. Meghavath Dasru, E.C.No.6770,
s/o M.Gemya, aged 36 yrs, Occ:SA/D, O/o Melt Shop,
11. V.Sontosh Kumar, E.C.No.6771, s/o V.Venkatramana,
Aged 28 yrs, Occ:SA/D, O/o ZFP.
12. Khadeswar SA, E.C.No.6777, s/o Resham SA,
Aged 31 yrs, Occ:SA/D, O/o MZG (09).
13. A.Amburose, E.C.No.6499, s/o V.Vijayan,
Aged 32 yrs, Occ:SA/D, O/o Utility.
14. K.Mallikarjun, E.C.No.6784, s/o K.Markondaiah,
Aged 31 yrs, Occ:SA/D, O/o Electrical project.
15. D.Rajesh, E.C.No.6785, s/o D.Jamala,
Aged 31 yrs, Occ:SA/D, O/o PD (85),
16. P.V.S.S.M.Charan, E.C.No.6786,
s/o P.Anjaneya Sarma, aged 30 yrs, occ:SA/D, O/o ZOP.
17. G.Mahesh, E.C.No.6790, s/o G.Parvathalu,
Aged 30 yrs, Occ:SA/D, O/o ZSP.
18. S.Ramachary, E.C.No.7371, s/o S.Seetha Ramaiah,
Aged 27 yrs, SA/C, O/o IMS-Miting (99).
19. Vinod Kumar, E.C.No.7374, s/o Yogendra Prasad Gupta,
Aged 25 yrs, Occ:SA/C, O/o UOP (01),
20. A.Srinivas Rao, E.C.No.7375, s/o A.Ramakrishna,
Aged 27 yrs, Occ:SA/C, O/o UOP (01).
21. Venkata Siddu, E.C.No.7377, s/o P.Sankaraiah,
Aged 30 yrs, occ:SA/C, O/o SED (38).
22. Akash Kumar Gupta, E.C.No.6805,
s/o Ram Chandra Gupta, aged 30 yrs,
Occ:SA/D, O/o ZSP.
23. Santosh Kumar, E.C.No.6807, s/o Mathura Prasad,
Aged 35 yrs, occ:SA/D, O/o SSTP (90).
24. Balka Murmu E.C.No.7038, s/o Ananta Murmu,
Aged 36 yrs, Occ:SA/D, O/o ZPP (RM).



25. Bhanoth Chandar, E.C.No.6651,
s/o Bhanoth Bitchu, aged 30 yrs,
Occ:SA/D, O/o ZFP (FT).

All are working in different divisions of Nuclear Fuel
Complex, ECIL Post, Hyderabad-500 062. ...Applicant s

(By Mrs.Anita Swain, Counsel for the Applicants)

AND

1. Union of India, rep., by its Secretary/Chairman,
Dept., of Atomic Energy, Anushakti Bhavan,
C.S.M.Marg, Mumbai-400 001.

2. Bhaba Atomic Research Centre, rep., by its
Secretary, TC & TSC Section, 3rd floor, Central
Complex, Trombay, Mumbai-400 085.

3. The Chief Executive, Dept. Of Atomic Energy,
Nuclear Fuel Complex, Sardhi Building, ECIL post,
Hyderabad-500 062. ...
Respondents

(By Mr.V.Vinod Kumar, Sr.CGSC, Counsel for the Respondents)

ORDER

By MRS.NAINI JAYASEELAN, MEMBER (ADMN.)

The applicants filed this OA aggrieved by the action of the respondents, vide order dated 12.11.2015 of the Department of Atomic Energy (DAE), Nuclear Fuel Complex (NFC), in rejecting the grant of Grade Pay Rs.4600/- as per the VI CPC OM dated 13.11.2009, and to declare the same as illegal, arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India, and contrary to the OM dated 13.11.2009, and the Revised Pay Rules 2008, and sought for a direction to the 2nd respondent to fix the



pay of the applicants in the pay of Rs.12,540/- with a Grade Pay Rs.4600/- from the date of their appointment/absorption as per the OM dated 13.11.2009 with all consequential and attended benefits such as arrears of pay etc.,.

2. Brief facts of the case:

The applicants submitted that the 3rd respondent is one of the constituent unit under the 1st respondent i.e., DAE,Mumbai. The Scientific staff are recruited by Bhabha Atomic Research Centre (BARC) for all DAE Units. The technical staff are generally selected by the Units of DAE. Hence, the norms prescribed by the Trombay Council (TC) and Trombay Scientific Committee (TSC) of BARC are followed for direct recruitment, promotion of all Scientific and and Technical Staff. The Chairman, Trombay Council is Respondent No.3, who is the competent authority in case of BARC and for all other DAE Units.



3. It is the case of the applicants that they were selected as Stipendiary Trainee Category-I by the 4th respondent from 2006 to 2008. On successful completion of training, they were confirmed as Scientific Assistant-B between 2007 to 2009 in the pre-revised pay scale of Rs.5500-175-9000/- in Grade Pay Rs.4200/-. On acceptance of the VI Central Pay Commission recommendations by the Government, it was decided, vide OM

dated 09.03.2009, “where all posts in one or more pre-revised scales are merged with a higher pre-revised scale and given a common replacement scale or grade pay/pay scale, the suitability of the incumbents need not be assessed for granting them the higher replacement scale/grade pay/pay scale, there is also no need for the incumbents to complete any minimum eligibility service in their earlier scale of pay”.



4. Subsequently, the M/o Finance, Department of Expenditure, Implementation Cell issued OM dated 13.11.2009, for merger of three pre-revised pay scales of Rs.5000-8000/-, Rs.5500-9000/- and Rs.6500-10500/- and replaced them for the revised pay structure of Grade Pay of Rs.4200/- in the Pay Band PB-2. Vide Para 2.2.21 (v) of the report, the VI Central Pay Commission had recommended that on account of merger of these three scales, some posts which constituted feeder and promotional grades, comes to lie in an identical grade. The VI Central Pay Commission gave specific recommendations in its report granting higher pay of Rs.4600/- to some categories of these posts. As regard the other posts, the Commission recommended that it should first be seen if the posts in 3 scales could be merged without any functional disturbances and if possible, the same should be done. Further, the Commission recommended that in case it was not feasible to merge, the posts in these pay scale of

Rs.5000-8000/- and Rs.5500-9000/- should be merged with the posts in the scale of Rs.6500-10500/- being upgraded to the next higher grade in the pay band PB-2 with grade pay of Rs.4600 corresponding to the pre-revised scale of Rs.7450-11500. This recommendation of VI CPC were notified vide Para (ii), Section-I in Para B and C of the First Schedule to the CCS (RP) Rules, 2008. On account of the implementation of the VI CPC recommendations, the Department of Space, vide OM dated 12.11.2010 including Department of Atomic Energy, issued orders for merger of pay scale of the posts to be made effective from 01.01.2006. Hence, the post and the pay scale of Rs.5000-8000/- and Rs.5500-9000/- is no more in existence after 13.11.2009. The applicants have been absorbed between 2007 and 2009 in pre-revised pay scale of Rs.5500-9000/- i.e., the Scientific Assistant-B post.



5. It is the contention of the learned counsel for the Applicants that on account of merger of 3 pre-revised scales come to lie in identical cadre, Scientific Assistant-C, in the revised pay scale of Rs.9300-34800/- with Grade Pay Rs.4600/-, but the respondent placed the applicants in the pay scale Rs.9300-34800 with Grade Pay Rs.4200/- instead of Grade Pay Rs.4600/-.

6. The applicants contended that they are entitled for Grade Pay of Rs.4600/- as per OM dated 13.11.2009, and inspite of repeated representations, the respondents have not extended the benefits of Grade Pay of Rs.4600/- to the applicants, who have been recruited after 2006, but have implemented the OM with effect from 01.07.2011 for the new recruits, who would be absorbed in the post of Scientist Assistant-C in the pay scale of Rs.9300-34800/- with Grade Pay Rs.4600/- in DAE. The respondents have rejected their representation dated 12.11.2015, by stating that the post in the pay scale of Rs.5000-8000/- and Rs.5500-9000/- have been merged and placed in Grade Pay of Rs.4200/- and the post pre-revised pay scale Rs.6500-10500 was merged with Rs.7500-11500/- and were granted Grade Pay of Rs.4600/-.



7. The applicants submitted that presently the CAT-1 trainees were undergoing two year training and getting absorbed as SA-C with Grade Pay of Rs.4600/- and prior to this the CAT-1 trainees had undergone one year training and got absorbed as SA-B in the pre-revised pay scale of Rs.5500-9000/-. On the implementation of CCS (RP) Rules, 2008, they were brought over to Rs.4200/- Grade Pay, which was the normal replacement rule. When they were recruited as per the rules in vogue, the training of CAT-1 was one year as per the TS & TSC Rule. On completion of the training,

the applicants were absorbed and got the status of SA-B. On implementation of VI CPC recommendations, and on account of merger as per the OM dated 13.11.2009, the merger took place with retrospective date 01.01.2006, the SA-B post is merged with SA-C, which is in Grade Pay of Rs.4600/- w.e.f. 01.01.2006. Hence, the applicants should be placed in SA-C post with Grade Pay of Rs.4600/-from the date of appointment/absorption.



8. The learned counsel for the respondents submits that the VI Pay Commission has recommended merger of 3 pre-revised scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 and replaced them by a revised pay structure in the Pay Band PB-2 (Rs.9300-34800/-) in the Grade Pay of Rs.4200/- in its report. The Commission also recommended that on account of merger of these 3 scales, some posts, which constituted feeder and promotion grades, would come to lie in an identical scale, and therefore, the Commission gave specific recommendations in its report granting higher Grade Pay of Rs.4600/- to some categories of these posts. The Commission recommended that it should first be seen if the posts in these 3 scales could be merged without any functional disturbance and if possible, the same should be done. However, it is not feasible to merge the posts in these pay scales on functional consideration, the posts in the scale of Rs.5000-8000 and Rs.5500-9000 should be merged with

the posts in the scale of Rs.6500-10500 being upgraded to the next higher grade in the pay band PB-2 with Grade Pay of Rs.4600 corresponding to the pre-revised scale of Rs.7450-11500/-. However, the Department of Expenditure, vide its OM No.1/1/2008-IC, dated 13.11.2009, after considering representations received from various Ministries/Departments proposing upgradation of the posts, which were in the pre-revised scale of Rs.6500-10500 as on 1.1.2006 for granting them Grade Pay of Rs.4600/- in the pay band PB-2, have conveyed their decision to the effect that the posts which were in the pre-revised scale of Rs.6500-10500/- as on 1.1.2006 and which were granted the normal replacement pay structure of grade pay of Rs.4200/- in the pay band PB-2, would be granted Grade Pay of Rs.4600/- in the pay band PB-2 corresponding to the pre-revised scale of Rs.7450-11500/- w.e.f 1.1.2006. However, in DAE, post of Scientific Assistant, which is a technical category post, is being operated in the following pay scales:



S.No.	Post	Pre-revised pay scale	Revised Grade Pay w.e.f 1.1.2006
1	Scientific Assistant-A	Rs.5000-150-8000	Rs.4200
2	Scientific Assistant-B	Rs.5500-175-9000	Rs.4200
3	Scientific Assistant-C	Rs.6500-200-10500 Upgraded to Rs.7450-225-11500	Rs.4600
4	Scientific Assistant-D	Rs.7450-225-11500 Upgraded to Rs.7500-250-12000	Rs.4600
5	Scientific Assistant-E	Rs.8000-275-13500	Rs.5400
6	Scientific Assistant-F	Rs.10000-325-15200	Rs.6600



9. The upgradation of pay scale of Rs.6500-150-10500 to Rs.7450-225-11500 and Rs.7450-225-11500 to Rs.7500-250-12500 was in accordance with the Part-B of Ministry of Finance notification GSR No.622 (E) dated 29.08.2008. In order to cater to the need of technical personnel, Graduates in Science and Diploma holders in Engineering were being recruited, till modification of the Scheme vide DAE OM dated 09.05.2014, though a one year Stipendiary Training Scheme (Category-I), as per Para 2.1.3 of the Recruitment and Promotion Guidelines in DAE for Scientific and Technical personnel. They were absorbed as Scientific Assistant-B in the pre-revised pay scale of Rs.5500-175-9000, which was revised to Pay Band of Rs.9300-34800/- with Grade Pay of Rs.4200/- vide DAE OM dated 10.11.2008. The DAE, vide OM dated 09.05.2014, partially modified the induction of Category-I Trainees by increasing the duration of training from the existing one year to two years and to absorb them in the grade of Scientific Assistant-C. The pre-revised pay scale of Scientific Assistant-C was Rs.6500-200-10500, which was revised to Pay Band Rs.9300-34800 with Grade Pay of Rs.4600, vide DAE OM dated 10.11.2008 after upgrading the pre-revised pay scale of Rs.6500-10500/- to the pay scale of Rs.7450-11500 as contained in Part-B of Ministry of Finance notification dated 29.08.2008.

Based on the representations received from various Ministries and Departments, proposing upgradation of posts, which were in the pre-revised pay scale of Rs.6500-10500 as on 1.1.2006 by granting them the grade pay of Rs.4600 in the Pay Band PB-2, the Ministry of Finance vide OM dated 13.11.2009, did not envisage grant of grade pay of Rs.4600 in the pay band PB-2 to the pre-revised pay scale of Rs.5500-9000. Therefore, the upgradation of pay done by the DAE was in accordance with the Part-B of Ministry of Finance, vide notification dated 29.08.2008.



In this case, the merger of only the pay sales Rs.5000-8000 and Rs.5500-9000 have taken place with a common grade pay of Rs.4200 and that the Scientific Assistant-B, which was in the pay scale of Rs.5500-9000/-, is a feeder post to the post of Scientific Assistant-C with the pay scale of Rs.6500-10500 with a Grade Pay of Rs.4600/-.. The applicants were selected as Stipendiary Trainee Category-I against the advertisements issued by NFC. It was clearly mentioned in the said advertisement that after successful completion of one year training, they would be absorbed as Scientific Assistant-B in the scale of pay of Rs.5500-175-9000. These Scientific Assistant-B were granted Pay Band Rs.9300-34800/- with Grade Pay Rs.4200/- in PB-2 as per the recommendations of the VI CPC, vide DAE OM dated 10.11.2008, which is the replacement as per Part-A of Ministry of Finance



Notification dated 29.08.2008. Four of the applicants were selected in response to the Advertisement No.NFC/01/2010 and in response to the earlier Advertisements Nos.NFC/01/2007 and NFC/01/2004, 11 applicants and 8 applicants respectively were selected, wherein it has been clearly stated that Stipendiary Category Grade-I will be considered for absorption as Scientific Assistant-B in the pay scale of Rs.5500-175-9000/- with a Grade Pay of Rs.4200/- as per the recommendations of the VI CPC. Two notifications were issued earlier to the VI CPC scale of Rs.5500-9000/-, which was equivalent to the scale with Grade Pay of Rs.4200/-. Therefore, all the applicants who were recruited as Scientific Assistant-B in the pre-revised pay scale of Rs.5500-9000/-, and after successfully completing one year of Stipendiary Trainee Category-I, would be considered for absorption as Scientific Assistant-B in the pay scale of Rs.5500-175-9000/- with a Grade Pay of Rs.4200/-,. In the DAE, merger of the posts of Scientific Assistant-B and Scientific Assistant-C, has *not* taken place, as contended by the applicants, and these posts are still being operated in the Grade Pay of Rs.4200/- and Rs.4600/-. The Grade Pay of Rs.4600/- was only available for those Scientific Assistant-C, who had completed 2 years Stipendiary Training.

10. Heard Mrs.Anita Swain, learned counsel appearing for the Applicants and Mr.Samba Siva Rao, proxy counsel, representing Mr.V.Vinod Kumar, learned Senior Central Govt. Standing Counsel, appearing for the Respondents. Perused the pleadings on record.

11. The following Table indicates the appointment of the applicants :



Sl.No.	Employment Advertisement No.	Notice	Applicants appointed	Total
01	NFC/01/2004		Sl.Nos.2 to 8 & Sl.NO.25	08
02	NFC/01/2007		Sl.Nos.9 to 17 and Sl.Nos. 22 and 23	11
03	NFC/01/2010		Sl.Nos.18 to 21	04
			Total	23

Therefore, 23 applicants were recruited as per the three Employment Notices stated in Para 9 (supra). The Applicant No.1 is the NFC Scientific Assistants Association represented by its General Secretary Sri G.Srinivas Rao and the applicant at Serial No. 24, working as Mech. in Heavy Water Plant, Baroda, was, however, transferred, and they are currently Scientific Assistants-D with effect from 01.07.2014 and 01.07.2015 respectively. All the 25 applicants are praying for grant of Grade



Pay Rs.4600/- from the date they were recruited. However, in view of the fact that the Pay Commission recommendations came into being only with effect from 01.01.2006 and based on the subsequent OMs of the Ministry of Finance, the scales were merged in two categories, the applicants cannot claim the Grade Pay of Scientific Assistant-C at this stage. Moreover, when they were granted Scientific Assistant-C scale during 2009-10, 2011-2013 and 2013-2014, they availed the benefit, but kept quiet. In a catena of cases, it is clearly laid down by the Hon'ble Supreme Court that the Tribunal/Courts are not to interfere with the litigations which is barred by limitation. The Scientific Assistants-B approached this Tribunal, when they were aggrieved with the impugned order dated 12.11.2015 in not having been given the Grade Pay of Rs.4600/-, after having availed the benefits of enhanced pay on account of the implementation of the VI CPC recommendations.

12. In view of the above, the OA is dismissed. No order as to costs.

Sd/-

(NAINI JAYASEELAN)
MEMBER (ADMN.)

Sd/-

(MANJULA DAS)
MEMBER (JUDL.)

Dated: this the 21st day of January, 2020

Dsn.