

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

LIBRARY

No. O.A. 350/00206/2018

Date of order: 16.12.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Madhu Naskar,
Son of Late Bablu Naskar,
Aged about 36 years,
Working as Laboratory Assistant,
ESI-PGIMSR, ESIC MEDICAL COLLEGE &
ESIC Hospital & ODC (EZ),
Diamond Harbour Road, Joka,
Kolkata - 700014,
Residing at 41, Biren Roy Road (East), Peace Park,
P.O. Barisha,
P.S. Behala,
Kolkata - 700008,
District - South 24 - Parganas.

..... Applicant.

Versus

1. Union of India
through the Secretary
to the Govt. of India,
Ministry of Labour & Employment,
Shram Shakti Bhawan,
Rafi Marg,
New Delhi - 110 001.
2. The Director General,
Employees State Insurance Corporation,
Panchdeep Bhawan, CIG Marg,
New Delhi - 110 002.
3. The Medical Commissioner,
Employees State Insurance Corporation,
Panchdeep Bhawan, CIG Marg,
New Delhi - 110 002.
4. The Financial Commissioner,
Employees State Insurance Corporation,
Panchdeep Bhawan, CIG Marg,
New Delhi - 110002.
5. The Medical Superintendent,
ESIC Hospital and ODC (EZ),
Kolkata - 700 104.

..... Respondents.



For the Applicant : Mr. K. Chakraborty, Counsel

For the Respondents : Mr. S. Banerjee, Counsel

O R D E R (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant in this O.A. has approached this Tribunal in second stage litigation, challenging the Office Order dated 17.2.2017 issued in compliance to this Tribunal's order dated 25.8.2016 in O.A. No. 350/00736/2016 and, in particular, seeking the following relief:-

"(a) An order setting aside the Office Order dated 17th February, 2017 (Annexure A-8) passed by ESI-PGIMSR & MC and ESIC Hospital, Joka in response to the Order dated 25th August, 2016 (Annexure A-7) passed by Hon'ble Central Administrative Tribunal, Calcutta Bench in O.A. No. 350/00736 of 2016 (Sri Madhu Naskar & ors. v. Union of India & ors.).

(b) An order directing the respondent authorities to grant the Grade Pay of Rs. 2400/- in PB-1 from the date of promotion of the applicants as Laboratory Assistants in compliance with Order dated 3.8.2016 (Sri Madhu Naskar & ors. v. Union of India & ors.) at Central Administrative Tribunal, Calcutta Bench read with judgment dated 21st November, 2017 (Annexure A-9) passed by Hon'ble CAT, PB, New Delhi) after holding that the denial of the said Grade Pay of Rs. 2400/- and grant of the Grade Pay of Rs. 2000/- instead of Rs. 2400/- is bad in law, arbitrary and discriminatory.

(c) An order directing the respondents to grant all consequential monetary benefits to the applicants after granting them the Grade Pay of Rs. 2400/- in PB-1 from the date of their promotion as Laboratory Assistant.

(d) An order directing the respondents to produce/cause production of all relevant records.

(e) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

2. The earlier O.A. bearing No. 350/736 of 2016 was disposed of with the following orders:-

"6. Accordingly the application is allowed. The respondents are directed to decide the representations of the applicants within a period of three months from the date of receipt of a certified copy of this order. The applicants shall also send the copy of the representation along with the copy of the order to the authorities. If the applicants are found entitled to Grade Pay of Rs. 2400, the same shall be given to the applicants in terms of the order passed in O.A. 791/2014.

7. The O.A. stands disposed of. There shall be no order as to cost."

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3. In compliance, the respondent authorities issued a speaking order as at Annexure A-8 to the O.A., in which the respondent authorities rejected the claim of the applicant by stating, *inter alia*, as follows:-

" ESI-PGIMSR, ESI MEDICAL COLLEGE AND ESIC HOSPITAL & ODC (E.Z)
DIAMOND HARBOUR ROAD, JOKA, KOLKATA - 700 104
(A statutory body under the Ministry of Labour & Employment, Government of
India)
AN ISO 9001:2008 CERTIFIED ORGANIZATION

No. 412-C-18/15/114 (O.A. No. 350/00736/2016)/2016-Estt. Date: 17.2.2017

ORDER

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4. I have gone through the relevant records. Perusal reveals that the higher grade pay of Rs. 2400/- has been given only to the petitioner Lab Assistants on the specific directions of Hon'ble Court in the aforesaid cases. Higher grade pay has been provisionally paid to the petitioner Lab Assistants subject to the outcome of WP No. 9512/2009 filed by the directorate (Medical) Delhi in Hon'ble High Court at Delhi.

5. Recruitment regulation for the post of Lab Assistant prescribes for the grade pay of Rs. 2000/- for the post. Therefore, Sri Madhu Naskar is not eligible for higher grade pay of Rs. 2400/-.

6. In view of the aforesaid, the representation dated 06.04.2016 of Sri Madhu Naskar lacks merit and cannot be acceded to.

XXXXXXXXXXXXXXXX

Sd/-
(Dr. S.K. Choudhury)
Medical Superintendent"

Being aggrieved with such rejection order, the applicant has approached this Tribunal once again asserting that he is being discriminated vis-à-vis the applicants in O.A. No. 350/791/2014, and, during hearing, would also claim parity with the applicants in O.A. No. 100/3185/2016 (Annexure A-9 to the O.A.) before the Principal Bench.

In the speaking order, the applicant's claim has been denied by the respondents primarily on two grounds:-

(a) That, higher grade of Pay of Rs. 2400/- had been given to the petitioner Lab Assistant(S) on the specific directions of Hon'ble Court, and, that such higher Grade of Pay has been provisionally paid to the petitioner Lab Assistants, subject to

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outcome of WP No. 9512/2009 filed in Hon'ble High Court of Delhi.

(b) That, the recruitment regulations for the post of Lab Assistants prescribes only a Grade Pay of Rs. 2000/- for the post and, accordingly, being ultra vires to the statutory provisions, a Grade Pay of Rs. 2400/- cannot be paid to the applicant Lab Assistant herein.

4.(a). The instant applicant is also a litigant before us, praying for similar relief as that prayed for by the applicants before the Principal Bench. The decision of the Principal Bench has been referred to by this Tribunal, while disposing of O.A. No. 350/791/2014, the latter being referred to in O.A. No. 350/736/2016 (Annexure A-7 to the O.A.) wherein the applicant had earlier approached this Tribunal.

(b) We are also given to understand that the respondent authorities have approached the Hon'ble High Court at Delhi against the orders of the Principal Bench of this Tribunal on the very same grounds, namely, that a Grade Pay of Rs. 2400/-, as claimed, is not permissible under the extant recruitment regulations to Lab Assistants employed with the respondent authorities. Admittedly, this issue would be decided upon with finality upon disposal of the Writ Petition.

5. Hence, the only issue that remains to be decided in this instant matter is whether the applicant is similarly circumstanced as that of the applicants in O.A. No. 350/791/2014 and the applicants before the Principal Bench.

6. Accordingly, as consented to by both Ld. Counsel, we accord the applicant liberty to prefer, within four weeks of the date of receipt of a

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copy of this order, a comprehensive representation fortified with an undertaking to refund the excess amount from his salary/pension (as applicable) in the eventuality that decision in the Writ Petition pending before the Hon'ble High Court at Delhi is in favour of the respondents.

The concerned respondent authority, shall, upon the event of having received such representation, consider the same in accordance with law and particularly, in the light of the fact that the applicant herein has also been litigating claiming a grade pay of Rs. 2400/- in two rounds of litigation akin to the applicants before the Principal Bench and those in O.A. No. 350/791/2014, and, that the applicability of the recruitment regulations of the applicants in the Principal Bench is under challenge before the concerned judicial forum. The respondent authority shall also reckon the directions of the Tribunal in O.A. No. 350/791/2014 as well as in O.A. No. 350/736/2018 and decide whether the applicant can be granted similar benefits on the basis of such undertaking in the event he is similarly circumstanced and decide within 12 weeks from the date of receipt of a copy of such order.

7. With these directions, the O.A. is disposed of. There will be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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