

Central Administrative Tribunal
Principal Bench

O.A. No. 347 of 2001

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New Delhi, dated this the 12th February, 2002

HON'BLE MR. JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

S/Shri

1. Dwarka Nath,
S/o Shri Bikru Ram,
R/o RZA-53, Sitapuri Part II,
New Delhi-110045.
2. Sanjay Kumar
S/o Shri Ramji Lal.

(Both are working as Blood Bank
Technicians, ESI Hospital,
Basai Darapur, New Delhi)

.. Applicants

(By Shri M.K. Gupta, Advocate)

Versus

1. Employee State Insurance Corporation
through the Director General,
Panchdeep Bhawan,
Kotla Marg,
New Delhi-110001.
2. The Medical Superintendent,
E.S.I. Hospital,
Basai Darapur, Ring Road,
New Delhi-110015.

.. Respondents

(Shri G.R. Nayyar, Advocate through
the Departmental Representative
Shri Mohindr Kumar)

ORDER (Oral)

S.R. ADIGE, VC (A)

Applicants who are two in number, and are presently working as Blood Bank Technicians in ESI Hospital, Basai Darapur, New Delhi seek a declaration that they are entitled to parity with other Laboratory Technicians, and are entitled to the pay scale of Rs.4500-7000 w.e.f. 1.1.1996, as has been granted to similarly situated Lab. Technicians. Consequential benefits have also been prayed for.

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2. The case of applicants is that prior to implementation of the 5th Pay Commission's recommendations all the technicians irrespective of the discipline to which they belonged, whether it was Microbiology, Biochemistry, Clinical Pathology, Haematology, Forensic Science etc. were in receipt of pay in the scale of Rs.1320-2040. Pursuant to the 5th Pay Commission's recommendations the said scale has been revised to Rs.4500-7000 by the Central Govt. as well as by Respondents (i.e. ESIC), but applicants who are working in the Blood Bank in ESI Hospital aver that they have been denied the said pay scale of Rs.4500-7000, despite the fact that prior to the introduction of the revised pay scale they were at par with other categories of technicians.

3. In this connection attention has been invited to Section 17 Employees State Insurance Act 1948. The relevant portion of Sub-Section (2)(a) and (2)(b) of the aforesaid Act is extracted below:

"(2(a) The method of recruitment, salary and allowances, discipline and other conditions of service of the members of the staff of the Corporation shall be such as may be specified in the regulations made by the Corporation in accordance with the rules and orders applicable to the officers and employees of the Central Govt. drawing corresponding scales of pay:

Provided that where the Corporation is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government.

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(12)

(b) In determining the corresponding scales of pay scales of pay of the members of the staff under clause (a), the Corporation shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government and in case of any doubt, the Corporation shall refer the matter to the Central Government whose decisions thereon shall be final."

4. It is contended that although a departure has been made in respect of the pay scales, prior approval of the Central Government has not been obtained by ESI authorities.

5. Respondents in their reply challenge the O.A. They contend that the post of Lab. Technician is different from the post of Blood Bank Laboratory Technician as the two posts are governed by different Recruitment Rules, it is also contended that there are differences in the field of qualifications, percentage of direct recruitment and promotions, nature of work etc.

6. We have heard applicants' counsel Shri M.K.Gupta and Shri G.R. Nayyar assisted by Departmental Representative Shri Mohinder Kumar on behalf of Respondents.

7. We have given the matter our careful consideration.

(14)

8. We note that Respondents in para 1 of their reply themselves concede that prior to the 5th Pay Commission's recommendations both categories of Technicians namely those working in laboratories as well as those working in Blood Banks were in the pay scale of Rs.1320-2040. It is also conceded in para 4(g) of the reply that pursuant to the recommendations of the 5th Pay Commission both categories were initially given the revised pay scale of Rs.4000-6000. However, in the case of Lab. Technician the Govt. of India further revised the pay scale of Rs.4000-7000, but as no such revision was made for the technicians working in Blood Bank, the pay scales of applicants was not revised.

9. When Respondents themselves have conceded in their reply that prior to the recommendations of the 5th Pay Commission and indeed even after the 5th Pay Commission had made its recommendations, the pay scale of both categories of technicians namely those working in Laboratories and those working in Blood Bank were the same, it is clear that the two categories of posts enjoy equal status, and discharge similar duties and responsibilities.

10. Under the circumstances no convincing reasons have been pointed to us as to why the pay scales of Laboratory Technicians alone were revised and not those of the Blood Bank technicians. In this connection we have already noted that prior approval

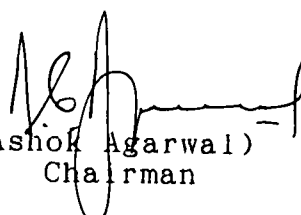
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(15)

of the Central Govt. has not been obtained by respondents in making departure from the pay scales under the proviso to Section 17(2)(a) ESI Act.

11. Furthermore, from the extracts of the Recruitment Rules for the post of Blood Bank Lab. Technicians we note that there are only two such posts.

13. In the light of the foregoing the O.A. succeeds and is allowed to the extent that Respondents should consider revising the pay scale of the post of Blood Bank Laboratory Technicians taking into account the pay scales granted to the Laboratory Technicians and other surrounding facts and circumstances. These directions should be implemented within four months from the date of receipt of a copy of this order. Upon the pay scales of the post of Blood Bank Lab. Technicians being revised pursuant to these directions applicant shall be entitled to consequential benefits as are admissible in accordance with rules, instructions and judicial pronouncements on the subject. No costs.


(Ashok Agarwal)
Chairman


(S.R. Adige)
Vice Chairman (A)

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