

Central Administrative Tribunal, Principal Bench

Original Application No. 2184 of 1998

New Delhi, this the 28 th day of November, 2000

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)  
Hon'ble Mr.V.K.Majotra, Member (A)

1. Shri Om Prakash, S/o Shri Vishwa Nath, R/o  
D-2/354, Nand Nagri, Delhi.

2. Shri Ombir Singh, S/o Shri Ram Mehar  
Singh, R/o Village Mavi Kalan, P.O.  
Khekra, Distt. Bagpat (U.P.)  
Sh.P.Chakraborty & Ass. Advocate,  
C-202, Madhuvan, Delhi-92 - Applicants

(By Advocate Shri P. Chakraborty)

Versus

1. Govt. of NCT of Delhi, Through Secretary  
(Medical), 5, Sham Nath Marg, Delhi-54.

2. Medical Superintendent, Guru Teg Bahadur  
Hospital, Shahdara, Delhi. - Respondents

(By Advocate Shri Vijay Pandita)

O R D E R

By V.K.Majotra, Member(A) -

The applicants had earlier on filed an OA No. 2678/90 which was disposed of on 19.12.1994 with the following directions:-

"6. In the present circumstances of the case, since the matter of the applicant has already been referred to Delhi Administration we only direct the Delhi Administration to consider the matter of applicants for upgradation of post seeing to the job requirement, the recruitment rules and the responsibilities and duties shouldered by the Hospital staff vis-a-vis, the same staff i.e. carpenters working in other attached offices of Delhi Administration.

7. The application, therefore, is disposed of with the above direction with no order as to costs. The applicants .. also free to press their claim before the 5th Pay Commission through proper channel. No costs."

2. According to the applicants they represented on 7.1.1995 b their case after the disposal of the afore-stated OA b followed by various other representations dated 25.6.1997, 18.7.1997 and 19.3.1998, which were of no avail. According to the applicants they are qualified Carpenters and skilled employees. The scale prescribed

for the post of Carpenters working in the attached hospitals of Government of NCT of Delhi is Rs.950-1400 and is a Class-III post. However, the applicants were wrongly appointed in the scale of Rs. 750-940 in Class-IV post. It is also averred that the pay scale of Carpenters was revised from Rs.950-1400 to Rs. 950-1500 vide a Circular of Govt. of India dated 14.7.1988 (Annexure-P-5) and the same was implemented by Delhi Administration and the Carpenters working in the attached hospitals were granted this scale. The applicants were inadvertently granted the pay scale of Rs.750-940 instead of Rs.950-1400 which was revised in 1988 to Rs.950-1500, and they are entitled to the scale of Rs.950-1500 as the job requirements of the Carpenters who are workshop staff of the attached hospital, in the Govt. of NCT of Delhi are the same. According to the applicant the 5th Central Pay Commission (for short '5th CPC') consolidated the pay scales of Rs.950-1400, Rs.950-1500 and Rs.1150-1500 into one scale of Rs.3050-4590 (Annexure-P-14) and the Delhi Administration has since accepted this recommendation of the 5th CPC for implementation but the applicants have not been given the benefit of the same. The applicants have sought grant of the scale of Rs.950-1500 (pre-revised) from the date of their appointment till the date of acceptance of the recommendations of the 5th CPC and the scale of Rs.3050-4590 as recommended by the 5th CPC thereafter on the principle of equal pay for equal work under Article 39(d) of the Constitution of India. They have also asked for consequential arrears.

3. In their counter the respondents have stated that the post of Carpenter was never upgraded in Guru Teg Bahaduar Hospital (for short 'GTB Hospital') as

Class-III post but was created as Group-D post as GTB Hospital is not competent to recruit Class-III officials. Thus, the post was created in the scale of Rs.750-940 in the year 1986. They have also maintained that qualifications in the GTB Hospital for this post are not similar as compared to post of Carpenter in other Central Government hospitals.

4. We have heard the learned counsel of both sides and carefully perused the material available on record.

5. The learned counsel of the applicants has drawn our attention particularly to Annexure-P-3 dated 13.2.1988 whereby respondent no.2 has recommended to Delhi Administration the case for upgradation of the post of Carpenter held by the applicants to Group-C in the scale of Rs.260-350 (pre-revised)/ Rs.950-1400 (revised) on various grounds including that the applicants fulfil the requisite qualifications and experience for the post of Carpenter and that the post of Carpenter as per Recruitment Rules is a Group-C post. The learned counsel also contended that the pay scales of certain categories of Union Territories employees, including the workshop staff, on removal of anomalies as a result of implementation of the 4th CPC recommendations, were revised vide circular dated 14.7.1988 (Annexure-P-5) from Rs.950-1400 to Rs.950-1500. The Carpenters are included in the workshop staff. He has also brought out that as per Annexure-P-8 dated 23.2.1995 Shri Roop Singh Carpenter was transferred from LNJP Hospital and posted in the pay scale of Rs.950-1400 (1500) in the workshop of GTB Hospital with effect from 6.1.1995. The learned counsel exclaimed how the applicants could be treated dissimilarly vis-a-vis Shri Roop Singh who is also a Carpenter, now

posted at the same work place.

6. First of all, we are constrained to make a mention that though vide order dated 19.12.1994 in OA 2678/1990 the respondents had been required to consider the matter of applicants for upgradation of posts looking to the job requirements, recruitment rules, responsibilities and duties of hospital staff, vis-a-vis the same staff i.e. Carpenter working in other attached offices of Delhi Administration, the respondents have not cared to pay heed to the afore-stated directions and not passed any considered orders in the matter despite several representations by the applicants from 19.12.1994 onwards. Referring to circular dated 14.7.1988 the *Applicants' Counsel has lb* stated that the Carpenters who are included in the workshop staff on recommendations of the 4th CPC in Union Territories were accorded the pay scale of Rs.950-1500. In reply to paras 4(iii) to 4(ix) of the O.A., the respondents have merely stated that "the contents of these paras of the O.A. under reply needs no comments being matter of record". Such a vague reply to a positive averment is not expected of a model employer and the only inference from such an instance can be that they are not in a position to contradict the contentions of the applicants. The scale of Rs.950-1500 prescribed under Circular dated 14.7.1988 for the Carpenters was revised to Rs.3050-4590 on the recommendations of the 5th CPC. The GTB Hospital vide their memorandum dated 13.2.1988 (Annexure-P-3) and another dated 8.10.1997 (Annexure-P-13) have conceded that the applicants being fully qualified for the post of Carpenters should be placed in the superior scale in Group-C as in 1986-87 as when Recruitment was made to the post of Carpenter in GTB Hospital, the pay scale of the post of Carpenter was

inadvertently proposed as Rs.750-940 instead of Rs.950-1400. The only explanation given by the respondents is that in GTB Hospital the post of Carpenter was created in Group-D and not in Class-III because the Hospital Superintendent was not competent to create Class-III post. We are not impressed with this explanation of the learned counsel of the respondents. If the creation of the appropriate level post required sanction of a higher competent authority, the proper course of action for the Superintendent of the Hospital was to have obtained the sanction of the competent authority, rather than down grading the post. When the post of Carpenter in all other hospitals of the Union Territories was in Class-III, there was no reason why the post would not have been created in the same level in GTB Hospital. We are inclined to go along with the applicants that the posts of Carpenter in GTB Hospital were created in the lower scale inadvertently and the recommendations of the Hospital authorities were for upgradation of the post to Group-C time and again did not yield any positive result.

7. The respondents have also failed to satisfy us how the Carpenters in GTB Hospital have a different job contents, duties and responsibilities than the Carpenters in other hospitals of Govt. of NCT of Delhi. The learned counsel of the respondents also failed to give any sound reasoning for prevalence of two different scales of Carpenters in the GTB Hospital as is clear from Annexure-P-8 dated 23.2.1995 whereby one Shri Roop Singh Carpenter has been transferred to this Hospital on a higher scale than that of the applicants.

8. We are fully aware about the limitation of the Courts regarding interference with matters relating to pay scales and do have in mind the caution described in

Union of India and another Vs. P.V.Hariharan, 1997 SCC (L&S) 838. However, here we are seized of the matter which is an exceptional case and not an ordinary one where despite the earlier order in OA2678/1990 and despite various representations of the applicants, the respondents have failed to consider the matter as per rules and in the right spirit. Even though a long time has elapsed after the afore-stated order, the respondents have, as it has been established above, created a dichotomy of pay scales in a single category of Carpenter, who have identical job contents, duties and responsibilities. In various hospitals of Govt. of NCT of Delhi the Carpenters have been given the scale of Rs.950-1500 up to 31.12.1995 and Rs.3050-4590 from 1.1.1996 but the same have been denied to the applicants, who are working as Carpenters in GTB Hospital. The authorities in the GTB Hospital have been recommending since long that these Carpenters should be given the same treatment in the matter of class and pay scales as Carpenters in other hospitals, but no relief has been accorded to the applicants as of now. The grievance of the applicants has been further aggravated with the posting of Carpenter, namely, Roop Singh vide order dated 23.2.1995 in GTB Hospital in a superior scale.

9. Having regard to the above discussion, we are quite convinced that the applicants have been given discriminating treatments by the respondents and their case for upgradation of pay scale has not been considered in the true spirit by the respondents despite Tribunal's directions contained in the order dated 19.12.1994 in OA 2678/1990 and even though the applicants have been representing time and again thereafter. In our considered view the present is a fit

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case where the respondents must be directed to consider the claim of the applicants under the relevant rules and recommendations of the 5th CPC for according them pre-revised scale of Rs.950-1500 with effect from the date of their joining as Carpenter and Rs.3050-4590 from 1.1.1996, restricting of course the arrears of pay from 1.1.1996. Ordered accordingly.

10. In the result, the OA is allowed with the above directions, however, without any order as to costs.

V.K.Majotra

(V.K.Majotra)  
Member (A)

Lakshmi Swaminathan

(Mrs.Lakshmi Swaminathan)  
Member (J)

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