

(23/7/06)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**OA-266/2000  
With  
TA-4/2005(CWP-7008-22/2005)**

New Delhi this the 3<sup>rd</sup> day of August, 2006.

**HON'BLE MR.SHANKER RAJU, MEMBER(J)  
HON'BLE MRS.CHITRA CHOPRA, MEMBER(A)**

**OA-266/2000**

1. Safdarjung Hospital Operation Theatre,  
Technical Staff Association  
through its President Sh. Pool Singh,  
S/o Lt. Sh. Kacheru Singh,  
R/o RZ-153 B, Street No.6, Sagar Pur (East)  
Delhi.
2. Sh. Maha Singh  
S/o Late Shri Mam Chand,  
H-8, Type-I, SJH Residential Complex,  
West Kidwai Nagar, New Delhi
3. Sh. Phool Singh-I,  
S/o late Sh. Biputi Singh,  
J-6, Type-II, Safdarjung Hospital,  
Residential Complex,  
West Kidwai Nagar,  
New Delhi.
4. Sh. Jagdish Singh,  
S/o Sh. Harjas,  
H.No.31, Piragarhi.
5. Sh. Laxman Singh,  
S/o Sh. Ram Sharma,  
Vill. Rangpuri,  
P.O. Mehpalpur,  
New Delhi-2.
6. Sh. Harinder Singh Bedi,  
S/o Sh. D.D. Bedi,  
17, Old Mess, LNJP Hospital,  
New Delhi-2.
7. Sh. Sher Singh,  
S/o Sh. Mehar Lal,  
Vill. & P.O. Puttah Kalan,  
Delhi.
8. Sh. Shiv Charan,  
S/o late Sh. Sahib Ram,  
23-A, Shapurjat,  
New Delhi-49.

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9. Sh. Mahan't Ram,  
S/o Late Sh. Ram Krishna,  
E-4 Type-I, Safdarjung Hospital  
Residential Complex, West  
Kidwai Nagar, New Delhi.

10. Sh. Basant Sha,  
S/o Sh. Lakhi Chand,  
1006 Laxmi Bai Nagar,  
New Delhi.

.... Applicants

(through Sh. P.S. Mahendru, Advocate)

Versus

1. Union of India through  
its Secretary,  
Ministry of Health & Family Welfare,  
Nirman Bhawan,  
New Delhi- 11001

2. Director General of Health Services,  
Ministry of Health & Family Welfare,  
Nirman Bhawan,  
New Delhi-110011

3. The Medical Superintendent,  
Safdarjung Hospital,  
New Delhi-110029.

.... Respondents

(through Sh. S.M. Arif, Advocate)

**TA-4/2005(CWP-7008-22/2005)**

1. Shri Mahender Pal Sharma,  
Late Shri Raghu Dayal Sharma,  
R/o 16 Telegraph Place,  
Bangla Sahib Marg,  
New Delhi-110001.

2. Shri Lala Ram,  
S/o Late Shri Shrichand,  
R/o Qr No.13, Type-II,  
Minto Road,  
New Delhi-110002.

3. Ram Narain Paswan,  
S/o Late Shri Jeet Lal,  
R/o 19, Type-II, Minto Road,  
New Delhi-110002

4. Divender Singh,  
S/o Shri  
R/o House No.48,  
Village & PO Bakkarwala,  
Delhi-110041.

5. Bhushan Lal Gera,  
S/o late Sh. Gurdyal Singh,  
R/o A-61, Anand Vihar,  
Old Uttam Nagar,  
Delhi.

6. Rajiv Diwan,  
S/o Suresh Kumar Diwan,  
R/o H.No. 2/141,  
Subhash Nagar,  
New Delhi-1.

7. Mahender Singh,  
S/o Sh. Hari Singh,  
R/o T.T. Place B.S. Marg,  
New Delhi.

8. Dharamvir Singh,  
S/o Ram Kumar,  
Qr. No. 34, Telegraph Squar,  
New Delhi-1.

9. Ravinder Patra,  
S/o Sh. Jai Krishna Patra,  
R/o 112 Qr.No. 43, Block No.6,  
Lady Harding Staff Quarters,  
New Delhi.

10. Sher Singh,  
S/o late Sh. Murli Dhar,  
R/o 2439/11, Nalwa Gali,  
Chuna Mandi, Paharganj,  
New Delhi-55.

11. Yogender Kumar,  
S/o Sh. Sita Ram,  
R/o 4836, Laddoo Ghati,  
Paharganj, New Delhi.

12. Surender Kumar,  
S/o late Sh. Bhoop Singh,  
R/o J-429, Shakarpur,  
Delhi-34.

13. Ramavtar Singh,  
S/o late Sh. Harshran Singh,  
R/o B-43, R.S.T. Enclave Kardam Farm  
Johripur East Near Tal Tel Johripur,  
Delhi-94.

14. Jai Prakash Tyagi,  
S/o late Sh. Jainda Singh,  
R/o 19/24, Lady Harding Hospital Compound,  
Panchkuian Road,  
New Delhi.

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15. Vishnu Dutt,  
S/o Sh. Ganeshi Lal,  
R/o Qr.No.19, Telegraph Place,  
B.S. Marg,  
New Delhi-1.

...Applicants

(through Ms. Lipika Sharma, Advocate)

**Versus**

1. Union of India  
Through its Secretary,  
Ministry of Health and Family Welfare,  
Nirman Bhawan,  
New Delhi-110111
2. Dr. S.P. Agarwal,  
Director General of Health Services,  
Ministry of Health and Family Welfare,  
Nirman Bhawan,  
New Delhi.
3. Principal & Medical Superintendent,  
Lady Harding Medical College and  
Smt. S.K. Hospital,  
New Delhi
4. Deputy Director(Administration),  
Lady Harding Medical College and  
Smt. S.K. Hospital,  
New Delhi

.... Respondents.

(through Sh. S.M. Arif, Advocate)

**ORDER**

**Hon'ble Mrs. Chitra Chopra, Member(A)**

As the facts involved are identical and issues raised are common, both these cases are being disposed off by this common order.

**OA-266/2000**

This OA has come before this Tribunal after being remanded back by the Hon'ble Supreme Court in Civil Appeal No.5250/2002 filed by Union of India & Ors. which was disposed off by the Hon'ble Supreme Court vide order dated 19.8.2004 by which the matter has been remanded back to the Tribunal for re-hearing.

The order passed by the Hon'ble Supreme Court is reproduced below:

“We find that neither the Tribunal nor the High Court examined the matter in detail. Therefore, we remit

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the matter to the Tribunal for consideration of all relevant aspects. We make it clear that we have not expressed any opinion on the merits of the case. The approach of the High Court so does not have our approval, in view of the fact that after the decision of this case in L.Chandra Kumar Vs. Union of India ((1997) 3 SCC 261, the Tribunal's order can be subject to the proceedings under Article 227 of the Constitution of India,1950 ( in short "the Constitution") and therefore the least that is required is the indication of reasons for disposing of the writ petition filed endorsing correctness of the impugned order of the Tribunal. The appeal is accordingly disposed of without no order as to costs."

2. The facts leading to this OA-266/2000 are as under:

The Safdarjung Hospital Operation Theatre Technical Staff Association filed this OA challenging the action of the respondents in not granting them the revised pay scale of Rs.5000-8000 as recommended by the Vth Central Pay Commission (CPC). It was averred that the said revised pay scale has been implemented in other Central Govt. Hospitals as well as the hospitals run by the Govt. of NCT of Delhi as per the recommendations of the Vth CPC but the applicants have been denied the said revised pay scale.

3. The applicants who are working as Operation Theatre Technicians (hereinafter referred to as "O.T. Technicians") in Safdarjung Hospital, New Delhi, were in receipt of pay scale of Rs.1200-2040 prior to 31.12.1995. The Vth CPC vide its recommendations contained in Para 52.78 recommended that the O.T. Technician be placed in the scale of Rs.1600-2660/-.

4. Vide Notification dated 30.9.97 the Govt. of India had accepted the aforesaid recommendations of the Vth CPC specifying that the O.T. Technicians will be given the revised scale of Rs.5000-8000 in terms of Vth CPC in para 52.78. The applicants stated that while some institutions like Lady Hardinge Medical College and Smt. S.K.Hospital, New Delhi, Central Govt. Health Scheme and others have already accepted and implemented the said revised pay scale of Rs.5000-8000 to the O.T. Technicians but the said revised scale has been denied to the applicants by the respondents without any justification and valid reasons. Accordingly, the applicants have sought for grant of revised pay scale of Rs.5000-8000 w.e.f. 1.1.1996.

5. The applicants had filed this OA-266/2000 on 7.2.2000.
6. In their counter reply to OA-266/2000, the learned counsel for the respondents have averred that the scale of Rs.5000-8000/- is a conditional scale which does not apply to the applicants as they do not fulfill the conditions of Vth CPC stipulated therein. It was contended that the implementation of the revised pay scale is only applicable to O.T. Technicians who possess minimum B.Sc plus Diploma/Certificate in the relevant subject. Thus, none of the applicants in the OA were eligible to claim the revised pay scale of Rs.5000-8000/- as they did not fulfill this essential requirement. They were given the normal replacement scale of Rs.4000-6000/- which is the corresponding scale of the pre-revised pay scale of Rs.1200-2040.
7. This OA was decided by this Tribunal on 30.5.2000. Paras 7 and 8 of this order read as under:

“7. From the various orders issued by the Govt. of India, it is clear that the pay scale of Rs.5000-8000 as recommended by the 5<sup>th</sup> CPC has been made applicable to the O.T. Technicians working in various institutions under Govt. of India, as well as NCT Delhi with effect from 1.1.1996 without insisting upon the condition of the qualification of B.Sc., thus denial of the said scale to the applicants working as O.T. Technicians in Safdarjung Hospital on the ground that they do not possess the minimum B.Sc. qualification is unjust, arbitrary and violative of the provisions of Articles 14 and 16 of the Constitution of India. It appears that in the case of other institutions under the NCT Delhi and the Govt. of India the condition of possession of B.Sc qualification has been made applicable prospectively and not to the incumbents already in service, insistence on application of this condition in the case of the O.T. Technicians working in Safdarjung Hospital only would be totally unjust and untenable.

8. Having regard to the above reasons and discussions, we find merit in the OA, which is allowed. Accordingly, we direct the respondents to grant the applicants revised pay scale of Rs. 5000-8000 with effect from 1.1.1996 as recommended by the 5<sup>th</sup> CPC and accepted by the Notification dated 30<sup>th</sup> September, 1997 with all its consequences. No costs.”

The abovementioned order of the Tribunal was challenged before the Delhi High Court by the Union in India in CWP No.7043/2000 which was dismissed by the Hon'ble Delhi High Court vide order dated 22.11.2000 with the following order:

(43) (5)

“We do not find any legal infirmity in the order passed by the Central Administrative Tribunal, Principal Bench, New Delhi dated 30<sup>th</sup> May,2000 which will require interference of this Court in exercise of powers under Article 226 or the Constitution of India. The present petition is accordingly dismissed in limine.”

6. Against this order of the Delhi High Court, the Union of India went in SLP before the Hon'ble Supreme Court. The Hon'ble Supreme Court disposed off the appeal vide order dated 19.8.2004 as reproduced in para 1 above.

7. The main contention of the learned counsel for the applicants, viz. the O.T.Technicians of the Safdarjung Hospital is that as the revised pay scale of Rs.5000-8000 has been given to their counter-parts working in the office of NCT of Delhi, Lady Hardinge Medical College and Smt. S.K.Hospital, New Delhi, CGHS etc. without insisting upon the condition laid down i.e. B.Sc plus Diploma/Certificate in the relevant subject, there is no reason why they being the employees of Safdarjung Hospital and performing similar duties and functions should be denied: It was also contended that the revised pay scale of Rs.5000-8000 was given to the employees of the other organizations after duly issuing notification by the respective organization. The orders issued by the G.B.Pant Hospital, New Delhi dated 20.5.1998, DGHS dated 12.10.1998 and the Lady Hardinge Hospital dated 22.12.1998(Annexure-A3 (Colly)) have been pointed out.

8. In the counter affidavit in support of their claim, learned counsel for the respondents made the following submissions:

The implementation of the revised scale to O.T. Technicians is applicable only to those O.T. Technicians who possess minimum B.Sc plus Diploma/Certificate in the relevant subject. As none of the applicants fulfills the condition stipulated in the recommendation of the Vth CPC, they were granted the replacement scale of Rs.4000-6000 to the pre-revised scale of Rs.1200-2040. Attention was also drawn to Part -B “Revised Pay Scales For Certain Common Categories of Staff” of the Notification dated 30.9.1997 (Annexure-A2). In this Notification, the O.T. Technicians are included as follows:

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Sl. No.	Posts	Present Scale (Rs.)	Revised Scale (Rs.)	Paragraph No. Of Report
1	2	3	4	5
<b>XVII. OPERATION THEATRE TECHNICAL STAFF</b>				
(A)	O.T. Technician	1200-30-1560-EB- 40-2040	5000-150-8000	52.78

9. Shri S.M. Arif, learned counsel the respondents while vehemently opposing particularly draw our attention to Para 52.78 which, inter alia, reads as follows:

“52.78 (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.”

It is thus very clear that only those O.T. Technicians who had minimum B.Sc plus Diploma/Certificate in the relevant subject would be entitled for the revised pay scale of Rs.5000-8000/-. Whereas the existing incumbents in each organization in operation theatres as well as sterilization service would be placed in appropriate matching pay scales. He argued that there is no infirmity whatsoever in giving the revised pay scale of Rs.4000-6000 to the existing incumbent in the pay scale of Rs.1200-2040/-. It was further contended that the demand made by the Association of Safdarjung Hospital O.T. Technicians is based on the erroneous demand which arose from the higher pay scale of Rs.5000-8000 which in fact had erroneously been given to O.T. Technicians of some of the hospitals, like Lady Hardinge Medical College, and Smt. S.K. Hospital. It was also submitted that this higher pay scale of Rs.5000-8000 has since been withdrawn by all these hospitals. The fact of higher pay scale having been withdrawn by the Government was also submitted by the learned ASG before the Hon'ble Supreme Court and finds place in the **Hon'ble Supreme Court's order dated 19.8.2004 in Civil Appeal No.5250 of 2002 in UOI Vs. Safdarjung H.O.T.T.S. Association & Ors.** as under:

“Mr. P.R.Malhotra, learned ASG submitted that the Central Administrative Tribunal did not take note of the First Schedule to the Central Civil Service (Revised Pay) Rules,



1997 and in particular to Rules 3 and 4 of the said rules. It was his stand that in respect of post/grade S-7 the revised scale was Rs.4000-100-6000/- as against three categories of the pre revised scales. According to him, the scale of Rs.5000-150-8000/- was applicable to S-9 post/grade. It was pointed out that the said benefit given to O.T. Technicians working in various institutions under Govt. of India, to which reference has been made by the Central Administrative Tribunal in its order dated 30.5.2000 has been subsequently withdrawn.”

**TA-4/2005(CWP No.7008-24/2005)**

10. The petitioner Shri Mahender Pal Sharma and others, O.T. Technicians of Lady Hardinge Medical College and Smt. S.K.Hospital, had filed CWP No.7008-24/2005 before the Hon’ble High Court seeking quashing of orders dated 7.12.2000 and 30.3.2005 and to issue a direction not to recover pay and allowances in 20 equal instalments. This CWP has been transferred by the Delhi High Court to this Tribunal vide order dated 27.10.2005 as the CAT has exclusive jurisdiction in the matter which has now been renumbered as TA-4/2005. The observations made by the Hon’ble High Court are as under:

“2.The petitioners in this case have sought for directions to quash an order dated 7.12.2000 issued by the respondents and also directions that no recoveries ought to be made from them. Their claim is premised on their entitlement to the benefit of 5<sup>th</sup> Pay Commission Recommendations.

3.Learned counsel for the petitioner has taken me through the judgment of Central Administrative Tribunal dated 30.5.2000 it was declared that denial of benefit of revisions sanctioned by the 5<sup>th</sup> Pay Commission to employees working in the Safdarjung Hospital was illegal and discriminatory. Counsel for the petitioner also relies upon a notification dated 30.9.1997 which it is submitted was considered by the Tribunal. The order of the Tribunal was affirmed by a Division Bench of this Court on 22.11.2000. The respondents preferred an appeal by Special Leave. The Supreme Court in its order dated 19.8.2004 remitted the matter for consideration by the Tribunal on all relevant aspects.”

11. It was also held by the Delhi High Court that “the Tribunal has exclusive jurisdiction in this matter and is the only forum to adjudicate this claim. It was also

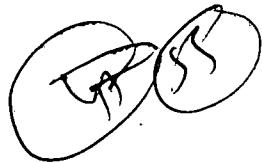
observed that the jurisdiction of this court is excluded by virtue of Section 14(1) of the Central Administrative Tribunal Act, 1985."

12. The case was accordingly transferred to the Principal Bench of Central Administrative Tribunal for hearing the petition.

13. The connected TA relates to the OA filed by the O.T. Technicians of the Safdarjung Hospital for grant of higher pay scale. The demand of Safdarjung Hospital O.T. Technicians Association is based on revised pay scale of Rs.5000-8000 having been allowed to O.T. Technicians of Lady Hardinge Medical College and Smt. S.K.Hospital, New Delhi. The O.T. Technicians of Lady Hardinge Medical College and Smt. S.K.Hospital were granted the revised pay scale of Rs.5000-8000. As that pay scale was granted erroneously, it was withdrawn vide O.M. dated 7.12.2000 in terms of detailed speaking order (Annexure P-8). The applicants filed OA-2636 and OA-2598 of 2000 before the Tribunal which was disposed off vide order dated 28.5.2002(Annexure- P10) with the following directions:

"7. In view of the above facts and circumstances, we consider it appropriate to dispose of the two OAs which shall abide by the decision of the Hon'ble Supreme Court in Special Leave Petition (Civil) No.20922/2000. The respondents shall also fully comply with the stay order granted by the Hon'ble Supreme Court and in the circumstances the ad interim orders granted by the Tribunal dated 13.12.2000 and 18.12.2000 in the two OAs respectively stand vacated."

14. It transpires that the O.T. Technicians of Lady Hardinge Medical College and Smt. S.K.Hospital were granted the revised pay scale of Rs.5000-8000 vide order dated 22.12.1998 ( Annexure-P3 (Colly) Page 34) whereas actually they were entitled to the revised pay scale of Rs.4000-6000 being the replacement scale of Rs.1200-2040. It is very clear from Notification dated 30.9.97, read with Para 52.78 of Vth CPC's recommendation that only those O.T. Technicians who had higher qualification of B.Sc plus Diploma/Certificate in the relevant subject, could have been granted the higher pay scale of Rs.5000-8000. It is also apparent that it was in fact the erroneous grant of the higher pay scale of Rs.5000-8000 to the O.T. Technicians of Lady Hardinge Medical College and Smt. S.K.Hospital which led to



the demand for the similar pay scale by the Safdarjung Hospital O.T. Technicians. The erroneous grant of higher pay scale to LHMC and Smt. S.K.Hospital having been rectified by the Government by withdrawing the higher revised pay scale of the employees who were not entitled for the grant of the same.

15. 16. We have heard the rival contentions of both the parties and have considered all aspects of the case in view of the directions of the Hon'ble Supreme Court. It is not in dispute that there are number of posts and categories of posts for which higher pay scales are recommended by the Central Pay Commission but with certain conditions like higher qualification etc. It is also not in dispute that once the recommendations of the Central Pay Commission are accepted by the Government, sometime even with modification, only then the pay scales would become admissible to the concerned employees. In the instant case, there is no doubt that higher pay scale of Rs.5000-8000 could have been granted only to those O.T. Technicians who possessed the prescribed qualification. Since the revised pay scale of Rs.5000-8000 was erroneously granted to the employees of one institution, namely Lady Hardinge Medical College, withdrawal of the pay scale by way of rectification cannot be said to be unjustified nor can an erroneously granted pay scale become the basis for grant of the same scale to the employees of other institution, namely the Safdarjung Hospital.

16. In view of foregoing discussion, we hold that neither the O.T. Technicians of Lady Hardinge Medical College and Smt. S.K.Hospital nor the Safdarjung Hospital were entitled to higher pay scale of Rs.5000-8000/- as they were not qualified to receive the same. Accordingly both the O.A and TA are dismissed. Interim order dated 25.4.2005 passed in TA 4/2005 is vacated. No costs.

17. Let a copy of this order be kept in each file.

*Chitra Chopra*  
(Chitra Chopra)  
Member (A)

*S. Raju*  
(Shanker Raju)  
Member (J)

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