

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 222/89
T.A. No.

199

DATE OF DECISION 17.12.1991NICD Staff Welfare Association & Petitioners
Ors.

Shri B.S. Charya Advocate for the Petitioner(s)

Versus Diseases & Ors.
National Institute of Communicable Respondents

Mrs. Raj Kumari Chopra Advocate for the Respondent(s)

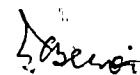
CORAM

The Hon'ble Mr. T.S. Oberoi, Judicial Member

The Hon'ble Mr. I.K. Rasgotra, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes


 (I.K. RASGOTRA)
 MEMBER(A)


 (T.S. OBEROI)
 MEMBER(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.222/1989

Date of decision: 17.12.1991

NICD Staff Welfare
Association & Others.

...Applicants

Versus

National Institute of ...Respondents
Communicable Diseases & Others

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

For the applicants Shri B.S. Charya, Counsel

For the respondents Mrs. Raj Kumari Chopra,
Counsel

(Judgement of the Bench delivered by

Hon'ble Mr. I.K. Rasgotra, Member (A))

The National Institute of Communicable Diseases (NICD) Staff Welfare Association through its General Secretary along with 27 others, working as Laboratory Attendants (Lab. Attendants) in NICD, in the pay scale of Rs.210-270 (pre-revised) Rs.800-1150, have filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking parity in pay scale with the Lab. Attenders in the Central Revenue Control Laboratories (CRCL) who have been placed in the pay scale of Rs.950-1400 (Rs.225-308 pre-revised).

The substantive plea of the applicants is that in terms of the Recruitment Rules notified in the year 1980, the qualification of the Lab. Attendant under column 8 of the schedule attached to the notification has been prescribed as Matriculation or equivalent with science from a recognised University or Board and that they are placed in the pay scale of Rs.210-270. Prior to the promulgation of the Recruitment Rules, quali-

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fication for the Lab. Attendant used to be non-Matriculate. According to the applicants the identical position obtains in the CRCL where also Matriculates with science subject are recruited, but were allotted pre-revised scale of Rs.225-308 which is now revised to Rs.950-1400. They are, therefore, aggrieved by the discriminatory treatment meted to them. For their claim they have relied on the recommendations of the Fourth Central Pay Commission vide para 11.50 of the report which is reproduced below:-

"11.50. There are posts of laboratory attendant in the Central Revenue Control Laboratories in the scale of Rs.225-308. These posts are filled by direct recruitment from amongst matriculates with science. It has been stated that non-matriculates are no longer being recruited. An expert committee appointed by government has also recommended improvement in the scale of pay. We recommend that posts of laboratory attendant in the ordinary grade (Rs.225-308) and selection grade (Rs.260-350) may be merged and given the scale of Rs.950-1400."

Accordingly, the Lab. Attenders in the CRCL have been granted scale of pay of Rs.950-1400. The applicants contend that they are performing similar duties and functions as performed by the Lab. Attendants similarly circumstanced in CRCL and other Laboratories of the other Departments. The grant of higher scale of pay to the Lab. Attendants in the CRCL and lower scale of pay to the Lab. Attendants in the NICD is, therefore, arbitrary and discriminatory and offends the principle of 'equal pay for equal work'.

By way of relief they have prayed that the respondents may be directed to allot the scale of pay of Rs.950-1400 w.e.f. 1.1.1986 to applicants No.2-28,

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working as Lab. Attendants with further direction to pay the arrears and other attendant benefits accruing therefrom.

2. Shri B.S. Charya, the learned counsel for the applicants drew our attention to the list/ duties of the Lab. Attendants in the NICD at (Annexure P-8) attached to the rejoinder. He submitted that the duties and responsibilities of Lab. Attendant in NICD are not only equivalent to the other Lab. Attendants in the Revenue Department and elsewhere but they are more onerous and also need specialised knowledge particularly when they are attached to Microbiology Division, B.C.G. Laboratory, Zoonosis Division, Epidemiology Division, Biochemistry Division etc. Further the qualifications and experience required as per the Recruitment Rules are identical to the one prescribed for Lab. Attenders in CRCL. The learned counsel also drew our attention to item 45 of the 13th Meeting of the Departmental Council where the issue was raised for getting the posts of the Lab. Attendants (Rs.210-270) upgraded from Group 'D' to Group 'C' so that after about 10-12 years of service they have suitable avenues of promotions (Annexure P-1). It was further averred that a proposal to allot the pay scale of Rs.825-1200 to the Lab. Attendants of NICD is being processed. However, even if this proposal goes through, the applicants shall remain the victims of discrimination as personnel performing similar duties have been allotted the higher scale of pay of Rs.950-1400. The learned counsel for the applicants relied on the following judicial dicta to fortify the claim of the applicants for parity with Lab. Attendants of the CRCL:-

i) 1988 (7) SLR 109 Naranjan Das Packer & Ors. v. State of Haryana & Ors.

This case relates to payment of wages at the same rate to the packers in Printing and Stationary Department and their counterparts in the Public Relation Department for discharging the same and similar duties. The Punjab & Haryana High Court, therefore, following the doctrine of equal pay for equal work allowed the C.W.P. of the petitioner.

ii. 1988 (7) SLR 666 Ramesh Chandra v. State of Rajasthan

This also relates to equal pay for equal work to LDCs paid daily wages at lower rates when other LDCs in the State performing the same and identical duties were paid regular scale of pay. The Rajasthan High Court, therefore issued directions to the respondents to give equal pay to the daily wagers.

iii. AIR 1988 SC 517 U.P. Income-tax Department Contingent Paid Staff Welfare Association v. Union of India & Ors.

This again deals with application of doctrine of equal pay for equal work to daily rated Class IV employees who had been working for nearly 8 years or more while their counter part were employed in regular scale of pay. The respondents were directed to pay wages to such workman at the rates equivalent to minimum pay in pay scale of regular employed workers.

iv. 1988 (1) SLR 388 Haryana Improvement Trust Employees Union (Regd) through its General Secretary v. State of Haryana & Another.

This relates to the application of doctrine of equal pay for equal work where employees discharging same and similar duties were dis-

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criminated.

3. Mrs. Raj Kumari Chopra, the learned counsel for the respondents referring to the written statement took the preliminary objection that allocation of scale of pay is a policy matter and, therefore, the application is not within the jurisdiction of the Tribunal. On merit, the learned counsel submitted that the Lab. Attendants in the NICD according to the Recruitment Rules notified on 2nd October, 1980 are placed in the pay scale of Rs.210-270 (pre-revised scale). The revised scale of pay recommended by the Fourth Central Pay Commission applicable to this category is Rs.800-1150. Same scales of pay have been allotted to the Lab. Attendants with similar Recruitment Rules in other departments where the posts of same nomenclature viz. Lab. Attendants are in existence. The post of Lab Attendant in NICD is classified as Group 'D' post as per the pay scale of Rs.210-270 (pre-revised) attached to the post. The Recruitment Rules also provide that 66 $\frac{2}{3}$ % of the posts are to be filled by direct recruitment having educational qualification as Matriculation with science and 33 $\frac{1}{3}$ % by promotion from certain Class IV categories having middle pass qualification and at least three years' service in the grade. The scale of pay for all the posts remains the same. The learned counsel further submitted that Lab. Attendants of NICD are not comparable with the Lab. Attenders in the CRCL. The specific recommendation of the Fourth Central Pay Commission vide paragraph 11.50 relates to Lab. Attenders in the CRCL and not to Lab. Attendants. There is a typographical error in the description of nomenclature of the posts in paragraph 11.50 of the Fourth Central Pay Commission's Report. Further the Lab. Attenders in CRCL are placed in the grade of

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Rs.225-308 by the Third Pay Commission and are classified as Group 'C'. The duties of the Lab. Attenders are notified by the CRCL, Government of India vide Office Order No.18-ADM/51 dated 19.5.1987. A perusal of the duties would indicate that they are totally different from the duties and nature of work of the Lab. Attendants in the NICD. The Lab. Attenders generally deal with the seized contraband goods. The learned counsel further drew our attention to the material submitted by the Ministry of Health and Family Welfare, Directorate General of Health Service to the Fourth Central Pay Commission for Group 'D' posts answering the Questionnaire of the Commission. The following duties have been listed for Lab. Attendants in NICD:

- "a. Cleaning of slides, Laboratory equipment, applicances and glassware.
- b. Upkeep of Laboratory Senitation/cleanliness."

The list of duties filed with the rejoinder is not the list duly notified by the NICD.

The learned counsel questioned the case of the applicants on the following grounds:-

"The principle of 'equal pay for equal work' is not involved as the applicants belong to Group 'D' (Rs.210-270) whereas they are seeking parity with Group 'C' employees (Rs.225-308) in CRCL. Again the nomenclature of the applicants is Lab. Attendants whereas they are comparing themselves with Lab. Attenders of the CRCL. The Recruitment Rules of Lab. Attenders at Annexure R-II notify their status as that of Group 'C' non-gazetted, non-ministerial with

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the scale of pay of Rs.225-308 and qualification of Matriculation or equivalent from a recognised University or Board. Appointment to the post of Lab. Attenders is 100% by promotion on the basis of the recommendation of DPC. This is not so in the case of Lab. Attendants in NICD. Further while in the departmental council (JCM) the Lab. Attendants of NICD have claimed the pay Scale of Rs.825-1200. The relief sought for from the Tribunal is parity of pay with altogether a different category of staff. The lab. Attendants of NICD have promotional avenue available to them as Insect Collector in the grade of Rs.950-1400. The learned counsel also submitted that applicant No.9 and 20 have already been promoted as Insect Collectors in the pay scale of Rs.950-1400 in April, 1990 and December, 1990 respectively. The learned counsel further submitted that specific recommendations made by the Fourth Central Pay Commission for the Lab. Attenders of CRCL Group 'C' cannot be extended to the general category of Lab. Attendants who are classified as Group 'D'."

Mrs. Raj Kumari Chopra, the learned counsel for the respondents cited the following judgements in support of her case:-

a. 1990 SLJ January 56 CAT Chandigarh Shri D.R. Sharma v. Union of India & Ors.

In this case an important point which has been made by the Chandigarh Bench of the Tribunal is that nobody can be allowed to derive advantage of a mistake. In this case the name of the

applicant was included as an Assistant inadvertently and the mistake was rectified after about 6 months by deleting his name. The Tribunal, therefore held that the rectification of the bonafide mistake was valid.

b. 1990 (1) SLJ April 161 Mewa Ram Kanojia v. A.I.I.M.S.

In this case their Lordships of the Supreme Court were considering the case of Hearing Therapist who was claiming the same pay as was granted to Audiologists on the Principle of equal pay for equal work. Declining the petition, their Lordships observed that the principle "equal pay for equal work has no mechanical application in other case of similar work."

4. Shri B.S. Charya, the learned counsel for the applicants filed an affidavit maintaining that the details of the duties of the Lab. Attendants of NICD at Annexure P-8 to the rejoinder are correct. He further submitted that the Anomaly Committee set up in the Ministry of Health had discussed among other things, the pay scale of the Lab. Attendants of NICD in the context of paragraph 11.50 of the Fourth Central Pay Commission's Report.

5. We have heard the learned counsel of both the parties and gone through the material placed before us. We observe that the Laboratory Attendants in the NICD are in Group D while the Laboratory Attenders in CRCL are classified as Group 'C'. While the former had the pay scale of Rs. 210-270 (Pre-revised), the latter post carried the pay scale of Rs. 225-308 (Pre-revised). The respondents have established that reference to

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nomenclature of Laboratory Attendants in CRCL in paragraph 11.50 of the Fourth Central Pay Commission's Report as a typographical error or a bonafide mistake. The said category discussed in that paragraph of the Commission's report is that of Lab. attenders. The Recruitment Rules of the two categories are also distinguishable from each other. Similarly the list of duties submitted by the applicant is at variance with the list of duties submitted in an official document by the Health Ministry to the Fourth Central Pay Commission. The doctrine of equal pay for equal work is therefore clearly not applicable in this case where the classification of the staff having regard to the duties and responsibilities attached to the posts in each category do not have any comparability. We also find that whereas there is a specific recommendation for the posts of Lab Attenders by the Fourth Central Pay Commission, who examined the conditions of services of Central Government employees in the recent past, no material has been produced to show if any specific recommendation for the category of Lab. Attendants in general has been made by the Pay Commission. In absence thereof the Lab. Attendants would be eligible only for the normal replacement scale recommended by the Pay Commission. In the case of K. Vasudevan & Ors. etc. v. UOI & Ors. JT 1990 (3) SC 58 the Hon'ble Supreme Court was considering / the Section Officers working in the Indian Audit & Accounts Department are entitled to the same pay scale, as are being drawn by the Section Officers in the Central Secretariat. Their Lordships observed that:

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"The pay revision by the Government was based on the recommendations of the Third Pay Commission which was an expert body. The extent of material and expertise before the Pay Commission is obvious from para 22, Part I of the Report.

.....

We, therefore, see no force in this contention and reject the same".

We may also usefully reproduce the observation made by the Hon'ble Supreme Court in **State of Uttar Pradesh V. J.P. Chaurasia and Ors. (1989) 1 SCC 121:**

"18. The first question regarding entitlement to the pay scale admissible to Section Officers should not detain us longer. The answer to the question depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the court should normally accept it. The court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration."

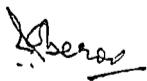
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6. The above observations of the Hon'ble Supreme Court is equally applicable in the case of Fourth Central Pay Commission and allotment of the scales of pay to the Government servants based on their recommendations. The Fourth Central Pay Commission was also presided over by a former Judge of the Hon'ble Supreme Court and had taken into consideration all relevant facts and circumstances including expert evidence before submitting its report to the Government of India recommending revision of pay scales. We, therefore, see no reason for our interference in the matter placed before us.

This will, however, not preclude the respondents from considering the improvement in the scale of pay of the Lab Attendants of NJCD, keeping in view their duties and responsibilities and the recruitment rules regulating their service conditions. We are living in a dynamic society and the duties and responsibilities are undergoing changes in a large number of sectors with the introduction of modern technology. With these observations, the OA is disposed of with no orders as to costs.

7. Before we part with the case, we would like to observe that the Applicants had moved MP No. 354/91, seeking amendment of the OA. Notice of the same was given to the respondents, who had filed reply opposing the same. Though the MP was fixed for hearing on several dates, the learned counsel for the petitioners in the MP could not be present for one or other reasons and eventually the same had to be dismissed vide order dated 20th November, 1991.


(T.K. Rasgotra)
Member (A)


(T.S. Oberoi)
Member (J)