

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00384/2017

Wednesday, this the 17th day of February 2021

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

Mr.Pramod.M.A., S/o.Augustine.S.,
Aged 34 years, Technical Assistant,
Regional Office for Health and Family Welfare,
Government of India, Meads Lane, Cantonment,
Palayam, Near Jubili Hospital, Trivandrum – 695 034.
Residing at Pramod Bhavan, Navodaya Lane,
Vazhapallikonam, Kuvalassery P.O.,
Thiruvananthapuram – 695 512.

...Applicant

(By Advocate Mr.V.Sajith Kumar)

v e r s u s

1. The Senior Regional Director,
Regional Office for Health and Family Welfare,
TC/14/2151(1), Meads Lane, Cantonment,
Palayam, Trivandrum – 695 034.
2. The Director General of Health Services,
Directorate Nriman Bhavan, New Delhi – 110 011.
3. Union of India
represented by Secretary to the Government,
Ministry of Health and Family Welfare,
Nriman Bhavan, New Delhi – 110 011.

...Respondents

(By Advocate Mr.N.Anilkumar, SCGSC)

This application having been heard on 4th February 2021, the Tribunal
on 17th February 2021 delivered the following :

ORDER

Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

The applicant who is a Technical Assistant in the Regional Office of Health and Family Welfare, Government of India, Trivandrum is aggrieved by the inordinate delay on the part of the respondents in granting him the scale of pay of Rs.9300-34800 with Grade Pay (GP) of Rs.4200/- (pre-revised Rs.5000-150-8000) with effect from the date of entry into the service in terms of Orders in similarly situated cases of the C.A.T., Bangalore Bench in O.A.No.80/2002 and of the C.A.T., Guwahati Bench in O.A.No.38/2015. He submits that all other Technical Assistants in the service have already been granted the scale of pay of Rs.9300-34800 with GP of Rs.4200/- through orders of various Benches of this Tribunal. It is submitted that he is a First Class Post Graduate in Mathematics and was selected through the Staff Selection Commission (SSC) to the post of Technical Assistant in the Ministry of Health and Family Welfare and appointed under the respondents with effect from 07.12.2012 vide the Annexure A-1 appointment order. Prior to this, he was working with the Survey of India from the year 2003. The Recruitment Rules to the post of Technical Assistant have been produced at Annexure A-2. From the Recruitment Rules the applicant submits that it is clear that the method of recruitment to the post is by direct recruitment 100% (Column 10 of the schedule to the Recruitment Rules) and the minimum essential qualification is a Master's degree in

Mathematics or Statistics. A desirable qualification for the post is the knowledge of collecting, maintaining, analyzing data pertaining to family planning.

2. The applicant submits that the above features of the Recruitment Rules make it mandatory that the Technical Assistant must have in depth knowledge in collection and analysis of statistical data. He submits that the Technical Assistant post with a total sanctioned cadre strength of around 10 is being filled up through 100% direct recruitment, which ensures that no person without any knowledge or even less knowledge in statistics is eligible for the post. The post is an isolated one. The applicant submits that no direct recruitment should normally be made to such post as no promotional avenues exist for incumbents of such isolated posts leading to frustration and demoralization. He submits that the policy has always been to fill up such isolated posts by appointment on deputation or on a contract basis. The applicant further submits that during the time of the 5th Central Pay Commission (CPC) no cadre specific scrutiny of the posts of Technical Assistant, Statistical Assistant and Investigators (Stat) with the Directorate General of Health Services (DGHS) was done. The pay scale of said posts were just revised to the normal replacement scale of pay, namely, for Technical Assistants from Rs.1400-2300 to Rs.4500-7000 and for Statistical Assistants from Rs.1400-2300 to Rs.4500-7000 and for Investigators (Stat) from Rs.1640-2900 to Rs.5500-9000. However, vide Annexure A-3 order

dated 05.08.1998, the normal replacement scale of pay for the post of Statistical Assistant was further raised from Rs.4500-7000 to an upgraded replacement scale of pay of Rs.5000-8000. Similarly, the pay of Investigator (Stat) was raised from Rs.5500-9000 (normal replacement scale of pay) to Rs.6500-10500, upgraded replacement scale of pay. This was done by DGHS only for these posts. The post of Technical Assistant was not considered similarly for upgradation and was denied parity with the Statistical Assistant.

3. It is submitted that the 5th CPC had made an elaborate examination of all the statistical posts in different Ministries and had come to the conclusion that the statistical function posts are special category posts. The Commission gave guidelines for financial upgradation of pay scale with relevance to the entry level qualifications. It recommended constitution of a Subordinate Statistical Service to undo the injustice on account of stagnation and to create avenues for promotion in different Ministries. However, it did not make cadre specific scrutiny of posts of Statistical Assistant and Investigators (Stat) in the DGHS. However, while action was taken for improving and upgrading the scale of pay of Statistical Assistant and Investigator (Stat) in the DGHS vide Annexure A-3 order, the post of Technical Assistant was similarly not considered for upgradation. It is submitted that this affected similarly placed officials substantially and set in motion an anomaly, wherein, a graduate in Statistics was granted a higher

pay scale as compared to a post graduate in Statistics in the same Directorate/Department. Further, the upgradation was made effective from 01.01.1996, the date from which the 5th CPC recommendations were implemented.

4. Aggrieved by this discrimination, Smt.Ishwari.M., a Technical Assistant posted at the Bangalore Regional Office of Health & Family Welfare approached the C.A.T., Bangalore Bench seeking parity in pay. Initially, orders were issued to the respondents to consider her representation. The representation was rejected holding that the post of Technical Assistant is not a statistical functional post and, since, she is not holding a statistical post, she was not eligible for grant of upgraded replacement scale of pay of Rs.5000-8000 and Rs.5500-9000. This order was challenged before the Bangalore Bench and was not allowed by the Bench initially. After an appeal the Hon'ble High Court of Karnataka remanded the matter back to the Bench for fresh consideration. Accordingly, the O.A was re-heard and the prayer for the grant of scale of Rs.5000-8000 with effect from 01.01.1996 and replacement scale as per the then 6th CPC was allowed vide order dated 25.11.2011 in O.A.No.80/2002, a copy of which has been produced at Annexure A-6. This was then implemented by the respondents vide Annexure A-7. Later, the same issue was considered by the Guwahati Bench of the C.A.T in another case filed by a technical assistant posted in Imphal and it was held that the applicant

therein was entitled to the upgraded pay scale, vide order dated 17.02.2016 in O.A.No.042/00038/2015, a copy of which has been produced at Annexure A-8. The respondents implemented the directions in this Order by granting the benefits vide Annexure A-9.

5. The applicant submits that almost all the Technical Assistants serving with the respondents have been granted the higher scale of pay and there is no justification in denying the same to him. After the filing of the O.A., he produced additional documents on 18.09.2020 through filing of a M.A.No.180/568/2020. These documents indicate that the C.A.T., Mumbai Bench in O.A.No.438/2016 in a similar matter held that the action of the respondents therein in compelling the applicant and similarly placed persons to approach Courts individually, inspite of the fact that the issue in hand had been decided by the Bangalore Bench and affirmed by the Hon'ble High Court of Karnataka and implemented by the respondents, is against the law settled by the Hon'ble Apex Court and various High Courts. In this matter the respondents were directed not only to grant the scale of pay of Rs.5000-8000 to the applicant with effect from 01.01.1996 with all consequential benefits as will be accrued to the applicant on re-fixation of pay after 6th and 7th CPC including arrears of pay but also to pay Rs.5000/- as cost of the O.A to the applicant. A copy of this Order has been produced at Annexure A-12 and a copy of the order implementing the same has been produced at Annexure A-13 and Annexure A-13(a) respectively. Similarly,

after the disposal of O.A.No.61/2018 of Chandigarh Bench of C.A.T., (Circuit Bench at Jammu), the Technical Assistant, Regional Office for Health and Family Welfare, Srinagar was granted upgradation with parity vide Order dated 12.07.2019, a copy of which has been produced at Annexure A-14. The applicant submits that these Orders show that the matter in issue has already been considered and decided in favour of the technical assistants by various Benches of this Tribunal and thus, the denial of the benefits to him is highly unjust.

6. A major ground on which the applicant has based his prayer is that a post graduate degree in Mathematics or Statistics was the minimum eligibility for appointment to the post of Technical Assistant. However, for the post of Statistical Assistants, the qualification prescribed was only graduation; however, these officials are being paid a higher scale of pay. He submits that the Technical Assistants are doing functions similar to that of Statistical Assistants, if not, with higher responsibilities. After the implementation of 5th CPC, Statistical Assistants are being given higher pay, ignoring the higher qualification and duties and responsibilities of the Technical Assistants. He submits that, as such, the denial of 'equal pay for equal work' is against the principles of equality enshrined in the Constitution. He submits that this is an "abstract" doctrine in consonance with principle of equality enshrined under Article 14 of Constitution of India. Hostile discrimination, which is illogical, irrational and illegal in a

matter where there is no intelligible differentia and which has a reasonable nexus with the object sought to be achieved, cannot pass the test of reasonableness. The applicant has cited a number of cases in support of his position, as follows :

(a). **Inder Pal Yadav v. Union of India (1985 (2) SCC 648)** wherein the Hon'ble Supreme Court had held that *“those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else, at the hand of this Court.”*

(b) A similar view was reiterated in **Uttaranchal Forest Rangers Association (Direct Recruits) & Ors. v. State of Uttar Pradesh & Ors. (2006 (10) SCC 346)** wherein it was held that *“Going by the said doctrine the respondents ought to have implemented the parity in pay to all the similarly situated.”*

(c) In the arena of 'equal pay for equal work' in **Randhir Singh v. Union of India (AIR 1982 SC 879)** the Hon'ble Supreme Court directed the Delhi Police establishment to grant driver constables at least the pay applicable to the drivers in Railway Protection Force. The only objection raised by the establishment was that the drivers of the police force and the other drivers were belonging to different Departments and that the principle of 'equal pay for equal work' was not applicable. The above contention was held irrational by the Hon'ble Supreme Court by allowing the prayer.

(d) In **Jaipal Niaz Mohammed & Ors. v. State of Haryana (1988 AIR SC 1504)** the claim for parity in pay was disputed by Government by contending that the mode of selection between parties was absolutely different. This was rejected by the Hon'ble Supreme Court by holding that the difference in mode of selection will not affect the application of the doctrine of "equal pay for equal work" if both classes of persons perform similar functions and duties under the same employer.

(e) A similar plea was raised by the State of Haryana in opposing the case of Supervisors in the case of **Bhagwan Dass v. State of Haryana (1987) 4 SCC 634**. While rejecting the plea, it was observed that if the State deliberately chose to limit the selection of candidates from a cluster of a few villages it will not absolve the choice to limit the selection of candidates in a discriminatory manner to be to the disadvantage of the selectees, once they are appointed, provided the work done by the candidates so selected is similar in nature.

7. The applicant, therefore, submits that the case in hand is already covered by Orders of this Tribunal in different Benches which have already been implemented by the respondents. It is also covered by the principles laid down in various judgments of the Supreme Court as cited above. As such, there is no justification for further delaying the grant of benefits to the Applicant as it will be highly unjust and discriminatory.

8. Per contra, Respondents filed a reply statement wherein they admitted that the applicant possesses a First class Master's Degree in Mathematics as, interalia, prescribed in the Recruitment Rules for the post. He was appointed to the post of Technical Assistant, Class III, Non Gazetted, in the Regional Office of Health & Family Welfare at Thiruvananthapuram on 07.12.2012 through SSC in the scale of pay of Rs.5200-20200 with GP of R.2800/- as per the prescribed Recruitment Rules. This post of Technical Assistant is an isolated post under the Regional Office of Health & Family Welfare with no promotional avenues. While the 5th Pay Commission did make various recommendations with regard to pay scales after examining in depth the service conditions as well as petitions submitted by the Government servants and also opinions from other quarters, it was for the Government to take a final view on these taking into account relevant factors. In the instant case, no decision has been taken by the Government to merge the isolated posts with statistical functions, like the posts of Technical Assistant, RoHFW within the Subordinate Statistical Service, as recommended by the 5th CPC in para 81.17 of the Report. As such, extending benefits on the basis of recommendations of the 5th CPC without a Government decision thereto, would be highly inappropriate. Further, the mere possession of qualifications prescribed for certain category of posts does not make other category of posts entitled to a similar scale of pay. The nature of service and responsibilities also need to be compared suitably and a decision taken thereof on merit. To cite an example, an initial recruit in

the grade of IAS, for which the essential qualification is graduation, is placed in level 10 of the Pay Matrix. The same does not call for/justify that all categories of posts stipulating just an essential qualification of graduation be given the benefit of the same level of the Pay Matrix.

9. The respondents also submit that the duties and responsibilities handled by the applicant are primarily of a routine nature as would be apparent from the resume of duties submitted by him in his APARs, a copy of which has been produced at Annexure R-1(a). They submit that he has been basically only assisting the Senior Regional Director and other Medical Officers during their visits by collecting data from sub health centres and maintaining reports pertaining to National Health Programmes. These duties seem to be only routine in nature and cannot be called as core statistical functions. The only statistical function in his area of work is field verification of MCH beneficiaries and cross verification with records during field visits. Thus, considering his request for grant of similar pay structure as payable to the statistical cadre of posts appears to be unjustified.

10. The respondents submit that the applicant was very well aware that his post was different from other posts in the Subordinate Statistical Service. Having exercised his option to join an isolated post under the Government in 2012 (when the pay structure as per 6th CPC was in force) and also having taken a decision to remain there, now seeking parity with

other Subordinate Statistical Service posts due to the changed position of a higher pay scale having been extended to the latter does not seem to be at all justified. Even after extension of a higher pay scale to Smt.Ishwari M., Technical Assistant, RoHFW, Bangalore the competent authority has not found it appropriate to consider the merger of these isolated posts with other posts belonging to Subordinate Statistical Service. It is submitted that extending the parity of scales of pay with Smt.Ishwari M, which was a special case, is irrational. The applicant is not similarly placed as Smt.Ishwari M considering the fact that the duties performed by him cannot be said to be core statistical functions. The applicant will be eligible to be considered for grant of financial benefits, subject to fulfilment of stipulated conditions, under the Modified Assured Career Progression Scheme (MACPS) of the Government of India. Hence, there will be no stagnation in his case in so far as financial benefits are concerned. The respondents reiterate that the applicant had joined the current post in 2012 when he knew that no decision on the recommendations of the 5th CPC for merger of isolated posts with statistical functions had been taken by the Government.

11. The respondents have also produced a table comparing the duties and responsibilities attached to the post of Technical Assistant with that of Statistical Assistant in the Regional Office of the Health & Family Welfare at Annexure R-1(b). The same is reproduced below :

Technical Assistant	Statistical Assistant
Technical Reports – compilation and maintenance of statistical figures under Family Welfare & NMEP and other National Programmes – Quarterly & Periodical review of the programme – Maintenance of files and correspondence.	<p>Collection of information for research studies by under-taking frequent field trips making house to house and institutional survey.</p> <p>Scrutiny and consistency check of the research data.</p> <p>Compilation of health information, data.</p> <p>Compilation, tabulation & analysis of data.</p> <p>Graphic representation of data.</p> <p>Data entry for mechanical tabulation (computer operation).</p> <p>Assisting for mechanical tabulation.</p> <p>Any other work assigned by superiors.</p>

The respondents claimed that as per the above it is clear that the duties and responsibilities of both the posts are quite different and hence not comparable. Extension of the upgraded scale to Smt. Ishwari M., by the CAT, Bangalore on an application filed by the individual was a special case and extension of such an upgraded pay scale cannot be a matter of right. As regards the order of the Guwahati bench of the C.A.T., it is submitted that it had granted the upgraded pay scale in the case of the applicant therein ex-parte.

12. The respondents submit that the applicant is not at all similarly placed as Smt.Ishwari M. since he is not performing core statistical functions. This has been further reiterated by them in their additional reply statement wherein they have stated that Smt.Ishwari M. possessing the qualification of M.Sc. in Statistics joined as a Technical Assistant with effect from 16.08.1998 and was governed by 4th CPC. She had relied upon the observations made in 5th CPC with reference to statistical posts. However, this applicant was appointed to the post of Technical Assistant, Class III, Non-Gazetted only on 07.12.2012 through the Staff Selection Commission (SSC) in the scale of pay of Rs.5200-20200 with GP of Rs.2800, ie. after the implementation of 6th CPC. It is mentioned by them that decisions with regard to the implementation of the recommendations of Pay Commission have to be taken by the Government. Even after extension of higher pay scale in the case of Smt.Ishwari M, the Government has not found appropriate to merge the isolated posts of Technical Assistants with the posts belonging to the Subordinate Statistical Services. It is submitted that the applicant knew very well that he was joining an isolated post under the Government with no promotional avenues. However he decided to join the post for reasons best known to him. Asking for a higher pay scale now on the ground that it has been given to other subordinate statistical posts is unjustified. His APAR's reveal that he has not been performing core statistical functions. The respondents submit that in any case the dictum of 'equal pay for equal work' cannot be arithmetically enforced. Different

organisations are having different pay structures and different staff patterns. He cannot claim parity with the pay of another post in a totally different organisation on the ground that qualifications are same. The respondents accept that the principles of equal pay for equal work can be extended to similarly placed persons in the same Department, but employees of two separate organisations are not similarly placed. Hence the ratio of the decisions quoted by the applicant is not applicable here. The pay structure in a particular department is fixed by Government after considering various aspects.

13. The respondents have also relied on the Hon'ble Supreme Court's judgment in **Union of India v. Arun Jyoti Kundu & Ors. (2007) KHC 3861** wherein typists claimed merger of their cadre with the cadre of clerks and higher payscales. It was held that the C.A.T could not direct the Government to sanction the payscale of the clerks with effect from 01.01.1996 and grant arrears of pay. It was observed that neither the C.A.T nor the High Court can direct the merger of any cadre, which is a policy decision for the Government to take. It was also ruled that the C.A.T had exceeded its jurisdiction in issuing the directions it has issued and the High Court was in error in not setting them aside. Similarly, in O.A.No.171/2012 the C.A.T., Ernakulam Bench had elaborately considered the matter in hand and held that *“the Tribunal cannot act as another Pay Commission to recommend re-designation of the various posts or to recommend pay scales*

as claimed by the applicants. Even though persons may do the same work their quality of work produced may be different. There may be qualitative differences as regards reliability and responsibility. Equal pay must depend upon the nature of the work done. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities would make a difference. One cannot deny that often the difference is a matter of degree and there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service.....It is for the Government or the management to fix the pay scales after considering various other matters and the court can only consider whether such fixation of pay scales has resulted in an invidious discrimination or is arbitrary or patently erroneous in law or in fact.”

14. We have heard Shri.V.Sajith Kumar, learned counsel for the applicant and Shri.N.Anilkumar, learned SCGSC for the respondents. We have also gone through the documents and records as well as the Court Orders cited in support of the respective positions. We note at the outset that it is now a fact that at least four different Benches of this Tribunal ie. Bangalore, Guwahati, Mumbai and Chandigarh have ruled in favour of raising the pay of the applicant Technical Assistants located within their jurisdiction and belonging to the same organisation ie. Directorate General of Health Services (the Regional Office of Health and Family Welfare located in those

States) to the level of Rs.9300-34800 with GP of Rs.4200/-, on par with Statistical Assistants with effect from the date of entry into service or with effect from 01.01.2006, whichever was relevant for the case. The reasoning exercised in each case might have been different, they have come to the same conclusion in favour of raising the pay of Technical Assistants to the level drawn by Statistical Assistants. Second, we have also carefully gone through the duties and responsibilities of Technical Assistant and Statistical Assistant as per the job chart provided at Annexure R1(b). We note that after going through the details it is not possible for us to make a full assessment as to whether there is a real qualitative difference in terms of the expertise required for doing the duties attached to the concerned posts. On an initial perusal however it appears that the duties can be done by either one or the other i.e. a Technical Assistant should easily be able to perform the duty of a Statistical Assistant or vice versa. Indeed, even in the case of the applicant in the C.A.T., Bangalore Bench Smt.Ishwari M., it was held by the Tribunal at Para 13 of that order as follows :

“13. We feel that there is no material distinction between the jobs performed by the two cadres as highlighted above, being the real statistical function. Other details mentioned for Statistical Assistants are merely by better elaboration of statistical function. It looks that the Department could gain by not keeping the two cadres of Technical Assistant (Statistics) and Statistical Assistant as separate but by merging the two, as that would bring about a rational distribution of the work load. We, therefore, partly agree with the learned counsel for the applicant. The case of the applicant who is the Technical Assistant must be treated on the similar lines as those of Statistical Assistants.”

In addition, in the same order it was mentioned in para 15 as follows :

“15. We feel that the present distinction that the department has maintained between the cadres of Technical Assistant and Statistical Assistant is an artificial distinction that may have had its justification many years ago but not now when the dynamics of the department requires much better quality of statistical analysis and the capabilities of the Technical Assistant for statistics can be better utilised, assuming that this is not being done as at present. In any case, that cannot be allowed as a ground to continue the cadre of Technical Assistant at a discriminated level even when their entry qualification is Post Graduation.”

15. We further note that in the matter decided by C.A.T., Guwahati Bench in O.A.No.042/00038/2015 it has been recorded as follows :

“7.The Hon'ble Supreme Court has consistently held that where all relevant considerations are the same, persons holding identical posts and discharging similar duties should not be treated differently. In Inder Pal Yadav v. Union of India (1985) 2 SCC 648, the Hon'ble Supreme Court has held as hereunder :

“.....those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court.”

Again, in Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P., (2006) 10 SCC 346, the Hon'ble Supreme Court has referred to the decision in the case of State of Karnataka v. C.Lalitha, (2006) 2 SCC 747 as under :

29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently.”

16. We have already mentioned the findings of the C.A.T., Mumbai Bench in relation to the applicant Technical Assistant located there earlier. In that case, the Bench found that the applicant before the Bangalore Bench and the applicant before the Bombay Bench were identically placed and, as such, rejection by the respondents of the claim of the applicant for extension of the benefit of the judgment in Smt.Ishwari M was arbitrary. In fact, in that case the action of the respondents in compelling the applicant and similarly situated persons to approach the court individually in spite of the fact that issue in hand had been decided by the Bangalore Bench and affirmed by the Hon'ble High Court and also implemented by respondents was held as arbitrary and against the law settled by the Hon'ble Apex Court and Hon'ble High Court(s).

17. In this case, the respondents have still not accepted these findings and have instead tried to make a distinction between the duties and responsibilities of this applicant vis a vis Statistical Assistants and also in relation to the applicant in the Bangalore Bench. They also have made another distinction in relation to the time of entry into service as Technical Assistant with that of the Bangalore Applicant. However, we do find that all this is very material or even justified in any way. Technical Assistants across the country working in the same office (Regional Office of Health & Family Welfare) of the same Department and recruited under the very same Rules surely cannot be said to be very dissimilar. Of course, there may be

minor variations in duties from one Regional Office to another but overall the duties and responsibilities will be almost identical. There has been no dispute on the fact of the applicant possessed the required Post Graduation qualifications and other similar conditions for entry. Just due to the fact that the applicant joined service in 2012, whereas, for example, Smt. Ishwari M joined service at the time of the 4th CPC with effect from 1998 and had different expectations, should not make any difference to the consideration of the issue at hand. Even if the applicant know that this was an isolated post and he was joining the post after leaving another post, it does not mean that he is not entitled to be considered for the benefit of higher pay scale, which as we have outlined; so many Benches of this Tribunal have already allowed in the cases of similarly posted Technical Assistants.

18. We also do not think that the reasoning given in OA 171/2012 of this Tribunal which we had brought out earlier is applicable in this case. The inherent logic of the Apex Court's findings in the judgments based on 'equal pay for equal work' is applicable in this case. Various Benches of C.A.T have already found that the pay of Technical Assistant needs to be equated with Statistical Assistant. We have also noted that it is difficult to make a very fine distinction between the two posts and duties and responsibilities thereon. The qualification for Technical Assistants are in no way inferior to that of Statistical Assistants and are very similar and in fact one step higher. Hence, we do see any infirmity in allowing a similar logic to be applied in

this case. We also note that except for the appeal in the case of Smt. Ishwari.M., to the High Court of Karnataka which was then rejected, no further steps have been taken by the Respondents. They have gone ahead implemented grant of the enhanced pay scale in all the other cases. The orders passed by other Benches only further buttress the applicant's case. **We therefore, find that a clear case has been made grant the enhanced pay scale to the applicant not just in the light of these decisions of the other Benches but also on merit, considering the duties, responsibilities, qualifications etc. of Statistical and Technical Assistants.**

19. We are quite aware of the directions of the Hon'ble Supreme Court as well as Hon'ble High Courts are in terms of the prohibition on Courts/Tribunals to direct implementation of Pay Commission recommendations or such other Committee recommendations or even to suggest equalisation of pay scales. Indeed this Tribunal itself has not ordered in favour of such practices as mentioned earlier. However, we also note that as regards pay scales there are directions which allow this in specific situations. The decision of the Hon'ble Supreme Court in **(2002) 6 SCC 72 State of Haryana & Anr. v. Haryana Civil Secretariat Personal Staff Association** is relevant. The Apex Court clearly stated that the fixation of pay and determination of parity in duties is the function of the executive. However, it was held that the courts should interfere with administrative decisions pertaining to pay fixation and pay parity only when

they find such decisions to be patently irrational, unjust and prejudicial to a section of the employees and if it is taken in ignorance of material and relevant factors. In Paragraph 10 of the judgment it was observed as follows :

*“10. It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter, several relevant factors, some of which have been noted by this Court in the decided case, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay.**The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter....**”*

(emphasis added)

20. We therefore, in consonance with the decisions taken by other Benches of this Tribunal allow the O.A. We hold that the applicant is entitled to parity of pay with that of Statistical Assistants as allowed in similar cases by the Bangalore Bench in O.A.No.80/2002, Guwahati Bench in O.A.No.042/00038/2015, Bombay Bench in O.A.No.438/2016 and Chandigarh Bench in O.A.No.61/2018. Accordingly the applicant shall be given the upgraded replacement scale in PB-2 Rs.9300-34800 with GP of Rs.4200/- with effect from his date of appointment ie. 07.12.2012. He will also be allowed to draw the pay arrears as per fixation in this scale as well

as due arrears and benefits as per the fixation in the normal replacement level in the appropriate pay matrix after the implementation of the 7th CPC recommendations etc. This will be paid to him within a period of three months of the date of receipt of a copy of this order. While we are not going into the issue of whether it was justified on the part of the respondents in carrying on this matter in view of the previous orders by at least four Benches of this Tribunal, we are of the view that there should have been acknowledgement by them of these developments and effort taken for seeking the advice/approval of appropriate authorities, in the administrative hierarchy in settling the matter instead of continuing it by simply ignoring it. We do not wish to comment on this further but only advice them to consider these aspects carefully in future. With this caution, we make no order as to costs.

(Dated this the 17th day of February 2021)

K.V.EAPEN
ADMINISTRATIVE MEMBER

P.MADHAVAN
JUDICIAL MEMBER

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List of Annexures in O.A.No.180/00384/2017

- 1. Annexure A-1** – A copy of the appointment order dated 20.12.2012 issued by the 1st respondent.
- 2. Annexure A-2** – A copy of the notification No.F25-15/68-Est.II dated July 1968 issued by the 3rd respondent.
- 3. Annexure A-3** – A copy of the order No.A26022/4/97-Admn.II dated 05.08.1998 issued by the Director General of Health Services (Administration II Section).
- 4. Annexure A-4** – A copy of the order in O.A.No.1653/2000 dated 09.07.2001 of the Hon'ble Central Administrative Tribunal, Bangalore Bench.
- 5. Annexure A-5** – A copy of the order No.C.14011/4/2000-R.D.Cell dated 16.08.2001 issued on behalf of the 2nd respondent.
- 6. Annexure A-6** – A copy of the order dated 25.11.2011 in O.A.No.80/2002 the Hon'ble Central Administrative Tribunal, Bangalore Bench.
- 7. Annexure A-7** – A copy of the letter F.No.C.18017/01/2011-RD dated 03.02.2012 along with file noting issued by the 3rd respondent.
- 8. Annexure A-8** – A copy of the order in O.A.No.042/00038/2015 dated 17.02.2016 of the Hon'ble Central Administrative Tribunal at Guwahati Bench.
- 9. Annexure A-9** – A copy of the order No.A2/ROHFW-2013/Estt./dated 17.08.2016 issued on behalf of the 3rd respondent.
- 10. Annexure A-10** – A copy of the representation dated 12.07.2016 submitted by the applicant to the 1st respondent.
- 11. Annexure A-11** – A copy of the representation dated 24.11.2016 submitted by the applicant and to the 2nd respondent.
- 12. Annexure A-12** – A copy of the order dated 12.09.2018 in OA 438/2016 of the Hon'ble Central Administrative Tribunal, Mumbai Bench.
- 13. Annexure A-13** – A copy of the order F. No. C-18017/03/2016-RD dated 27.05.2019 issued by the 3rd respondent.
- 14. Annexure A-13(a)** – A copy of the order F. No. C-18017/03/2016-RD dated 06.06.2019 issued by the 3rd respondent.

15. Annexure A-14 – A copy of the order F. No. C-16017/02/2018-RD dated 12.07.2019 issued by the 3rd respondent.

16. Annexure R-1(a) – A copy of the self-appraisals submitted by the applicant for his APARs from the years 2012-13 to 2015-16.

17. Annexure R-1(b) – A copy of the records available with the directorate.
