

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH :: HYDERABAD**

OA/021/00396/2015

Date of CAV: 26.04.2021

Date of Pronouncement: 03.06.2021



Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

1. B.Ramchandar Goud S/o Sri B.Venkaiah,
Occ: Laboratory Technician,
P.No.0507241, Aged about 46 years,
Ordnance Factory Hospital,
Yeddumailaram, Medak District,
Telangana State, R/o Q.No.3785,
Ordnance Factory Medak Estate,
Yeddumailaram, PIN 502 205, Telangana State.
2. Paul Suvarna Babu, P,
S/o Sri L.Poobalan,
Occ: Laboratory Technician,
P.No.0511832, Aged about 43 years,
Ordnance Factory Hospital,
Yeddumailaram, Medak District,
Telangana State, R/o Q.No.3781,
Ordnance Factory Medak Estate,
Yeddumailaram, PIN 502 205, Telangana State.

...Applicants

(By Advocate : Sri K. Ram Murthy)

Vs.

1. Union of India, Represented by its Secretary,
Department of Defence Production and Supplies,
Ministry of Defence, New Delhi.
2. The Chairman and Director General,
Ordnance Factories Board,
Ministry of Defence, Govt. of India,
10-A-SK Bose Road, Kolkatta-700 001.
3. The Director General Health Services,
Ministry of Defence, Govt. of India,
10-A-SK Bose Road, Kolkatta-700 001.

...Respondents

(By Advocate: Smt. K. Rajitha, Sr. CGSC)

ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Administrative Member)



2. The OA is filed for a direction to grant pay scale of Rs.5000-8000/- (V CPC) and Grade Pay of Rs.4200/- (VI CPC) to the applicants with consequential benefits such as fixation of pay and arrears arising out of it, irrespective of the qualifications of the incumbents, as has been given to Medical Assistants in the same Department.

3. Brief facts of the case, are that the applicants joined the respondents organization as Laboratory Technicians in 1990 & 2001 respectively. Respondents framed the Recruitment Rules (for short **RR**) - 2005 vide SRO-88 for laboratory technicians and issued orders revising the pay scale to Rs.9300 – 34,800 with grade pay of Rs.4200 on 17.10.2014 in the light of the recommendations of the 5th CPC. Juniors to the applicants were allowed higher pay as per orders dated 29.12.2014 & 6.1.2015 but not the applicants, despite submitting several representations and hence the OA.

4. The contentions of the applicants are that the Laboratory Technicians form a part of the Paramedical staff. Till the 3rd CPC, they were treated on par with the scientific staff. From 4th CPC, Laboratory Technicians were categorized as a separate category and the 5th CPC recommended the pay scale of Rs.1600 – 2600, prescribing B.Sc. as the minimum educational qualification along with relevant diploma/ certificate in the concerned field, which requires amendment of the RR. Ministry of Railways has granted the pay scale of Rs.5000-8000 to laboratory technicians after amending the RR whereas applicants were granted Rs.4500-7000 as per RR- 2005, which is not as per 5th CPC recommendations. It is settled law that once the job

profile and the qualifications of two Ministries are the same the pay has to be same. Despite several representations and even when the staff unions took up the matter there was no relief and on the contrary juniors to the applicants were granted the higher pay scale with grade pay of Rs.4200.



For having higher educational qualifications some increments can be granted and not higher pay scale to juniors. The applicants were recruited prior to the amendment of the recruitment rules and are seeking higher pay in line with that granted to the Medical Assistants based on the principle of equal pay for equal work. The higher educational qualifications have to be applied to those recruited after the amendment of the RR. Articles 14 & 16 of the Constitution have been violated. Applicants cited the Hon'ble Apex Court judgments in regard to equal pay equal work to support their contentions as well as that of the Hon'ble Principal Bench in OA 2660 of 2012 dated 11.10.2013.

5. Respondents responded by stating that revised grade pay of Rs.4200 is applicable from 1.1.2006 as per orders of the nodal Ministry. The 1st applicant, who joined in 1990 was granted 1st ACP (*for short ACP Scheme*) in the pay scale of Rs.5000-8000 in 2002 and the corresponding pay band with the grade pay of Rs.4200 from 1.1.2006. The 2nd applicant joined in 2001 and was granted grade pay of Rs.4200 by granting 1st MACP (*for short Modified ACP*) in 2011. Railways have a hierarchy in regard to laboratory staff where as there is only the post of laboratory technician in the respondents organization which is equivalent to the Lab Technician–III of Railways with grade pay of Rs.4200. RRs were amended in 2005 wherein it was indicated that B.Sc. degree with diploma in medical lab

technology having one year experience in Medical Lab and knowledge of computers are the prerequisites to grant the higher pay scale. Ministry of Defense vide letter dated 15.10.2014 has permitted enhanced pay scale from 1.1.2006 provided the conditions laid in the RR- 2005 are satisfied.



Accordingly, the pay of the juniors mentioned by the applicants was revised as per provisions of RR-2005. Dept. of Expenditure orders are to revise the grade pay from 1.1.2006 as per new RR. Retrospective benefit of higher pay scale contrary to the orders of the nodal Ministry is not permitted.

6. Heard both the counsel and perused the pleadings on record. Both the parties were given three days time to submit additional material / judgments, if they so desire to support their contentions, but they did not avail of the opportunity given.

7. I. The dispute is about grant of grade pay of Rs.4200 on par with the medical staff and the applicants' juniors. Applicants are working as Lab Technicians in the respondents' organization. Till the 3rd CPC, Lab technicians were placed in the same category of scientific staff and with the advent of 4th CPC, they were categorized as a separate group. In 5th CPC, higher pay scale was granted to the Lab Technicians which required amendment of RR for granting the enhanced pay scale. Accordingly, respondents have amended the RR in 2005 vide SRO-88, wherein the following educational qualifications were stipulated to grant the higher pay scale:

- (i) *Pass in B.Sc. with Biochemistry/ Microbiology/ Life Science or equivalent from a recognized institution;*
- (ii) *Candidate should possess Diploma in Medical Laboratory Technology from a recognized Institution,*

(iii) *must possess at least one year experience in Medical Laboratory* (iv) *Must have working knowledge of Computers.*

The juniors to the applicants namely Sri H.P. Gopal Rao and Sri A.V. Sujaya Kumar who satisfied the above provisos under RR -2005 were allowed the higher grade pay of Rs.4200, whereas applicants who did not possess the qualifications as required under amended RR were not granted. Applicants have admitted in the OA that for higher pay scale RR are to be amended. Respondents have complied with the said condition by amending the RR in 2005 by including the conditions referred to. Hence the contention of the applicants that juniors were granted higher pay and therefore they should be granted does not hold good for aforesaid reasons.



II. The further contention of the applicants that since they were recruited prior to amendment of RR in 2005 and hence the amended RR should not be applied to them is not tenable since the higher pay was granted as per CPC recommendations. The tribunal is not expected to interfere with the recommendations of an expert body like the CPC as held by the Hon'ble Supreme Court, as under:

a. ***Union of India v. Dineshan K.K.,(2008) 1 SCC 586***, wherein the Apex Court has held as under:

It has been observed that equation of posts and equation of pay structure being complex matters are generally left to the executive and expert bodies like the Pay Commission, etc.

b. ***State of Bihar v. Bihar Veterinary Assn., (2008) 11 SCC 60***, at page 64 :

13. If the courts start disturbing the recommendations of the pay scale in a particular class of service then it is likely to have cascading effect on all related services which may result into multifarious litigation. The Fitment Committee has undertaken the exercise and recommended the wholesale revision of the pay scale in

the State of Bihar and if one class of service is to be picked up and granted higher pay scale as is available in the Central Government then the whole balance will be disturbed and other services are likely to be affected and it will result in complex situation in the State and may lead to ruination of the finances of the State.



III. The other contention of the applicants that the Railways have granted a higher pay scale of Rs.5000-8000 whereas the respondents have granted the pay scale of Rs.4500-7000 does not cut ice as hierarchy of posts are different as given below.

Sl. No.	Designation	Pay scale (as per 4 th CPC)	Minimum Qualification	Grade Pay as per 6 th CPC
01	Lab Attendant III	Rs.750-940	VIII Standard	Rs.1800/-
02	Lab Assistant III	Rs.950-1500	Metric (with Science) + Certificate/ Diploma in Lab Technician (including DMLT) or 10+2 with Science	Rs.1900/-
03.	Lab Technician III	Rs.1600-2660	B.Sc. with Diploma/ Certificate	Rs.4200/-

In the respondents organization there is no such hierarchy in the respondents organization. Applicants have not submitted any documents to claim that the recruitment rules/ service conditions of the Railways are similar to that of the respondents organization with reference to the cadre under reference. Hence comparing with the Railways and seeking parity is illogical.

IV. In regard to the applicants' contention of equal pay equal work, the said concept should not be applied in a mechanical manner. Classification based on educational qualification as per the RR is valid as held by the constitution bench of the Hon'ble Apex Court in P. Narasinga Rao [AIR

1968 SC 349: (1968) 1 SCR 407]. Assuming though not admitting, that the nature of work of lab technicians in different Ministries may be more or less the same as claimed by the applicants, but the academic qualification makes the essential difference in regard to pay. We take support of the Hon'ble Supreme Court observations in **Director of Elementary Education, Odisha & Ors vs Sri Pramod Kumar Sahoo** on 26th September, 2019 in Civil Appeal No. 7577 of 2019 (Arising out of SLP (Civil) No. 23279 of 2019), as under, in stating the above.



12) The Trained Matric Teacher is the one who has been trained for the purposes of teaching. In the absence of such training, the respondent cannot be said to be a Trained Matric Teacher entitled to the pay scale meant for such teachers. The classification based upon educational qualification for grant of higher pay scale to a trained person or a person possessing higher qualification is a valid classification. It has been so held in Shyam Babu Verma & Ors. v. Union of India & Ors. (1994) 2 SCC 521, wherein this Court held as under:

“9. ... The nature of work may be more or less the same but scale of pay may vary based on academic qualification or experience which justifies classification.

The principle of ‘equal pay for equal work’ should not be applied in a mechanical or casual manner. Classification made by a body of experts after full study and analysis of the work should not be disturbed except for strong reasons which indicate the classification made to be unreasonable. Inequality of the men in different groups excludes applicability of the principle of ‘equal pay for equal work’ to them....”

13) The said decision has been quoted by another Bench of this Court in M.P. Rural Agriculture Extension Officers Association v. State of M.P. & Anr.4, wherein this Court held as under:

“22. Furthermore, as noticed hereinbefore, a valid classification based on educational qualification for the purpose of grant of pay has been upheld by the Constitution Bench of this Court in P. Narasinga Rao [AIR 1968 SC 349:(1968) 1 SCR 407].”



Further historical parity in pay scales is no ground to seek parity in pay scales between the medical staff and the Lab Technicians. For granting equal pay for equal work there has to be complete and whole sale identity between two groups that are to be compared. The applicants have not brought out any details with documentary evidence that their work is similar to that of the Railway Lab Technicians or of the scientific staff/ medical staff as asserted by them. We rely on the observation of the Hon'ble Supreme Court in **Union Of India & Ors vs Hiranmoy Sen & Ors** on 12th October, 2007 in Appeal (Civil) No.7232 of 2003, as under, to state what we did.

4. This Court in S.C. Chandra and Ors. vs. State of Jharkhand and Ors. JT 2007(10)4 SC 272 has held that the Court cannot fix pay scales as that is the purely executive function. In the aforesaid decision one of us (Markandey Katju, J.) has discussed in detail the principle of equal pay for equal work and has observed that the said principle has been considerably watered down in recent decisions of this Court, and it is not applied unless there is a complete and wholesale identity between the two groups, and even there the matter should be sent for examination by an Expert Committee appointed by the Government instead of the Court itself granting the higher pay scale. The entire case law on the subject has been discussed in the said decision. Following the aforesaid decision in S.C. Chandras case (Supra) this appeal has to be allowed. It cannot be said that there is a complete and wholesale identity between the Senior Auditors in the office of Accountant General, Assam and Meghalaya and Assistants in the Central Secretariat.

5. Learned counsel for the respondents submitted that the auditors and assistants have been historically treated at par in the matter of pay scales. Although this fact has been denied by the appellant, we are of the opinion that even if it is correct, that will not be of any help to the respondents. To give an illustration, if post A and post B have been carrying the same pay scales, merely because the pay scale of post A has been increased that by itself cannot result in increase in the pay scale of Post B to the same level. It is entirely on the Government and the authorities

to fix the pay scales and to decide whether the pay scale of post B should be increased or not. The judiciary must exercise self restraint and not encroach into the executive or legislative domain.



The basic concept of higher qualification imparting better knowledge and attracting higher pay, as enjoined in the RR, is a fact of lore which cannot be ignored. Thus in view of the latest judgment of Hon'ble Apex Court in 2019 cited supra, its own verdicts relied upon by the applicants delivered between 2009 to 2013 and that of the Hon'ble Principal Bench in OA 2660 of 2012 may not be of any assistance to the applicants. In fact, the differentiation has been done on an intelligible basis, namely educational qualifications, experience in a lab, computer knowledge etc. The same amount of physical work may be differentiated by quality of work with some work more sensitive, some requiring more fact and some less - it varies from nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object sought for, a certain amount of value judgment of the administrative authorities/ expert bodies, who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the Tribunal unless it is demonstrated that either it is irrational or based on no basis or arrived mala fide either in law or in fact. In the instant case the pay scale variation has been brought about due to the recommendations of the expert body like the CPC. The applicants have not demonstrated that the differentiation in question was irrational or malafide by way of rejoinder. In the light of the averments made in the facts mentioned before, it is not possible to say that the differentiation is based

on no rational nexus with the object sought for to be achieved. Hence the principle of equal pay for equal work would not apply to the case of the applicants.



Moreover, in the concept of equal pay for equal work, the stress is upon similarity of skill, effort and responsibility when performed under similar conditions. Further, the quality of work may vary from post to post and from institution to institution. We cannot ignore or overlook this reality. It is not a matter of assumption but one of proof. The applicants have failed to establish that their duties, responsibilities and functions are similar to those with whom they compared themselves. They have also failed to establish that the distinction between their scale of pay and with those compared is either irrational and that it has no basis, or that it is vitiated by mala fides, either in law or in fact. It must be remembered that since the plea of equal pay for equal work has to be examined with reference to Article 14 of Constitution, the burden is upon the applicants to establish their right to equal pay, or the plea of discrimination, as the case may be. This burden the applicants have failed to discharge.

Further, in the case of **Sohan Singh Sodhi vs Punjab State Electricity Board**, Patiala, (2007) 5 SCC 528, the Apex Court has held that parity in pay cannot be claimed when the educational qualifications prescribed are different, as under:

"In Government of W.B v. Tarun K Roy, (2004) 1 SCC 347, a three-Judge Bench of this Court, noticing several other decisions opined that parity in the pay cannot be claimed when the educational qualification is different."

V. We also gone through the OM dated 1.8.2012 of the Ministry of Finance enclosed by the applicants, relating to increase of grade pay for official language staff of the Railways where in 6 conditions have been laid to grant higher grade pay of Rs.4200 in PB -2 including postgraduate degree at entry grade. The OM in no way can be applied to the case of the applicants in view of the vast difference in nature of work, qualifications etc and hence would not be of any help to the applicants. Moreover, equation of posts and equation of pays is not within the purview of the Tribunal. Applicants claim that the condition of educational qualification should not be applied to them is not maintainable since the respondents have to follow the rules ie RR -2005. Ministry of Defence has issued instructions vide letter dated 15.10.2014, as a matter of policy to enhance the grade pay to Rs.4200 provided conditions specified in RR – 2005 are adhered to. In matters of policy there is very little scope for the Tribunal to interfere as observed by Hon'ble Uttarakhand High Court in **Prakash Chandra vs State Of Uttarakhand And Others** on 10 October, 2019 in Writ Petition (S/B) No. 467 of 2019 and in regard to rules, Hon'ble Supreme Court has emphasized that rules are to be abided by, in the following judgments:

The Hon'ble Supreme Court in T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544 held that "Action in respect of matters covered by rules should be regulated by rules". Again in Seigal's case (1992) (1) supp 1 SCC 304 the Hon'ble Supreme Court has stated that "Wanton or deliberate deviation in implementation of rules should be curbed and snubbed." In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held " the court cannot de hors rules".

Respondents have followed the rules and the law set by the Hon'ble Supreme Court as at above.



VI. Other contentions made by both the parties have been gone into and since they lack legal force, they have not been dealt with.

VII. In view of the aforesaid circumstances, we do not find any merit in the OA and hence, the same is dismissed with no order as to costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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