

10/4/21

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA



O.A. No.350/01349/2013.
M.A. 350/00461/2017.

Date of order : This the 15th of April, 2021.



Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr (Ms) Nandita Chatterjee, Administrative Member

1. Sri Bishnupada Nayak
2. Sri Dinesh Chandra Pant
3. Sri Utpal Kumar Mallick
4. Sri Arindam Basu
5. Sri Angas Minz
6. Sri Dilip Das
7. Sri Indrajit Banerjee
8. Sri Subrata Goswami

All the applicants are retired employee of
Central Drugs Laboratory, 3, Kyd Street,
Kolkata-700016.

.....Applicants

- Versus -

1. Union of India through the
Secretary to the Govt. of India,
Ministry of Health & Family Welfare,
Nirman Bhawan, Maulana Azad Road,
New Delhi-110001.
2. The Drug Controller General of India,
Ministry of Health & Family Welfare,
Govt. of India, Nirman Bhawan,
New Delhi-110001.
3. The Director,
Central Drug Laboratory,
3, Kyd Street, Kolkata-700016.

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4. The Secretary,
Ministry of Finance, Deptt. of Expenditure,
Govt. of India, North Block,
New Delhi – 110001.

.....Respondents

Advocate for the applicants : Mr S.K.Datta

Advocate for the respondents : Ms M. Bhattacharya

Mr M.K.Ghara



ORDER

Ms Bidisha Banerjee, Member(J)

The applicants, 8 in numbers have prayed for allowing them to join in this single application as they are similarly placed and have prayed for common relief. Considering the facts and circumstances, we allow the prayer by invoking Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987. They have sought for the following reliefs :

- "a) An order granting leave to the applicants under Rule 4(5)(a) of the Central Administrative Tribunals (Procedure) Rules, 1987 to move this application jointly.
- b) An order quashing and/or setting aside the impugned order dated 3.1.2013 holding the same as arbitrary, illegal, discriminatory and perverse.
- c) An order directing the respondents to grant the benefits of upgraded scale of pay of Rs.5000 – 8000/- with effect from 1.1.96 with all consequential benefits.
- d) An order directing the respondents to produce all relevant records including the records pertaining to consideration of the case of the applicants for grant of upgraded scale of pay as was granted to them by order dated 18.05.2009 as well as the records pertaining to the consideration of the representations of the applicants pursuant to which the impugned order dated 3rd January, 2013 has been passed.
- e) An order directing the respondents to produce/cause production of any other relevant records as to this Hon'ble Tribunal may seem fit and proper including the files containing consideration of the cases of upgradation of Associate Pharmacognocist, Associate Bio Chemist, Associate Bacteriologist, Associate Pharmacologist, Senior Laboratory Assistant etc. regarding grant of upgraded scale

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- f) *of pay in place, and stead of normal replacement scale of pay with effect from 1.1.96 with all consequential benefits. Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."*



2. The facts leading to filing this application are that on implementation of 5th CPC the scale of Junior Scientific Assistant (JSA) in CDL had been upgraded to 5000-8000/- with the retrospective effect since 01.01.1996 but the Assistant Chemist was given the normal placement scale of Rs.4500-7000/- despite the fact that both the said posts, having same job responsibilities, were holding same pay scale (1400-2300/-) in the 4th CPC. Whereas, Senior Laboratory Assistant (SLA) had been upgraded with retrospective effects and brought at par with scale of Assistant Biochemist although they had inferior nature of duties and inferior entry qualification in the recruitment rule. Several representations were preferred with the request to the authorities to upgrade their scale to Rs.5000-8000/- but to no avail. O.A No.521 of 2005 was filed when this Tribunal directed to take a decision in a detailed, reasoned and speaking order within a period of four months. In response Ministry issued a speaking order vide Office Order No. A.32022/5/99-Drugs dated 30.05.2006 where proposal for upgradation was rejected by the Government. It was again challenged in O.A.No.727 of 2006. The Tribunal quashed the speaking order of Ministry and remanded the case back to Ministry for fresh consideration vide its order dated 20.06.2008. Ultimately the Ministry of Health (MOHFW) in concurrence with Ministry of Finance had agreed to the upgradation of Assistant Biochemist from 4500-7000 to 5000-8000/- (pre-revised) at par with JSA vide Office Order

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No.A.14019/11/2005-ND(DFQC) dated 18.05.2009 with immediate effect. Such order established legitimacy of their demand for upgradation but denied upgradation with retrospective effect i.e. with all consequential financial benefits since 01.01.1996 which the JSA had already enjoyed earlier. The applicants are aggrieved as they deserve upgradation from 01.01.1996 with all consequential financial benefits as enjoyed by JSA. They agitate against the discriminatory treatment meted out to them.



3. Per contra, the respondents would contend that in the absence of any specific recommendation of the 5th CPC for upgradation of pay scales of Assistant Chemist, Assistant Pharmacognosist and Assistant Bio-Chemist in CDL Kolkata, the upgradation of pay scale of these posts cannot be effected retrospectively with effect from 01.01.1996. The recommendation of 5th CPC has been implemented with effect from 1st January, 1996 whereby the existing pay scale of Junior Scientific Assistant has been upgraded and corresponding replacement pay scale has been fixed to Rs.5000-8000. Therefore, the applicants cannot ask the respondents to upgrade the pay scale suo-moto for the post of Assistant Chemist, Assistant Pharmacognosist and Assistant Bio-Chemist to make at par with Junior Scientific Assistant. That there are differences in the "Essential Educational Qualification" in the Recruitment Rule for direct appointment to the post of Junior Scientific Assistant and the post of Assistant Chemist, Assistant Pharmacognosist and Assistant Bio-Chemist. The "Essential Educational Qualification" required for direct recruitment to the post of "Junior Scientific Assistant" is as under :

"A degree in Science with Chemistry as one of the subject Preferably with Honours in Chemistry or Post Graduate Experience."

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Whereas, the "Essential Educational Qualification" required for direct recruitment to the post of "Assistant Chemist", "Assistant Pharmacognosist" and "Assistant Bio-Chemist" is

"A degree in Science with Chemistry as one of the subject."

4. Ld. Counsels were heard and records perused.
5. The respondents seemed to have missed the issue, which is admissibility of upgraded pay scales from the date of acceptance and implementation of the report of 5th CPC i.e. 01.01.1996 as granted to all Central Govt. employees nation wide. The reason why upgradation has been accorded but from a subsequent date is not forthcoming.
6. The note annexed to rejoinder at RJ-1 is perused. It reads as under :

"It may be mentioned that the prospective approval of the Finance Ministry appears to be against the spirit and intent of the Cat order especially that the Finance Ministry has also realized the mistake made by the 5th CPC in singling out the category of JSAs of CDL, Kolkata while denying the same to the similarly placed Assistant Chemist, Assistant Biochemist and Asstt. Pharmacognocist of the Laboratory. The denial of the enhanced scale of pay is again likely to result in further litigation by the parties involved for retrospective implementation of the enhanced scale of pay. In the circumstances, if approved, we may refer the representations for favourable consideration of the Ministry of Finance (Department of Expenditure). IF Division may kindly see and recommend the case to the Ministry of Finance (Pay Implementation Cell) for necessary concurrence."

7. In **Purshottam Lal vs. Union of India & Ors. AIR 1973 SC 1088**, it was held as under :

"We are unable to accept this contention. The terms of reference are wide, and if any category of Government servants were excluded material should have been placed before this Court. The Pay Commission has clearly stated that for the purposes of their enquiry they had taken all persons in the civil services of the Central Government or holding civil posts under that Government and paid out of the Consolidated Fund of India, to be Central Government employees. It is not denied by Mr. Dhebar that the petitioners are paid out of the Consolidated Fund of India."

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.....if it has made a reference in respect of all Government employees and it accepts the recommendation it is bound to implement the recommendation in respect of all Government employees. If it does not implement the report regarding some employees only it commits a breach of Arts. 14 and 16 of the Constitution. This is what the Government has done as far as these petitioners are concerned.

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17. In the result the petition is allowed and it is directed that the revised pay scales of the petitioners will have effect from July 1, 1959, in accordance with the recommendations of the Pay Commission."



8. In the aforesaid backdrop the plea of the applicants for a retrospective implementation of the upgraded pay scale seems justified. Hence the matter be referred to respondent No.3 to grant the benefit retrospectively or to justify rejection of their claim by way of a speaking order by 4 months from the date of receipt of a copy of this order.

9. O.A is accordingly disposed of. No costs.

10. M.A.461/2017 is also stands disposed of.

(DR NANDITA CHATTERJEE)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)