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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK**

O.A. Nos. 247/05 & 525/05

Thursday, this the 22nd day of November, 2007

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER**

1. Sri Sarat Chra Rout,
S/o. Dhruba Charan Rout,
Resident of Village Tihudi,
P.O. Galadari, Via. Devidol,
District Cuttack. (OA No. 247/05)
2. Sudhansu Sekhar Mishra,
S/o. Late Nishakar Mishra,
Resident of Village/PO-Sriganga,
PS-Dhusuri, Dist. Bhadrak. (OA No. 525/05)

(All are working as Junior Technicians, Regional Office for Health & Family Welfare, B1-25, BJB Nagar, Bhubaneswar-14, Dist. Khurda)

... Applicants.

(By Advocate Mr. K.C. Kanungo)

v e r s u s

1. The Secretary,
Ministry of Finance, New Delhi.
2. The Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan, new Delhi – 1.
3. Director General of Health Services,
Nirman Bhawan, New Delhi – 1.
4. Director,
National Vector Borne Disease Control
Programme (NBDCP), 22, Sham Nath Marg,
P.B. No. 8616, New Delhi – 54.
5. Regional Director, Health & Family Welfare,
BJ-25, BJB Nagar, Bhubaneswar – 14,
District Khurda.

... Respondents.

(By Advocate Mr. P.R.J. Dash, ACGSC)

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O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

Applicants 1 and 2 entered the services as Jr. Technicians in 1984, vide Annexure A-1 and A-2. They are science graduates, which are the requisite qualifications for the post of Jr. Technicians. The post of Lab. Asst. is equivalent post to Jr. Technicians, and likewise, the next promotional post, Sr. Technicians is equivalent to Lab. Technician. Insect Collector is the feeder grade for Lab. Assistants. The qualification requirement for Insect Collector is Intermediate Science. When pay revision was considered by the V C.P.C., certain recommendations have been made and the same are as under:-

"69.83. We have already made general recommendations for Laboratory Technicians and staff elsewhere in the report, which will apply in this organization as well. While we do not find justification for the proposed merger. We are in favour of making some structural changes keeping in mind these general recommendations. These are discussed in the next paragraph.

69.84. There are 74 posts of junior Technicians and Laboratory Assistants, of which 50% are filled by promotion from among Insect Collectors, and 50% by direct recruitment with B.Sc. qualification. They are eligible to be promoted, to the extent of 50%, to 56 posts of Senior Technicians on completing 5 years' service. Senior Technicians are 50% direct recruits with graduation in Science as basic qualification, and have 100% promotion opportunities to the posts of Research Assistants (Rs. 1400-2300). The next and final higher level is that of two posts of Malaria Supervisor (Rs. 1640-2900), filled 50% by promotion of Research Assistants with 5 years' service, and 50% by direct recruitment of candidates having M.Sc. (Zoology) with entomology as minimum qualification. There are also 6 posts of Malaria inspector (Rs. 1200-2040) filled by promotion of Laboratory Assistants or Junior Technicians with 5 years' service and possessing a certificate in the Health Inspectors' Course, failing which by Insect Collectors with 8 years' service and the necessary qualifications. As already stated, we are not in favour of merger of feeder and promotion posts, and thus do not recommend merger of Lab Assistants (Junior Technicians) with Laboratory Technicians (Senior Technicians). However, keeping in mind the general pattern recommended for Laboratory Staff and Technicians, we recommend that the cadre structure, as given in the Annex 69.1, should be adopted for the entire hierarchy described above."

2. The Government had placed the Jr. Technicians in the scale of pay of Rs 4,000 – 6000 w.e.f. 01-01-1996 vide Annexure A-5 order dated 18-12-1998 and Annexure A-6 order dated 28-01-1999. When insect collector, holding lower qualifications on promotion are afforded the pay scale of Rs 4500 – 7000 as Lab. Assistants, the applicants, Science Graduates are placed in Rs 4,000 – 6000, whereby, evidently, anomaly was stated to have arisen and Respondent No. 4, appreciating the anomaly, approached Respondent No. 2 and 3 in this regard, vide Annexure A-6. Respondents had published corrigendum dated 30-06-2000, placing such promotee Lab Assistants in the scale of Rs 4,000 – 6,000/- It was also held that under the ACP, the next pay scale would be Rs 5,000 – 8,000/-, vide Annexure A-9. In so far as the applicants (i.e. holding posts of Jr. Technicians) are concerned, respondents have stated that their ACP would be in the scale of Rs 4,500 – 7,000. Annexure A-10 refers.

3. A colleague of the applicants, by name Archana Rastogi filed an OA before the Lucknow Bench claiming pay scale of Rs 4,500 – 7,000 instead of Rs 4,000 – 6,000/- and the Tribunal directed the respondents to consider the claim of the said applicant. The decision of the respondents is as contained in Annexure A-11. It is the case of the respondents that as per Annexure A-11, the case was solely on account of wrong interpretation of a specific recommendation of 5th CPC by the Administrative Ministry.. According to the applicants the 5th CPC recommendation should have been correctly implemented with all the post of Lab. Asst. (whether filled by promotion or Direct Recruitment in NAMP being initially placed in the scale of Rs 4,000 – 6,000 and thereafter, 34 amongst them should have been upgraded to the scale of Rs 4,500 – 7,000/- and redesignated as Lab. Assistant Grade I. The ratio of

promotion to the post of Lab. Assistant Grade II shall be 50% by way of direct recruitment, while the other 50% by way of promotion from among eligible insect collectors.

4. According to the applicants, the decision is contrary to the recommendations. Para 69.83 of the recommendations goes to state, "*We have already made general recommendation for Laboratory Technicians and staff elsewhere in the report which will apply in this organization as well.*" It further observed, "*We are in favour of making some structural changes keeping in mind the general recommendations.*" Again, in para 69.84, the recommendation inter alia reads, "*However, keeping in mind the general pattern for Laboratory Staff and Technicians, we recommend the cadre structure as given in Annexure 69.1, should be adopted for the entire hierarchy described above.*" It is the case of the applicants that they being science graduates, the general recommendations for the science graduates who are Junior Technicians were recommended under the Heading 'Other Technicians' to get an upgraded scale of Rs 1600 - 2660 corresponding to Rs 5,000 - 8,000/- should be considered. The recommendation reads, "*We also recommend that the other technicians entering service with either degree in science or Diploma in Engineering should be upgraded to the scale of Rs 1600 - 2660 with assured career progression on a dynamic basis to the levels f Rs 1640 - 2900 and 2000 - 3500 respectively.*"

5. According to the applicants, the recommendations of the Pay Commission have not been properly considered, much less implemented.

6. Respondents rely upon the legal proposition that the matter is no longer res-integra since the Lucknow Bench having passed an order and when the

applicant therein filed CPC, the same was not entertained. It has also been contended that in all matters of pay scales, it is for the Government to consider all these aspects, as held in various cases, including the decision in the case of **State of UP vs J.P. Chaurasia, (1989) 1 SCC 121** and other cases.

7. Arguments were advanced by the respective counsel and written submissions have also been given.

8. Arguments were heard and documents perused. Certain provisions of the V Pay Commission in addition to para 69.83 and 69.84 are relevant and the same are extracted below:-

"52.111. EMG, EEG and Audiometry Technicians usually require at least an Engineering Diploma or a B.Sc. Degree after 10+2 for direct recruitment to different grades, as follows:

<u>S.No.</u>	<u>Nomenclature</u>	<u>No.of Posts</u>	<u>Essential Qualification</u>
1. <u>Safdarjang Hospital</u> :			
i)	ECG Technician Rs. 1200-2040	9	Matric + Experience
ii)	Lab. Technician Rs. 1200-2040	2	B.Sc. (Physics) + 1 Yr. Exp./ Diploma in Engg.
iii)	ECG Technician Rs. 1320-2040	4	B.Sc. (Physics) + 3 Yrs. Exp./ Diploma in Engg.
iv)	EMG Technician Rs. 1400-2300	1	B.Sc./Diploma in Engg.
2. <u>RML Hospital</u> :			
i)	Audiometry Technician Rs. 1200-2040	1	Diploma in Communi- cation Engineering
ii)	Sr. ECG Technician Rs. 1200-2040	4	Matric + 1 Yr. Experience

S.No.	<u>Nomenclature</u>	No.of Posts	<u>Essential Qualification</u>
	iii) Sr. ECG Technician Rs. 1400-2300	1	B.Sc. (Physics) + 1 Yr. Exp./ Diploma in Engg.
	iv) ECG Technician	2	- do -

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i) Cardiographic Technician Rs. 1320-2040	2	Matric + 3 Yrs. Experience
ii) Dialysis Operator Rs. 1320-2040	1	- do -

Cardiographic Technician and Dialyser Operator both in the scale of 1320-2040 and ECG Technician at Safdarjung Hospital in the scale of Rs. 1200-2040 have the direct recruitment qualification of matriculation and some experience. There are also some ECG Technicians in the scale of pay of Rs.1200-2040 recruited directly with the matriculation plus experience as minimum qualification. Keeping in mind the qualifications and nature of duties attached to these different posts in the second category, we do not consider that upgradation is justified. However, consequent on the rationalisation of the scale of pay of Rs. 1200-2040, the posts requiring matriculation with some experience as minimum qualifications for direct recruitment should be placed in the scale of Rs. 1320-2040 with Assured Career Progressions to the scales of pay of Rs. 1400-2300 and Rs. 1600-2660 respectively. We also recommend that the other Technicians entering service with either a Degree in Science or Diploma in Engineering should be upgraded to the scale of pay of Rs. 1600-2660 with Assured Career Progression on a dynamic basis to the levels of Rs. 1640-2900 and Rs. 2000-3500, respectively."

"69.1. The Ministry of Health and Family Welfare deals with policies and programmes covering preventive, promotive and curative health care, including prevention, control and eradication of major diseases and propagating the Indian Systems of Medicine and Homoeopathy. It aims at attaining the goal of **Health for All by 2000 AD**. It comprises three Departments - the Department of Health, the Department of Family Welfare and the Department of Indian Systems of Medicine and Homoeopathy.

9. The applicants have contended and rightly so in para 6 of the rejoinder which reads as under:-

"6. That the order at Annexure A-11 created further anomaly and complicated the whole issue. Firstly, the order at Annexure A-11 treat the decision of the department extending the pay scale of Rs. 4500-7000 to the Junior Technicians (applicants) is a wrong interpretation and it did not recognize/admit the recommendation at para 69.84 read with Annexure 69.1 at page 1137 and 1143 of the report as a clear anomaly. It is not understood how Annexure A-11 suggested the posts of Laboratory Assistant – II will be filled up 50% by direct recruitment and 50% by promotion when the Pay Commission recommends direct recruitment in the said posts only. Secondly, how is it possible that the post of Laboratory Assistant – I should be filled up through promotion without incorporating suitable amendment in the Recruitment Rules. Thirdly, where and how those who have been recruited as Junior Technician with B.Sc. qualification would be placed. The order itself is silent on this score. Admittedly, it is a case of pay anomaly which requires to thrash out by an Anomaly Committee required to be constituted / set up in pursuance to the instructions contained in the Department of Personnel and Training O.M. No. 19/1/1997-JCA dated 6.2.1998. Nowhere in the counter, the respondents have disclosed that an Anomaly Committee was set up to settle the anomaly arising out of the implementation of the 5th Pay Commission Report. It appears that the respondent No. 2 made some proposal alleging anomalies to respondent No. 1 whereafter the respondent No. 1 interpreted the recommendation of the Pay Commission in its own way making it absolutely unimplementable."

10. That the applicants are directly recruited Junior Technicians and they are science graduates is not refuted by the respondents. Again, in so far as recommendations of the Pay Commission, the fact that there has been a specific recommendation that Science Graduates should be afforded higher pay scale vide the recommendations which read, "*We also recommend that the other Technicians entering service with either Degree in Science or Diploma in Engineering should be upgraded to the scale of Rs 1600 - 2660 with Assured Career Progression on a dynamic basis to the levels f Rs 1640 - 2900 and 2000 - 3500 respectively.*" This aspect has not been considered by the respondents. If the above recommendation has been accepted in respect of other organizations but not to the applicants, then the same deserves due consideration. For, Articles 14 and 16 are the paramount in Fumdamental

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11. The contention of the Respondents that with the dismissal of the contempt petition by the Lucknow Bench, there is no further question of considering the claim is totally untenable since all that the order of the Tribunal was to consider and the respondents considered the claim. To that extent there has been no violation or disobedience of the order and it was for that reason that the Tribunal dismissed the contempt petition. Under no stretch of imagination, could it be construed that by the dismissal of contempt petition, the decision of the Respondents has been held as valid. Its validity has to be seen only in this OA.

12. As to the relief, all that the Tribunal could do is to declare that the applicant has made out a case. The Tribunal cannot direct the respondents to fix a particular pay scale. In this regard, the Apex court has, in the case of **Chief Administrator-cum-Jt. Secy. to Govt. of India v. Dipak Chandra Das, (1999) 9 SCC 53**, has held, as under:-

"4. However, the Tribunal could not have directed fixing the pay scales of the respondent. On the other hand, a direction should have been issued to the authority concerned to fix a proper pay scale bearing in mind the finding recorded by the Tribunal that Divisional Accountants enjoy a higher status to that of a Senior Accountant."

13. In view of the above, the above OAs are disposed of with a direction to the respondents to constitute a Committee at the level of Joint Secretary of the Ministry of Finance and Ministry of Health and Family Welfare and the recommendation of the Committee be considered by the Government for suitable orders to be passed. The applicants should prepare necessary paper book reflecting their case, the grounds for their contention, attendant documents

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in support of their contentions, duly indexed and paginated and forward the same to Respondent No. 5 giving as much information as possible to facilitate the Committee to consider the case with proper perspective. The paper book be submitted within 6 weeks from the date of communication of this order, by which time, the Secretary Ministry of Health may, in consultation with his counterpart in the Ministry of Finance, constitute the Committee, and on their fixing a date, which shall be within a period of eight weeks from the date of receipt of this order. Respondent No. 5 shall transmit the paper book to the Committee and the Committee would consider the entitled case and furnish their recommendation to Respondents No. 1 and 2, who would on the basis of the same take a decision and communicate the same to the applicants. Such a final decision if made by 30th April, 2008, would be considered as reasonable.

14. No costs.

(Dated, the 22nd November, 2007)


(TARSEM LAL)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER