CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR ENCH, JABALPUR

Original Applications No 969 and 1051 of 2004

Jabalpur, this the 16Th day of September, 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

(1) Original Application No 969 of 2004

1. Haridas Gujbhije,
S/o Late Balaji Gajbhiye,
Date of birth 20.7.1958,
Ins-ect Collector, R/o H.No.68, Ma Parvati Nagar,
Kolar Road, Near Mahabali
Nagar, Bhopal.

2. M.Raita, S/o Sambharoo Raita,
Date of birth 1.7.1945,
Ins-ect Collector,
R/o H.No.III/ 32, CPWD Colony,
Bharat Nagar, Bhopal.

3. Prakash Kumar Mirdha,
S/p Shri Hariprasad Mirdha,
Date of birth 1.12.1966,
Ins-ect Collector, R/o Near
Qr. No.55/36,South T.T. Nagar,
Mata Mandir, Bhopal. Applicants

(By Advocate – Shri V.Tripathi on behalf of Shri S.Paul)

VERSUS

1. Union of India Through its Secretary,
Ministry of Health & Family
Welfare, Nirman Bhawan, New Delhi.

2. The Director, Directorate of Nationa Victor
Borhe Disease Control Programme, 22, Sham Nath
Marg, New Delhi-54.

3. Sr. Regional Director, Regional Office for Health & Family Welfare, 32, Purjor House, IInd Floor, Indra Press Complex, Zone-I, Maharana Pratap Nagar, Bhopal

4. Director Genral Health Services, Nirman Bhawan, New Delhi. Respondents

(By Advocate – Shri M. Chourasia)

(2.) Original Application No 1051 of 2004

1. Rudra Kumar Singh S/o Shri Bhagwan SinghAged 43 years 168, Narayan Nagar,Opp. Barkatullah University Bhopal (M.P.)

2. Veena Ganorkar D/o Shri S.H. Kundle Aged 45 years A-13, Fine Avenue, Nayapura, Kolar Road Bhopal (M.P.)

3. Nighat Afza D/o A.Q. Khan Aged 45 years Flat No.8, IIIrd Floor, Prince Apartment, Prince Colony, Idgah Hills, Bhopal (M.P.) Applicants

(By Advocate – Smt. S. Menon)

VERSUS

1. Union of India Through Secretary Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi.

2. Director, National Vector Borne Diseases Control Programme,22, Shyam Nath Marg, New Delhi-110 054.

3. Regional Office for Health and Family Welfare, Government of India, 32, Purhjore House, Indira Press Complex, Zone 1, MP Nagar, Bhopal Through : Its Senior Regional Director Respondents

(By Advocate – Shri P.Shankaran)

O R D E R(Common)

By M.P. Singh, Vice Chaiman :-

MA No.1379/2004 filed in OA 1051/2004 under Rule 4(5)(a) of Central Administrative Tribunal (Procedure) Rules, 1987 for permission to move the joint application is considered and allowed.

2. Since the issue involved in both the aforementioned Original Applications is common and the facts involved and grounds raised are identical, for the sake of convenience, we are disposing of both these Original Applications by this common order.

3. By filing Original Application No.969 of 2004, the applicants have sought the following main reliefs :-

> "(ii) Upon holding the action of the respondents in artificially creating the post of Laboratory Asstt. Grade-I & II is bad in law, command the(sic) them to have only one post of Laboratory Asstt. In the pay-scale of Rs.4500-7000/- as per equal pay for equal work.
>
> (ii) (a) Set aside the order dated 3rd June, 2005 Annexure-A-5.
>
> (iii) The respondents' action in withdrawing the benefit of ACP from applicant 1 and 2 be declared invalid and accordingly orders withdrawing the said benefit vide Annexure A/4 & Annexure A/5 be set aside. The recovery made from applicants 1 & 2 be directed to be refunded. A command be issued to the respondents to provide the benefit of Rs.4500-7000 to applicant no.3 with all consequential benefits from the date of his entitlement."

3.1 By filing Original Application No.1051 of 2004, the applicants have sought the following main reliefs :-

> "I To set aside the order dated 16.11.2004/annexure A-10 and be pleased to hold the clarification issued vide letter No. 1-85-2004 (Admin) dated 4.10.2004/Annexure-A-9 as wholly untenable.
>
> II. to direct the respondents and in particular respondents 2&3 to modify office order dated 23.3.2004/Anneuxure A-8 in accordance with recommendations of Vth C.P.C and reflected in AnnexureA-8."

4. The brief facts of these OAs are that while the applicants in OA 1051/2004 were appointed as Junior Technician, the applicants 1 & 2 in OA969/2004, were promoted as Junior Technician from the post of Insect Collector under the respondents. 50% posts of Junior Technicians/ Lab.Assistants are filled by promotion of Insect Collector (feeder cadre) with three years regular service and 50% by direct recruitment with essential qualification of B.Sc. The essential qualification for appointment as Insect Collector is Higher Secondary with science. Before implementation of the recommendations of the 5th CPC in 1996, the pay scale of Junior Technician/Lab.Assistant was Rs.975-1540. However, the 5th CPC recommended two different pay scales for Jr.Technician/ Lab.Assistant i.e. Rs.4500-7000 to those Junior Technician/ Lab.Technician promoted from Insect Collector and Rs.4000-6000 to those who were directly appointed in the grade. The anomaly of two different pay scales for same post after implementation of the 5th CPC recommendation was under consideration at the higher level. Since the anomaly was under consideration, an order was issued earlier on 18.12.1998 (Annexure-R-1) for implementing the revised pay scale to this post immediately, based on the recommendations of the 5th CPC. It was clearly mentioned in the said order that "issue of implementation of above pay scale has been under detailed consideration by Directorate General of Health Services/Ministry of Health & Family Welfare and the scales are being granted subject to the final decision by the appropriate authorities regarding anomalies etc. arising out of this implementation if any. The benefits accorded to the incumbent will also be subject to the adjustment/ recoveries, if any". The anomaly was resolved by the Department of Expenditure, Ministry of Finance (Implementation Cell) and accordingly Department of Health vide their letter dated 18.12.2003 (Annexure-R-2) issued the order conveying the decision of the Department of Expenditure arrived vide their UO

dated 15.12.2003 (Annexure-R-3). According to the respondents, the recommendations of the 5th CPC should have been correctly implemented with all posts of Laboratory Assistants (whether filled by promotion or by direct recruitment) in NAMP being initially placed in the scale of Rs.4000-6000 w.e.f. 1.1.1996. Thereafter, 34 of these posts should have been upgraded to the scale of Rs.4500-7000 and re-designated as Laboratory Assistant-I, to be filled by promotion of existing Laboratory Assistants, who would then be classified as Laboratory Assistant-II. Further more, all future appointment to the post of Laboratory Assistant-I should have been made through promotion of Laboratory Assistant-II with the post of Laboratory Assistant-II being filled, 50% by direct recruitment of Graduate and 50% by promotion of Insect Collectors. This course of action being the only correct method would now have to be followed. The administrative Ministry is also advised that the existing pay (not pay scale) of such of those promotee Laboratory Assistants as had wrongly been extended the higher scale of Rs.4500-7000 would be protected and no recoveries be made from them.

5. The respondents have submitted that the seniority list of 74 Laboratory Assistants/ Junior Technicians as on 1.1.1996 was prepared and all the Laboratory Assistants/ Junior Technicians working in the Headquarter and various Regional Offices were initially placed in the pay scale of Rs.4000-6000 (Gde II) and the senior most 34 Technicians were further granted the higher pay scale of Rs.4500-7000. The orders were issued for granting this pay scale as well as for protecting the pay of those Laboratory Technicians/ Junior Technicians whose pay scale was wrongly fixed in the scale of Rs.4500-7000 vide order dated 17.2.2004 (Annexure-R/4). No recoveries have been affected from their salary. However, they would not be entitled to the benefit of first ACP being promotee to the higher pay scale.

6. The respondents have further stated that the recommendations of the 5th CPC and anomaly in the pay structure of Lab.Assistant/ Junior Technician was examined by the Departmental Anomaly Committee and resolved by the Department of Expenditure, Ministry of Finance. The placement of the Lab. Assistants/ Junior Technicians in the pay scale of Rs.4500-7000 while implementing the recommendations of the 5th CPC was conditional as stated in Annexure-R-1. This arrangement was made as an interim measure till such time the anomaly is resolved by the competent authority. Therefore, the applicants have no vested right to claim pay in this pay scale when a final decision was taken by the competent authority and the revised pay scales were implemented as per revised directions.

7. Heard the learned counsel of both the parties.

8. The learned counsel for the applicants has drawn our attention to Annexure-R-2 wherein it has been stated that the erstwhile post of Laboratory Assistant which was in the pay scale of Rs.975-1540 was required to be filled up 50% by promotion and 50% by direct recruitment with B.Sc.qualification. Since the applicants possessed the B.Sc. qualification, they have rightly been promoted as Laboratory Assistant in the pay scale of Rs.4500-7000. The learned counsel has also drawn our attention to Annexure-A-5 by which the pay of the applicant R.K.Singh was fixed at Rs.4300/- in the pay scale of Rs.4000-6000 with effect from 1.1.1996. Vide another order dated 13.3.2000 (Annexure-A-6) aforementioned applicant R.K.Singh was placed in the higher scale of Rs.5000-8000 by granting the benefit of ACP scheme. The learned counsel has also drawn our attention to the letter dated 23.3.2004 (Annexure-A-8) whereby the applicants in OA 1051/2004 have been placed in the pay scale of Rs.4500-7000 as direct recruits, as they were graduate. The learned counsel has further submitted that the applicants in OA 1051/2004 have rightly

been placed in the scale of Rs.4500-7000 and, therefore, the impugned orders Annexure-A-9 and A-10 of OA 1051/2004 be quashed and set aside and the respondents be directed to grant all consequential benefits to the applicants.

9. During the course of arguments, the learned counsel for the respondents has submitted that the present issue was taken up for advice with the Ministry of Finance, Department of Expenditure, who observed that the present case is solely on account of wrong implementation of a specific recommendation of the 5th CPC by the administrative Ministry and, therefore, the applicants are not entitled to get any relief sought for in these Original Applications.

10. We have given careful consideration to the rival contentions. We find that the post of Junior Technician/Laboratory Assistant was earlier in the pay scale of Rs.975-1540. The 5th CPC recommended two different pay scales for Jr.Technician/ Laboratory Assistant i.e.Rs.4500-7000 - for those Jr.Technician/ Laboratory Assistant promoted from Insect Collectors; and Rs.4000-6000 – for those who were directly appointed in the grade and the post has been redesignated as Laboratory Assistant-I and Laboratory Assistant-II respectively. The matter has been referred to the anomaly committee. This issue was taken up for advice with the Ministry of Finance, Department of Expenditure, who observed that the present case is solely on account of wrong implementation of a specific recommendation of the 5th CPC by the administrative Ministry. The 5th CPC's recommendations should have correctly been implemented with all the posts of Laboratory Assistants (whether filled by promotion or direct recruitment) in NAMP being initially placed in the scale of Rs.4000-6000 w.e.f. 1.1.1996. Thereafter, 34 of these posts should have been upgraded to the scale of Rs.4500-7000 and re-designated as Lab Assistant-I to be filled by promotion of the existing Lab. Assistants, who would then be classified as Lab

Assistants-II. Furthermore, all future appointments to the post of Lab.Assistant-I should have been made through promotion of Lab.Assistant-II with the post of Lab.Assistant-II being filled 50% by direct recruitment of graduates and 50% by promotion of Insect Collectors. Thus, we find that it is a policy decision, which has been taken by the Government on the recommendations of the Pay Commission and anomaly committee set up by the department. The Department of Expenditure has examined the matter in detail and have arrived at the conclusion after making a detailed and in-depth study in the matter and, thereafter they have passed the order dated 17.2.2004 clarifying the position. The Hon'ble Supreme Court in the case of Union of India Vs.P.V.Hariharan, JT 1997 (3) SC 569 = 1997 SCC (L&S)838 has laid down as under:-

> "We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realize that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. .....Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales".

11. In the conspectus of the aforesaid facts and the discussions made above and also in view of the decision of the Hon'ble Supreme Court in the case of P.V.Hariharan (supra), we do not find any irregularity in the order dated 17.2.2004 passed by the respondents, in compliance of which the impugned orders have been passed by the respondents. However, we find that in the letter dated 17.2.2004 it has been clearly mentioned that "The Department of Expenditure also advised that the existing pay (and

not pay scales) of such of those promotee Lab. Assistants as had wrongly been extended the higher scales of Rs.4500-7000 would be protected and no recoveries be made from them". As such, the impugned orders of recovery now passed by the respondents in the present cases are quashed and set aside.

12. In the result, both these Original Applications are disposed of in the aforesaid terms. No costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

Rkv

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....
प्रतिलिपि अग्रेषित:—
(1) सचिव, उच्च न्यायालय बार एसोसिएशन, जबलपुर
(2) आवेदक श्री/श्रीमती/कु.....के काउंसल Smt. S. Menon and Sh. S. Paul
(3) प्रत्यर्थी श्री/श्रीमती/कु.....के काउंसल Sh. P. Shankaran Sh. M. Chawla
(4) कोषपाल, के.प्र.अ., जबलपुर न्यायपीठ
सूचना एवं आवश्यक कार्यवाही हेतु
23-9-05
उप रजिस्ट्रार

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