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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00486/2014

**Order Reserved on 05.03.2015
Pronounced on 11.03 2015**

...
CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

- ...
1. Krishan Kumar Sharma, S/o Hardwari Lal, # 2373 Sector 44-C, Chandigarh.
 2. Dev Raj Goyal, S/o Mangat Ram, # 3310 Sector 15-D, Chandigarh.
 3. Surjit Kumar Batish S/o Sh. Shadi Ram, # 160 Sector 23-A, Chandigarh.
 4. Satish Kumar Gambhir S/o Sh. H.L. Gambir, # 5516 MHC Manimajra, UT, Chandigarh.
 5. Anil Bhatnagar S/o Sh. S.L. Bhatnagar, @ 3402/1 Sector 40-D, Chandigarh.
 6. Darshan Devi wd/o Anand Parkash Vijan S/o Sh. Ram Chand, # 322, Opp STD Khuda Alisher UT, Chandigarh.
 7. Mrs. Urmil Verma W/o Sh. Mohan Lal, @ 2141 Sector 50-C, Chandigarh.
 8. A.K. Malhotra S/o Sh. Ram Sarup, #3183/1, Sector 47-D, Chandigarh.
 9. Roshan Lal Samra S/o Sh. Neki Ram, #1398 Sector 7, HUDA Karnal.
 10. Harbhajan Singh Bains S/o Late Sh. Hansa Singh Bains, #344-A, Gobind Colony, Sector 11, Kharar.
 11. Shiv Charan Singh S/o Late Sh. Kartar Singh, 380 Adarsh Nagar Choepar Mundi Kharar, District Mohali.
 12. Haqiqat Singh S/o Sh. Hazara Singh, 8, Gali No.1, Village Mohali, District Mohali.
 13. K.M. Srivastava S/o Brij Behari Lal, #3440, Sector-40D, Chandigarh.
 14. Mohan Lal Sharma S/o Sh. Ajudhya Nath, # 776, Sector-43-A, Chandigarh.
 15. Mohan Lal Gulati S/o Sohan Lal, # 4074 Mauli Complex, Chandigarh.
 16. Rajpal Singh, S/o Ramji Das, #1363-A, Sector 28-B, Chandigarh.
 17. Pradeep Kumar Sharda S/o Sh. D.C. Sharda, # 3226, Sector 28-D, Chandigarh.
 18. Sant Lal Sharma S/o P.S. Sharma, # 556 Sector 12-A, Panchkula.
 19. Rajendra Singh Tomar S/o Sh. Bansi singh Tomar, # 768 Sec 21, Panchkula.
 20. Ashok Kumar Kaul S/o Janki Nath Kaul, #402, Sec 8, Panchkula.

As —

16

21. Vijay Kumar Gupta S/o Mehanga Ram, # 24 Type 4, Sec 12, Chandigarh.
22. Sunder Dass Arora S/o Sh. Chandu Ram, # 5345/1, MHC Manimajra.
23. Roshan Lal S/o Sh. Surat Singh, # 1041 HBC, Dhanas, Chandigarh.
24. Bhupinder Singh Rathee S/o Sh. Ranjeet Singh, B-61, GH-94 Sec 20, Panchkula.
25. Vijay Kumar Aggarwal S/o Sh. Ram Sarup, # 2327 Sec 44-C, Chandigarh.
26. Gopal Krishan Mehta S/o Sh. Shiv Dyal Mehta, # 347 Phase-II, Mohali.
27. Mrs. Ajit Kaur D/o Sh. Harchet Singh, # 347, Phase II, Mohali.
28. Mrs. Sharda Mago W/o Sh. S.K. Mago, # 543 Vigyan Vihar, Sector 49-A, Chandigarh.
29. Krishan Lal Kapur S/o Sh. Paramanand, # 3856/1, Sector 47-D, Chandigarh.
30. Hari Darshan S/o Sh. Phagu Ram, Flat No.31-H, GH-94, Sector 20, Panchkula.
31. Itwari Lal Kashiv, S/o Sh. Ratti Ram, C/o 1320 Shivalik City, Landra Kharar.
32. Harcharan Singh, S/o Sh. Laxman Singh, # 413, Sector 41-A, Chandigarh.
33. Sohan Singh, S/o Sh. Paras Ram, # 3185, Sector-47D, Chandigarh.
34. Ram Rattan Gill S/o Late Sh. Gurdas Singh, # 574-A, Ranjit Enclave, Near Deep Nagar, Jalandhar Cantt.
35. Har Narinder Singh S/o Late Sardar Jarnail Singh, # 204, Sector 20-A, Chandigarh.
36. Satish Kumar Gupta, S/o Late Sh. Charan Dass, # 3326, Sector 49-D, Chandigarh.
37. Jawahar Lal Arora, S/o Sh. Ram Lal Arora, # 593, Gobind Nagar, Near Century Public School, Nayagaon, Distt. Mohali.
38. Sushil Chopra, S/o Sh. Sunder Lal Chopra, # 1106-E, Vishal Bhawan, Sector 4, Panchkula.
39. Gopal Dass, S/o Madan Lal, # 2619, Sector 40-C, Chandigarh.

... Applicants

Versus

1. Union of India, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi through its Secretary.
2. Post Graduate Institute of Medical Education and Research (PGIMER) Sector 12, Chandigarh through its Director.

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... Respondents

Present: Sh. D.R. Bansal, counsel for the applicants.
Sh. Amit Jhanji, counsel for the respondents.

ORDER

BY HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking that order dated 22.12.2010 may be set aside to the extent of allowing the pensionary benefits of old age allowance and leave travel concession etc. to the employees of category I only i.e. employees whose services were transferred to the Institute at the time the Institute came into existence as an autonomous body and not to the applicants who were at par with these employees who were granted this benefit (Annexure A-1), order 24/25.04.2014 (Annexure A-2), rejecting the claim of the applicants for grant of pensionary/retiral benefits on Punjab Pattern who were drawing pay scales as per Punjab Pattern be quashed and directions be given to the respondent Institute to grant them retiral/pensionary benefits as per Punjab pattern.

2. Background of the matter is that the applicants are retirees of PGIMER, Chandigarh and are getting pension/family pension. The applicants were appointed in the PGIMER after commencement of the Post Graduate Institute of Medical Education and Research Act, 1966 and before 20.09.1975. Appointment letters in respect of some of the

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applicants have been appended as Annexure A-3 and in the clause regarding pay and allowances of the applicants, it has been mentioned that pay scale plus usual allowances as are sanctioned for the employees of the Institute from time to time are applicable. Employees of the Institute who were recruited before commencement of the PGI Act, 1966 were drawing pay scales as per Punjab pattern. The employees recruited after commencement of the Act and before 20.09.1975 also drew their pay in the pay scale as per Punjab pattern.

3. In 1974 the matter regarding pay scale and allowances of the employees of the respondent Institute came up for consideration. The employees were asked to exercise option as to whether they wished to draw their salary as per Punjab pattern or as per pay scale and allowances as in the AIIMS, New Delhi. Out of 716 employees working at that time and drawing the pay scales as per Punjab pattern, only 9 class IV employees opted for AIIMS pay scale with the condition that they should be given Central Revised pay scales with retrospective effect i.e. from 01.01.1973. The matter came up for decision in the meeting of Standing Finance Committee of the Institute held on 20.9.1975 and it was decided that the categories of staff who were drawing Punjab pay scale and allowances should be allowed to continue on the Punjab pattern and they be delinked from U.T. Administration. It was also decided that future recruitments/promotions in PGI should be made in

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the same scales as in the AIIMS. Thus employees recruited after the commencement of the Act and before 20.09.1975 who did not opt for AIIMS scale, were brought at par with the employees who were recruited before the commencement of the Act who were protected under Section 28 of the Act (a copy of the agenda and decision thereon dated 20.09.1975 annexed as Annexure A-4). After this decision, appointments in the Institute were made mentioning the pay scale plus usual allowances as are sanctioned by the Central Government for the same category of staff stationed at Chandigarh. To give effect to the decision as per Annexure A-4, Regulation 40 was further amended vide PGI notification dated 26.12.1984 adding proviso to the regulation which reads as under:-

"Provided that in the case of employees appointed in the Institute who are drawing pay at the rates admissible to the corresponding categories of employees of the Government of Punjab, it shall be competent for the institute to revise the scales of pay of such employees so as to bring the said scales at par with the scales of pay sanctioned by the Govt. of Punjab from time to time for such corresponding categories of employees."

4. The employees recruited after the commencement of the Act and before 1975 started retiring on superannuation in the year 2000-2001. The matter for granting them pensionary/retiral benefits again came up for consideration before the respondent Institute. At that time pensionary benefits as per pattern of the Central Government were more

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beneficial. The respondent Institute was in favour of granting pensionary benefits as per Central Government pattern to the employees who had retired and were drawing Punjab pay scales. The proposal to grant pensionary benefits on the pattern of Central Government to the employees drawing Punjab pay scales was however specifically rejected by the Ministry of Finance (Department of Expenditure) and Department of Pension and Pensioners Welfare vide letter dated 26.02.2003 (Annexure A-10) stating that the proposal has been considered by both the Departments and the Ministry of Finance (Department of Expenditure) agrees with the views expressed by the Department of Pension and Pensioners Welfare that option exercised by certain employees to opt for Punjab State Govt. pay scales instead of Central Government Pay Scales was a conscious decision by them, option once exercised is final and cannot be revised and therefore, the proposal for grant of pensionary benefits on the pattern of the Central government to all pensioners of PGIMER, Chandigarh who were drawing Punjab Pay Scales has not been agreed to. Thereafter, the matter came up before the Standing Finance Committee of PGI in its meeting held on 08.05.2004 to discuss and decide whether the employees who retired from PGIMER and were drawing Punjab Pay Scales can be granted pension as per Punjab Pattern or Central Pattern (Annexure A-11). The Committee agreed to the agenda item that these employees are to be

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paid pensionary benefits as per Punjab Pattern, which was communicated to the Financial Advisor vide letter dated 23.07.2004 (Annexure A-12). Then, the matter came up before the Governing Body Meeting held on 22.09.2004 (Annexure A-13) and Governing Body approved the proposal, which was also communicated to the Financial Advisor vide letter dated 05.10.2004 (Annexure A-14).

5. Averment has been made in the O.A. that all of a sudden from 01.09.2008, the respondent Institute without issuing any office order stopped pensionary benefits as per Punjab pattern. Some of the retirees then approached this Tribunal by filing O.A. No.431/CH/2010 which was disposed of on 21.05.2010 directing that representations of the applicants be decided by the respondents. A letter dated 29.12.2010 was issued to the applicants in O.A. No.431/CH/2010 enclosing a copy of rejection order dated 23.12.2010 and stating that the directions of the C.A.T. dated 21.05.2010 had been complied with.

6. Applicants no.1 to 32 again submitted representation to PGIMER. Since there was no response to the same, they filed O.A. no.611/CH/2012 which was disposed of vide order dated 06.01.2014 directing the respondents to decide the claim of the applicants by passing a detailed speaking order on the representation, after giving them personal hearing within two months. The representation made by

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applicants no.1 to 32 was received by Director PGIMER on 13.01.2014 and the same had been decided rejecting the claim of the applicants vide order dated 24/25.04.2014 attached as Annexure A-2. Hence this O.A.

7. In the grounds for relief, it has inter alia been stated as follows:

- 1) The applicants were recruited in the pay scale as per Punjab pattern, their pay scales were revised from time to time as per Punjab Pay Scales and they retired from the service drawing Punjab Pay Scales. Therefore, they are also entitled to the retiral/pensionary benefits as per Punjab pattern.
- 2) It was decided in the meeting held on 20.09.1975 that the employees drawing Punjab pay scales and allowances should be allowed to receive the same. However, it was decided that all future recruitment should be made in the pay scales of AIIMS. Thus, when the respondent Institute has taken a conscious decision in the matter of pay scales of the applicants to grant them pay scales on Punjab pattern, they are entitled to the pensionary/retiral benefits on Punjab pattern.
- 3) When the employees who were recruited in Punjab Pay Scales by the PGIMER, Chandigarh started retiring in 2002-03, the matter came up for consideration whether these employees could be granted pensionary benefits as per Central Government pattern as pensionary benefits as per Central Government Pattern that was favourable to the employees, but the Central Government rejected the case saying that once the employees have opted for Punjab Pay Scales, they have to be paid pensionary benefits as per Punjab pattern and not as per Central Government pattern. Thereafter the matter was taken up and after a lot of deliberation the Governing body of the Institute in its meeting held on 22.09.2004, decided to allow the retired employees drawing Punjab pay scales, the benefits allowed by the State of Punjab to its retirees i.e. restoration of commutation of pension

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after 12 years, old age allowance of 5%/10% at the age of 70/80 years as per A-4 and thereafter at the age of 65/70 w.e.f. 01.01.2001 and also the travel concession. When conscious decision has been taken by the respondent Institute, this benefit cannot be denied at this stage.

- 4) The employees recruited before the commencement of the Act and after commencement of the Act but before 1975 who were recruited in Punjab pay scales and were allowed the same vide A-4, were clubbed in one class and particularly when the retiral/pensionary benefits were granted to them on the same pattern i.e. Punjab pattern vide A-6. Now, bifurcating them in two classes is discriminatory, arbitrary and violative of Article 14 and 16 of the Constitution of India. It is also ridiculous that the pay and allowances and promotion of these employees was as per Punjab pattern and other conditions of service like pension to be under CCS Rules.
- 5) The respondent Institute erred in saying that due to audit objection, the matter was again reviewed and examined and it was found that these employees are not entitled to pensionary benefits as per Punjab pattern. The audit objection is to be removed by the official respondents and not by the applicants. The respondent Institute should have brought the matter to the notice of the audit that the Central Government vide A-10 had clearly decided that these pensioners are to be granted pensionary benefits as per Punjab pattern as they had opted for Punjab scales and the proposal for granting them pensionary benefits as per Central Government pattern was specifically rejected.

8. In the written statement filed on behalf of the respondents it has been stated that the claim of the applicants who had joined the Institute after the commencement of PGIMER Act, 1966 are not entitled for pensionary benefits allowed by Punjab Government. Vide order dated 30.10.2014 the Institute accorded sanction to grant of

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pensionary benefits to all the retired employees who were drawing Punjab Pay Scales. Thereafter, Punjab government had lowered the commutation of pension value w.e.f. 30.07.2012 to their employees and consequently the office of Principal Accountant General, Chandigarh raised the audit objection during the audit of the Institute's accounts for the year 2004-05 that when all the benefits of Punjab government had been given to pensioners drawing Punjab pay scales, commutation value rate allowed to these pensioners should have been as per Punjab government rate, which is lower than commutation rate allowed to these pensioners. In view of the audit objection raised by the Principal Accountant General, the matter was examined in terms of Section 28 of PGIMER Act and it was found that only those employees who had joined the Institute before the commencement of PGIMER Act and were drawing Punjab Pay Scales are eligible to get pensionary benefits as per the Punjab pattern. The employees who joined the Institute after the commencement of PGIMER Act and were drawing Punjab pay scales till 1975 were wrongly given the pensionary benefits on Punjab pattern. In other words protection was given to the Punjab Employees under Section 28, whose services were transferred to the Institute before PGIMER Act, 1966 came into force. Section 28 and 40 of the PGIMER Act that are relevant to the matter read as follows:-

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"28. Transfer of service of existing employees:-

Subject to the provisions of this Act, every person who is employed in the Post Graduate Institute of Medical Education and Research, Chandigarh immediately before the commencement of the Act, shall on and from such commencement, become an employee of the Institute and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave gratuity and provident fund and other matters as he would have held the same on the date of commencement of this Act if this Act had not been passed and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by regulations.

Provided that the tenure, remuneration and term and conditions of service of any such person not be altered to his disadvantage without the previous approval of the Central Government."

"Section 40 other conditions of service:-

In respect of matters not provided for in these regulations, the rules as applicable to Central Government Servants such as regarding the general conditions of service, pay allowances including travelling and daily allowances, leave, salary, joining time, foreign service terms and orders and decisions issued in this regard by the Central Government from time to time shall apply mutatis mutandis to the employees of the Institute.

Provided that in the case of employees appointed in the Institute who are drawing pay at the rates admissible to the corresponding categories of employees of the Government of Punjab, it shall be competent for the Institute to revise the scales of pay of such employees so as to bring the said scales at par with the scales of pay sanctioned by the Government of Punjab from time to time for such corresponding categories of employees."

After PGIMER Act, 1966 came into force, some of the employees appointed by the Institute as per Punjab Pay scales and their services

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were regulated under the provisions of Section 40 of PGIMER Act. Protection of Section 40 of PGIMER Act was given to these employees but the protection under Section 28 was not given to them. Therefore, in order to resolve the audit objections raised by Principal Accountant General number of meetings were held and ultimately it was decided to withdraw the earlier order dated 31.10.2004. Matter was referred to Government of India for examination as per the decision of the bodies of the Institute and after in depth consultation with Department of Legal Affairs, it was decided that the excess payment which has already been made to the pensioners may not be recovered. It was further decided vide decision dated 22.12.2010 by respondent Institute that the applicants who had joined the answering respondents after the commencement of PGIMER Act, would be allowed pensionary benefits as per the Central Civil Services rules and not on Punjab pattern. A copy of Agenda item no.16 meeting dated 23.07.2010 regarding grant of pensionary benefits to retirees drawing Punjab scale as well as order dated 23.12.2010 passed by answering respondents are appended as Annexure R-1 and R-2 respectively.

9. Rejoinder was also filed on behalf of the applicants reiterating the content of the O.A.



10. Arguments advanced by learned counsel for the parties were heard. Learned counsel for the applicant narrated the background of the matter and pressed that since the applicants through out their service had drawn their salary in the Punjab scales, hence there was no ground for allowing them pension on the basis of Central rules. He also stated that this matter had been considered in 2003 when the employees were seeking that they be allowed to adopt Central Scales but this was rejected vide letter dated 26.02.2003 (Annexure A-10) wherein it had been recorded as follows:

"The proposal has been considered by both the Departments and the Ministry of Finance (Department of Expenditure) agrees with the views expressed by the Deptt. Of Pensions and Pensioner Welfare that option exercised by certain employees to opt for Punjab State Govt. pay scales instead of Central Government pay scales was a conscious decision by them. Option once exercised is, therefore, final and cannot be revised. Therefore, the proposal for grant of pensionary benefits on the pattern of Central Government to all pensioners of PGIMER, Chandigarh including pensioners who retired from PGIMER, Chandigarh and were drawing Punjab pay scales has not been agreed to."

He stated that since the Department of Pension and Pensioners Welfare as well as Ministry of Finance (Department of Expenditure) had considered the matter on reference having been made by Ministry of Health and Family Welfare that option once exercised was final and cannot be revised and the proposal for grant of pensionary benefits on the pattern of Central Government to all pensioners of PGIMER,

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Chandigarh including the applicants who retired from PGI and were drawing Punjab scale had not been agreed to, hence there was no reason to reopen the matter on account of some audit objection and to revise the pensionary benefits of the applicants to their detriment.

11. Learned counsel for the respondent Institute referred to the provisions in Section 28 and Section 40 of PGIMER Act 1966 and stated that the employees who had been recruited during the period after commencement of the Act and before 20.09.1975 were not entitled to pay scale and pension as per the Punjab pattern. He stated that the Institute had already decided not to effect recovery of over payment made to such persons but he admitted that in future pensionary benefits of the applicants would be reduced on account of decision taken in 2010.

12. I have carefully gone through the pleadings of the parties, material on record and heard learned counsel at length. It appears patently illogical in the case of the applicants who had been drawing their salary in Punjab pay scales and even after retirement have been getting their pensionary benefits in accordance with the Punjab pattern, that so many years after retirement, their pensionary benefits have been reduced to their detriment on account of audit objections and due to interpretation of Section 28 and 40 of the PGIMER Act. The issue regarding applicability of Punjab Scales/Central scales was considered by

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the Department of Pension and Pensioners Welfare as well as Ministry of Finance (Department of Expenditure) and it was concluded and conveyed to the PGI as per letter dated 26.02.2003 (Annexure A-10) that the option exercised by the employees to opt for Punjab State Government pay scale was a conscious decision by them and option could not be revised. The action of the PGIMER to switch these retiree applicants to the Central Scales is tantamount to revising the decision of 26.02.2003 without again consulting the Department of Pension and Pensioners Welfare as well as Ministry of Finance. There is no good reason for doing so. The applicants are not at fault if the Institute has not applied provisions of the Act correctly to them when they joined service and thereafter. Hence the impugned order dated 24/25.04.2014 is quashed and the applicants are held to be entitled to pension/pensionary benefits as they were drawing at the time of their retirement from the Institute i.e. on the Punjab pattern.

13. The O.A. is allowed in the above terms.


(RAJWANT SANDHU)
MEMBER (A)

Place: Chandigarh.

Dated: 11.3.2015

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