

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.218/2015

M.A. No.160/2015

Order reserved on 4th November 2016

Order pronounced on 18th November 2016

Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

1. Mahender Kumar Bhardwaj, age 47 years
s/o Late Tara Chand
Post at present: Plaster Assistant
Posting: ESI Hospital, Rohini, Sector 15, Delhi – 85
2. Surender Kumar, age 42 years
s/o Ram Kishore
Post at present: Plaster Assistant
Posting: ESI Hospital, Rohini, Sector 15, Delhi – 85
3. Dalel Singh, age 48 years
s/o Mr. Hawa Singh
Post at present: Plaster Assistant
Posting: ESI Hospital, Rohini, Sector 15, Delhi – 85
4. Sushila Tirky, age 52 years
s/o Mr. Lt. Pascal Minj
Post at present: Plaster Assistant
Posting: ESI Hospital, Rohini, Sector 15, Delhi – 85
5. Parmod Kumar, age 48 years
s/o Mr. Moha Singh
Post at present: Plaster Assistant
Posting: ESI Hospital, Rohini, Sector 15, Delhi – 85

..Applicants

(Mr. Ravinder Kumar Sharma, Advocate)

Versus

1. Director General
ESI Corporation, Panchdeep Bhawan
Kotla Road, New Delhi – 2
2. The Director
Directorate (Medical) Delhi
Employees State Insurance Scheme
Dispensary Complex, Tilak Vihar, New Delhi

3. The Medical Superintendent
Employees State Insurance Corporation
ESI Hospital, Sector 15,
Rohini, Delhi – 89

..Respondents

(Mr. A.K. Verma, Advocate)

O R D E R

Mr. K.N. Shrivastava:

M.A. No.160/2015

M.A. seeking joining together in a single petition is allowed.

O.A. No.218/2015

The applicants have filed the instant O.A. under Section 19 of the Administrative Tribunals Act, 1985 praying for the following specific relief:

“1. Direct the respondents to re-fix the pay Scale (Pay Band 5200-20200- Grade Pay 2400) and allowances of the applicants at par with the other Plaster Assistants, similarly and identically situated as the applicant, and not less than his juniors and place the applicants in the correct pay slots, according to the 6th CPC from to date of appointments.

2. Direct the respondents to pay interest on the arrears of pay till the date of payment and grant the litigation expenses.”

2. The brief facts of the case are as under:

2.1 The applicants are presently working as Plaster Assistants in Employees State Insurance Corporation (ESIC) – respondent organization. They were appointed to the post in the years 2011 and 2012. Plaster Assistants, Laboratory Assistants, Nursing ‘D’ Grade, Auxiliary Nurse & Midwife were all in the same pay scale. The 5th Central Pay Commission (CPC) had put them in the pay scale of `3200-4900.

2.2 The Central Government, vide Notification dated 30.10.1997, upgraded the said pay scale to `4000-6000 in respect of all technical posts

requiring matriculation qualification with some experience. By virtue of this Notification, the Nursing 'D' Grade and Auxiliary Nurse & Midwife were granted the pay scale of `4000-6000 whereas the Laboratory Assistants and Plaster Assistants were continued in the pay scale of `3200-4900.

2.3 Aggrieved by the denial of pay upgradation to `4000-6000, a group of Laboratory Assistants approached this Tribunal in O.A. No.1464/2003 (**Ashok Kumar & others v. Union of India**), which was allowed vide order dated 13.01.2004.

2.4 Subsequently some more Laboratory Assistants filed various O.As. (O.A. Nos.1145/HP/2002,1464/2003, 1253/2002, 1401/2006, 825/2007 and 1145/2002. These O.As. were also allowed by this Tribunal.

2.5 The ESIC challenged the orders of the Tribunal in respect of the Laboratory Assistants. However, it also decided to implement the orders of the Tribunal pending the disposal of the writ petitions.

2.6 A group of Plaster Assistants, seeking the pay scale upgradation to `4000-6000 and thus claiming parity with Laboratory Assistants, Nursing 'D' Grade, Auxiliary Nurse & Midwife, approached this Tribunal in O.A. 3226/2011, which was allowed by the Tribunal vide order dated 19.12.2013. The operative part of the said order is extracted below:-

“8. In the light of the discussion in the preceding paragraph and the reasons explained, we quash the order dated 17.01.2011 passed by the respondents in compliance of the directions of the Tribunal in OA-3138/2010 and MA no.2432/2010. The respondents are further directed to implement the scale notified vide resolution dated 30.09.1997 for other technicians (Posts) requiring matriculation with

some experience as minimum qualification for direct recruitment, i.e., 4000-6000. The respondents shall implement this order within a period of two months and will also pay arrears to the applicants from the date of filing of this O.A. The O.A. stands allowed in the aforesaid terms. No costs.”

The applicants in the present O.A. are seeking the same reliefs, as had been allowed by this Tribunal to the Plaster Assistants vide order dated 19.12.2013 in O.A. No.3227/2011. Incidentally, the said order of the Tribunal has also been provisionally implemented by the ESIC, notwithstanding the fact that the ESIC has challenged this order of the Tribunal also in a writ petition before the Hon’ble High Court of Delhi.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The applicants thereafter filed their rejoinder. With the completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 04.11.2016. Mr. Ravinder Kumar Sharma, learned counsel for applicants and Mr. A.K. Verma, learned counsel for respondents were heard.

4. Learned counsel for applicants, besides narrating the factual matrix of the case, stated that the applicants in the instant O.A. are similarly circumstanced with the applicants in O.A. No.3227/2011 and thus are seeking the same relief that has been granted to the applicants in the said O.A. vide order dated 19.12.2013. In this regard, the learned counsel placed reliance on the judgment of Hon’ble Supreme Court in the case of **Union of India v. P. Jagdish** [(1997) 3 SCC 176].

5. *Per contra*, learned counsel for respondents, while admitting that the reliefs, as prayed for in the instant O.A., have been granted by this Tribunal

to similarly placed applicants in O.A. No.3227/2011, prayed for keeping this O.A. pending *sine die* and await the outcome of the writ petition filed by the respondents challenging the order of the Tribunal dated 19.12.2013 in O.A. No.3227/2011.

6. We have considered the arguments of learned counsel for the parties and perused the pleadings and documents annexed thereto. Admittedly, the applicants in O.A. No.3227/2011 and those in the instant O.A. are Plaster Assistants working in the ESIC. The Tribunal has already allowed the O.A. No.3227/2011 vide order dated 19.12.2013 granting the relief of pay scale upgradation and the said order has also been implemented by the respondents. The applicants in the present case are identically placed. As such we do not have any hesitation in holding that these applicants deserve to be extended the benefits of the decision of this Tribunal in O.A. No.3227/2011.

7. In the conspectus of the discussions in the foregoing paragraph, the O.A. is allowed. The respondents are directed to grant the scale notified vide Government of India Notification dated 30.10.1997 for other Technicians / posts requiring matriculation as minimum qualification for direct recruitment, i.e., `4000-6000 whose replacement scale under the 6th CPC is `5200-20200 with Grade Pay of `2400/- to these applicants. This shall be done within a period of two months from the date of receipt of a copy of this order. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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