

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**OA NO.707/2012
AND
OA NO.1338/2012**

Order reserved on 01.08.2016
Order pronounced on 10 .08.2016

**HON'BLE SHRI P.K. BASU, MEMBER (A)
HON'BLE DR B.A. AGRAWAL, MEMBER (J)**

OA NO.707/2012

1. Munish Kumar Bhardwaj,
S/o Late Sh. Dori Lal Bhardwaj,
Aged about 49 years,
Radiographer.
2. Sabu Thomas
S/o Sh. K.A. Thomas,
Aged about 44 years,
Radiographer.
3. Arun Kumar,
S/o Late Sh. Vikram Singh,
Aged about 44 years,
Radiographer.
4. Arvind Kumar,
S/o Late Sh. Ramanand,
Aged about 42 years,
Radiographer.

Applicants Nos.1 to 4 presently posted at:
Indira Gandhi E.S.I. Hospital,
Jhilmil, Delhi-55.

5. Miss. Deepa Atri,
D/o Sh. B.K. Atri,
Aged about 45 years,
Radiographer.
6. Ram Mehar,

S/o Sh. Hukum Chand,
Aged about 56 years,
Radiographer.

7. Mrs. Aleyamma Mathew,
S/o Sh. T.C. Varghese,
Aged about 46 years,
Radiographer.
 8. Shaji Mathew,
S/o Sh. M.V. Mathew,
Aged about 45 years,
Radiographer.
 9. Sanjeev Kumar Aggarwal,
S/o Sh. R.S. Aggarwal,
Aged about 48 years,
Radiographer.
 10. James Varghese,
S/o Sh. C.T. Varghese,
Aged about 46 years,
Radiographer.
 11. George C,
S/o Sh. A.K. Lukose,
Aged about 37 years,
Radiographer.
 12. Yad Ram,
S/o Sh. Dhani Ram,
Aged about 50 years,
Radiographer.
 13. Mohan Singh,
S/o Sh. Lallu Ram,
Aged about 37 years,
Radiographer.
- Applicants Nos.5 to 13 presently posted at:
ESI Hospital, Basaidarapur Ring Road,
New Delhi-15.
14. Krishan Lal Dahiya,
S/o Sh. Mange Ram,

Aged about 56 years,
Radiographer.

15. Sushil Kumar,
S/o Sh. Dhoom Singh,
Aged about 45 years,
Radiographer.
16. Amit V. Singh,
S/o Late Sh. G.B. Singh,
Aged about 48 years,
Radiographer.
17. Sanjeev Sharma,
S/o Sh. H.R. Sharma,
Aged about 36 years,
Radiographer.
18. Ms. Sangeeta Bindal,
D/o Sh. M.C. Agarwal,
Aged about 38 years,
Radiographer.

Applicants Nos.14 to 18 presently posted at:
ESI Hospital, Rohini, Sector 15,
Rohini, Delhi-85.

19. Bishan Singh,
S/o Sh. R.H. Lal,
Aged about 44 years,
Radiographer.
20. Stephan Theodore Robert,
S/o Late Sh. Theodore Robert,
Aged about 34 years,
Radiographer.
21. Emanuwel Minz,
S/o Late Sh. Tius Minz,
Aged about 38 years,
Radiographer.

Applicants Nos.19 to 21 presently posted at:
ESI Hospital, MA Anand Mai Marg,
Okhla Phase 1, Delhi-21.

...Applicants

(By Advocate: Shri Amit Anand)

VERSUS

1. Union of India
Through its Secretary,
Ministry of Labour,
Shram Shakti Bhavan,
New Delhi-110 001.
2. The Director General,
Employees State Insurance Corporation,
Kotla Road,
New Delhi-110 002.

...Respondents

(By Advocate: Shri M.K. Saran)

OA NO.1338/2012

1. Sh. Amar Chand,
Aged about 46 years,
S/o Sh. Ram Singh,
R/o F-68, Laddo Sarai,
Mehrauli, New Delhi-110030.
2. Sh. Shiv Singh Bhandari,
Aged about 43 years,
S/o Sh. B.S. Bhandari,
R/o A-232, St No.9,
Kumaon Square,
West Vinod Nagar,
Delhi-110091.
3. Sh. Jagbir Singh,
Aged about 45 years,
S/o Sh. Piyare Lal,
R/o D-26, Dayanand Block,
Shankar Pur, Delhi-110092.
4. Sh. Naresh Kumar Bhardwaj,
Aged about 43 years,
S/o Sh. K.D. Bhardwaj,

R/o RC/48, Vandana Enclave,
Khora Colony, Ghaziabad.

5. Sh. Asha Bose,
Aged about 45 years,
S/o Sh. Dan Singh,
R/o 396, Sector-22,
NOIDA (UP).

...Applicants

(By Advocate: Shri Amit Anand)

VERSUS

Union of India through

1. Secretary,
Ministry of Labour,
Shram Shakti Bhawan,
New Delhi-110001.
2. The Director General,
Employees State Insurance Corporation,
Kotla Road, New Delhi-110002.
3. The Director (H),
ESIC Hospital,
Sector-24, NOIDA (UP).
4. Sh. John Amit Soreng,
Aged about 36 years,
S/o Late Sh. Antony Soreng,
R/o B-58, S-5, Royal Apartment,
Dilshad Colony, Delhi-110035.
5. Sh. Bhuvnesh Kumar,
Aged about 38 years,
S/o Sh. Rajendra Kumar,
R/o E-20C, Sector-12,
Vijay Nagar, Ghaziabad.
6. Mohd. Ejaz Hussain,
Aged about 28 years,
S/o Sh. Shahzad Hussain,
R/o RZ-28, Nand Vihar,

Sector-16, Dwarka,
New Delhi.

7. Sh. Brahm Singh,
Aged about 47 years,
S/o Sh. Mangal Sain,
R/o H.No.595, Jawala Nagar,
Shahdara, Delhi-110032.
8. Sh. Vaibhav Vashistha,
Aged about 30 years,
S/o Sh. R.D. Vashistha,
R/o H.No.677, A Block,
Baba Colony, Burari, Delhi-84.
9. Sh. Ranjan Kumar Gupta,
Aged about 44 years,
S/o Late Sh. Ram Niwas Gupta,
R/o 1765, Mahavir Block,
Bhola Nath Nagar, Shahdara,
Delhi-110032.
10. Ms. Shivani,
Aged about 27 years,
D/o Sh. Jagmohan Singh,
R/o C-26A, Kiran Garden,
Uttam Nagar, New Delhi.
11. Sh. Sanjiv Sehgal,
Aged about 51 years,
S/o Late Sh. Ram Prakash,
R/o H-9, B.K. Duh Colony,
New Delhi.
12. Sh. Surinder Verma,
Aged about 44 years,
S/o Sh. Suresh K. Verma,
R/o WZ-485/8, Basai Dara Pur,
New Delhi.
13. Ms. Geeta,
Aged about 27 years,
D/o Umesh Ram,
F-3, Block-37, Kalyanvas,
Delhi-110091.

14. Sh. Pratap Singh,
Aged about 28 years,
S/o Sh. Pooran Singh,
C-10, Sitapuri Part-I,
New Delhi.

15. Sh. Satish Kumar,
Aged aboutyears,
S/o Sh. Chand Singh,
R/o RZ. G 1/64, Mahavir Enclave,
New Delhi.

...Respondents

(By Advocate: Shri M.K. Saran)

:ORDER:

DR BRAHM AVTAR AGRAWAL, MEMBER (J):

The above two OAs have been filed by 26 Radiographers working in ESIC hospitals praying for a direction to the official respondents to grant them pay-scale of Rs.5000-8000 w.e.f. 01.01.1996 in place of Rs.4500-7000 relying on the principle of "equal pay for equal work" and also praying that the ESIC's 'Speaking Order' dated 11.04.2011 (Annexure A-1 in both the OAs) denying the said benefit be quashed. The private respondents (nos.4 to 15) in the OA No. 1338/2012 are also Radiographers, who support the applicants' claim in the OA and would be entitled to the same relief, were impleaded when their MA No.3360/2015 was allowed, vide our order dated 17.05.2016.

2. The applicants in the two OAs had earlier filed the OA No. 3627/2009 and the OA No. 926/2010, respectively, which were disposed of by this Tribunal, vide the common oral order dated 16.11.2010 (Annexure A-19 in both the OAs). The said order reads as under;

"2. Radiographers in Employees State Insurance Corporation (ESIC) have sought the pay scale of Rs.5000-8000 and challenged the order dated 8.9.2009. Earlier in a litigation before the Madras Bench of the Tribunal in OA-308/2005 decided on 25.7.2006 respondents have been directed to grant the pay scale, which has been modified by the High Court of Madras vide its order dated 28.4.2009 in WP-27142/2008 by directing the respondents to consider the claim and pass an order. In the impugned order, as regards Radiographers, it has been stated that the pay scale, as claimed by the applicants, has not been implemented by the Central Government as per the Section 17 (2) of ESI Act whereby wherever any departure from rules and orders applicable to the officers and employees of Central Government is made, the ESIC shall obtain prior approval of the Central Government. The Ministry has denied the pay scale on the ground that the Central Government is yet to implement the pay scale in respect of the Radiographers working under it.

3. However, learned counsel for applicants has now appended with the rejoinder certain documents to show that the pay scale has been implemented by the Central Government is a new fact, which has come forth during the course of the pleadings. We find that in the matter of pay scale once the very basis of the decision is proved otherwise, i.e., if on verification respondents-ESIC find that the pay scale has been extended to the Central Government, they will process the claim of the applicants for such grant of pay scale from the due date. This shall be done within a period of three months from the date of receipt of a copy of this order.

4. With this, these OAs are disposed of. No costs."

3. The official respondents thereafter passed the aforesaid impugned 'Speaking Order', which reads as under:

" SPEAKING ORDER IN THE CASE OF OA -NO.3627/2009 WITH OA NO. 926/2010 FILED BY RADIOGRAPHERS OF ESIC V/S UO & ORS. BEFORE HON'BLE CAT, PRINCIPAL BENCH, NEW DELHI.

Whereas the Radiographers of Employees State Insurance Corporation filed OA-No.3627/2009 & OA-NO.926/2010 in the Hon'ble CAT, Delhi seeking direction to UOI & ESIC to consider and grant the pay scale of Rs. 5000-8000/- wef. 1.1.96 along with all consequential benefits.

Whereas the Hon'ble CAT vide its judgment dated 16.11.10 directed the respondents (ESIC) that if the higher pay scale has been extended to the Central Govt., they will process the claim of the applicants for such grant of pay scale from the due date.

Consequent to the implementation of fifth pay commission recommendation, the following scale has been given w.e.f 1.1.96 to its Radiographers-
-Rs.4500-7000/-

The scale of pay of Rs. 4500-7000 is granted strictly in accordance with the recommendation of Vth Central Pay Commission adopted by ESIC vis-à-vis provisions of the recruitment rules of the ESIC.

As per Vth CPC recommendations at para 52.107, the higher pay scale of Rs. 5000-8000/- is to be granted only to such of the post of Radiographer, for which minimum qualification of 3 years diploma has been prescribed. As per RR of ESIC, minimum qualification for all the post of Radiographers in ESIC hospitals is only a 2 years diploma. Hence, the higher pay scale of Rs. 5000-8000/- cannot be extended to Radiographers working in ESIC.

Secondly, as per order of Hon'ble CAT, the matter of higher pay scale to Radiographers has been examined in consultation with Ministry of Health & Family Welfare. Ministry vide letter no.C- -18018/11/2011-MH-1 dated 10.3.11 has informed that higher pay scale of Rs. 5000-8000/ is being granted as per order of Hon'ble CAT to those Radiographers only who were applicants in OA No.760/2009 filed by Rajesh Yadav & Ors. Vs. UOI & Ors. Ministry has also informed that as per their RR to the post of Radiographers, the pay scale is Rs. 4000-

6000/-(pre revised) Revised pay scale for the same is Rs. 5200-20200/- with grade pay of Rs.2400/-/

In ESIC scale of Radiographer is Rs. 4500-7000/- which is revised to Rs. 5200-20200/- with grade pay of Rs. 2800/-

Since the Central Govt. has not implemented the higher scale of 5000-8000/- in respect of its radiographers, same cannot be permitted to Radiographers of ESIC

This Speaking Order is issued in compliance with the directions given by the Hon'ble CAT, Principal Bench, New Delhi on 16.11.10 in OA- No. 3627/2009 & OA- No.926/2010."

4. The applicants then filed CPs Nos. 693/2011 and 702/2011, which were disposed of by the Tribunal, vide separate but identical orders both dated 31.10.2011 (vide Annexure A-22 in both the OAs). The CPs were dismissed and notices discharged, acknowledging the applicants' liberty to challenge the aforesaid 'Speaking Order' in appropriate proceedings. Hence, the instant OAs.

5. The applicants claim parity in pay-scale with Radiographers working in the CGHS, Safdarjung Hospital, Maulana Azad Medical College, MCD, Ordnance Factory Board, Sashastra Seema Bal and AIIMS.

6. We have heard the learned counsel for the parties, perused the pleadings as well as the rulings cited at the Bar, and given our thoughtful consideration to the matter.

7. In **State of M.P. & Ors. Vs. Ramesh Chandra Bajpai**

[(2009) 13 SCC 635], the Hon'ble Supreme Court observed as under:

"It is well settled that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated. Similarity in the designation or nature or quantum of work is not determinative of equality in the matter of pay scales. The Court has to consider the factors like the source and mode of recruitment/appointment, qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesale identity between the holders of two posts."

8. In **State of Haryana & Ors. Vs. Charanjit Singh & Ors.**

[(2006) 9 SCC 321], the Hon'ble Supreme Court held that the doctrine of "equal pay for equal work" means that equal pay must be for equal work of equal value. The Court observed:

"A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere."

9. Further, in **S.C. Chandra & Ors. Vs. State of Jharkhand & Ors.** [(2007) 8 SCC 279], the Hon'ble Supreme Court held that even if the employees in the two groups are doing identical work they cannot be granted equal pay if there is no complete and wholesale identity and for finding out the same, the proper forum is an expert body and not the writ court, as this requires extensive evidence. The Court observed:

"the principle of equal pay for equal work is not always easy to apply. There are inherent difficulties in comparing and evaluating the work of different persons in different organisations. Persons doing the same work may have different degrees of responsibilities, reliabilities and confidentialities, and this would be sufficient for a valid differentiation. The judgment of the administrative authorities concerning the responsibilities, which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at bona fide, reasonably and rationally was not open to interference by the court. granting pay scales is a purely executive function and hence the Court should not interfere with the same."

10. While we feel that the aforesaid 'Speaking Order' is not a proper response to the claim of the applicants and, therefore, we set it aside, we cannot directly direct payment of the pay-scale asked for. In the circumstances, the official respondents are directed to constitute an independent expert committee, which shall revisit the matter and come to a holistic finding after examining it in all its perspectives. The applicants' submissions shall also be duly considered by the committee. This shall be

done within three months from the date of receipt of a copy of this Order.

11. The OAs are disposed of with the above directions. No order as to costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

/mk/

(P.K. Basu)
Member A)