

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

OA No.450/2012

Reserved on:24.04.2017

Pronounced on:26.04.2017

Hon'ble Mr. P.K. Basu, Member (A)

Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Mrs. Mollykutty K.P.,

Age 59 years

W/o Shri P. Samuel,

R/o 25/7, 2nd Floor,

East Patel Nagar,

New Delhi-110008.

.....Applicant

(By Advocate: Shri Amit Anand)

Versus

Union of India through

1. The Secretary
Ministry of Agriculture,
Krishi Bhawan,
Dr. R.P. Road, New Delhi.
2. Director General, ICAR,
Ministry of Agriculture,
Krishi Bhawan,
Dr. R.P. Road, New Delhi.
3. The Director,
Indian Agriculture Research Institute,
Pusa Campus,
New Delhi-110012.

... Respondents

(By Advocate: Shri Gagan Mathur)

ORDER

Hon'ble Mr. P.K. Basu, Member (A)

The applicant is a Staff Nurse working in Indian Agricultural Research Institute (IARI) under the aegis of Indian Council of Agricultural Research (ICAR), Ministry of Agriculture. This is an autonomous

institution under Ministry of Agriculture. Applicant's pre-revised scale was Rs.6500-10500. After the 6th Pay Commission report, she was granted the pay scale of Rs.9300-34800 and Grade Pay of Rs.4200/-.

2. The applicant claims that for the Staff Nurse, the correct Grade Pay is Rs.4600/-. The learned counsel for the applicant has put forth the following arguments in support of her claim:-

- (i) The pay scale and service conditions of the Government of India are applicable to IARI *mutatis mutandis*;
- (ii) Staff Nurses of other Government of India organisations, such as the Central Government Health Scheme Dispensary are granted the Grade Pay of Rs.4600/-;
- (iii) All India Institute of Medical Sciences (AIIMS), which is an autonomous organisation under the Ministry of Health and Family Welfare, have granted Grade Pay of Rs.4600/- to Sister Grade-II, which is equivalent of Staff Nurse;
- (iv) As per the Office Memorandum issued by Department of Expenditure dated 13.11.2009, Government servants in the pre-revised scale of Rs.6500-10500, who were earlier granted

Grade Pay of Rs.4200/-, are to be granted the Grade Pay of Rs.4600/- with effect from 01.01.2006;

- (v) In accordance with letter dated 20.11.2009 issued by ICAR regarding revision of pay scale of technical posts consequent upon implementation of 6th Central Pay Commission, the following has been clarified:-

“In this connection, reference is invited to Department of Expenditure OM NO.1/1/2008-IC dated 13.11.2009, according to which the posts which were in the pre-revised scale of Rs.6500-10500 as on 1.1.06 and which were granted the normal replacement pay structure of grade pay of Rs.4200/- in the pay band PB-2, are to be granted grade pay of Rs.4600/- in pay band PB-2 w.e.f. 1.1.06. Accordingly, it is requested that in respect of technical employees who were in the pre-revised scale of Rs.6500-10500 as on 1.1.06, further action to fix the pay and pay the difference of arrears may be taken as per Department of Expenditure OM No.1/1/2008-IC dated 13.11.2009.

Hindi version will follow”.

- (vi) Judgment of Hon'ble Supreme Court dated 21.10.2010 in **Yogeshwar Prasad & Others Vs. National Institute of Educational Planning and Administration Delhi** (Civil Appeal No.288-289 of 2005) which pertained to grant of same pay scale to Assistants/Stenographers in National Institute of Education Planning and Administration, Delhi, at par with those granted to their counter parts in Central Government. The grounds taken by the respondents in that case was that since it as an autonomous organisation, they cannot be paid

pay scale at par with their counter parts in Central Government. The issue here was, however, recovery of amount arising out of fixation of pay in higher scale. We do not think this is applicable in the present case as the issue was different and the organisation was also not the same. There is no ratio laid down that employees of all autonomous organisations have to be granted pay scales as their counter parts in Government.

3. Learned counsel for the respondents argued that the Office Memorandum dated 13.11.2009 in para (1) itself clearly states as follows:-

“In case a post already exists in the scale of Rs.7450-11500, the post being upgraded from the scale of Rs.6500-10500 should be merged with the post in the scale of Rs.7450-11500”.

It is, therefore, argued that only in case a post already exists in the scale of Rs.7450-11500, the post being upgraded from the scale of Rs.6500-10500 should be merged with that post in the scale of Rs.7450-11500 and granted Grade Pay of Rs.4600/- after revision. It is stated that in the case of the applicant it is an isolated post and there is no post which existed in the pay scale of Rs.7450-11500. Therefore, it is argued that this OM does not apply to the applicant. Secondly, it is argued that letter dated 20.11.2009 is restricted only to technical postd whereas the post of the applicant is not a technical post.

4. As regards the Grade Pay of Rs.4600/- to Sister Grade-II in AIIMS, it is stated that such kind of parity cannot be drawn as the two organisations and job requirements are completely different.

5. The respondents also rely on order passed by this Tribunal in **OA No.3057/2011 – Dr. Amitabh Mishra and Others Vs. U.O.I. & Others.**

In the said case, applicants, who were Medical Officers in different institutes under the ICAR, had claimed benefits under the Dynamic Assured Career Progression Scheme applicable in the Government of India. Our specific attention is drawn to para 5 and 5.1 which we quote below:-

“5. Having considered the respective submissions and the material on record, we do not find the claims of the applicants for implementation of Dynamic ACP Scheme as tenable. We note a basic fallacy in the arguments extended on their behalf. There is a blurring of the distinction between the employees directly under the Central Government and those under its various autonomous bodies. All the Resolutions/OMs of the GOI being relied upon by the applicants[†] counsel pertain to the former category. A proposition of the suo-motto extension of such decisions to the employees under the various autonomous bodies like the ICAR would not be on sound footing for the simple reason that each such body is governed by its own Rules and Bye-laws. Further, a conscious decision on the part of the competent authority is required before extending or not extending any benefits granted to the Central Government servants.

5.1 As has been pointed out, in the case of the ICAR the mutatis mutandis applicability of the rules and orders of the GOI for its employees is only in cases where there are no specific provisions in their rules, bye-laws, regulations or orders. Since in the present case, the ICAR has

implemented a system of five yearly Assessment Promotion from one grade to the next higher grade or grant of advance increments, (irrespective of the vacancies) for the Technical Service - under which category the applicants as the Medical Officers fall - they have not found it necessary to adopt the DACP Scheme of the Central Government”.

Based on this, it is argued that the argument of the applicant that Government of India's scale would be applicable *mutatis mutandis* in ICAR, has been rejected by this Tribunal earlier.

6. Heard the learned counsels and perused the several orders and judgments relied upon by both sides.

7. We agree that comparison of Sister Grade-II in AIIMS and the applicant's post cannot be made for the simple reason that these are vastly different organisations with different job profiles.

8. We also agree with the learned counsel for the respondents that letter dated 20.11.2009 being meant for technical posts and the applicant not belonging to the technical category, cannot be made applicable suo motu. We also accept the contention of the learned counsel for the respondents based on order passed in OA No.3057/2011 (supra) that suo motu extension of Government of India scales to employees under the autonomous bodies such as, ICAR would not be on a sound footing.

9. We, however, are of the opinion that the interpretation that the learned counsel for the respondents makes of OM dated 13.11.2009 is incorrect. Indeed, the OM states that in case posts already exists in the scale of Rs.7450-11500, the post being upgraded from the scale of Rs.6500-10500 should be merged with the post in the scale of Rs.7450-11500 and granted Grade Pay of Rs.4600/- in the revised pay structure. This does not mean that in case there is no such post in the scale of Rs.7450-11500, those in the scale of Rs.6500-10500, who were earlier granted Grade Pay of Rs.4200/- would be debarred from the benefit of Grade Pay of Rs.4600/-. The distinction here is between scale of pay and post. What it means is that since Rs.6500-10500 scale has to be given the revised scale equivalent to Rs.7450-11500, namely, PB-2 Grade Pay of Rs.4600, the post itself should be merged with the post in the scale of Rs.7450-11500. For example, in some organisation, if the pre-revised scale of Private Secretary is Rs.6500-10500 and that of Sr. Private Secretary is Rs.7450-11500, and there is one post each in each category, then after implementation of 6th CPC, both the posts will be in the revised Pay Grade plus Grade Pay pertaining to the pre-revised scale of Rs.7450-11500 and both the posts will now be carrying the nomenclature of Sr. PS. This is the simple meaning of the OM. In case there is no such post in the scale of Rs.7450-11500, there would be no post for the post of Rs.6500-10500 to be merged with. That is all. It does not mean that the incumbent in the pay scale of Rs.6500-10500 who was granted the Grade Pay of Rs.4200/- will not get the Grade Pay of Rs.4600/-

10. We have taken some pains in explaining the meaning of OM dated 13.11.2009 to avoid any confusion in this regard. In view of the above, the OA deserves to succeed. We, therefore, allow the OA and direct the respondents to grant the Grade Pay of Rs.4600/- to the applicant with effect from 01.01.2006 on notional basis and arrears to be paid from the date of filing of this OA, i.e., 26.01.2012. The aforesaid directions shall be complied with, within a period of 90 days from the date of receipt of a certified copy of this order. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

Rakesh