

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

O.A. No. 2623/2013

Reserved on : 01.12.2015  
Pronounced on : 04.12.2015

**HON'BLE MR. JUSTICE SYED RAFAT ALAM, CHAIRMAN  
HON'BLE MR. P.K. BASU, MEMBER (A)**

Vinay Kumar Bhowmik,  
S/o Shri J.N. Bhowmick,  
R/o Flat No.9, NDMC Flats,  
Netaji Nagar Main Market,  
New Delhi-110023.

.. Applicant

(By Advocate : Shri V.V.R. Rao)

Versus

1. The Chairperson,  
New Delhi Municipal Council,  
3<sup>rd</sup> Floor, Palika Kendra,  
Parliament Street,  
New Delhi-110001.
2. Dy. Director (Civil),  
New Delhi Municipal Council,  
Room No.1019, Palika Kendra,  
Parliament Street,  
New Delhi-110001.

... Respondents

(By Advocate : Shri Rajneesh Vats)

**ORDER**

**By Hon'ble Mr. P.K. Basu**

The applicant is a Chemist in New Delhi Municipal Council (NDMC). He was appointed on 17.06.1987 in the pay scale of Rs.1640-2900 (4<sup>th</sup> PRC pay scale). The applicant's contention is that

the 5<sup>th</sup> CPC recommended that posts having required minimum qualification of Post Graduation and in the pay scale of Rs.1640-2900 should be granted the revised scale of Rs.6500-10500 (5<sup>th</sup> CPC) w.e.f. 01.01.1996. However, the respondents have only provided him replacement scale for Rs. 1640-2900/-, i.e. Rs.5500-9000. The present O.A. has, therefore, been filed seeking the following relief(s):

- “(1) Admit the present OA and the respondent No.1 and 2 may please be directed to grant the up-gradation of pay/replacement pay scale from Rs.5500-8000 to Rs.6500-10500 along with all cumulative benefits and with all consequential benefits from the date of declaration of fifth pay commission recommendations.
- (2) xxx xxx xxx
- (3) Further quash the impugned order O.O. No.SO(CE-II)/2169/SAG-1 dated 08/07/2013 passed by the respondents being the illegal and issue necessary directions to the Respondent No.1 and 2 to produce all records pertaining to the denial of the replacement scale of pay to the applicant even after its approval by the competent authority in different courts, and fix up the responsibility for such gross violation of the accrued rights of the applicant.
- (4) Cost of the proceedings be paid to the applicant.”

2. In support of his claim, the applicant has stated that the 5<sup>th</sup> CPC in its recommendation in para 43.16 has suggested the scale of Rs.2000-3500 for the posts having minimum qualification of Post Graduation degree holders in Engineering and Law, etc.; in para 90.32 for 129 posts of Research Assistants in the scientific and

engineering streams for which the required qualification of Post Graduate degree in Science and a degree in Engineering is prescribed and who were in the erstwhile scale of Rs.1640-2900, have been recommended the revised scale of Rs.2000-3500; and in para 104.32 for the post of Biochemist in the UT of Dadra and Nagar Haveli, presently in the scale of Rs.1640-2900, and the minimum qualification of Post Graduation degree in Biochemistry, the pay scale of Rs.2300-3500 has been recommended. It is argued that the applicant made a representation before the respondents – NDMC, however, they rejected his claim vide order dated 08.07.2013 on the following grounds:

- (i) 5<sup>th</sup> Pay Commission in Part-C of its report had identified the specific posts carrying pay scale of Rs.1640-2900 for determination of the higher replacement scale for Rs.6500-10500 after taking into consideration the factors like job content, skill requirements, inter-se-horizontal and vertical relativities etc. apart from recruitment qualifications.
- (ii) Part-C of the report does not contain the post of Chemist.
- (iii) The 5<sup>th</sup> Pay Commission had specifically mentioned in its report that in certain cases upgradation of the scale of Rs.2000-3500 would result in a quantum jump over 2 or 3 intermediate scales, which has been generally avoided, keeping in view the need for not unduly disturbing existing relativities.

3. According to the applicant, since his post is an isolated post, the third ground is absolutely irrelevant. As regards the other two grounds, he has argued that it is gross discrimination on the part of the respondents that for the same kind of job of Chemist, they are providing different pay scales. In fact, it is stated that in Delhi Jal board, the post of Chemist has been granted the pay scale of Rs.6500-10500 although they do the same kind of work.

4. The learned counsel for the respondents argued that the 5<sup>th</sup> CPC have made two kinds of recommendations. One kind of recommendation is post specific where depending on job content, skill requirement etc., specific pay scales have been granted and wherever no specific recommendation is there, the 5<sup>th</sup> CPC has recommended granting of replacement scales. In the case of Chemist in NDMC, no specific recommendation has been made and, therefore, the applicant has been granted the replacement scale of Rs.5500-9000 and he is not entitled to the scale of Rs.6500-10500, which has been recommended by the 5<sup>th</sup> CPC for specific posts.

5. It is further emphasized that there can be no comparison regarding duty of Chemist in NDMC and those of Chemist in Delhi Jal Board (DJB) for the reason that the Treatment & Quality Control Department of DJB is responsible for treatment of water with various parameters and thereafter, supply potable water to all of Delhi, including the NDMC. The NDMC, thus, get treated water

from the DJB and does not have any treatment plant of its own. The duty of the Chemist in NDMC is to re-check water at consumer level for its potability only. Therefore, even on job content, the applicant cannot claim the scale of Rs.6500-10500.

6. Heard the learned counsels and perused the pleadings.

7. It is settled law that the question of setting of pay scales is best left to the Govt. to be decided on the basis of recommendation of expert bodies, such as, Pay Commissions and Courts/Tribunals should normally not get into the arena of deciding pay scales being a policy matter of the Government [**Union of India & Another Vs. P.V. Hariharan and Another**, 1997 SCC (L&S) 838 and **Union of India Vs. Makhan Chand Roy**, AIR 1997 SC 2391].

8. In this case, the 5<sup>th</sup> Pay Commission itself has made specific recommendation for specific posts and has not made any specific recommendation for the post of Chemist in the NDMC. Therefore, as per the recommendations of the 5<sup>th</sup> CPC itself, the normal replacement scale of Rs.5500-9000 has been granted to the applicant. Even otherwise, as has been brought out by the respondents, there is clear distinction between the job contents of the Chemist in NDMC and DJB and, certainly, there is no comparison between the posts of Chemist in NDMC and Biochemist in UT of Dadra and Nagar Haveli and Research Assistants in

Scientific and Engineering streams. Therefore, we do not find the decision of the respondents to be arbitrary and the letter dated 08.07.2013 is perfectly in order.

9. The O.A. is, therefore, devoid of merit and is, accordingly, dismissed. No costs.

**(P.K. Basu)**  
**Member (A)**

**(Syed Rafat Alam)**  
**Chairman**

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