

**Central Administrative Tribunal
Principal Bench**

**OA No.3371/2013
MA No.2552/2013**

Order reserved on : 03.09.2015
Order pronounced on: 16.09.2015

**Hon'ble Mr. Justice B.P. Katakey, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)**

1. Ram Bharosi,
S/o Late Shri Nathe Lal,
R/o RZF-910, Raj Nagar-II,
Palam Colony,
New Delhi-45.
2. Kuldeep Singh,
S/o Shri Hari Singh,
R/o H.No.326, V & P.O., Kangon Heri,
Najafgarh, New Delhi-71.

...Applicants

(By Advocate: Shri Srigopal Aggarwal)

Versus

1. Union of India through,
Secretary,
Ministry of Earth Sciences (MOES),
CGO Complex,
Lodhi Road,
New Delhi-3.
2. Secretary,
Ministry of Finance,
Deptt. Of Expenditure,
South Block,
New Delhi-03.
3. Director General of Meteorology,
India Meteorological Deptt;
Mausham Bhavan, Lodhi Road,
New Delhi-03.

...Respondents

(By Advocate : Shri H.K. Gangwani)

ORDER**Mr. V.N. Gaur, Member (A) :-**

The applicants who are Mechanic Grade-II in the Directorate General of Meteorology (respondent No.3) have approached this Tribunal in this third round of litigation seeking the pay scale of Rs.4000-6000/-, in terms of the recommendations of the 5th Central Pay Commission w.e.f. 01.01.1996.

2. The applicants filed their first OA No.793/2007, in which this Tribunal by an order dated 09.05.2008 directed that the claim of the applicants of an anomaly arising out of the recommendations of the 5th CPC may be referred to the 6th CPC, which was working at that time, for consideration thereof. The applicants filed second OA No.1080/2011, which was disposed of by this Tribunal on 11.01.2012 with a direction to the respondents to take a decision in the matter in consultation with the authorities concerned and communicate the same to the applicants within a period of three months. After noting that the respondents were yet to take a decision with regard to the aforesaid anomaly, the applicants preferred a Contempt Petition No.522/2012 in OA No.1080/2011 for the respondents' failure to comply with the directions dated 11.01.2012. The respondents subsequently passed an order dated 27.09.2012 (impugned), stating that the matter had been duly examined and considered by 6th CPC and suitable pay scales were

recommended which have already been granted to the applicants. There was no decision pending with regard to any anomaly arising out of 6th CPC or prior to it. The CP No.522/2012 was disposed of by this Tribunal by granting liberty to the applicants to challenge the impugned order.

3. Learned counsel for the applicants in his submissions stated that the 5th Pay Commission in its recommendation in respect of Mechanic Grade-II had committed an inadvertent error by specifying a "Two Year Diploma", besides Matriculation as a qualification for granting pay scale of Rs.1320-2040 (Rs.4000-6000 revised). The learned counsel stated that this was an error because there is no Diploma of two years duration in Radio TV Engineering and Electronics Engineering. This has been confirmed in a clarification given by the AICTE. Two years courses are termed as Certificate Courses and not Diploma Courses. The respondents realised this error and in the amended Recruitment Rules notified on 07.10.2000 specified the qualification for Mechanic Grade-II (Non Industrial) as "one year certificate course in Craftsmanship in an Engineering Trade" from a recognised Industrial Training Institute". Since this stipulation was also erroneous the respondents issued another notification on 09.08.2001 replacing "One Year Certificate Course" by "Two Years Certificate Course" in the Recruitment Rules. Thus having recognised the error made in the report of the 5th CPC, the scale granted to Mechanic Grade-II should also have

been revised in the Recruitment Rules to Rs.4000-6000 instead of replacement scale of Rs.3050-4590. The applicants have since then been raising the issue before all the authorities. The respondents referred the grievance of the applicants to the adhoc Anomaly Committee constituted in July, 2005, which keeping in view the disturbed horizontal relativity because of placement of posts having identical qualification as per the existing RRs in the same Department, recommended the pay scale of Rs.4000-6000 to Mechanic Grade-II (Ind.) in IMD.

4. In compliance of the directions of this Tribunal dated 09.05.2008 in OA No.793/2007, the matter was referred to another Committee headed by Dr. Shailesh Nayak, Director INCOIS. This Committee also recommended the pay scale of Rs.4000-6000 revised to Rs.5200-20200 (Pay Band-I with Grade Pay of Rs.2400) by the 6th CPC. According to the learned counsel, despite recommendations by the Expert Committees, the respondents have failed to implement the same and address the long pending grievance of the applicants. He also alleged that despite the direction of this Tribunal to refer the matter to 6th CPC, it was their perception that the respondents never forwarded the proposal for consideration of the 6th CPC. According to the learned counsel, 5th CPC in its report, extracts of which have been annexed as Annexure-A/11 to the OA, remarked that *"We earnestly feel that getting the benefit of revised pay scales is a matter of right of all*

Government employees irrespective of their post or category being mentioned in the Report or otherwise". The case of the applicants is that despite two Pay Commissions – 5th and 6th, there has been no “revision of the pay” Mechanic grade II. They have been getting only replacement scales. It was further pointed out that within the same Department, and in some other Departments as well, the person with comparative qualifications had been given the scale of Rs.4000-6000 and as examples, he referred to RRs of posts of Wireless Mechanic in Central Water Commission (CWC), Ministry of Water Resources, Radio Mechanic within the Department of IMD and Technician in Doordarshan. In all these cases, the qualification prescribed was Matriculation or equivalent along with two years trade certificate from ITI in the Radio or Electronics. He also dubbed the claim of the respondents as wrong that there was no specific recommendation in the 6th CPC in respect of respondent No.3 and all employees were given replacement scales. According to the learned counsel, there were instances of upgradation of scales; for example, the scales of Sr. Observers and Scientific Assistants were merged to the post of Scientific Assistant in PB-2 with corresponding pre-revised pay scale of Rs.6500-10500. Similarly in the matter of Assistant Meteorologist Grade-II, the pay scale was upgraded to PB-2 with Grade Pay of Rs.4600.

5. Learned counsel further submitted that the respondents have been unfair and hostile to the applicants, as for nearly 20 years, the grievance of the applicants has not been addressed. The learned counsel relied on ***Prakash Ratan Sinha Vs. State of Bihar and Ors.*** (2010) 1 SCC (L&S) 443, ***Canara Bank Vs. Debasis Das*** 2003(4) SCC 557, ***A. Kraipak Vs. UOI*** 1969(2) SCC 262 and ***Management of M/s M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar & Ors.*** 1990 (2) SCC 48, to emphasise that under our constitution the rule of law was paramount and all the instrumentalities of the State have to function in a just and fair manner. If any of its actions or administrative decisions result in civil consequences, the actions or decisions could be judicially reviewed or tested on the anvil of principles of natural justice. He further relied on ***M.R. Gupta Vs. UOI & Ors.***, SCC 1995 (5) 628 to contend that the matters relating to pay scales fall under the category of continuous cause of action which will not be hit by the principle of limitation.

6. The learned counsel for the respondents, on the other hand, submitted that the matter relating to pay scales was a prerogative of the executive and it has been laid down in a catena of judgments that the Courts and Tribunals should refrain from passing any order granting a particular scale. According to the learned counsel, the recommendation of the 5th CPC was taken into consideration while finalising the Recruitment Rules for the post of Mechanic

Grade-II (NI) notified on 07.10.2000. The 5th CPC recommended pay scale of Rs.3050-4590 both for Mechanic Grade-II (Industrial) and Mechanic Grade-II (Non- Industrial). The pay scale of Rs.1320-2040, was revised to Rs.4000-6000 by 5th CPC, but the same has not been approved by the Govt. for the post of Mechanic-Grade-II (I&NI) in IMD. He denied that there was any discrimination with the applicants. The department had constituted adhoc Anomaly Committee in July 2005 and later another committee headed by Dr. Shailesh Nayak, Director INCOIS to look into the grievance of the applicants. It is the prerogative of the Government to take a final decision on the recommendation of such Committees. Learned counsel produced original record to show that the recommendation of the ad hoc Anomaly Committee dated 11.07.2005 was sent to the 6th Pay Commission vide letter dated 03.04.2007 in compliance of the direction of the Tribunal in OA No.793/2000. However, the 6th CPC did not make any specific recommendation with regard to the staff of the respondent No.3 and gave only replacement scales which have already been implemented. He further reiterated that the Pay Commissions are Expert Bodies for deciding the pay scales of various posts under the Central Government and their recommendation would be final, even if there were recommendations by any other Committee contrary to the recommendation of the Pay Commission. Learned counsel also referred to ***Union of India v. Tarit Ranjan Das***, JT 2003 Vol. 8 SC

352, ***Union of India Vs. P.V. Hariharan***, (1997) 3 SCC 569 and OA No.3190/2012 – ***Suresh Singh Vs. Union of India*** .

7. We have heard the learned counsels for the parties and carefully gone through the material placed on record. The genesis of the grievance of the applicants lies in the recommendation of the 5th CPC contained in paragraph 51.34 – “Direct Recruitment Scientific Staff”, which says that persons who possess the qualification of Matriculation with Science and two years diploma, were to be accorded pay scale of Rs.4000-6000. The Recruitment Rules for the post of Mechanic grade II in IMD, as finally notified in 2001, prescribe Matriculation with two years certificate courses, without any experience, and retains the pay scale of Rs.3050-4590. It is the case of applicants that the 5th Pay Commission actually meant this group of persons possessing two year certificate course while specifying the pay scale of Rs.4000-6000/- but inadvertently used the words ‘two years diploma’ instead of ‘two years certificate course’. In support, the applicants have stated that in response to an RTI query AICTE has confirmed that its approved institution do not offer 2 years Diploma in Radio T.V. engineering and electronics engineering. The applicants thus argue when the 5th CPC has recommended the scale of Rs.4000-6000 to the group possessing the qualification of two years diploma which does not exist, it is logical to co-relate this recommendation to the qualification of two years certificate course. However, the respondents have not taken that

view while framing the Recruitment Rules in the year 2000-2001. The information supplied by AICTE regarding diploma courses has been annexed to the OA. In a letter issued by AICTE, South Western Regional Office, Bangalore, dated 06.02.2012 (Annexure-A/10 Colly) it has been stated:-

“No AICTE approved institution in this region offers 2 years Diploma in Radio T.V. engineering and electronics engineering.”

Another letter of same date issued by AICTE, Southern Regional Office, Chennai states:

“This is with reference to your RTI application dated 11th January 2012 received from AICTE, New Delhi on the above noted subject and to inform that 2 year diploma courses do not come under the purview of AICTE.”

Thus, there is no categorical statement by AICTE that there is no two years diploma course. AICTE says either its approved institutions do not run two year diploma courses, or two year diploma courses do not come under its purview.

8. The applicants in their rejoinder have quoted the examples of Wireless Mechanics in the Central Water Commission and Technician in Doordarshan for pay parity. The qualification prescribed for Wireless Mechanic in CWC reads as follows :-

- “(i) Matriculation or equivalent qualification from recognised University/Board.
- (ii) Diploma in Electrical/Radio Telecommunication of Electronic from any Technical institute recognised by the Central Government and Diploma awarded by State

Board of Technical Education with six month experience in maintaining necessary measuring instruments and batteries and carrying out adjustments/ repairs to the Wireless sets.

Or

Apprenticeship certificate in Electrical/Radio Technician from any Industrial Technical Institute/ Certificate awarded by National Council for Training in Vocational Trade with one year experience in maintaining necessary measuring instruments and batteries and carrying out adjustments/ repairs to the Wireless sets.

OR

5 years experience from any private/ Public Undertakings or / Public organisations in maintenance and repairs of electronics equipments and allied accessories.

OR

Certificate of Vocational Courses in Electronics/ Radio/Technology from a recognised Board of Secondary Education.”

9. The Recruitment Rules prescribed diploma or apprenticeship certificate or certificate of Vocational Courses with varying duration of experience, or just five years' experience in maintenance and repairs of electronics equipment. With such wide ranging specification of qualification, it cannot be readily concluded that the qualification prescribed in the CWC for Wireless Mechanics is equivalent to the one prescribed for the applicants in this case. If at all the qualifications of Wireless Mechanic in CWC appears to be on higher side.

10. The prescribed qualification of Technicians in Doordarshan is as follows :-

“I. Matriculation or equivalent

- (a) A two years trade certificate from an I.T.I. in Radio or Electronics, or Electrician with one year practical experience after obtaining the certificate.

Or

- (b) A one year trade certificate from an I.T.I. as AIR Conditioner and Refrigeration Mechanic with two years experience after obtaining the certificate

Or

- (c) A certificate of competence or Diploma from recognised Institution for Wireman Mechanic or Electrician or Fitter Mechanic subject to the condition that the candidate possessed suitable electrical licence with at least two years experience in a reputable workshop in one of the following:

1. Lathe Work
2. Carpentry
3. Electric wiring soldering
4. Fitting and plumbing
5. Internal combustion engine"

11. Here again "two years Trade Certificate" is coupled with "One year Practical Experience" or "One year Trade Certificate" with "Two years Experience", which again would appear to be higher qualification than the one prescribed for the Mechanic Grade-II post in IMD.

12. Thus, the claim of the applicants of an 'inadvertent error' in the recommendation of the 5th CPC in using the word Diploma instead of Certificate does not get substantiated either by the examples of CWC or Doordarshan or clarifications by AICTE. We therefore, do not find a convincing material to show that there was an 'Inadvertent Error' on the part of the 5th Central Pay Commission, when it prescribed two years diploma for the scale of Rs.4000-6000.

13. The next leg of the argument of the applicants in support of their demand is that IMD staff with similar qualification have been granted the scale of Rs.4000-6000/-. From the posts within IMD the applicants have enclosed Recruitment Rules (RRs) for the post of Electrician and Radio Mechanic with the rejoinder. For both these posts the qualification prescribed is matriculation with two years certificate in the concerned trade and the scale given is Rs 4000-6000. Probably it is this horizontal relativity that was referred to by the ad-hoc Anomaly Committee in its recommendations dated 11.07.2005 which reads as below:

- “1. Upgradation of pay scale of Mechanic Grade Ii (Ind.) from Rs.3050-4590 to Rs.4000-6000.

The Committee noticed that the horizontal relativity has been disturbed by placing the posts having identical qualification as per the existing Recruitment Rules in the same Department. Therefore, the Committee recommended the pay scale of Rs.4000-6000 to Mechanic Grade II (Ind) in IMD.

2. Upgradation of pay scales to the cadre of Mechanic Grade I (Ind.) from Rs.4000-6000 to Rs.5000-8000.”

14. The ad hoc Anomaly Committee has noted that the horizontal relativity had been disturbed by placing the posts with identical qualification in the same Department. A separate Committee constituted under the Chairmanship of Dr. Shailesh Nayak, Director INCOIS apparently had examined this issue once again as mentioned in the copy of departmental notes obtained under RTI by the applicants and placed as Annexure-A/7 but specific

recommendations of the Committee has not been brought on record. It is also apparent from the documents placed at Annexure-A/7 that the Department had submitted the case for upgradation of scale of Mechanic Grade-II for the consideration of the Anomaly Committee constituted to look into the anomalies arising out of the 6th CPC recommendations, but the same was not considered by the respondent No.2 stating that *“The cases of this nature are apparently not covered under the definition of anomaly as defined by the DOP&T in their OM No.11/2/2008-JCA dated 12.01.2009. The matter needs to be considered from the angle of structural imbalance in the cadre rather than identified as anomaly”*.

15. While we are not persuaded by the submission of the applicants with regard to the inadvertent error in the recommendations of the 5th CPC, it cannot be ignored that some of the posts within IMD carrying similar qualifications to that of Mechanic Grade-II, have been placed in the scale of Rs.4000-6000. The applicants have been agitating their grievance for more than 15 years but the records do not show that the matter was ever examined with due seriousness. An Ad hoc Anomaly Committee had recorded its finding that horizontal relativity had been disturbed by the placement of some posts having identical qualification in the same department in the scale of Rs.4000-6000 and accordingly recommended that pay scale to Mechanic Grade-II (Ind.). The

respondents have admitted that traditionally the pay scale of Mechanic Grade-II (Ind.) and Mechanic Grade-II (NI) have been the same. This recommendation of the Ad hoc Anomaly Committee was sent to the 6th CPC vide letter dated 03.04.2007, following the order passed by this Tribunal in OA-793/2007. It is the submission of the respondents that the 6th CPC did not make any recommendation in respect of the employees of IMD. However, it has not been brought on record whether the 6th CPC had actually considered the proposal sent as per the direction of this Tribunal and took a conscious decision to retain the existing scale for Mechanic grade II of IMD. Later the effort to place the matter before the Anomaly Committee constituted as a sequel to the 6th CPC also did not succeed for the reason that there was no issue to be resolved arising out of the 6th CPC's recommendations. It can be seen that after the report of the Ad hoc Anomaly Committee, at no stage, the competent authority appears to have applied its mind to the demand of the applicants and considered it on merit. The choice before us at this stage is to either refer the matter for the consideration of a high level committee on merit, or refer it to the 7th CPC for consideration. Consideration of the demand of the applicants by the high power committee at this stage could again create a difficulty when the 7th CPC is seized of the matter of the scales of all Central Government employees. We, therefore, prefer the alternative of letting the matter be considered by the 7th CPC. It is, however, noted that the Pay

Commission is in the concluding phase of its work and therefore the respondents have to take time bound action to move the proposal.

16. For the reasons, as discussed in the preceding paras, we direct the respondents to submit its proposal on the basis of the recommendations of the Ad hoc Anomaly Committee dated 11.07.2005 to the 7th CPC within a week from the date of receipt of this order and the 7th CPC shall consider that demand of the Mechanic Grade-II (Ind. & NI) taking into account the recommendations of Ad hoc Anomaly Committee in 2005 and include its finding, with reasons, in the report going to be submitted to the Government in the next few months. A copy of this order be also endorsed to the Secretary of the 7th CPC. OA is disposed of with the above direction. No costs.

17. MA No.2552/2013 filed for joining together is allowed.

(V.N. Gaur)
Member (A)

(Mr. Justice B.P. Katakey)
Member (J)

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