

Central Administrative Tribunal  
Principal Bench  
New Delhi

O.A.No.3034/2015

M.A.No.2668/2015

Order Reserved on: 30.09.2015

Order pronounced on: 31.10.2015

Hon'ble Justice Shri Syed Rafat Alam, Chairman

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

1. Amit Dixit

S/o Sh. Om Prakash Dixit

Aged about 48 years

R/o H.No.213 Sector-11

Vasundhara, Ghaziabad, U.P

Posted as Sr. Radiographer

2. Vinod Kumar

S/o Sh. Malkhan Singh

Aged about 44 years

R/o 24/8 Chhajjupur Shahdara

Delhi-110032

Posted as Sr. Radiographer

3. Subhashkumar

S/o Shri Prem Singh

Aged about 48 years

R/o D-237, Ganga Vihar,

Gukulpuri, Delhi-110094.

Posted as Sr. Radiographer.

4. Bhupinder Singh

S/o Shri Madan Singh

Aged about ... years

R/o C-1/5 DDU Hospital Complex

New Delhi

Posted as Sr. Radiographer.

5. Amar Singh Panwar

S/o Late Shri J.S. Panwar  
Aged about 49 years  
R/o RZ-C-3/26, Manaur Enclave  
Palam, Delhi  
Posted as Sr. Radiographer.

6. Naresh Kumar  
S/o Shri Mangal Saini  
Aged about .. years  
R/o D-208, Nawada Housing Complex  
Posted as Sr. Radiographer.

7. Savita Mittal  
D/o Prem Chand Chandok  
Aged about 47 years  
R/o F-60, Second Floor  
Moti Nagar, New Delhi-110015.  
Posted as Sr. Radiographer.

8. Bharat Bhushan  
S/o Late Shri Khem Chand  
Aged about .. years  
R/o 135-C, Platinum Enclave  
Sector-18, Rohini, Delhi  
Posted as Sr. Radiographer.

9. Hema Batra  
W/o Shri Ashwani Batra  
Aged about .. years  
R/o A-3/333, Paschim Vihar  
New Delhi  
Posted as Sr. Radiographer.

10. Rajeev Sharma  
S/o Shri Satyaveer Sharma  
Aged about 42 years  
R/o Village & Post Office-Malikpur  
New Delhi-110073  
Posted as Sr. Radiographer.

11. Johanson P.C.  
S/o Late Shri M.C. Chacko  
Aged about 46 years  
R/o C-1/22, DDU Hospital Complex,  
Hari Nagar, New Delhi  
Posted as Sr. Radiographer.

12. Sunil Kumar

S/o Shri O.P. Dabas  
Aged about 45 years  
R/o H.No.111, Village Chandpur Kharad  
P.O. Chandpur, Delhi-110081  
Posted as Sr. Radiographer.

13. Shiv Raj  
S/o Late Shri Phool Singh  
Aged about 58 years  
R/o 10785/16, Pratap Nagar  
Delhi-110007  
Posted as Sr. Radiographer.
14. Surinder Singh  
S/o Shri Hayat Singh  
Aged about.. years  
R/o C-1/9, DDU Hospital Residential Complex  
Hari Nagar, New Delhi  
Posted as Sr. Radiographer.
15. Birju Kuriakose  
S/o Late Shri Kuriakose  
Aged about .. years  
R/o B-336, 1<sup>st</sup> Floor, Hari Nagar  
New Delhi  
Posted as Sr. Radiographer.
16. Ram Dass  
S/o Shri Hari Ram  
Aged about 49 years  
R/o B-141/16, Chitra Guloka Road,  
Subhas Mohalla, North Ghonda,  
Delhi-110053.  
Posted as Sr. Radiographer.
17. Ram Prakash Gupta  
S/o Late Shri B.P. Gupta  
Aged about .. years  
R/o A-3/298, Paschim Vihar  
New Delhi  
Posted as Sr. Radiographer.
18. Joginder Khanna  
S/o Shri B.R. Khanna  
Aged about 60 years  
R/o 83-B, Gautam Nagar  
New Delhi-110049  
Posted as Sr. Radiographer.

19. Thomasviju  
S/o Shri T.T. Varghese  
Aged about .. years  
R/o 93-A, Counterywde Apartment  
Plot No.401, New Delhi-49  
Posted as Sr. Radiographer.

20. Raju Sharma  
S/o Shri Shiv Sharma  
Aged about 49 years  
R/o B2/B-229, Janakpuri,  
New Delhi-58  
Posted as Sr. Radiographer.

21. Gopal Banarjee  
S/o Shri T.C. Banarjee  
Aged about .. years  
C-11, Mir Dard Lane,  
MAMC Campus,  
New Delhi-02  
Posted as Sr. Radiographer.

(By Advocate: Shri Sudarshan Rajan with Shri Ramesh Rawat)

Versus

1. The Chief Secretary  
Govt. of NCT of Delhi,  
Delhi Secretariat, I.P. Estate  
New Delhi.
2. The Principal Secretary (Health)  
Govt. of NCT of Delhi,  
9<sup>th</sup> Floor, A-Wing  
Delhi Secretariat, New Delhi.
3. The Medical Superintendent  
Dr. Jiladyar, Deen Dayal Upadhyay Hospital  
Hari Nagar, New Delhi-110054.
4. The Medical Superintendent  
Dr. U.C. Verma, GTB Hospital Shahdara  
Delhi.
5. The Medical Superintendent  
Dr. N.V. Kamat  
Sanjay Gandhi Memorial Hospital

Mangol Puri, New Delhi.

6. The Medical Superintendent  
Dr. S.C. Chetal  
Janakpuri Super Specialty Hospital  
C-B2, Janakpuri, New Delhi-110053.

7. The Secretary Finance (H&FW)  
Department of Health & Family Welfare  
Govt. of NCT  
Delhi Secretariat, I.P. Estate  
New Delhi.

8. The Medical Superintendent  
L.N. Hospital  
Jawahar Lal Nehru Marg  
New Delhi.

.. Respondents

(By Advocate: Sh. N.K.Singh for Mrs. Avnish Ahlawat)

### **ORDER**

**By P. K. Basu, Member (A):**

MA No.2668/2015, filed under Rule 4(5) of the Central Administrative Tribunal (Procedure) Rules, 1987, for joining together, is allowed.

The applicants, in this OA, are presently working as Senior Radiographers in various Government Hospitals in Government of NCT of Delhi. The applicants are aggrieved by Order dated 27.07.2015, by which the respondents, in compliance of the order of this Tribunal, re-examined the fixation of Grade Pay of the applicants in accordance with the norms and observations made by this Tribunal's order dated

29.07.2010, passed in OA No.538/2010. The said OA was filed against the impugned order dated 01.01.2010, issued by the respondents for reduction of Grade Pay from Rs.4600 to 4200/-. The Tribunal's order dated 29.07.2010 was challenged in the Hon'ble High Court of Delhi in Writ Petition (C) No.1802/2011, and vide Order dated 12.03.2015, the Hon'ble High Court stayed the recovery orders, and directed the respondents to decide the matter within a period of three months by passing a reasoned and speaking order. The impugned order dated 27.07.2015 is the reasoned and speaking order, issued by the Department of Health & Family Welfare, Govt. of NCT of Delhi. The Department had re-examined the matter after obtaining the opinion of the Finance Department (GNCTD). For ready reference, the relevant parts of the impugned order are quoted below, which clarifies the issue and spells out the reason why the respondents have upheld their decision to reduce the Grade Pay to Rs.4200/-:

"And whereas, the representation of the aforementioned applicants has been re-examined by the Department in light of the relevant orders. Opinion has also been taken from the Finance Department, Govt. of NCT of Delhi on the issue. The guiding policies considered state that:-

"The Government of India,  
Ministry of Finance, Department of

Expenditure, Implementation Cell, vide their O.M.No.1/1/2008-IC, dated 13.09.2009, has decided that the posts which were in the pre-revised scale of Rs.6500-10500 as on 01.01.2006 and which were granted the normal replacement pay structure of Grade Pay of Rs.4200/- in the PB-2, will now be granted Grade Pay of Rs.4600/- in the pay band of PB-2 w.e.f. 01.01.2006. The above said O.M. has already been endorsed by this Government, vide Finance (Budget) Department's Endorsement No.F.11(4)/2006/Fin.(B)dsfb/2406-2409, dated 25.11.2009. Thus, all the posts which were in the pre-revised pay scale of Rs.5000-8000/- and Rs.5500-9000/- will be remain in the normal replacement pay structure of PB-2: Rs.9300-34800 + Grade Pay of Rs.4200/- w.e.f. 01.01.2006. But those posts which were in the pre-revised pay scale of Rs.6500-10500 will be placed in revised pay structure of PB-2: Rs.9300-34800 + Grade Pay of Rs.4600/- w.e.f. 01.01.2006."

And whereas, it is pertinent to mention here that few hospitals (i.e. JPSSH, DDUH, GTBH and SGMH who were petitioners in the instant WPC) of Government of NCT of Delhi have inadvertently misinterpreted the Part-B Section-I sub section (ii) and have erroneously granted the grade pay of Rs.4600/- to the Sr. Radiographer, Technical Assistant (Radiology) and Technical Supervisor (Radiology) working in different hospitals without consulting the H&FW Department/Finance Department, GNCTD and taking proper approval. This issues shall be examined as per administrative action, if warranted, against the administration.

And whereas, the claims/demands of the Sr. Radiographers/Technical Assistant (Radiology) regarding grant of Grade Pay of Rs.4600/- has been re-examined in light of the clarification given above and also in light of Government of India, Ministry of Finance, Department of Expenditure, Implementation Cell, vide their O.M.No.1/1/2008-IC, dated 13.09.2009 also endorsed by the Finance Department, GNCTD. The claims/demands are therefore not justified hence, these cannot be acceded to."

2. It is stated by the learned counsel for the applicants that the 6<sup>th</sup> Central Pay Commission had made certain

recommendations regarding merger of pre-revised pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 and thereupon the Government issued Notification for Central Civil Services (Revised Pay) Rules, 2008 vide Notification dated 29.08.2008. In Part-B Section-I of the said Notification, the following provision has been made:

“(ii) On account of merger of pre-revised pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500, some posts which presently constitute feeder and promotion grades will come to lie in an identical grade. The specific recommendations about some categories of these posts made by the Pay Commission are included Section II of Part B. As regards other posts, the posts in these three scales should be merged. In case it is not feasible to merge the posts in these pay scales on functional considerations, the posts in the scale of Rs.5000-8000 and Rs.5500-9000 should be merged, with the post in the scale of Rs.6500-10500 being upgraded to the next higher grade in pay band PB-2 i.e. to the grade pay of Rs.4600 corresponding to the pre-revised pay scale of Rs.7450-11500. 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.”

3. It is argued that since the above 3 scales have been merged and as per the above cited provision in Part B, Section I, they have to be merged in the pay scale of Rs.7450-11500 and the said revised scale has been granted with Grade Pay of Rs.4600, the applicants have to be granted Grade Pay of Rs.4600/-. In this regard, reliance has been placed on OM dated 13.11.2009, which states as follows:

“The matter has been considered and it has now been decided that the posts which were in the pre-



revised scale of Rs.6500-10500 as on 1.1.2006 and which were granted the normal replacement pay structure of grade pay of Rs.4200 in the pay band PB-2, will be granted grade pay of Rs.4600 in the pay band PB-2 corresponding to the pre-revised scale of Rs.7450-11500 w.e.f. 1.1.2006. Further, in terms of the aforementioned provisions of CCS (RP) Rules, 2008, in case a post already existed in the pre-revised scale of Rs.7450-11500, the posts being upgraded from the scale of Rs.6500-10500 should be merged with the post in the scale of Rs.7450-11500.”

4. It is further argued that the office of the Additional Director, CGHS, vide its Order dated 10.05.2010, have themselves indicated the pay of Radiographer as in the Pay Band of Rs.9300-34800 plus Grade Pay of Rs.4600. Relevant parts of the Order read as under:

Pay in the Existing Pay Band + Grade Pay of Rs.5000-8000 and Rs.5500-900 as on 1.1.2006	<b>Pay fixed in the Pay Band + Grade Pay on Rs.9300-34800+4600 w.e.f. 1/1/2006</b>	Date of next increment
1. Sh. Shashi Kant = 6050 Radiographer	10480+4600=15580	1/7/2006
2. Shri K.K.Bhatt=7775 Jr. H.T.	14470+4600=19070	1/7/2006

5. It is also stated that in the hierarchy of pay scales for common categories of pay scales, in the said Gazette Notification, under the head Nursing and Paramedical Staff like Dietician Gr.II/Lecturer in PT/OT/Radiographer, etc. have been shown in the pre-revised pay scale of Rs.6500-10500 and revised pay of Rs.7450-11500 and corresponding Pay Band is PB-2 with Grade Pay of Rs.4600. Based on the

above, the applicant states that they are also, therefore, entitled to GP of Rs.4600/-.

6. The applicants further referred to the reply of the Department of Expenditure, provided on an RTI application made by one Manoj Kumar Singh, dated 24/26.10.2008, in which the following clarification has been given:

“(2) As per 6<sup>th</sup> CPC’s Report as accepted by the Government, the pre-revised scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 have been granted the identical revised Pay Band of PB-2 (Rs.9300-34800) with Grade pay of Rs.4600. This is in accordance with recommendations of the Sixth Pay Commission.”

However, this letter pertains to some third party and also not related to Radiographers. Thus, this is not relevant in our view.

7. Similarly, our attention has also been drawn to the reply given by Office of the Medical Superintendent, Safdarjung Hospital, sought under RTI application, for the post of Senior Radiographer in Safdarjung Hospital in which Radiographer scale has been indicated as PB-2 plus Grade Pay of Rs.4600.

8. The learned counsel for the respondents, first of all, relied upon the Judgment of the Hon’ble Supreme Court in **Union of India and Another v. P.V.Hariharan and**

**Another**, (1997) SCC (L&S) 838 stating that the Hon'ble Apex Court held as follows:

"5. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter".

9. Moreover, it is also stated that the Hon'ble Supreme Court in **State of Haryana vs. Haryana Civil Secretariat Personal Staff Association**, (2002) 6 SCC 72, has also held that the fixation of pay scale and claim to parity in pay is the function of the Executive.

10. Further, they basically relied upon the Clarification received, after consulting the Finance Department, which was quoted in their order dated 27.07.2015, and the same has been quoted to hereinbefore.

11. In fact, our attention is also drawn to Clarification with regard to the Grade Pay of Sr. Radiographer/Technical Assistant (Radiology)/Technical Supervisor (Radiology), issued to all Hospitals under GNCT of Delhi dated 17.08.2015 in which the whole issue has been discussed and stated that the pay scales of Sr. Radiographer, Technical Assistant

(Radiology), and Technical Supervisor (Radiology), has been granted the Grade Pay of Rs.4600 on a wrong interpretation of the 6th CPC. In this letter, they have specifically again reiterated that the Grade Pay will be Rs.4200 in respect of the Sr. Radiographers, and advised all Institutes to comply with the above directions.

12. As clarified by us in several orders in other OAs, there is a complete misinterpretation of the said sub rule (ii) Section I in Part B. Since we have already clarified in detail earlier in our orders in OA 125/2013, **Raj Kumar and others Vs. The Director General, ICMR and others** decided on 10.02.2015 by the Principal Bench of the Central Administrative Tribunal and OA 254/2012, **Ashish Bhaskar Mandavgani and another Vs. Union of India and others** decided by the Bombay Bench of the Tribunal in Circuit Sitting at Nagpur, we do not wish to repeat it here except to state that the scales of pay of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 have been merged. They got the replacement PB-2 plus Grade Pay of Rs.4200/-. Only posts in the scale of Rs.6500-10500 were placed in PB-2 with Grade Pay of Rs.4600. Therefore, the merger of pay scale

does not mean, by any stretch of imagination, that the scales of pay of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 will be placed in the Grade Pay of Rs.4600. It is because of the wrong interpretation, many people have been given their higher pay scales which has now been corrected by the Department and the present claim of the applicant is also based on this wrong interpretation.

13. As regards the applicants' argument that Radiographers in the common category posts have been shown in the Grade Pay of Rs.4600, the Radiographers indicated in the common categories are shown to be in pre-revised pay scale of Rs.6500-10500 (Pre-revised) whereas the applicants admittedly were in the pre-revised pay scale of Rs.5500-9000. Thirdly, the GNCT of Delhi cannot compare with Government of India's Institutions such as Safdarjung Hospital, etc. on the ground of designation being the same. Designation alone cannot decide the pay scale and to that extent the ratio in Shri P.V.Hariharan's case (supra) would apply. In any case, the Hon'ble Supreme Court has held that the Tribunal should not normally get into determining the pay scales and this should be left to the

Government/Executive on the advice of the Expert Bodies such as Pay Commission, etc. Similarly, in **State of U.P. v. J.P.Chaurasia**, AIR 1989 SC 12, also held that the matter of pay scale does not just depend upon either the nature of work or volume of work done as primarily what is needed to be noticed is evaluation of duties and responsibilities of the respective posts.

14. As regards Order dated 10.05.2010, this does not in any way help the applicants' case because respondents admit that there are wrong fixation of pay scales by several Institutes on misinterpretation of 6th CPC recommendations, as discussed above, and the respondents have clarified, vide letter dated 17.08.2015, indicating the pay scales of Radiographer, Sr. Radiographer, etc. in the GNCTD, would be continued to be drawn in the PB-II, i.e., Rs.9300-34800 with Grade Pay of Rs.4200.

15. In view of the above, we find nothing wrong with the impugned order dated 27.07.2015 nor in correcting the applicants' Grade Pay of Rs.4600 to Rs.4200/-.

16. As regards recovery, the Hon'ble Supreme Court in **Chandi Prasad Uniyal and others V. State of Uttarakhand and Others**, (2012) 8 SCC 417 have decided the ratio that in case of such wrong fixation recoveries can indeed be made, the relevant paras of which read as under:

õ14. We are concerned with the excess payment of public money which is often described as õtax payers moneyö which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

15. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case (supra) and in Col. B.J. Akkara (retd.) case (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered.

16. Appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However, we order the excess payment made be recovered from the appellant's salary in twelve equal monthly installments starting from October 2012.

17. However thereafter the Hon'ble Supreme Court in **State of Punjab and others Vs. Rafiq Masih (White Washer)**

**etc.**, 2014 (8) SCALE 613 has held that in certain situations recovery is not permissible. The Hon'ble Supreme Court held as follows:

ö12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group -C and Group -D service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

18. It would appear that the case of the applicant does not fall in any of the exceptions pointed above and, therefore, we



do not find any illegality or irregularity in the impugned order dated 27.07.2015. The OA is, therefore, dismissed. No costs.

(P. K. Basu)  
Member (A)

(Justice Syed Rafat Alam)  
Chairman

/nsnrvak/