

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 3253/2010

with

O.A. No. 2778/2010

Reserved on : 10.02.2016
Pronounced on : 17.02.2016

**HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MR. P.K. BASU, MEMBER (A)**

OA No. 3253/2010

1. Manish Rastogi,
Aged about 32 years,
R/o H-38-A, Shakarpur,
Delhi-92.
2. Ramesh Prasad,
Aged about 39 years,
R/o B-60, Type II,
Minto Road Complex,
New Delhi.
3. Anand Kumar Pachori,
Aged about 39 years,
R/o 24 Foot Road,
Radha Vihar, Under Tulsi Vihar,
Near Police Post,
Near Railway Station,
Post Dadri Dist. G.B. Nagar,
Uttar Pradesh. .. Applicants

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

Versus

1. The Additional Medical Superintendent,
Kalawati Saran Children Hospital,
Bangla Sahib Marg,
New Delhi.
2. The Principal,
Lady Harding Medical College,
Smt. S.S. Kriplani Road,
New Delhi.

3. Union of India,
 Through the Secretary,
 Ministry of Health and Family Welfare,
 Nirman Bhawan,
 New Delhi-110 001. .. Respondents

(By Advocate : Mrs. Priyanka Bhardwaj)

OA No. 2778/2010

1. Ramesh Kumar,
 S/o Shri Johri Ram,
 R/o B-58, Nanhey Park,
 Uttam Nagar, New Delhi.
2. R.K. Sharma,
 S/o Shri B.D. Sharma,
 R/o Town and Post Office Babu Garh,
 District Ghaziabad, Uttar Pradesh.
3. Vibha Choudhary,
 W/o Shri Sanjay Choudhary,
 R/o 44/18, East Azad Nagar,
 Delhi-110 051.
4. Subhash Chander Mamgain,
 S/o Shri Darshan Lal Mamgain,
 R/o H-1/13, Sector 11,
 Rohini, Delhi-110085.
5. Mukesh Kumar,
 S/o Shri Raj Nandan,
 R/o WZ-286, Madipur Village,
 New Delhi-110063.
6. Monika,
 W/o Shri Rakesh Arora,
 R/o 153, Permanand Colony,
 Kingsway Camp, New Delhi.
7. Harendra Kumar,
 S/o Shri Ram Bali Sharma,
 F-702, Lado Sarai,
 Near Campa Cola,
 New Delhi-110 030. .. Applicants

(By Advocate : Shri Amit Anand)

Versus

1. The Director,
Lala Ram Swarup Institute of Tuberculosis
and Respiratory Diseases Hospital,
Sri Aurobindo Marg,
New Delhi-110 030.
2. Union of India,
Through the Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi-110 001. .. Respondents

(By Advocate : Ms. Neha Bhatnagar for R-1)

ORDER

By Mr. P.K. Basu, Member (A)

The issue for adjudication in O.A. Nos. 3253/2010 and 2778/2010 being the same, we are disposing of both the OAs through this common order. However, for convenience, we will be drawing the facts mainly from O.A. 3253/2010.

2. The applicants are working as X-Ray Technicians in Kalawati Saran Children Hospital (KSCH) (O.A. No.3253/2010) and Lala Ram Swarup Institute of Tuberculosis and Respiratory Diseases (LRSI) (O.A. No.2778/2010). KSCH is a hospital under administrative control of Lady Harding Medical College (LHMC) and under the overall control of Ministry of Health and Family Welfare, Govt. of India.

3. The X-Ray Technicians working in these two hospitals were initially granted pay scale of Rs.330-560 which was revised to Rs.1350-2200 under the 4th Pay Commission.

4. It is stated by the learned counsel for the applicants that Radiographers and X-Ray Technicians in the Central Govt. were commonly dealt with by the 4th CPC and recommended a scale of Rs.1350-2200, which was granted to them by the Govt. It is further stated that the 5th Central Pay Commission had recommended the scale of Rs.5000-8000, both for Radiographers and X-Ray Technicians. However, in its report where under the existing and proposed pay scales of Radiographers have been mentioned, the applicants are covered under the heading Radiographers only. In fact, our attention was drawn to the portion of the Report with the heading "RADIOGRAPHERS/X-RAY STAFF" starting para 52.104 of the Report. In para 52.105, it has been indicated under Column 5 as follows:

“5. Radiographer/X-Ray
Technician/Radiographer
Gr.II”

5. Learned counsel further referred to Notification dated 30.09.1997 regarding grant of 5th CPC scale and also referred to entry XXI, which reads as follows:

“XXI. RADIOGRAPHERS/X-RAY TECHNICIANS

Accepted Scale
By Govt. of India

(a) Radiographer 1350-30-1440-40- 5000-150-8000 52.107

(b) Radiographers requiring a minimum of 2 years diploma/certificate after 10+2" 4000-100-6000 52.107

The learned counsel contends that though the recommendation mentions “Radiographers”, the heading of the relevant Chapter of 5th CPC recommendations makes it clear that it applies to Radiographers and X-Ray Technicians both.

6. The learned counsel of the applicants further relies on judgment in O.A. No. 2748/2002 with connected OAs dated 13.04.2004 in support of their claim. In this O.A., the applicants are Sr. Radiographers/X-Ray Technicians in various hospitals of Govt. of NCT of Delhi. He referred to para 7 of the aforesaid judgment. The grievance of the petitioners in that case was that as against the scale of Rs.5000-8000 recommended by the 5th CPC, the respondents had brought them down to the scale of Rs.4500-7000. O.A. No.2748/2002 was disposed of by passing the following order:

“25. Having regard to the aforesaid discussion and conclusion arrived at, we are of the considered view that the issue requires reconsideration by the Government. Respondents are directed to re-examine the entire matter in the light of our observations and take a final decision within a period of six months from the date of receipt of a copy of this order. Till then status quo with respect to applicants in the context of the present pay scale be maintained and recovery shall not be given effect to. No costs.”

The respondents had approached the Hon'ble High Court vide Writ Petition No.3070/2007 but the Hon'ble High Court was pleased to dismiss the Writ Petition as barred by laches and delay as well as on the principle of estoppel. It is stated that vide order dated 03.10.2008, Safdurjung Hospital implemented this order. However, certain X-Ray Technicians, similarly placed to the applicants, working in LRSI had moved this Tribunal for grant of pay scale of

Rs.5000-8000 vide T.A. No.20/2007, which was disposed of by this Tribunal vide order dated 29.10.2007 by passing the following order:

“2. In view of the above, TA stands disposed of with a direction to the respondents to take a final decision concerning the pay scales of the applicants by a speaking order to be passed within a period of three months from the date of receipt of a copy of this order.

3. TA is disposed of accordingly. No costs.”

7. Since the applicants in that case were not accorded the pay scale of Rs.5000-8000, they again approached the Tribunal in O.A. No.626/2008, which was disposed of vide order dated 15.12.2008 as follows:

“4. To meet the ends of justice, this OA stands partly allowed. Impugned order is set aside. Respondents are directed to examine the averments of the applicants in the light of our observations. In that process to treat the averments in the present OA, including Annexures as supplementary representation of the applicants and the claim shall be disposed of by a speaking order to be passed within three months from the date of receipt of a copy of this order. No costs.”

8. Another O.A. No.1145/2009 was filed by X-Ray Technicians working in LRSI. Again, this O.A. was disposed of vide order dated 01.09.2009 as follows:

“While quashing the impugned order dated 12/13th March, 2009, the OA is disposed by directing the respondents to examine the matter once again. Since the burden of proof to prove the complete parity rests on the claimants, the applicants would be at liberty to make a representation before the respondents establishing their factual claim and parity with those claimed as similarly situated employees. This should be done within a period of one month from the date of receipt of a copy of this order, where after the respondents are directed to pass their speaking order within a period of another three months keeping in view the observations made in the body of this order.

There shall be no order as to costs.”

9. The applicants' case is that the qualification/responsibility and duties of the applicants and other incumbents placed in the same cadre in all Govt. hospitals under respondent No.2 as well as other institutions under the Govt. of NCT of Delhi are the same and whereas they have granted the pay scale of Rs.5000-8000 to X-Ray Technicians and Radiographers, the applicants have not been granted this scale. Similarly, the AIIMS has also granted the scale of Rs.5000-8000 to Technicians (Radiology/Radiotherapy)Gr.-II (Annexure A-10 colly.). Our attention is also drawn to a reply on RTI application dated 05.03.2010 in which the AIIMS has replied that the present scale of Radiographers/X-Ray Technicians (i.e. 6th CPC) is Rs.9300-34800 + GP Rs.4200/-. The learned counsel points out that this is the replacement scale of Rs.5000-8000.

10. It is submitted by the learned counsel for the applicants that there is no post of Radiographer in the applicants' hospital and they all are working under the nomenclature of X-Ray Technicians but Radiographers and X-Ray Technicians are one and the same with just different nomenclatures. It is further explained that it is for this reason that each hospital has either the post of Radiographers or the post of X-Ray Technicians. None of the Institute/Hospital has both X-Ray Technicians and Radiographers posts.

11. It is further pointed out that the Central Government Health Scheme (CGHS) vide office order dated 19.05.1999 regarding implementation of Part B of the 5th CPC report in CGHS Organisations also shows that X-Ray Technicians/Radiographers are granted the revised scale of Rs.5000-8000.

12. It is the contention of the applicants that the qualifications required in LRSI are the same with that of Radiographers/X-Ray Technicians working in the other Govt. hospitals. In this regard, a comparative chart has been prepared and placed at Annexure A-13, which is reproduced below:

“RR (Recruitment Rules) of Government Hospitals.

L.R.S. Institute of T.B. & R.D. Delhi	SAFDARJANG HOSPITAL DELHI	AIIMS DELHI	LHMC DELHI/KSCH DELHI
10+2 with science equivalent from a recognized board. Diploma (2 years course) in radiography. With one year experience. Age limit 28 years.	Matriculation or equivalent qualification from a recognized board. Diploma (2 yrs. course) in radiography with one year experience. Age limit 20-30 yrs.	10+2 with science equivalent from recognized board/universities. Diploma (2 yrs course) in radiography techniques from recognized Institute. One year experience. Age limit 18-30 years.	Matriculation or its equivalent from a recognized board. Diploma (2 years course) Radiography with one year experience Or Diploma certificate (one year course) with two years experience. Age limit 21-30 years.”

Similarly, the duties and responsibilities of Radiographers/X-Ray Technicians are placed at Annexure A-14, which is reproduced below:

**“NATURE OF DUTIES FOR RADIOGRAPHER/X-RAY
TECHNICIAN OF GOVERNMENT HOSPITALS.**

L.R.S. Institute of T.B. & R.D. Delhi	SAFDARJANG HOSPITAL DELHI	AIIMS DELHI	LHMC DELHI/KSCH DELHI
To do the Diagnostic radiography of the patients & its radiography allied works	To take diagnostic radiographs of patients as required by Doctors. Any other duties assigned by the H.O.D. or any superior officer from time to time	There is no defined duties and responsibilities in the R.R. for the post of Technician Radiology Grade-II	To take diagnostic radiographs of patients as required by Doctors.

13. It is further argued that even in the office of the applicants, i.e. KSCH, some of the X-Ray Technicians are getting the pay scale of Rs.5000-8000. It is submitted that Shri Prem Masih (since retired), Shri Vijay Kumar Verma, Shri Surjeet Kumar Manchanda and Shri Jagdish Chander are drawing the pay scale of Rs.5000-8000. In this regard, the applicants have filed corrigendum dated 22.02.2002, which shows that Shri Prem Masih, Dark Room Assistant is promoted to the post of X-Ray Technician in the scale of Rs.5000-8000 on regular basis. Our attention is also drawn to order dated 26.02.2008 (Annexure A-16) granting ACP to certain Dark Room Assistants, who are in the basic grade of Rs.3200-4900 and they have been granted ACP in the scale of Rs.5000-8000. Upgradation under the ACP has to be to the pay scale of the next hierarchical promotional post. The next hierarchical post is that of X-Ray Technician and the feeder grade for promotion to X-Ray Technician is Dark Room Assistant. It is thus contended that this

also establishes that the pay scale of X-Ray Technician should be Rs.5000-8000.

14. Referring to the detailed order passed by the LRSI dated 19.04.2010, it is stated by the learned counsel for the applicants that in para 3.3, the order states that the Recruitment Rules of Technician (Radiology) Gr.II, AIIMS provides higher educational qualification, i.e. B.Sc.(H) (3 years course in Radiography) from a recognized University/Institution. In this regard, learned counsel contends that this Tribunal in its order dated 13.04.2004 in OA No. 2748/2002 in para 19 observed as follows:

“If one has regard to the above the entry level qualification has been recommended for future recruitment. It is also recommended that the present incumbents in the post of Radiographer with minimum of two years diploma should be placed at the level of Rs.1350-2040 but Senior Radiographer being the promotional post had been placed in the level of Rs.1640-2900 the equivalent of which is Rs.5500-9000. After this the Government accepted the recommendations and as per the Revised Pay Rules Radiographer in the pay scale of Rs.1320-2200 as per the recommendations of para 52.107 enhanced the revised pay scale of Rs.5000-8000 to Radiographer requiring two years diploma certificate have been placed in the pay scale of Rs.4000-6000. This is our considered view refers to the entry level qualification. **We do not find any recommendation as to placement of three years diploma holders in the revised pay scale of Rs.5000-8000.** The only recommendation which has been made is the replacement scale of Rs.1350-2200 to the Radiographer without any reference to the qualifications.

(emphasis supplied)”

It is contended that it would be clear from this order that there is no recommendation as to placement of three years diploma holders in the revised scale of Rs.5000-8000.

15. The applicants also relied on judgment dated 02.05.2008 in Writ Petition No.484/1988 of Hon'ble High Court of Delhi in **Mirza Zahid Beg & Ors. vs. Union of India & Ors.** However, the facts of this case are totally different as they relate to Lower Division Clerks in the office of District & Sessions Judge, Delhi and, therefore, in our opinion, this cannot be cited as a precedent.

16. The learned counsel for the respondents argued that the order dated 19.04.2010 passed by the respondents is a well reasoned and speaking order dealing with each and every aspect raised by the applicants in their representation and, hence, the said order does not call for any interference by this Tribunal.

17. It is contended that the applicants are seeking parity with the employees of Safdarjung Hospital, AIIMS and MCD Hospitals. However, these are totally different departments from the LRSI, which is an autonomous organisation and has its own decision making body in this regard. It is stated that on the basis of educational qualifications, the 5th CPC had recommended for grant of pay scale of Rs.4000-6000 to the X-Ray Technicians possessing diploma of two years duration after 10+2 and the applicants, who possess similar qualifications have already been granted the pay scale of Rs.4500-7000 and, hence, the grievance raised by the applicants regarding higher pay scale is totally misconceived.

18. It is further added that the required educational qualification as per the Recruitment Rules for the post of X-Ray Technician in AIIMS is higher and provide B.Sc. (H) with three years' course in Radiography. Hence, they cannot be equalised with the applicants, who are 10+2 with two years diploma. Another issue raised is that the pay scale of Rs.5000-8000 was granted without consultation of Department of Finance and approval of competent authority and, therefore, on that basis, the scale cannot be granted to X-Ray Technicians and Radiographers and the decision taken by the respondents in concurrence with the Ministry of Finance to grant the scale of Rs.4500-7000 does not call for any interference.

19. Heard the learned counsels, perused the judgments/written statements produced by both the sides.

20. 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].

21. As we have seen that in this case comparison is very difficult. The X-Ray Technicians in AIIMS, for instance, are required to possess higher educational qualifications than the applicants.

Therefore, the applicants cannot ask for parity with the X-Ray Technicians of AIIMS. Similarly, the other cases cited by the applicants pertain to different organizations and the applicants, during their arguments and in their written statement also, claimed only "similarity of duties and responsibilities". It is very difficult for us to get into such an exercise, which is really a job for the Pay Commission. The applicants have also not been able to demonstrate any illegality or mala fide or arbitrariness in the action taken by the respondents. The impugned order dated 19.04.2010 is a very detailed order considering various judgments of Hon'ble Supreme Court and we quote below why their representations have been rejected:

- “3.1 The 5th CPC in para No.52.107 has recommended the upgraded pay scale of Rs.1600-2660, corresponding, corresponding to the Rs.5000-8000 to the Radiographers in view of the DR qualifications and conversion of Minimum 2 year of Diploma certificate in Radiology to a three year Diploma in Radiological Technology. However, the 5th CPC in the same para also recommended that the common Category of Radiographers/X-Ray Technicians possessing the minimum of 2 years Diploma/Certificates after 10+2 may be placed in the revised pay scale of Rs.4000-6000. These recommendations were accepted and notified under the CCS (RP) Rules, 1997. It has already been observed that based on the recommendations of 5th CPC as accepted by the Govt. under in part B of CCS (RP) Rules, 1997, the post of X-Ray Technician with minimum qualification of 2 years Diploma/certificate in Radiography after 10+2 are to be placed in the pay scale of Rs.4000-6000. **Since, the X-Ray Technicians of LRS Institute with comparable educational qualification have already been placed in the higher pay scale of Rs.4500-7000, there is no case for further revision of the pay scales in this case.**
- 3.2 The post of X-Ray Technician does not exist in the Safdarjung Hospital. The normal pay scale of Radiographer as per the 5th CPC is Rs.4000-6000 in Safdarjung Hospital. **However, the scale of Rs.5000-8000 has been extended to the Radiographers, after the order of CAT dated 13.04.2004 for the applicants**

only in OA No.2748/2002. Therefore, the pay scale has not been extended on the basis of merits but on the basis of the Court's judgment and these pay scales are not strictly applicable to the X-Ray Technicians of LRSI.

3.3 It appears that the AIIMS Memorandum dated 23.05.2001 regarding upgradation of the pay scales of Technicians (Radiology) from Rs.4500-7000 to Rs.5000-8000 has not been issued in consultation with the Department of Finance. Furthermore, the hierarchical of the post of Technicians (Radiology/Radiotherapy) in AIIMS is different from the hierarchy of the X-Ray Technicians of LRSI. The RRs of the Technician (Radiology) Gr.II, AIIMS also provides **higher alternative qualification i.e. B.Sc.(H) (3 years course in Radiography)** from a recognized University/Institution. Therefore no wholesale identity is established between the post of X-Ray Technician in LRSI and Technician (Radiology) Gr.II in AIIMS.

3.4 Only copies of the orders issued by safdarjung Hospital, MCD (Delhi), AIIMS granting pay scale of Rs.5000-8000 to X-Ray Technicians/ Radiographers have been enclosed by the applicants with their representation dated 08.10.2009 and no submissions/points have been raised in favour of their claim.

(emphasis supplied)"

22. It has been clearly explained that as per 5th CPC recommendations, Radiographers and X-Ray Technicians with minimum qualification as that of the applicants were granted the revised scale of Rs.4000-6000. Since the applicants have already placed in the higher scale of Rs.4500-7000, there is no case for further revision of the pay scale in this case. Moreover, wherever, the higher scale of Rs.5000-8000 has been extended, it has been extended to only those regarding whom (a) the Tribunal had passed specific order and the order had to be complied with or (b) on the ground of higher qualification/different nature of duties. It is also clarified that the hierarchy of posts in AIIMS is different from the hierarchy of X-Ray Technician in applicants' Organisation. Even if,

we ignore the three years course in “Radiography”, the qualification in AIIMS still remains higher.

23. In view of above, as has been made clear by us, this is a matter which clearly has to be dealt with only by a Pay Commission, if at all, there is any anomaly. However, from the facts of the case, we are of the opinion that there is no anomaly and the applicants have rightly been given the scale of Rs.4500-7000. In fact, this is a scale higher than what was recommended by the 5th CPC. Comparing with the other organizations just on the ground of designation being the same, is a fallacious approach. As has been demonstrated above, the qualifications differ and, hence, the pay scales differ.

24. Therefore, keeping in view all the facts and the judgments of the Hon'ble Supreme Court, we do not find any merit in this O.A. and the same is, accordingly, dismissed. There shall be no order as to costs.

(P.K. BASU)
Member (A)

(V. AJAY KUMAR)
Member (J)

/Jyoti/