

Central Administrative Tribunal  
Principal Bench  
New Delhi

O.A.No.3974/2014

Order Reserved on: 06.10.2015  
Order pronounced on 27.10.2015

Hon'ble Justice Shri Syed Rafat Alam, Chairman  
Hon'ble Shri P. K. Basu, Member (A)

Prabhakar Singh Prabhat  
S/o Sri Nageshwar Prasad Singh  
R/o 1/3, Chandresh Villa, Row House  
Kalyan Shil Road, Lodhar Heaven  
Dombivali (E), Thane, Mumbai  
Maharashtra, India. ... Applicant

(By Advocate: Sh. J.M.Khanna)

Versus

1. The Chairman  
Railway Board  
Ministry of Railways  
Government of India  
Rail Bhawan  
New Delhi – 110 001.
2. General Manager  
Central Railways  
Chhatrapati Shivaji Terminus  
Mumbai (Maharashtra).
3. Union of India through  
Secretary  
Ministry of D.O.P.T  
New Delhi.

4. Union of India

Through Secretary

Ministry of Railways

New Delhi.

.. Respondents

(By Advocate: Shri R.N.Singh)

### **O R D E R**

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

The applicant was appointed as Chemical and Metallurgy Assistant [in short, CMA (Grade I)] on 16.10.2007. The minimum educational qualification prescribed for recruitment to the said post of CMA Grade-I is Degree in Metallurgy/Chemical Engineering from a recognized institution approved by All India Council of Technical Education or M.Sc Degree in Chemistry/Applied Chemistry from recognized University. It is stated that the applicant possesses the above educational qualifications (i.e. B.Tech (Chemical Engineering)).

2. The 6<sup>th</sup> Central Pay Commission made certain recommendations specifically for the posts in certain Ministries/Departments, separate recommendations for certain common category posts and where no specific recommendations were made, the normal replacement scales

were to be followed. In the case of Chemical and Metallurgical Assistant, on the demands noted in paras 7.36.89, the 6<sup>th</sup> CPC made certain specific recommendations in para 7.36.91 of its report, which are quoted below:

**“Demands: 7.36.89:** Cadre of Chemists and Metallurgists have demanded that in view of the hazardous nature of work, they should be paid hazardous allowance at the rate of 25% of pay. Change in designation of the post of C&MA Gr.II as JE (C&M), SE (C&M) etc. has also been demanded.

**Recommendations: 7.36.91:** It is observed that Chemists and Metallurgists were given parity with the Subordinate Engineering Cadres. The Commission, however, is of the view that issues relating to change of designations etc. are best decided by the administrative Ministry keeping in view the functional exigencies. In any case, Commission has recommended merger of the scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500. Due to this, the posts of Chemical and 534 Metallurgical Assistant (C&MA) Gr. II (JCMA), C&MA Gr. I (CMA) and Lab Superintendent shall automatically be placed in Pay Band PB-2 of Rs.8700-34800 along with a grade pay of Rs.4200 corresponding to the pre-revised pay scale of Rs.6500-10500. Consequently, the post of Lab Superintendent should be upgraded and merged with the next higher post of Superintendent (X-Ray /Spectrograph/ Industrial Engineering). The posts of Chemical and Metallurgical Assistant (C&MA) Gr. II (JCMA and C&MA Gr. I (CMA) will stand merged. Insofar as grant of hazardous allowance is concerned, it is seen that handling chemicals etc. is a part of the job of Chemists and Metallurgists. The element of hazard involved in such duties is already included in the pay scale attached to this category. As such, a separate allowance on this account is not justified.”

3. The applicant's claim is that the 6<sup>th</sup> Central Pay Commission also made certain other recommendations, pertaining to Subordinate Engineering Services, in para 3.4.7 which is relevant to this case. Subordinate Engineering Cadres has been defined in para 3.4.5. of its reports and is cited below:

**"3.4.5: Subordinate Engineering Cadres:**

Subordinate engineering cadres include holders of diploma in engineering and other posts of engineering carrying minimum direct recruitment qualification of Bachelor of Engineering who have not been recruited to Group A service or post."

According to the applicant, in para 3.4.7 of its report, the 6<sup>th</sup> CPC made certain recommendations in respect of the Subordinate Engineering Services, and recommended that all the posts in subordinate engineering cadres and carrying minimum qualifications of diploma in engineering for direct recruits and having the element of direct recruitment, should be placed in the running Pay Band-2 of Rs.9300-34800 along with Grade Pay of Rs.4200 corresponding to the pre revised pay scales of Rs.6500-10500. Simultaneously, all posts in Subordinate Engineering cadres carrying minimum qualifications of a degree in engineering would get the PB-2

with Grade Pay of Rs.4600 corresponding to the pre-revised pay scale of Rs.7450-11500.

4. It is argued that regarding scientific staff also, those having minimum qualification of Degree in Engineering for direct recruitment, the Grade Pay recommended was Rs.4600 in PB-II. Similarly, all Technical Supervisors, whose minimum qualifications are only Diploma in Engineering, were granted the Grade Pay of Rs.4200 in PB-2 and Grade Pay of Rs.4600 to Section Engineers.

5. The applicant further states that the 6<sup>th</sup> CPC has merged pre revised scales of Rs.5000-8000, 5500-9000 and Rs.6500-10500 and granted them PB-2 with Grade Pay of Rs.4600.

6. It is further argued that in OA No.1957/2010, the same issue had come up before the Calcutta Bench of this Tribunal and the Calcutta Bench had, vide its order dated 29.08.2014, specifically observed in para 6 as follows:

“6. In view of such specific recommendations with regard to Chemists and Metallurgists by the 6<sup>th</sup> CPC itself, as reflected in para 7.36.91 of its report, recommending Grade Pay of Rs.4200/- for CMA-I, the action of the respondents in according Grade Pay of Rs.4200/- to the CMA-I cannot be faulted with since they have not acted ultra vires the 6<sup>th</sup> CPC recommendations. We cannot direct the

authorities to implement the general recommendation of para 3.4.7 of 6<sup>th</sup> CPC, as highlighted by the applicants, in absence of any malafide or arbitrariness specifically alleged.

However, we find that the specific recommendation in para 7.36.91 appears to run contrary to para 3.4.7 of the 6<sup>th</sup> CPC recommendations and the situation is quite anomalous to that effect, at least with regard to "the CMA" whose entry qualification is Degree in Engineering."

However, the Calcutta Bench of this Tribunal remanded the matter back to the respondents with the following directions:

"7. Since the Ministry of Railways are yet to decide on grant of Grade Pay of Rs.4600/- in PB-2 in terms of para 3.4.7 to the CMA-I the OA is disposed of with the consent of the parties with a direction upon the Railways to decide the matter within two months or else to refer the matter to the Anomalies Committee if there is already one in the Railways arising out of 6<sup>th</sup> CPC or to refer the matter appropriately to the 7<sup>th</sup> CPC."

7. It is, therefore, argued that the Calcutta Bench of this Tribunal had already observed that there is a contradiction between the two recommendations of 6<sup>th</sup> CPC which needs to be resolved.

8. The applicant states that instead of taking a view in the matter at their level, the respondents have passed a speaking order dated 10.07.2014 in which they have taken the following stand without resolving the issue:

"8. Since the existing pay structure allotted to CMA is based on specific recommendations of 6<sup>th</sup> CPC, who are the expert bodies on the subject, it is not feasible to make any departure thereto. Furthermore, as the Government has already set up a new Pay Commission viz. 7<sup>th</sup> Central Pay Commission, the Applicant is also at full liberty to take up the matter with them."

9. Aggrieved by the action of the respondents, the OA has been filed seeking the following reliefs:

- (i) To issue writ, order or direction to the Respondents to grant (give) the Grade Pay Rs.4600/- in Pay Band-II of Rs.9,300-34,800 with 18% interest, "the Initial Recruitment Pay Rs.17,140+D.A. (i.e., Rs.12540 + 4600) (G.P.) with 18% interest", to the Chemical and Metallurgical Assistant Grade I w.e.f. 16.10.97 or from the date of Pay Commission from 1.1.2006.
- (ii) To award cost in favour of the applicant and against the respondents, and/or
- (iii) To pass any further order, which this Tribunal may deem fit, just equitable in the facts and circumstances of the case.

10. The applicant further argued that since the entry point qualification is the same, the principle of 'equal pay for equal work' would apply and, therefore, they should also be given the Grade Pay of Rs.4600/- in PB-2 at par with other Degree holders. By not doing so, the respondents have discriminated against them thus violating Articles 14 and 16 of the Constitution of India.

11. In their rejoinder, the applicant also placed before us the Training pattern of C&M Staff/posts trying to establish that their duties are more onerous to normal engineering Degree holders' job, and, therefore, even on this ground, the respondents cannot deny them the relief sought.

12. The respondents' case is that this OA is barred by resjudicata/constructive resjudicata inasmuch as the applicant has earlier filed OA No.799/2014, seeking similar relief, which was disposed of by this Tribunal vide order dated 03.03.2014 and the respondents have already complied with the directions of this Tribunal by passing a speaking order dated 10.07.2014.

13. The respondents have further relied on the following Judgements of the Hon'ble Supreme Court to argue that equation of posts and determination of pay scales is primary function of the executive, best left to expert bodies like Pay Commissions and Tribunals should refrain from issuing observations in such matters.

- a) **Mallikarjuna Rao & Others v. State of A.P. & Others**, (1990) 2 SCC 707,
- b) **P.U.Joshi & Ors. v. The Accountant General, Ahmedabad & Ors.**, (2003) 2 SCC 632;
- c) **Secretary, Finance Department & Ors. v. The West Bengal Registration Service Association & Ors.**, (1992) 2 SLR 82;
- d) **S.C.Chandra and ors. v. State of Jharkhand & Ors**, (2007) 8 SCC 279 and
- e) **Union of India & Others v. Hiranmoy Sen & Others** (2008) 1 SCC 630.

14. In the backdrop of the above citations, the learned counsel for the respondents also submits that recruitment qualification is not the only factor that is taking into

consideration while determining the pay structure. There are numerous factors which are taken into consideration such as (i) Work program of the department; (ii) The nature of contribution expected from the employee; (ii) the extent of his responsibility and accountability of the discharge of his diverse duties and functions; (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties; (v) the extent of powers vested in him; (vi) the extent of his dependence on superiors for the exercise of his powers; (vii) the need to coordinate with other departments; (viii) method of recruitment; (ix) level at which recruitment is made; (x) the hierarchy of service in a given cadre; (xi) avenues of promotion; (xii) the nature of duties and responsibilities; (xiii) the horizontal and vertical relativities with similar jobs. It is further submitted that given the technical complexity, the task of recommending appropriate pay structure for different categories of Government employees, has been assigned to an expert body especially mandated for this purpose, namely, the Central Pay Commission. Also, the posts of Section Engineers/Senior Section Engineers have always been placed

in a higher scale vis-a-vis CMA-I in the respective 4<sup>th</sup> CPC, 5<sup>th</sup> CPC & 6<sup>th</sup> CPC.

15. It is also pointed out by the learned counsel for the respondents that the 6<sup>th</sup> CPC has specifically made certain recommendations in para 7.36.91 of their report with respect to CMAs, which is already quoted above, and recommended the Grade Pay of Rs.4200. The recommendations of the 6<sup>th</sup> CPC were accepted by the Government of India and implemented. Therefore, it is not the case that there is no application of mind by the Pay Commission in their matter and hence there is no reason for Government to deviate from these recommendations, and the decision of the respondents cannot be faulted with since they have not acted ultra vires to the 6<sup>th</sup> CPC recommendations.

16. In fact, it is pointed out that the Calcutta Bench of this Tribunal had also noted this in para 6 of their Judgement which was already referred hereinbefore.

17. Further, it is stated in para 7.1.19 of the Report, while considering the **demand of M.Sc. Degree holders**, the 6<sup>th</sup> CPC had also noted that minimum qualification prescribed

cannot be sole criteria for grant of specific pay scale. The relevant part of the said para is quoted below:

"7.1.19 M.Sc. Degree holders in Central Marine Fisheries Research Institute have demanded that all posts carrying minimum qualifications of M.Sc. degree should be placed in the pay scale of Rs.8000-13500. The Fifth CPC had considered this issue and recommended that while posts requiring minimum qualifications of post-graduate degree were ordinarily placed in the pay scale of Rs.6500-10500, a lower scale could also be prescribed. This Commission has taken the consistent stand that the minimum qualifications prescribed cannot be the sole criterion for grant of a specific pay scale and the same has to depend on various factors including the hierarchical pattern, the established relativities, the functions attached and the minimum qualifications prescribed.  
**Accordingly, the demand cannot be accepted."**

18. Heard both the learned counsel and perused the pleadings on record, including the various judgements relied upon by the parties.

19. We agree with the learned counsel for the respondents that the Hon'ble Supreme Court in catena of Judgements have held that the Tribunals/Courts should not normally get into determining of pay scales as this is best left to the Executive, who have full facts before them and also left to Expert Bodies like Pay Commission, etc. The petitioner had come before this Tribunal and on the directions of the

Tribunal, the respondents have passed a detailed speaking order. The applicant has again come before this Tribunal with the same claim. This clearly is not maintainable.

20. However, even on merits, the Calcutta Bench of this Tribunal had directed the respondents to either decide the matter themselves or sent it to the anomaly Committee or the 7<sup>th</sup> Central Pay Commission. Both sides informed that neither of them have approached the 7<sup>th</sup> CPC. The respondents have stated through the order dated 10.07.2014, they have taken a final decision which is consistent with the 6<sup>th</sup> CPC recommendations, so nothing more needs to be done by the respondents.

21. It is a fact that merely because two posts have the same minimum entry qualifications, pay parity cannot be sought. The 6<sup>th</sup> CPC had specifically applied its mind with respect to the CMA cadre and made a recommendation of Grade Pay of Rs.4200. Therefore, to now compare this cadre with other cadres across Government, does not come within the purview of this Tribunal as has been consistently held by the Hon'ble Supreme Court. In fact, where there are specific recommendations of the 6<sup>th</sup> CPC, and the Government has

accepted that recommendation, there is no scope of interference left by us. The only recourse available was to approach the 7<sup>th</sup> CPC at the appropriate time, which they have failed to do. Therefore, we see no merit in the OA and the OA is liable to the dismissed.

22. In the backdrop of the discussions, we do not see any merit in the OA and the OA is, therefore, dismissed. No order as to costs.

(P. K. Basu)  
Member (A)

(Justice Syed Rafat Alam)  
Chairman

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