

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No. 2627/2016

New Delhi this the 17th October, 2018

Hon'ble Sh. Pradeep Kumar, Member (A)

1. Amit Kumar Sharma, Age 30
Sub: Pay Fixation
S/o Sh. Ved Prakash Sharma R/o E-6/15,
33 Futa Road, Dayallpur, Delhi.
2. Basanti D/o, Age 29
Sh. Purshottam Bhatt
R/o E-20/13, Subhash Vihar
Gali No. 8, Ghonda, Delhi.
3. Surinder Kumar, Age 27,
S/o Sh. Gyashi Ram, R/o SQ No.1
Children Observation Court, Delhi.
4. Hemraj Chandan, Age 32
S/o Sh. Dhira Lal, R/o B-II/440,
Raghubir Nagar, New Delhi.
5. Mahesh, Age 31
S/o Sh. Ram Chander
R/o A-131, Minto Road, Delhi.
6. Sumit Kumar Pandey, Age 29
S/o Sh. S.K. Pandey, R/o 1277 Type-II,
Gulabi Bagh, New Delhi.
7. Sanjay Kumar, Age 33
S/o Sh. Bhagwan Dash, R/o D-3/10,
Amit Niwas Dayalpur, Delhi.
8. RakeshKumar, Age 30,
S/o Late Sh. Srikant Mishra, R/o E-6/15,
33 Futa Road, Dayalpur, Delhi.
9. Vinod Kumar, Age 29
S/o Sh. Chandeshwar, R/o A-10
Sewa Kutir, GTB Nagar, Delhi.

10. Parveen Kumar, Age 30
S/o Sh. Badri Parsad, R/o H.No. 590
Bhim Gali Sabzi Mandi, Delhi.

... Applicants

(All the applicants are Group 'D' Peon in the O/o of the respondent no.2 and have been posted in different offices of the respondents.

(By Advocate :Sh.U. Srivastava)

Vs.

1. Govt. of NCT Delhi through
The Secretary
Department of Social Welfare
Govt. of NCT Delhi, GLNS Building
Delhi Gate, New Delhi.
2. The Joint Director (Tech.)/HOO
D/o Women and Child Development
GNCTD, 1, Pandit Ravi Shanker Shukla Lane
KG Marg, New Delhi.
3. The Dy. Director (Admn.)
D/o Women and Child Development
GNCTD, 1, Pandit Ravi Shanker Shukla Lane
KG Marg, New Delhi

...Respondents

(By Advocate : Sh. H.D. Sharma)

ORDER (ORAL)

1.0 The applicant brought out that certain Group 'D' posts of Peon were created in the ICDS Project under Govt. of NCTD vide letter dated 02nd August, 2007. The applicants were engaged by the respondents vide letter dated 04th September, 2007. The terms and conditions of this appointment letter are reproduced below :-

"1. The contractual engagement is only for six months from the date of your joining this department. However,

this department reserves the right to cancel the contractual engagement any time during the six months period without any notice.

2. You will be paid only consolidated remuneration of Rs. 4,000/- per month. No DA/HRA/CCA or any other allowances shall be paid.

3. This contractual engagement 'does not confer' any right to claim regular appointment in the department by you."

2.0 The applicants approached the Tribunal claiming for equal pay for equal work. This was granted to them and thereafter the emoluments of the applicants were fixed at the minimum pay in the pay scale to a total of Rs. 10570/- p.m. The relevant Group 'D' scale was Rs. 5200-20200+grade pay Rs. 1800+DA @ 51% (As on 01.06.11). Accordingly, the applicable remuneration w.e.f. 01.01.11 worked out to Rs. 10570/- (Basic at minimum Rs. 5200/-+Grade Pay Rs.1800/- + DA @ 51% of "Basic Pay + GP" i.e. Rs. 3570/-).

3.0 The applicants had thereafter approached the Tribunal vide another OA No. 1596/2013 seeking certain reliefs. This was decided on 29th October, 2014. The following directions were given :-

"4. In the circumstances, the OA is disposed of with the direction to the respondents to take a final decision in the matter for proper fixation of consolidated pay of the applicants in view of the judgment of this Tribunal in the case of **Raj Rani Chachra & Others vs. Govt. of NCT of Delhi & Others**, as upheld by the Hon'ble Delhi High Court in terms of order dated 16.3.2012, within 8 weeks from the date of receipt of a copy of this order. No costs."

In this connection, the relevant judgment in the case of **Raj Rani Chachra** (supra) in OA No. 851/2009 was decided on 16.9.2009 wherein the following directions were issued:-

“We have carefully considered the rival contentions of the parties and also perused the reply filed by respondent No. 6. Though negative equality has no place in the Constitution of India, it cannot vest an indefeasible right to the concerned. However, when a particular relief has been given as an implication of direction by a judicial Forum and complied with, if is claimed by the left over categories, identically situated, it would not amount to claiming negative equality. The Full Bench of the Tribunal having regard to the circular issued by respondents where a fraction of Nurses had been denied regular pay scale, disapproved the act of the respondents and this direction has been upheld by the High Court, which is a binding precedent on us. Applicants cannot be denied the benefit of extension of decision of the High Court.

7. We have asked the learned counsel of respondents as to the challenge to the order of the High Court before the Apex Court. No details have come forth; law shall take its own course in that event. It is trite that unless a decision of the higher fora is overturned, modified or set aside, it does not lose its precedent value. The claim of applicants insofar as the claim decided with direction by the High Court, on all fours covers the claim of applicants in the present OA. Accordingly, the OA is allowed to the extent that respondents shall now treat the applicants in the similar manner in the matter of pay and allowances as other Nurses are being treated. They are entitled to arrears from the date of filing of the OA, i.e. 26.3.2009.

8. Insofar as age relaxation is concerned, in case selection is held, it is open to applicants to apply and participate in the selection process for the posts of Staff Nurse, Grade-I on notification. In such an event, in consonance with the decision of the Apex Court in Umadevi (supra) applicants are entitled to age relaxation and weightage of their experience. These directions shall be complied with by the respondents, within a period of two months from the date of receipt of a copy of this order. No costs.

9. Consequently MAs are also allowed."

Thereafter the respondents had passed an order dated 27.11.2015

wherein the following orders were passed :-

"Hon'ble Central Administrative Tribunal in court case O.A. 1596/2013, case title "Amit Kumar Sharma & Ors. V/s Govt. of NCT of Delhi an ors." Vide its order dated 29.10.2014 has directed the respondents to take a final decision in the matter for proper fixation of consolidated pay of the applicants in view of the judgment in the case of Raj Rani Chachra & Ors. Vs Govt. of NCT of Delhi & others.

Whereas, in compliance of the order of the Hon'ble CAT, the case of applicants who had been engaged to the post of Peon (erstwhile Group-D) under centrally sponsored Plan Scheme – ICDS was considered for proper fixation of consolidated pay in view of the judgment in Raj Rani Chachra case which pertains to Grade 1 Staff Nurses working in Health Department on contract basis.

Whereas, the Department with concurrence of Finance Department, releasing monthly contractual emoluments to the applicants from time to time, as per provision of O.M. dated 30.12.2011 of Finance Department of Govt. of NCT of Delhi, which as per continuation of contract order dated 03.09.2015, taking DA @ 113% is Rs. 14910/- per months.

Since the judgment of Raj Rani Chachra's case, was related to parity of remunerations of contractual staff Nurses with regular Staff Nurses of the Health Department, as such it has been decided not to fix applicants monthly consolidated remunerations as per the ratio of Raj Rani Chachra's case as such present formula of fixing contractual consolidated remunerations shall continue to be applicable, for the applicants.

The applicants are informed accordingly."

4.0 The applicants are aggrieved that the case of **Raj Rani Chachra** (supra), which was thereafter upheld by the Hon'ble High Court and Hon'ble Apex Court levels has not been correctly implemented in their

case and this is the grievance that has been ventilated in the instant OA.

5.0 The applicants drew attention to the judgment passed by Hon'ble Apex Court two judge bench (**State of Punjab and others vs. Jagjit Singh and others**, (2017) 1 SCC 148, decided on 26.10.2016) and drew attention to para 5 of the judgment that has been considered by the Apex Court in respect of "equal pay for equal work" and it is applicable to the temporary employees. In this para 5, following observation has been made :-

"5. The issue which arises for our consideration is: whether temporarily engaged employees (daily-wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and the like), are entitled to minimum of the regular pay scale, along with dearness allowance (as revised from time to time) on account of their performing the same duties which are discharged by those engaged on regular basis, against sanctioned posts?"

Accordingly, the applicants pleaded that they being contractual employees, they are entitled to get the same salary, scales and allowances as were admissible to the regularly recruited employees.

6.0 On further queries as to what has not been accorded by the respondents, the applicants brought out that with implementation of 6th Pay Commission scales, Group 'D' has now been abolished and all regular Group 'D' employees have since gone to the scales of Group 'C' employees and now they are known as MTS. This has not been granted to the applicants.

7.0 The respondents brought out that the instant applicants are contractual employees engaged on contract basis and this is clearly specified in the appointment letter dated 04th September, 2007 as brought out in para 1.0 above.

Learned counsel also pleaded that the applicants are on contractual basis only and they cannot be equated to the regularly recruited employees. In this connection, it was also pointed out that the system of regular employment in ICDS, is through the recruitment examination conducted by Delhi Subordinate Services Selection Board (DSSSB). The applicants had not followed this route and are engaged on contractual basis till regular candidates became available.

In the instant case the contractual engagement was done by the department itself, and not through DSSSB, and it was for a temporary period, even though the same has been extended from time to time due to non-holding of selection by DSSSB on account of the absence of recruitment rules.

8.0 Learned counsel for the respondents drew attention to the Hon'ble Apex Court judgment in the case of **State of Madhya Pradesh and Others vs. Ramesh Chandra Bajpai**, (2009) 12 SCC 635 delivered on 28th July, 2009 by a three Judge bench. This is in the context of equal pay for equal work and it was held that this principle cannot be invoked for perpetuating an illegality i.e. an illegal or wrong order passed in one case cannot be made the basis for compelling, a public authority to pass similar order in other cases, simply because appeal

was not preferred in the earlier case. Learned counsel also drew attention to another aspect of this judgment where it was held that equal pay for equal work can be invoked only when there is wholesale identity between the holders of two posts. The judgment also referred that wholesale identity includes the process of recruitment etc. also, which is admittedly different in respect of applicant with respect to regular employees.

Another judgment was also quoted by the respondents, which is also by another three judge bench of the Hon'ble Apex Court in the case of **Steel Authority of India Limited and others vs. Dibyendu Bhattacharya**, (2011) 11 SCC 122 delivered on 29th October, 2010. In this judgment also, it was held that equality clause can be invoked in the matter of pay scales, only when there is wholesome/wholesale identity between holders of two posts and burden of establishing right and parity in employment is on person claiming such right. The respondents brought out that the instant case pertains to those engaged on contractual basis, who are seeking parity with those engaged on regular basis. However, at present there are three different variety of employees: those who were regularly recruited employees, those who are contractual employees as the applicants and those who are on outsourced basis with a view to manage the work.

9.0 Learned counsel for the applicant drew attention to the case of **Raj Rani Chachra** (para 3.0 supra) and it was pleaded that the benefits

as are requested in the instant application are permissible and were already ordered by the Tribunal.

10.0 Matter has been heard at length. It is admitted that the instant applicants are the contractual basis workers who are being paid a consolidated remuneration which has been worked at the “minimum of the relevant pay scale +DA thereupon”. The recruitment process of the instant applicants was very distinct process and had not followed the process of recruitment by DSSSB.

The case of the instant applicants is not similar to that of **Raj Rani Chachra** (supra), which pertains to the nurses. In regard to **Raj Rani Chachra** (supra) case, it is also noted that the applicants therein were contractual nurses who were engaged when the regular nurses had gone on strike. Out of the contractual nurses, some were already regularised. Ms. Raj Rani Chachra was one such contractual nurse, who appeared in this test but was not successful and had approached Tribunal for relief. In this case following observations were made by Tribunal in that judgement:

“However, next question which arose for consideration is as to whether these respondents were still working on contract basis and have not been regularized can be held entitled to grant of increments as well as promotion. We are posing this question because of directions contained in judgment dated 03/07/07 passed by the Tribunal in O.A. 1857/06 which is the subject matter of writ petition no. 8476/2008. These directions are in the following terms:

Taking the totality of facts and circumstances into consideration, we come to the conclusion that applicant is entitled to all the benefits in terms of salary, allowances,

promotion etc. which have been extended to other Staff Nurses, who were recruited during the period of strike of nurses in the year 1998.

The legal position in this regard is that casual or contract employees are not entitled to increments and would get pay at the minimum of the regular pay scale. In the absence of regularization, question of consideration of cases for promotion also would not arise. While that is the position in law, we have no information as to whether other Staff Nurses appointed on contract basis, who had approached the Tribunal and this Court earlier for pay parity and were granted relief, have been granted increments or not. In case the petitioner had given to those nurses appointed on contract basis benefit of increment, then it would be extended to the respondents herein as well on the principle of equality and equal treatment. However, if such a benefit has not been granted to other similarly situated staff nurses appointed on contract basis, then the respondents herein also shall not be entitled to benefit of either increment or promotion. All these writ petitions are disposed of in the aforesaid terms.

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6. We have carefully considered the rival contentions of the parties and also perused the reply filed by respondent No.6. Though negative equality has no place in the Constitution of India, it cannot vest an indefeasible right to the concerned. However, when a particular relief has been given as an implication of direction by a judicial Forum and complied with, if is claimed by the left over categories, identically situated, it would not amount to claiming negative equality. The Full Bench of the Tribunal having regard to the circular issued by respondents where a fraction of Nurses had been denied regular pay scale, disapproved the act of the respondents and this direction has been upheld by the High Court, which is a binding precedent on us. Applicants cannot be denied the benefit of extension of decision of the High Court.

7. We have asked the learned counsel of respondents as to the challenge to the order of the High Court before the Apex Court. No details have come-forth; law shall take its own course in that event. It is trite that unless a

decision of the higher fora is overturned, modified or set aside, it does not lose its precedent value. The claim of applicants insofar as the claim decided with direction by the High Court, on all fours covers the claim of applicants in the present OA. Accordingly, the OA is allowed to the extent that respondents shall now treat the applicants in the similar manner in the matter of pay and allowances as other Nurses are being treated. They are entitled to arrears from the date of filing of the OA, i.e., 26.3.2009.

8. Insofar as age relaxation is concerned, in case selection is held, it is open to applicants to apply and participate in the selection process for the posts of Staff Nurse, Grade-I on notification. In such an event, in consonance with the decision of the Apex Court in Umadevi (supra) applicants are entitled to age relaxation and weightage of their experience. These directions shall be complied with by the respondents, within a period of two months from the date of receipt of a copy of this order. No costs."

It will thus be seen that this Tribunal in the case of **Raj Rani Chachra** (supra) has not granted full parity to contractual staff vis-a-vis regular staff. Accordingly, the claim of the applicants in instant case, who are all contractual staff, including the relief sought in para 6.0 above cannot be accepted.

11.0 In the instant case the relevant "minimum pay scales +DA etc. thereupon" has already been implemented. Therefore, the relevant reliefs to the instant applicants, as were already ordered by CAT in OA no. 1596/15, have admittedly since been implemented by the respondents.

12.0 In view of foregoing, the present OA is not maintainable and the same is dismissed being devoid of merits. No order as to costs.

(Pradeep Kumar)

Member (A)

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