

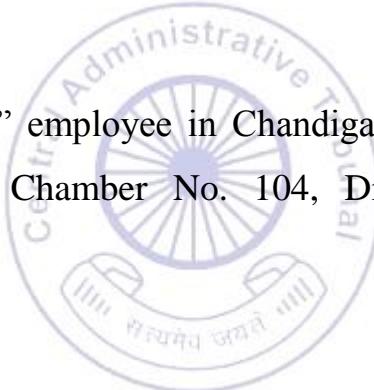
CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH****OA No. 060/00302/2016**

Pronounced on : 28.03.2018
Reserved on : 07.03.2018

CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS.P. GOPINATH, MEMBER(A)

1. Davinder Pal S/o Late Sh. Chunni Lal, aged 58, Technician Grade II
(Battery Attendant)
2. Nirmal Singh S/o Sh. Ujjagar Singh, aged 53 Technician Grade II
(Battery Attendant)
3. Sat Pal son of late Sh. Tara Chand, aged 58 Technician Grade II
(Turner)

All working as Group "C" employee in Chandigarh Transport Undertaking U.T. Chandigarh. C/O Chamber No. 104, District Court, Sector 43, Chandigarh.



.....Applicants

BY ADVOCATE: Sh. Amit Kaith

VERSUS

1. U.O.I. through Secretary to Government of India, Ministry of Home Affairs, New Delhi.
2. Chandigarh Administration, through its Finance Secretary, Chandigarh.
3. Divisional Manager and Director Transport, Chandigarh Transport Undertaking, UT Chandigarh.
4. General Manager, Chandigarh Transport Undertaking, Depot No. II, Industrial Area, UT Chandigarh.

.....Respondents

BY ADVOCATE: Sh. Rajesh Punj

ORDER

MRS. P. GOPINATH, MEMBER(A):-

1. The applicants are Helper Battery Attendants/Assistant Turner promoted as Assistant Battery Attendant/Turner and subsequently as Battery Attendant. The UT of Chandigarh adopted the Punjab Pay Rules and service conditions w.e.f. 01.04.1991. The State of Punjab revised the pay scales of technical staff by categorizing them as Technician Grade I, Technician Grade II, Technician Grade III and Junior Technician w.e.f. 03.11.1989. The State of Punjab further revised the pay scale of its employees w.e.f. 01.01.1996 after acceptance of the recommendations of the Fourth CPC i.e. Punjab Civil Service Revised Pay Rules, 1998. Punjab Roadways granted this revised pay scales to its employees.

2. The service rules of the employees of the Punjab Roadways Workshop employees Group 'C' were again amended in 2009. Vide amended rules, the post of Battery Attendant and Turner were designated as Technician Grade I and granted pay scale of Rs. 4550-7220 w.e.f. 01.01.2009. The applicants' argument is that they have not been granted this pay scale despite the applicability of Punjab Civil Service Rules to them. This argument of the applicant is not acceptable as the UT Administration has framed its own Rules in 2007 and the same would be applicable thereon. However, the pay scale of applicant, due to earlier applicability of Punjab Civil Services Rules if higher, would be protected, if the Chandigarh Administration pay scales are lower.

3. The Union of Workshop Staff of CTU approached the Chandigarh Bench in OA No. 538/CH/2013 for grant of revised technical pay scales of State of Punjab. The Tribunal directed the Secretary Transport, UT

Chandigarh to take a final decision on their own recommendations and pass an order within a period of two months. In compliance of the Tribunal order, respondent No. 3 took a decision to grant technical pay scales as applicable to State of Punjab w.e.f. 01.11.1989 and 01.01.1996. It was also decided and notified that the post of Technician shall not exceed 50% of the total posts of Technicians of various levels. The post of Technician Grade III re-designated as Technician Grade II shall not exceed 30% of the post of Technician of various levels. Thirdly, the level of Technician Grade II re-designated as Technician Grade I shall not exceed 20% of the posts of various levels. The above clause, fixing percentage for each category of post, thus fixed the number of persons who would work against each type of post and these percentages are sacrosanct and cannot be violated or exceeded and applicants would be bound by the notified number of posts in RRs, the designations and the number of posts of each level as indicated thereon. It is presumed that the applicants' pay scale as last drawn in the Punjab Civil Service Rules would be protected if the same was higher than the scales provided under the UT Rules.

4. Applicants submit that as per Group 'C' Service Rules of Punjab Government, the pay of Technician Grade I Battery Attendant was fixed at 4550-7220. This was revised to Rs. 10300-34800 with Grade Pay Rs. 3000 w.e.f. 01.01.2006 with Grade Pay Rs. 3200 w.e.f. 01.12.2011. These revised technical pay scales were not extended to the workshop staff of CTU and employees Union approached the Chandigarh Bench of the Tribunal by filing OA No. 538/CH/2013 for grant of the revised technical pay scales.

5. Applicants argue that after framing of the 1992 Rules of Service Conditions of Employees of UT Chandigarh, rules and service conditions are

same as applicable to the employees of the State of Punjab and there is no need for a formal adoption of every subsequent amendment made in the rules. Applicants cite the Apex Court judgement 2014(1) SCT 680 in favour of their contentions. The Apex Court in a judgement related to Chandigarh Housing Board in 2014(1) SCT 546 had laid down that employees of UT Chandigarh are entitled to the same pay scales as given to the employees of the State of Punjab. Applicants argue that their pay scales are to be revised to Rs. 4550-7220 w.e.f. 01.01.1996 and Rs. 10300-34800 with Grade Pay of Rs. 3000 w.e.f. 01.01.2006. The prayer of the applicant is for quashing Annexures A-8 and A-10 denying them the benefits of the pay scale Rs. 4550-7220 and 10300-34800 + Grade Pay of Rs. 3000 revised to Rs. 3200.

6. The respondents submit that since Chandigarh Administration has issued its own Group 'C' Non Ministerial Workshop Recruitment Rules, 2007 for the CTU, the rules of Punjab Civil Service 1994 are no longer applicable. In compliance of the Tribunal's directions in OA No. 538/CH/2013, CTU workers Union Vs. UOI & Ors., the workshop staff posts have been redesignated in four Grades i.e. Technician Grade I, Technician Grade II, Technician Grade III and Junior Technician. Their pay scales were as follows:-

(i)	Technician Grade I	Rs. 1410-2460
(ii)	Technician Grade II	Rs. 1350-2400
(iii)	Technician Grade III	Rs. 1200-2100
(iv)	Junior Technician	Rs. 950-1800

The post of Battery Attendant/Turner to which the applicant belongs has been redesignated as Technician Grade III and given the pay scale of Rs. 1200-2100 w.e.f. 03.11.1989 produced as Annexures R-2 & R-3. The limiting of number of posts in Technician Grade I, Technician Grade II and Junior

Technician to 20%, 30% and 50% of the total posts was made adjustable against future appointments so that reversion of excess staff in the higher grades could be avoided. Thus, persons occupying posts in excess of %age norms in any of the three grades were protected as a measure personal to the incumbents and on the retirement of such persons, the percentage norms fixed would be applied. This was done so as not to cause a loss to those, who are already occupying the higher post, though in excess of the revised percentage norms. Since such persons were already occupying the higher posts, the question of their reversion which would have caused undue hardship, loss and upheaval in the cadre and was avoided. The posts of Battery Attendant/Turner have been placed as Technician Grade III and given pay scale of Rs. 1200-2100 w.e.f. 03.11.1989. The posts of Battery Attendant/Turner were redesignated as Technician Grade II and given pay scale of Rs. 4020-6200 in compliance of letter No. F&PO(7)-98/12503 dated 18.09.1998 of Finance Department of Chandigarh Administration.

7. The respondents deny the arguments of the applicants that the posts of Battery Attendant/Turner were given the pay scale of Technician Grade I of Rs. 4550-7220. The creation of the four grades Technician Grade I, II, II and Junior Technician was ordered by the Tribunal in OA No. 538/CH/2013, in compliance with letter No. F&PO(7)-98/12503 dated 18.09.1998 of Finance Department of the Chandigarh Administration. As per documents cited above, the post of Battery Attendant and Turner are placed in Technician Grade III in scale Rs. 1200-2100 w.e.f. 03.11.1989. On the merger of the post of Battery Operator and Turner with Technician Grade II, the pay scale of Rs. 1420-6200 was given. Applicants have been granted this

pay scale of Rs. 1420-6200 w.e.f. 01.01.1996 as they fell in the quota of 30% of posts allotted to Technician Grade II.

8. The Punjab Roadways (Workshop) Group 'C' Service Rules, 2009 notified by the Department of Transport, Government of Punjab on 07.01.2009, are not applicable to the workshop staff of CTU as they have already been placed in a different set of Chandigarh Administration Group C Non-Ministerial Workshop Recruitment Rules 2007. Hence, the applicability of Punjab Rules to the CTU Staff thereafter would not arise and the Chandigarh Transport Department Service Group 'C' Non-Ministerial Workshop Recruitment Rules would be applicable to the workshop staff of CTU. Since the above benefit has been given as a result of the CAT orders in OA No. 538/CH/2013, any further or additional order modifying the same cannot be issued.

9. We have perused Annexure R-1 judgement rendered by this Tribunal in OA No. 638/2014 wherein the Tribunal had held that the Chandigarh Administration has issued its own 2007 Recruitment Rules for the Group C Non-Ministerial Workshop posts in the Chandigarh Transport Undertaking. Tribunal had held that in view of existence of UT Administration Rules, the age limit of 37 years as prescribed by Punjab Government Rules were not applicable to the applicants in OA No. 638/2014 filed by an employee of Chandigarh Transport Undertaking also, the respondent in this OA. Thus, quoting Punjab Service Rules, pay scales post 2007 would not be validated.

10. Applicants make a reference to Apex Court judgement 2014(1) SCT 680 in favour of their contentions. The Apex Court in a judgement

related to Chandigarh Housing Board in 2014(1) SCT 680 had established that the Punjab Civil Service Rules were applicable to Chandigarh Housing Board w.e.f. 01.04.1991. We would also not dispute this fact. There is no discussion in the above judgement on the subsequent issue of 2007 UT Recruitment Rules for the Group C Non-Ministerial Workshop posts which had been issued by the Chandigarh Administration under Article 309 of the Constitution of India and which became the rules applicable w.e.f. 25.01.2007. Prior to that, the rules of Punjab Government and the pay scales for identical posts in Punjab Government would be applicable in view of Presidential Notification dated 06.02.1992 which made Punjab Civil Service Rules applicable to Group A, B, C & D Central Civil Service posts in the UT of Chandigarh.

11. Be that as it may, it is established that Punjab Civil Service Rules are applicable upto 25.01.2007, after which the UT Rules stand notified. Hence pay scales for the CTU posts would be identical to the Punjab Transport Undertaking pay scales for the same posts upto 24.01.2007. We also observe that Apex Court has in a catena of judgements laid down the principle that the subsequent Notification of UT Rules in 2007 cannot reduce the pay scales of the applicant but will be applicable to new recruits.

12. The Presidential Notification dated 06.02.1992, Annexure A-1, issued by Chandigarh Administration in para 2, notified that conditions of service of persons appointed to the Central Civil Services and posts in Group A, B, C & D under the administrative control of the Administrator of UT of Chandigarh shall be the same as the conditions of service of persons appointed to corresponding posts in Punjab Civil Services and shall be governed by the

same rules and orders. This Notification will rule the applicant till it was replaced by the UT of Chandigarh Administration 2007 Recruitment Rules cited in pre-para. Annexure A-2 Gazette Notification dated 03.01.1992 notified the revised pay scales of Assistant Fitter/Assistant Turner/Assistant Battery Attendant as Rs. 950-1800 and Rs. 1200-2100 w.e.f. 03.11.1989 and also redesignated the post as Technician Grade III. The same notification designated Fitter/Turner/Battery Attendant also in the same pay scale Rs. 950-1800 and in scale Rs. 1200-2100 from 03.11.1989 and redesignated the post as Technician Grade III. Thus, the post of Assistant Fitter/Fitter, Assistant Turner/Turner and Assistant Battery Attendant/Battery Assistant posts were merged into one pay scale. Applicants' argument is that having redesignated the posts as early as 1989, they should have been given the pay scale of 4th Punjab Pay Commission. The Punjab Government pay scale of Technician Grade III i.e. Rs. 1200-2130 revised to Rs. 4020-6200 post 25.01.2007. Applicants are governed by Punjab Civil Service Rules upto 24.01.2007, and the conditions of 25.01.2007 Rules will be applicable thereafter. And the pay scales as per Punjab Rules drawn prior to Notification of UT Rules cannot be altered to a lower level if the UT Rules have notified lower pay scales.

13. On 01.01.1996, all the similarly situated posts of Electrician, Blacksmith, Welder, Carpenter, Painter etc. were amalgamated into the designation of Technician Grade II and granted pay scale of Rs. 1350-2400 w.e.f. 01.11.1989. W.e.f. 01.01.1996, all these posts were designated as Technician Grade I and given pay scale of Rs. 4550-7200 as per Punjab Civil Service Rules under operation for UT of Chandigarh also. Upto this period, Punjab Civil Service Rules were applicable to applicants and hence on

01.01.2006, as per VI CPC, applicants have to be given replacement pay scale for the pre-2006 Rs. 4550-7200 pay scale as Chandigarh Administration Rules came into effect later in 2007.

14. The case of applicant No. 1 being taken as a test case, started career as Helper Battery Attendant in 1984, promoted to Assistant Battery Attendant in 1989 and again promoted to Battery Attendant in 1992. As per Annexure 2, Gazette Notification, post of Assistant Battery Attendant and Battery attendant was merged into the post of Technician Grade III with pay scale of Rs. 1200-2100. The replacement pay scale for this scale on 01.01.1996 was Rs. 4550-7200 and on 01.01.2006 was Rs. 10300-34800 plus Grade Pay of Rs. 3000/-. The prayer of applicant for this pay scale is allowed.

15. Respondent has not given any plausible explanation or argument as to why when Assistant Welder, Assistant Painter, Assistant Tyreman etc. have been redesignated as Technician Grade III and Welder, Painter, Tyreman have been redesignated as Technician Grade II in pay scale of Rs. 1350-2400, the posts Assistant Fitter, Assistant Turner and Assistant Battery Attendant are all redesignated as Technician Grade III in scale Rs. 1200-2100 a lower post. There is no explanation as to the above distinction being drawn when the redesignation was made in the Annexure R-3. The Battery Attendant, Fitter and Turner should have been redesignated as Technician Grade II as was done for the posts of Welder/Painter/Tyreman being similar nomenclature posts in the same respondent organization.

15. Prior to 1992, the Fitter/Turner/Battery Attendant were in higher scale of Rs. 400-660 whereas the Welder, Painter, Tyreman were in lower scale of Rs. 400-600. Hence, re-designating Fitter /Turner/Battery

Attendant who were in higher pay scale of Rs. 400-660 as Technician Grade III subsequently in scale of Rs. 1200-2100 and Welder/Painter/Tyreman who were in lower scale of Rs. 400-600 as Technician Grade II in higher scale of Rs. 1350-2400 appears to be a totally arbitrary decision not supported by the logic of higher pay scale being entitled to a higher replacement scale. The Fitter/Turner/Battery Attendant ought to have been, in Annexure A-2, given not the scale of Rs. 1200-2100 but Rs. 1350-2400. Going by the same logic, in Annexure R-3 order issued later on 30.04.2015 Fitter/Turner/Battery Attendant should have been designated as Technician Grade I in scale of Rs. 4550-7220 and equated with Welder/Tyreman/Painter, and not as Technician Grade II in lower scale of Rs. 4020-6200.

16. Prayer of being placed in pay scale of Rs. 4550-7220 w.e.f. 01.01.1996 is allowed along with replacement pay scale on implementation of VI CPC. Applicants will, while being entitled for the above admissible pay scale or replacement pay scale be governed by the 25.01.2007 Recruitment Rules framed by the UT of Chandigarh Administration. Once the UT Administration of Chandigarh has framed its own rules and notified the same, the applicants cannot be outside the ambit of these rules. However, the pay drawn by applicants as per application of Punjab Rules prior to UT Rules, if higher will be protected. Applicants cannot have their feet in two boats and seek the benefit of Punjab Rules and UT Rules and they will be governed by the Rules framed by UT Administration with protection of pay.

17. Prayer of applicant to be placed in pay scale of Rs. 4550-7220 w.e.f. 01.01.1996 and subsequent VI CPC replacement pay scale is allowed. Applicants will be governed by the 2007 UT Administration 2007

Recruitment Rules for Group C Non-Ministerial Workshop Posts as per judgement in OA No. 538/CH/2013. The pay scales as per Punjab Rules drawn prior to notification of UT Rules, if higher, cannot be altered to a lower level if the UT Rules have notified lower pay scales. OA is allowed accordingly. No order as to costs.

**(P. GOPINATH)
MEMBER (A)**

**(SANJEEV KAUSHIK)
MEMBER (J)**

Dated: 28.03.2018
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