

CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH

O.A.NO.060/00409/2016

Orders pronounced on: 26.07.2018
(Orders reserved on: 11.07.2018)

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

Sandeep Kutlehria, aged 39 years,

S/o Sh. Punjab Singh,

working as TMT Technician,

Government Multi Speciality Hospital,

Sector 16, Chandigarh, Group C.

Applicant

By: Mr. R.K. Sharma, Advocate.

Versus

1. Union Territory, Chandigarh Administration
through its Administrator
2. Secretary Finance, Union Territory,
Chandigarh Administration, U.T. Civil Secretariat,
Sector 9, Chandigarh.
3. Secretary, Health, Union Territory,
Chandigarh Administration, U.T. Civil Secretariat,
Sector 9, Chandigarh.
4. Director Health Services, Union Territory,
Chandigarh, Government Multi Speciality Hospital,
Sector 16, Chandigarh.

By: Mr. Vivek Arora, Advocate.

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Respondents

*(O.A.No. 060/00409/2016-
Sandeep Kutlehria Vs. UOI etc.)*

ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, seeking quashing of impugned decision conveyed vide Memo dated 26.10.2015 (Annexure A-1), vide which his claim for equation of his post with that of ECG Technician w.e.f. the date he joined on the post has been declined and order dated 9.9.2010 (Annexure A-2), to the extent, post of Treadmill Technician has been equated with the post of ECG Technician (now Electro Cardiographer) for the purpose of pay and allowances, but with immediate effect only, instead of w.e.f. 16.9.1999 when he was appointed and to direct the respondents to grant him equality of post / pay scale w.e.f. 16.9.1999 with all the consequential benefits.

2. The facts of the case, as culled out from the pleadings of the parties, are that the applicant has qualification of 10+2 with specialization / experience in TMT for more than 3 years. A post of Tread Mill Technician (TMT) was created vide order dated 28.4.1999, in the pay scale of Rs.950-1800, revised to Rs.3120-4160 w.e.f. 1.1.1996. The applicant was appointed to the said post and joined w.e.f. 17.9.1999. Another post of ECG Technician also exists, with pay scale of Rs.950-1500. The pay scale of ECG Technician was upgraded to Rs.1200-2100 with change in nomenclature as Electro-Cardiographer (ECG) by Punjab Government vide letter dated 5.3.1998, without any change in duties and responsibilities. As per recommendations of 4th Punjab Pay Commission, adopted by Chandigarh Administration, pay scale of TMT of Rs.950-1800 was revised to Rs.3120-5160, on scale to scale basis, as no post of TMT is available in State of Punjab. However, pay scale of ECG Technician in pay scale of Rs.950-1800 was revised to

Rs.1200-2100 with nomenclature as Electro Cardiographer and pay scale was revised to Rs.4020-6200 w.e.f. 1.1.1996. In Punjab, work of TMT is carried out by Junior Lab Technician in pay scale of Rs.1400-2300, revised to Rs.5000-8000, now Rs.9300-34800 w.e.f. 1.1.2006. Applicant submitted a representation on 20.8.2008 for revision of his (TMT) pay scale to Rs.4020-6200 at par with ECG Technicians. Such equation was accepted and anomaly committee removed anomaly vide proceedings dated 22.7.2010. Respondent no.3 issued order on 9.9.2010 (Annexure A-2) equating post of TMT with ECG Technician but with immediate effect. The claim raised by applicant for revision w.e.f. his initial appointment was turned down, hence the O.A.

3. The respondents have resisted the claim of the applicant by filing written statement. It is pleaded that there is no valid ground of benefit claimed by the applicant as Anomaly Committee in its meeting held on 22.7.2010 has recommended removal of anomaly and decision was taken on 9.9.2010, which is to be applied prospectively only. They plead for dismissal of O.A.

4. We have heard the learned counsel for the parties at quite some length and examined the material on the file minutely.

5. M.A. for condonation of delay was allowed by a coordinate Bench of this Tribunal on 5.12.2017.

6. The short and crisp question that involved in this case is, as to whether the grant of higher pay scale of the post of TMT held by the applicant, on comparison with another post of ECG Technician, would be from the date of his joining the post in 1999 or with prospective effect only when anomaly committee took a decision to remove the admitted anomaly in the pay scale?

7. We are not required to delve into this issue any longer as it has been set at rest a long time back by the Hon'ble Jurisdictional High Court in the case of **RAJBIR SINGH & OTHERS VS. HARYANA STATE ELECTRICITY BOARD**, 2009 (3) SCT, 239, in the following terms :-

"we have no hesitation to uphold the submission advanced by the learned counsel for the petitioners, so as to conclude, that in case of an anomaly, which had arisen during the revision of pay scales, the correction thereof, to be with effect from the date when the anomaly had arisen. In other words, if a pay scale wherein the anomaly had arisen was released from 1.1.1986, it is bound to be corrected from 1.1.1986, and not with effect from the date when the anomaly was discovered, or prospectively with effect from a date of the choice of the employer. Even the learned counsel for the respondents acknowledges the correctness of the aforesaid proposition. The basis of our conclusion recorded hereinabove arises out of a simple premise. Once it is acknowledged that a mistake has been committed, whereby an anomaly has arisen, the mistake has to be remedied in such a manner, that the aggrieved party does not have any adverse effect of the mistake/anomaly. This would be possible if an anomaly in pay scales is corrected retrospectively with effect from the date when the anomalous pay scale was introduced. On the other hand, if the mistake/anomaly is corrected from a future date, the concerned individual will have to suffer the effect of the anomaly, from the date it had arisen, till the date it was remedied. The latter determination would be iniquitous and unacceptable in law as it would not be able to stand the test of Article 14 of the Constitution of India, which postulates equality before the law and equal protection of the laws."

8. It is, thus, clear that Hon'ble High Court has clearly held that if there is a mistake, it has to be corrected in such a manner that the aggrieved person is not made to suffer adversely and if anomaly in pay scales is corrected retrospectively, only then it would be reasonable. If it is corrected from a future date, the concerned individual will have to suffer the effect of the anomaly, from the date it had arisen, till the date it was remedied. The latter determination would be iniquitous and unacceptable in law as it cannot stand the test of Article 14 of the Constitution. In the light of these observations and findings of Hon'ble High Court, the impugned orders, to the extent these revise the pay scale of the applicant prospectively only, are illegal and cannot stand the scrutiny of law and as such are declared as in-operative.

9. In view of the above, the impugned orders, Annexures A-1 and A-2, to the extent the applicant has been granted revised higher pay scale

with prospective effect only, are quashed and set aside. The applicant is held entitled to revised/higher pay scale from the initial date of his appointment to the post of Treadmill Technician.

10. However, even though the delay in filing the O.A. has been condoned, but to strike a balance between the parties, it is also held that the applicant would be entitled to benefit on notional basis, since 1996 and actual payment would be restricted to 18 months prior to the date of filing of the Original Application. The respondents are directed to extend the due benefits to him within a period of two months from the date of receipt of a certified copy of this order.

11. However, in the facts and circumstances of this case, the parties are left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(P. GOPINATH)
MEMBER (A)

Place: Chandigarh
Dated: 26.07.2018

HC*