

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : HYDERABAD

O.A. No.021/01447/2014

Date of CAV:04.01.2018.

Date of Order :19.02.2018.

Between :

1. G.Yesumani, D/o late G.Chandrappa, aged 53 yrs,

Occ:Chief Matron, O/o the Medical Director,

Central Hospital, South Central Railway,

Lallaguda, Secunderabad.

2. K.Padmalatha, W/o K.Bala Bhaskar, aged 46 yrs,

Occ:Chief Matron, O/o the Medical Director,

Central Hospital, South Central Railway,

Lallaguda, Secunderabad.

3. B.R.Swarnalatha, W/o D.Vikram Kumar, aged 48 yrs,

Occ:Chief Matron, O/o the Medical Director,

Central Hospital, South Central Railway,

Lallaguda, Secunderabad.

4. Georgina F Francis, W/o T.G.Francis, aged 43 yrs,

Occ:Chief Matron, O/o the Medical Director,

Central Hospital, South Central Railway,

Lallaguda, Secunderabad.

5. P.Shantilatha, D/o Adinarayana Patnaik, aged 40 yrs,

Occ:Chief Matron, O/o the Medical Director,

Central Hospital, South Central Railway,

Lallaguda, Secunderabad.

6. B .Padmavathi, W/o B.L.Narasimha Rao, aged 43 yrs,

Occ:Chief Matron, O/o the Medical Director,

Central Hospital, South Central Railway,

Lallaguda, Secunderabad.

7. B.Saimala, W/o B.Venkata Ramana, aged 46 yrs,

Occ:Chief Matron, O/o the Medical Director,
Central Hospital, South Central Railway,
Lallaguda, Secunderabad.

8. A.Mary Kalyani, D/o late A.L.Marianna, aged 45 yrs,

Occ:Chief Matron, O/o the Medical Director,
Central Hospital, South Central Railway,
Lallaguda, Secunderabad. ...

Applicants

And

1. Union of India, rep., by the Chairman,
M/o Railways, Railway Board, Rail Bhavan,
New Delhi.

2. The General Manager, South Central Railway,
Rail Nilayam, Secunderabad.

3. The Chief Personnel Officer,
South Central Railway,

Rail Nilayam, Secunderabad. ...

Respondents

Counsel for the Applicants ... Mr.K.R.K.V.Prasad

Counsel for the Respondents ... Mr.N.Srinatha Rao, SC for Rlys.

CORAM:

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)THE
HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)**

ORDER

{ As per Hon'ble Mrs.Minnie Mathew, Member (Admn.) }

The applicants were appointed as Staff Nurses in the scale of Rs.1400-2600/Rs.5000-8000/- during the IV / V CPC. While working as such they were appointed as Nursing Sisters in the scale of pay Rs.5500-9000/- during 2003/2004 when the V CPC scales were in force. On further promotion as Chief Matron, they were placed in the Pay Band-2 Rs.9300-34800 with Grade Pay Rs.5400/- after the implementation of the VI CPC. Consequent on the introduction of the VI CPC scales

for Central Govt. employees with effect from 01.01.2006 the Ministry of Railways issued the Revised Pay Rules 2008 vide RBE No.103/2008, dated 6.9.2008. According to the applicants, the VI CPC recommended the upgradation of the pay of Nursing Sisters from Rs.5500-9000/- to Rs.7500-12000/- and that the equivalent pay scale in PB-2 of Rs.9300-34800/- with Grade Pay Rs.4800/- had been accepted by the Ministry of Railways. However, instead of fixing the pay of the applicants in the VI CPC on the basis of the upgraded scale of Rs.7500-12000/-, the respondents have fixed the pay of the applicants with reference to the pay of Rs.5500-9000/- drawn by them in the V CPC as on 31.12.2005 after adding the Grade Pay of Rs.4800/- and after multiplying with the factor of 1.86.

2. The applicants further point out that the pay of the Staff Nurses recruited directly after 01.01.2006 was fixed in terms of Rule 8 of the Railway Services (Revised Pay) Rules, 2008 duly considering the entry level pay in PB-2 with GP Rs.4600/-. The applicant submits that while their existing pay in the pre-revised pay scale at Rs.6725/-, Rs.6550/-, Rs.6375/-, was fixed at Rs.17,310, Rs.16,990 and 16,660/- respectively, the pay of the newly recruited Staff Nurses in the entry cadre was fixed taking into consideration the entry level pay in the Pay Band-2 with Grade Pay of Rs.4600/- as prescribed under Section II of Part-A of First Schedule appended to the Rules. Thus, in terms of the said stipulation, the pay of such Staff Nurses recruited after 1.1.2006 was fixed at Rs.17,140/-. Thus, the grievance of the applicants is that although they joined as Staff Nurses several years ago and got promoted as Nursing Sisters during V CPC, they have not got the benefit of the upgraded scale of Rs.7500-12000/- while fixing their pay in the VI CPC. As such, their pay was fixed at a lower level invoking Rule 7-A in their cases.

3. The contention of the applicants is that their pay should have been fixed considering the minimum pay of Rs.7500-12000/- in the upgraded scale which then should have been multiplied with the factor of 1.86 and thereafter Grade Pay of Rs.4800/- added. By invoking Rule 7-A in the case of the applicants and by taking their existing pay in the pay scale of Rs.5500-9000/- and multiplying the same with 1.86 factor, the applicants' pay was lower than the direct recruit Staff Nurses inspite of their long years of service.

4. The applicants further submit that when they submitted a representation, the 3rd respondent has made a reference to the first respondent Railway Board. However, without getting any clarifications on the subject from the first respondent, the 3rd respondent issued a reply to one Sri Ashish who submitted a grievance on behalf of the 6th applicant stating that no correction was warranted in the pay fixation of the 6th applicant. The applicants also represented to the Chief Grievance Authority, South Central Railway, on 2.5.2014 seeking necessary changes to their basic pay.

5. It is the contention of the applicants that the VI Pay Commission had recommended the higher pay scales so as to give a better deal to the Nursing cadre in recognition of the duties performed by them. The action of the respondents in not fixing the pay of the applicants properly and by indirectly withdrawing the benefits extended to them shows the arbitrary exercise of power. The applicants have also relied on the orders of the Principal Bench of this Tribunal in OA.No.3679/2012, dated 7.5.2014, which dealt with the issue of discrimination in the pay scales of the directly recruited Staff Nurses prior to 1.1.2006 and after 1.1.2006 and had directed the respondents

therein to treat the applicants in the OA at par with the direct recruit Staff Nurses appointed on 1.1.2006 and to grant PB-2 scale with Grade Pay of Rs.4600/- with effect from 01.01.2006 with all consequential benefits. It is also submitted by the applicants that though the said dispute related to the Staff Nurses, who were appointed prior to 1.1.2006 and after 1.1.2006, the principle that has been decided in the said case would be squarely applicable to the applicants also in view of the patent discrimination that has occurred.

6. The respondents have filed a reply statement raising a preliminary objection that the OA, which seeks a direction for grant of the pre-revised pay scale of the V CPC Rs.7500/0 is barred by limitation under Section 21 of the Administrative Tribunals Act. Hence, the OA is liable to be dismissed for delay and laches, particularly as they did not file any petition for condonation of delay. They also point out that the applicants had drawn their entire salary arrears after their pay fixation in the VI CPC and are now challenging the same by this OA after a lapse of 8 years. The respondents point out that as per the recommendation of the VI CPC, the Pay Band of the Nursing Sister is Rs.9300-34800/- with Grade Pay of Rs.4800/-. The respondents also submit that the contention of the applicants that the upgradation of pay scale of Nursing Sisters from Rs.5500-9000/- to Rs.7500-12000/- is not correct. However, in para 4.23 of the reply statement, it has been submitted that there is an anomaly in connection with fixation of pay in respect of Direct Recruits as on 01.01.2006 vis-a-vis the promotee Nursing Sisters and that in the matter of stepping up their pay with that of their juniors, a reference was made to the Railway Board vide their letter dated 24.2.2014 and that no clarification has been received from the Railway Board. According to the

respondents the pay fixation of the Nursing Sisters are fixed in accordance with the Railway Board's letter dated 22.9.2008 circulated under S.C.No.120/2008. It is also pointed out that while introducing the VI CPC, the pay scales of the Staff Nurse and the Nursing Sisters are not merged and have been kept independent. The respondents also submit that as and when orders are received from the Railway Board, necessary action will be taken.

7. We have heard the learned counsel on both sides and perused the record.

8. The learned counsel for the Applicants heavily relied on the judgment of the Principal Bench in OA.No.98/2014 & batch dated 27.03.2015, which has been allowed with a direction to the respondents to treat the applicants at par with the Direct Recruit Staff Nurses appointed after 1.1.2006 and grant the PB-2 scale of Rs.9300-34800/- with Grade Pay of Rs.4600/- and fix their pay accordingly. He also drew our attention to the orders of the Hon'ble High Court of Delhi upholding the orders of this Tribunal. Further, although the respondent-Railway did not challenge the orders of the Tribunal and the Hon'ble High Court of Delhi, the Employees State Insurance Corporation challenged the aforesaid order by filing SLP No.23440/2017 in Sheeja Santosh case. The said SLP along with another SLP No.23663/2017 filed by Govt. of NCT of Delhi was disposed of by the Hon'ble Apex Court vide its common order dated 01.9.2017 upholding the principle laid down by the Tribunal and the Hon'ble High Court. The Apex Court had directed the Government of India to issue Circular regarding grant of pay scale to avoid several litigations in the matter in which a principle has been established by the Tribunal and the Hon'ble High Court. As there

was no compliance, the applicants filed CP.No.297/2017 in OA.No.111/2014 and C.P.No.298/2017 in OA.No.107/2014 and the CPs were disposed of by this Tribunal, vide order dated 10.10.2017 with an order to comply with the orders of this Tribunal within 6 weeks.

9. The respondents have taken a preliminary objection that the OA is barred by limitation. We, however, hold that there is continuous cause of action in view of the fact that the matter relates to recurring monetary losses on account of alleged erroneous pay fixation. Further, the respondents themselves have admitted that the matter is still under consideration and that the Railway Board has been addressed for a clarification on the anomaly in the pay fixation of the applicants.

10. The two issues that fall for consideration in this OA are:

(i) Whether the applicants are entitled to pay fixation in the upgraded scale of Rs.7500-12000/- in the Nursing Sister cadre with effect from 01.01.2006.

(ii). Whether the applicants are at a disadvantage in terms of pay vis-a-vis the Staff Nurses, who are directly recruited after 01.01.2006 and who are their juniors.

11. On perusal of the record, we note that Para 3.8.15 of the VI CPC recommendations reads as follows:

“Para Medical Staff 3.8.15. As mentioned in para 3.8.3, the Commission is recommending higher pay scales for the cadre of Nurses. This will affect some of the existing relativities of nursing cadres vis-a-vis other para medical staff. This, however, is a conscious decision of the Commission for giving a better deal to the Nurses in recognition of the duties being performed by them. Apart from the cadre of Nurses, the Commission has made a conscious effort not to disturb any of the established relativities between the other cadres of para medical staff. In any case, the different categories of para medical staff will benefit from the re-organization of pay scales being recommended by the

Commission. Accordingly, the following pay structure is being recommended for different categories of para medical staff including Nurses:-

Designation	Present pay scale	Recommended pay scale	Corresponding Pay Band & Grade Pay	Grade Pay
Operation Theater (OT) Asstt./Asst. Radiographer III	3050-4590	3050-4590	PB-1	1900
Dental Tech.III/Asstt. Radiographer II /Lady Health Visitor	4000-6000	4000-6000	PB-1	2400
OT Tech./Dental Tech.I/ Pharmacist II / Radiographer III	5000-8000	6500-10500	PB-2	4200
Staff Nurse	5000-8000	7450-11500	PB-2	4600
Dietician Gr.III / Pharmacist I / Physiotherapist/ Occupational-therapist / Radiographer	5500-9000	6500-10500	PB-2	4200
Nursing Sister	5500-9000	7500-12000	PB-2	4800
Dietician Gr.II / Lecturer in PT / OT/Radiographer	6500-10500	7450-11500	PB-2	4600
Asstt.Nursing Superintendent	6500-10500	8000-13500	PB-3	5400
Deputy Nursing Superintendent	7500-12000	8000-13500	PB-3	5400
Nursing Superintendent	8000-13500	10000-15200	PB-3	6100
Chief Nursing Officer	10000-15200	12000-16500	PB-3	6600

Posts of other para-medical technicians/personnel not mentioned above shall be extended the corresponding revised pay bands and

grade pay. The posts which were in different pay scales earlier but have come to lie in an identical pay band and grade pay shall stand merged.

Rates of existing allowances for all the categories of para-medical staff, except those specifically considered in the Report (like HPCA/PCA), shall stand doubled.”

12. From the above table, it is seen that the VI CPC had recommended the higher pay scales of Rs.7450-11500/- as against the then pay of Rs.5000-8000/- for Staff Nurses and Rs.7500-12000/- as against the existing pay scale of Rs.5500-9000/- for Nursing Sisters. Thus, this is a clear case of the post having been upgraded as a result of the VI CPC recommendations.

13. The main argument of the applicant is that since their earlier pay scale of Rs.5500-9000/- has been upgraded to Rs.7500-12000/-, the respondents ought to have considered Rs.7500/- as the minimum pay for the purpose of fixation in the VI CPC and then multiplied the said pay with 1.86 factor and thereafter add Rs.4800/- Grade Pay. Instead of doing this, the respondents have invoked Rule 7-A according to which the pay in the Pay Band/Pay Scales will be determined by multiplying the existing basic pay as on 1.1.2006 by a factor of 1.86.

14. The respondents, on the other hand, have refuted the contentions of the applicants that the pay scale of Nursing Sisters has been upgraded from Rs.5500-9000/- to Rs.7500-12000/- and pointed out that in the VI CPC, the pay of the Nursing Staff is equated to the Pay Band with GP as given in CPO/SC/S.C.No.120/2008.

15. We find that both the issues mentioned in Para 10 supra have been squarely covered in the judgment of the Principal Bench of the Central Administrative Tribunal in OA.No.98/2014 with OA.No.187/2014 and OA.No.111/2014, dated 27.03.2015.

16. The first issue is whether the pay fixation of the applicants, who were in the scale of Rs.5500-9000 while working as Nursing Sisters, are entitled for pay fixation on the basis of the upgraded scale of Rs.7500-12000/-, which came into effect from 01.01.2006. The method that has to be adopted for pay fixation whenever a pay scale has been upgraded has been extensively dealt with by the various Coordinate Benches of this Tribunal. The earlier judgments of the Ernakulam Bench in OA.No.856/2011 in ***K.K.Vijayan vs. Principal Registrar, Central Administrative Tribunal, Principal Bench & Others*** dated 13.07.2012 and the the case of ***T.Srinivasa*** of Bangalore Bench and ***Sri C.Sreekantan vs. The Principal Registrar, Central Administrative Tribunal, Principal Bench & Others*** dated 07.03.2013 in OA.No.840/2011 have been cited followed by the Principal Bench in OA.No.98/2014 & batch. These OAs have been contested by the respondents stating that since the pay scale of the applicants therein had never been fixed at any stage in the higher scale of Rs.6500-10500/-, they cannot be given higher pay scales. However, in all the aforesaid OAs, the Tribunal had directed to fix the pay of the applicants therein as on 01.01.2006 first in the upgraded pay scale on notional basis and on actual basis thereafter in the corresponding pay band with Grade Pay. In view of the ratio laid down by the Coordinate Benches and also in view of the fact that the principle of pay fixation first in the upgraded scale has been laid down, the applicants herein are also entitled to claim that their pay should first be fixed in the upgraded scale of Rs.7500-12000/- and thereafter fixed in PB-2 with Grade Pay Rs.4800/-.

17. The second main ground, which has been raised by the applicants is that by multiplying the existing pay in the pay scale of Rs.5500-9000/- with 1.86 factor to arrive at the pay in PB-2, their pay has remained lower than the Direct Recruit Staff Nurses by one grade below.

18. As regards this issue, the Principal Bench in OA.No.98/2014 & batch has held as follows:

“10. We have heard the learned counsel for the applicants, Shri Padma Kumar S. And learned counsel for the respondents Ms.Ishita Barua for Shri Gaurang Kanth, in this case. The substantive question for consideration in this case is whether the direct recruits who have been appointed prior to 01.01.2006 can be placed at a lower pay scale than those direct recruits who have been appointed after 01.01.2006. The applicants were in the pre-revised scale of Rs.5000-8000/- and were drawing the basic pay between Rs.5300 to Rs.5900/- as on 31.12.2005. The fixation of pay w.e.f 01.01.2006 after the acceptance of the 6th Pay Commission was made in terms of the Central Civil Service (Revised) Pay Rules, 2008. The said statutory rule upgraded the pay scale of Rs.5000-8000/- to Rs.7450-11500/- and then brought the Staff Nurses to PB-2 pay scale of Rs.9300-34800/- with the grade pay of Rs.4600/-. In between the scales of Rs.5000-8000/- and Rs.7450-11500, there were two more scales in the pre-revised scale, viz., Rs.5500-9000 and Rs.6500-10500/-. As both Rs.5000-8000 and Rs.7450-11500 are the 5th Central Pay Commission scales, the 6th Central Pay Commission cannot give the upgraded pay scale of Rs.7450-11500 to a date prior to 01.01.2006. The upgraded pay scale of Rs.7450-11500 was to happen as on 01.01.2006 and thereafter the conversion to the 6th CPC PB2 scale of Rs.9300-34800/- was to be made. The minimum pay in the pay band for a person even with Rs.7450/- is to get Rs.13860/- as per the said statutory rule. Therefore, there should have been

some provision for fixation of pay in the revised pay scale of 6th CPC, when pre-revised pay scale has been upgraded to a level after skipping two intermediate scales, so that the employees who has been serving in the pre-revised scales for years are not falling below at least the corresponding minimum of the 6th CPC revised scales of the upgraded pay scale. However, Revised Pay Rules, 2008 did not contain any such provision for upgradation after skipping two intermediate scales. But, at the same time, the said Rules stipulate that all Direct Recruits in the Grade Pay of Rs.4600/- appointed as on 01.01.2006 or after would get a minimum of pay in the pay band of Rs.12540/- (excluding Grade Pay) (which will make their basic pay including Grade Pay Rs.12540 + 4600 =Rs.17140/-). Admittedly, the applicants have had several years of service as direct recruit Staff Nurses as on 01.01.2006 were granted the pay in the pay band ranging from Rs.9860 to Rs.10980/- excluding Grade Pay as against the direct recruit with the same educational qualification and conditions of service who joins on 01.01.2006 who would get Rs.12540/- (excluding Grade Pay). Therefore, the Applicants are entitled to get at least the minimum of Rs.13860/- (Rs.18460 with Grade Pay) as on 01.01.2006, but in any eventuality not less than Rs.12540/- (Rs.17140/- with Grade Pay) as on 01.01.2006, as the same post when held by a direct recruit who joins on or after 01.01.2006 and one who joined as direct recruit years earlier, cannot be given different pay scales, that too prejudicial to the persons who joined much earlier as it would violate Article 39 (d) of the Constitution of India which has now assumed the level of a Fundamental Right and also Article 14 and 16 of the Constitution being irrational and arbitrary. The settled law is that no rules can be made in violation of the provisions contained in the Constitution of India.”

19. While admittedly the aforesaid judgment is in respect of Staff Nurses, the principle that has been laid down would equally apply in the case of the applicants

also. Further, it has been admitted by the respondents themselves that there is an anomaly in the pay fixation of direct recruit Staff Nurses appointed on or after 01.01.2006 vis-a-vis the applicants, who were initially appointed as Staff Nurses and got promoted to the higher grade as Nursing Sisters prior to 01.01.2006. They concede that some of the Nursing Sisters, who were initially appointed as Staff Nurses and got promotions to the higher grade as Nursing Sisters prior to 1.1.2006, are drawing lesser pay than the Staff Nurses appointed after 1.1.2006.

20. It has also been admitted that the respondents had sought a clarification from the Railway Board, which is still awaited.

21. The learned counsel for the Applicant has also drawn our attention to the orders of the Principal Bench in CP.No.297/2017 in OA.No.111/2014 and CP.No.298/2017 in OA.No.107/2014 in which it has been stated that the respondent-Railways has neither chosen to file an SLP nor complied with the orders of this Tribunal. The Tribunal had also observed as follows:

“It is abundantly clear from the aforesaid orders of this Tribunal and the Hon'ble High Court and the Hon'ble Apex Court that the view taken by this Tribunal has been upheld by both the higher Courts. The Hon'ble Apex Court having accepted the view of this Tribunal dismissed the SLPs filed in identical cases”.

With this observation, the Tribunal had granted six weeks time to report full compliance. Thus, the principle laid down by this Tribunal in OA.No.98/2014 and batch has attained finality.

22. Accordingly, the OA is allowed with a direction to the respondents to fix the pay of the applicants on a notional basis in the upgraded pay scale of Rs.7500-12000/- with effect from 01.01.2006 and thereafter on an actual basis in the pay scale of Rs.9300-34800/- with Grade Pay of Rs.4800/-. They shall be paid arrears with effect from the date of filing of the OA. This shall be done within three months from the date of receipt of a copy of this order. There shall be no order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated: this the 19th day of February, 2018

Dsn.