

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O.A. No.60/1245/2017

Date of decision: 16.01.2019

M.A. No.60/44/2019

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

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1. Neeraj Sharma son of Sh. Anand Sharma, age 42 years.
2. Ram Avtar son of Sh. K. L. Bansal, age 43 years.
3. Baljeet Singh son of Sh. Sewa Singh, age 43 years.
4. Sandhya Rahi wife of Sh. Mahesh Kumar, age 43 years.
5. Mrs. Meenakshi wife of Sh. Kranti Chaudhary, age 43 years.

All applicants are presently working as Data Entry Operators in Government Medical College & Hospital (GMCH), Sector-32, Chandigarh, U.T.

... APPLICANTS

VERSUS

1. Chandigarh Administration, Union Territory, Chandigarh through the Advisor to the Administrator, U.T. Secretariat, Sector: 9, Chandigarh.
2. The Secretary, Department of Medical Education & Research, Chandigarh Administration, U.T. Secretariat, Sector: 9, Chandigarh.
3. The Director Principal, Medical College & Hospital, Sector 32, Chandigarh.
4. The Finance Secretary, Department of Finance, U.T. Secretariat, Sector: 9, Chandigarh.

... RESPONDENTS

PRESENT: Sh. D.R. Sharma, counsel for the applicants.
Sh. K.K. Thakur, counsel for the respondents.

ORDER (Oral)

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SANJEEV KAUSHIK, MEMBER (J):-

1. Applicants, who are working in Government Medical College & Hospital, Sector-32, Chandigarh, U.T. ('GMCH' for short) are before this Court for invalidation of the impugned order dated 18.05.2016 (Annexure A-1), whereby respondents have taken a decision by modifying their earlier order dated 14.5.2015 (Annexure A-13), whereby applicants were placed in the pay scale of Rs.10300-34800 + 3200 grade pay w.e.f. 1.12.2011, as recommended by anomaly committee and have modified the same by making it applicable from the date when notification was issued i.e. 18.01.2016 and have made recovery of arrears.
2. Broadly speaking, facts are not in dispute.
3. Applicants are working as Data Entry Operator with respondent GMCH. They were placed in the pay scale of Rs.3120-5160. After merging of posts of Clerks, Medical Clerks, Ward Clerks, Receptionist Clerks, Record Keeper, Cashier, Store Keepers, Data Entry Operators etc. carrying pay scale of Rs.950-1800, Rs.3120-5160, the merged posts were re-designated as Clerk cum Store Keeper cum Data Entry Operator. The respondents modified recruitment rules known as Government Medical College and Hospital, Chandigarh (Group 'C' Non-Ministerial Posts) Recruitment Rules, 2002 and merged posts of Clerk mentioned at serial no.7 in Schedule 1 of the Government Medical College and Hospital, Chandigarh (Group 'C' Ministerial Posts) Recruitment Rules, 2002.
4. One Ajay Sharma approached this Tribunal by filing O.A. No.1016/CH/2004 against notification dated 14.7.2004 whereby post of Data Entry Operator was merged and nomenclature was changed as Clerk. While defending their plea, respondents therein averred that Data

Entry Operators and Clerks were performing similar duties and have similar responsibilities. The said O.A. was disposed of vide order dated 14.12.2007 rejecting challenge to merger. Vide order dated 1.5.2009, issued by Chandigarh Administration demerged 9 posts out of 15 merged posts of Data Entry Operator from the Cadre of Clerks out of 121 continued posts of Clerks-renamed as Data Entry Operator. Thereafter, Govt. of Punjab vide notification dated 03.10.2011 revised, the pay scale of posts of Clerks, Steno Typists, Jr. Scale Stenographers w.e.f. 01.10.2011. Pay scale of post of Clerk has also been revised w.e.f. 01.10.2011 and further revised from 1.12.2011. The said notification issued by Govt. of Punjab has been adopted by Chandigarh Administration vide letter dated 14.10.2011. The controversy started from this point as the applicants who were working as Data Entry Operators have not been granted the same pay scale as has been revised for the post of clerk. They approached this Tribunal by filing O.A. No.1133/CH/2012 wherein they had challenged order dated 22.3.2012 and this Court while disposing of O.A. on 21.1.2014 directed the respondents to constitute an expert committee to go into the matter of equation of the post of Data Entry Operator and Clerk for the purpose of determining pay parity and other benefits within one month. It is in furtherance thereto, the respondents constituted anomaly committee who vide letter dated 05.3.2014 submitted report and in item no.2 they accepted the anomaly and recommended that Data Entry Operator working on regular basis be given same pay scale as Clerks working in respondent GMCH. While accepting recommendation, respondents issued orders dated 12.5.2016 and 19.5.2016, whereby applicants have been placed in the pay scale of Rs.10300-34800+3200 grade pay w.e.f. 1.12.2011, the date when Clerks were placed in the pay scale.

Applicants' pay was fixed and they were granted arrears also. Suddenly respondents have passed order dated 18.5.2016 (Annexure A-1) whereby they have decided that the pay of Clerks granted to Data Entry Operators will be given from prospective date i.e. the date of issuance of notification and not from 1.12.2011 and also started recoveries of the excess payment. Against this applicants are before this Court.

5. To support his plea, learned counsel for the applicants submitted that the impugned order is liable to be set aside for two reasons firstly because the same has been passed in violation of principles of natural justice and secondly, that once recommendation has been made in favour of the applicants in pursuance to direction of this Court and that has also been implemented then respondents cannot change their decision by withdrawing the benefit already granted to the applicants w.e.f. 1.12.2011. He argues that based upon pay scale allowed to the applicants, other persons working as Data Entry Operator raised their plea for grant of benefit and while accepting their contention, Chandigarh Administration has passed order dated 18.5.2016 whereby they have reviewed their earlier order granting benefit to Data Entry Operator w.e.f. 1.12.2018 and have decided to grant benefits from the date when order was passed. He submitted that under the garb of the impugned order, respondents cannot be allowed to reopen the matter, therefore, he prayed that the same be set aside.
6. Respondents have filed a detailed reply wherein they have submitted in para no.2 that on recommendation of the Anomaly Committee, applicants, who are working as Data Entry Operators, have been extended benefit of pay scale of Rs.10300-34800+3200 grade pay, at par with Clerks working in GMCH w.e.f. 1.12.2011. Subsequently, a decision has been taken to grant benefit to entire cadre of Data Entry

Operator w.e.f. the date when notification was issued thus while rectifying their mistake, this benefit has been given to them w.e.f. 18.01.2016 and accordingly, the department recovered excess payment. On the similar lines, arguments have been raised by learned counsel for the respondents.

7. We have given our thoughtful consideration to the entire matter and have perused pleadings available on record with able assistance of learned counsel for the parties.
8. A conjunctive perusal of the pleadings makes it clear that this Court, while disposing of O.A. No.1133/CH/2012 decided on 21.01.2014, restrained itself from passing any order with regard to anomaly and left it open to respondent department to constitute a committee to look into the matter of determining pay parity and other benefits for the post of Data Entry Operators vis a vis Clerks working in the respondent Institute. In furtherance thereto, respondents constituted anomaly committee, meeting of which was held on 4.2.2015 which made following recommendations in item no.2:-

“Item No.2-case of pay parity of Data Entry Operators with the post of Clerks in the Govt. Medical College & Hospital-32, Chd.

Dr. Harsh Mohan assisted by the DC (F&A) of the GMCH-32, Chandigarh explained the agenda that they have a small cadre of 09(nine) Data Entry Operators since 1995-96 onwards out of which 05(five) posts have since been filled up on regular basis. The pay scale of the post of Data Entry Operators had been similar to that of the Clerks from the very beginning. Now an anomaly took place on 1.12.2011 after the revision of Grade pay of Rs3200 for the post of Clerk. Hon’ble CAT vide its direction dated 21.01.2014 in OA No.1133-CH of 2012 titled Neeraj Sharma & Others versus Chandigarh Administration & Others had directed to constitute an Expert Committee for the purpose of pay party as regards to pay and other benefits within one month from the date of receipt of the copy of orders.

In view of the recommendations of the Expert Committee constituted by the Director Principal, Govt. Medical College, Sector-32,

Chandigarh in pursuance of directions of Hon'ble CAT dated 21.1.2014, the Anomaly Committee hereby recommends to allow the parity of pay scale of Rs.103000-34800+3200 GP w.e.f. 1.12.2011 to the Data Entry Operators working on regular basis in GMCH-32 at par with the post of Clerks."

Recommendations of the anomaly committee whereby they removed pay anomaly between two posts of Clerk and Data Entry Operator was accepted by Chandigarh Administration and applicants were granted benefit vide order dated 12.5.2016 and 19.05.2016 (Annexure A-13 and A-14/colly) respectively. Perusal of the above orders make it clear that while accepting recommendation made by anomaly committee dated 4.2.2015 under Chairmanship of Finance Secretary, respondent GMCH granted pay scale of Rs.10300-34800+grade pay of Rs.3200 to Data Entry Operators (applicants) who were working with respondent department w.e.f. 1.12.2011. A conscious decision was taken by Chandigarh Administration while removing anomaly between the posts of Clerks and Data Entry Operators and also granted arrears. Later on, when similarly placed persons like the applicants raised the plea to grant them similar benefit as has been granted to the applicants, respondent department while accepting their request decided to grant the benefit from prospective effect when notification was issued i.e.18.01.2016 and not from the date when it was given to applicants i.e. 1.12.2011 and also reviewed their earlier orders passed in favour of the applicants granting benefit. Once a conscious decision has been taken by the competent authority to remove anomaly and based on recommendations of the Committee, as recorded above, respondents have granted benefit then they cannot take a somersault that the benefit will be granted only from prospective date. When a decision has been taken under chairmanship of Finance Secretary to grant benefit then it cannot be said

that they were not aware of this fact at that time that benefit is to be granted from the date when anomaly was removed by anomaly committee. It is in consonance with the law laid down by the Hon'ble Jurisdictional High Court in CWP No.12029 of 1998 **(Rajbir Singh & Others vs. Haryana State Electricity Board & Ors.)**, decided on 31.01.2009 that in the case of an anomaly, which had arisen during the revision of pay scales, the correction thereof, has to be made 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 anomaly was discovered, or prospectively with effect from a date of the choice of the employer.

9. Thus, we find that view taken by the respondents while granting benefit to similarly placed persons cannot take away right of the applicant qua whom recommendations have already been implemented. Accordingly, the impugned order is quashed and set aside. Respondents are directed to release the amount which they have recovered from the applicants pursuant to impugned order within a period of two months from the date of receipt of a certified copy of this order.
10. The O.A. stands allowed in the above terms. M.A. No.60/44/2019 also stands disposed of. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 16.01.2019.
Place: Chandigarh.

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