

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHENNAI BENCH**

**OA/310/00372/2017**

**Dated Wednesday the 6<sup>th</sup> day of February Two Thousand Nineteen**

**CORAM : HON'BLE MR. R. RAMANUJAM, Member (A)  
HON'BLE MR. P. MADHAVAN, Member (J)**

Suryaprakash V. Yadadu  
X-Ray Technician (Radiotherapy)  
Dept. of Radiotherapy  
JIPMER, Puducherry – 605 006. ....Applicant

By Advocate Dr. P.S. Vijayakumar

Vs

1. Union of India, represented by  
The Secretary  
Ministry of Health & Family Welfare  
New Delhi.

2. The Director  
JIPMER, Puducherry – 605 006.

3. The Deputy Director (Admn.)  
JIPMER, Puducherry – 605 006.

4. The Accounts Officer  
JIPMER, Puducherry – 605 006. ....Respondents

By Advocate Mr. M. T. Arunan

**ORAL ORDER****(Pronounced by Hon'ble Mr. R. Ramanujam, Member(A))**

Heard. The applicant has filed this OA seeking the following reliefs :

"To call for the connected records from the respondents and on perusal:-

- a. To direct the respondents to grant pay protection by fixing the Basic Pay as Rs. 13,490/- plus Grade Pay as Rs. 4200/- with effect from 24.02.2015 which was granted earlier by the 3<sup>rd</sup> respondent in NOTE, bearing No. Admn.III(A)Misc./01-2014-15, dated 20.02.2016 and consequentially grant periodical annual increments with other allowances such as DA, TA, etc. and benefits as per the extant rules, within a time frame, pending disposal of OA and
- b. To pass such further or other orders as may be deemed fit and proper in the facts and circumstances of the case and thus render justice."

2. The case of the applicant is that he had initially joined as Scientific Assistant-B in the scale of Rs. 9300-34800 in Pay Band 2 ( Grade Pay 4200) in the Department of Radiation Oncology, Tata Memorial Hospital which is a Grant-in-Aid institution under the administrative control of the Department of Atomic Energy. He was promoted as Scientific Assistant-C in the same scale pay with the Grade Pay 4600 w.e.f. 01.07.2011 in which capacity he continued till 23.02.2015.

3. The applicant, in response to Advertisement No. 1/2013 of the 2<sup>nd</sup> respondent hospital (Annexure A1) applied for the post of X-Ray Technician (Radiotherapy) through proper channel. On selection, he tendered a technical resignation and joined JIPMER as X-Ray Technician (Radiotherapy) w.e.f. 27.02.2015 on regular basis. Although he was already in the Grade Pay of 4600, he was granted the pay scale Rs. 9300-34800 with GP 4200 only. The applicant had no grievance about this as the post advertised was a Direct Recruit post in

the pay scale of Rs. 9300-34800 with a GP of 4200 only.

4. On joining the 2<sup>nd</sup> respondent institution, the applicant was given pay protection in the aforesaid scale in terms of his last pay certificate dt. 23.02.2015 wherein his basic pay was shown as Rs. 13490/-. Annexure A7 note dt. 20.02.2016 was issued by the 3<sup>rd</sup> respondent fixing the applicant's basic pay as Rs. 13490 + GP 4200 w.e.f. 24.02.2015. The applicant is aggrieved that Annexure A11 office order dt. 15.02.2017 was passed informing him that in the light of the representation submitted by three officials who claimed to be his seniors and who had sought stepping up their pay at par with that of the applicant, the matter had been examined in the light of the rules and, accordingly, pay protection allowed to him by office order dt. 22.05.2015 was not in order and stood cancelled. The said order was issued without any notice to the applicant and as such, was unilateral and high handed besides being contrary to the instructions contained in Annexure A10 OM dt. 17.08.2016 of the DoPT, it is contended.

5. The respondents have contested the plea of the applicant stating that in issuing the impugned order, the respondents had merely corrected an erroneous pay fixation done earlier as the same was not in accordance with the instructions contained in DoPT OM dt. 10.07.1998. It is submitted that in terms of the said OM, pay protection would only be available to persons who had been appointed on the basis of interview only and not to such direct recruits who were selected through an open competitive examination. As the applicant had entered the

service of the 2<sup>nd</sup> respondent institute as a direct recruit after qualifying in the competitive examination and interview and had been assigned seniority below the existing persons at that level, he could not draw a higher pay than the seniors. As the seniors had demanded the stepping up of their pay on par with the applicant, the respondents were left with no alternative but to step down the pay of the applicant to initial entry level basic pay. As the previous pay fixation was erroneous, the respondents were fully within their rights to refix the pay and recover the excess payment on account of erroneous pay fixation, it is submitted.

6. Keeping in view the balance of convenience, this Tribunal had, by an interim order dt. 10.03.2017 stayed the recovery of overpayment as sought by the applicant till the next date of hearing. However, the interim order had been continued thereafter from time to time.

7. Learned counsel for the applicant seeks to rely on Annexure A8 OM of the DoPT dt. 08.04.2016 whereby consolidated guidelines were issued regarding the manner in which the matter of technical resignation was to be dealt with. The OM, *inter alia* covered the issue of pay protection and eligibility to count past services for reckoning the minimum period for grant of annual increment. It is submitted that a resignation would be treated as technical resignation if the Government servant had applied through proper channel for the post in the same or some other department and his selection required him to resign the previous post for administrative reasons. A resignation in other cases including where the

competent authority had not allowed the application of the Government servant to be forwarded or where the application was not through the proper channel would not be treated as a technical resignation and the benefit of past service would not be admissible. The benefit of past service is allowed in such cases subject to the fulfilment of the following conditions :-

"i. the Government servant should intimate the details of such application immediately on their joining;

ii. the Government servant at the time of resignation should specifically make a request, indicating that he is resigning to take up another appointment under Government/Government organisation for which he applied before joining the Government service;

iii. the authority accepting the resignation should satisfy itself that had the employee been in service on the date of application for the post mentioned by the employee, his application would have been forwarded through proper channel."

8. Attention is drawn to Annexure A5 office order of the 3<sup>rd</sup> respondent wherein it was clearly stated that the applicant had technically resigned and joined JIPMER on the post of X-Ray Technician (Radiotherapy) on 26.02.2017. It was also informed that the applicant had been relieved from the previous post from the Tata Memorial Hospital, Mumbai where he was serving as Scientific Assistant-C in (PB-2 9300-34800 + GP 4600). It was categorically stated that the applicant was entitled to pay protection as per rules. It was also stated that his past services would only be counted for pensionary benefit and not towards seniority on the post of X-Ray Technician (Radiotherapy).

9. Learned counsel for the applicant would argue that the applicant had never sought seniority over the persons at whose behest the applicant's pay was

being reduced. The matter of pay protection was, however, covered by the OM of the DoPT dt. 08.04.2016 (Annexure A8) issued in April 2016 wherein it was clearly stated that pay of the substantive post held by the Government servant was to be protected. It was also stated that after 6<sup>th</sup> Pay Commission, only the pay in the Pay Band was protected and the employee would get the grade pay of the post to which he was appointed after his resignation. Accordingly, the 3<sup>rd</sup> respondent had committed no error in protecting the applicant's basic pay in Rs. 13490 in the pay scale of Rs. 9300-34800 granting him a lower GP of Rs. 4200, although he was working on a post carrying a higher GP of Rs. 4600 earlier.

10. As the applicant has not been assigned seniority over existing X-Ray technicians (Radiotherapy) as on the date of his joining, they could have no valid grievance with regard to his pay. If a senior person sought stepping up of pay at par with his junior who has been appointed through a different source, the respondents ought to deal with the representation under the relevant rules and not reduce the applicant's pay below his as it is impermissible under the relevant rules. The protection granted to the applicant by the relevant rules could not be taken away merely because of a grievance expressed by his seniors, it is contended.

11. Reliance is placed on the order of the Hon'ble Delhi High Court dt. 20.04.2007 in ***Sanjog Kapoor Vs. Union of India and ors*** wherein it was held as follows :-

"15. In these circumstances, we hold that the distinction sought to be drawn

between candidates selected from non government bodies through interview and those selected through open competitive examination is sans rationale justification. Protection the pay of one and not protecting the pay of the other set of candidates is completely arbitrary and illogical. The purpose behind grant of pay protection was to draw talent from organisations like PSUs. The best talent is drawn through the Civil Services Examination. Encouraging employees of PSUs to sit for such examination which is highly competitive is in line with the purpose behind the OM of 1989 of attracting the best talent. Even assuming that for the purposes of pay protection, the distinction between selection through interview and selection through open competitive examination does hold a rational nexus, the Civil Services Examination, through which the petitioner has been selected also comprises a comprehensive interview. Therefore, denial of pay protection benefit to the petitioner is unjustified and illegal."

12. Reliance is also placed on the order of the Hon'ble Delhi High Court in WP(C) No. 8660/2005 dt. 06.01.2016 wherein it was observed as follows:-

"....

16. In these circumstances, we hold that the distinction sought to be drawn between candidates selected from non government bodies through interview and those selected through open competitive examination is sans rationale justification. Protecting the pay of one and not protecting the pay of the other set of candidates is completely arbitrary and illogical. The purpose behind grant of pay protection was to draw talent from organisations like PSUs. The best talent is drawn through the Civil Services Examination. Encouraging employees of PSUs to sit for such examination which is highly competitive is in line with the purpose behind the OM of 1989 of attracting the best talent. Even assuming that for the purposes of pay protection, the distinction between selection through interview and selection through open competitive examination does hold a rational nexus, the Civil Services Examination, through which the petitioner has been selected also comprises a comprehensive interview. Therefore denial of pay protection benefit to the petitioner is unjustified and illegal."

Counsel for the respondent urges that the basic distinction made between those joining the service in a Government Department through interview on one hand and those recruited on the basis of Open Competition could not be ignored. This distinction was because of the subsequent Office Memorandum dated 10.07.1998 which had the effect of qualifying/clarifying the first memorandum dated 07.08.1989. This Court is of the opinion that on first principle, there is no dispute about the fact that the petitioner's previous employment fell within the covered category, i.e., was covered by the previous Office Memorandum dated 07.08.1989. The only question is whether the restriction imposed by the subsequent memorandum of 10.07.1998 applies. It is firstly noticed at the outset that the subsequent memorandum is only by way of a clarification; it does not purport to have been issued under the authority of the Central Government unlike the earlier memoranda which is expressly issued in the name of the President after due approval by the concerned Competent Authority. Secondly and more importantly, the recruitment process in the present case involved both

the Open Competition Examination as well as an interview. Given that the clarification is restricted to open competition processes alone, the intent, if any, of the said clarification of 1998 cannot be stretched further to include hybrid processes where the candidate is successful in an open competition and also in the W.P.(C) No.8660/2005 Page 6 qualifying interview. Furthermore, the restrictive nature of clarification of 1998, in our opinion, defeats the very purpose of 07.09.1989 Office Memorandum which was to ensure pay protection for all those who were directly recruited to a Central Government Organization or Department after having served in State Public employment or in autonomous bodies such as University, etc.

...."

13. Learned counsel for the respondents would, however, submit that in terms of the relevant rules the applicant was not entitled to pay protection. He had been selected as direct recruit through a competitive process comprising both examination and interview. As the respondents found the grievance of the seniors valid and the pay protection granted to him to be erroneous, it was deemed fit to reduce the pay of the applicant downwards so that he would not be drawing a higher pay than his seniors.

14. We have considered the pleadings and the submissions made by the rival counsel. It is not in dispute that the applicant had been granted pay protection in terms of the consolidated guidelines issued by the DoPT dt. 08.04.2016 as at Annexure A8 wherein it has been clearly provided that after 6<sup>th</sup> Pay Commission, the pay in the pay band would be protected but the employee would get the Grade Pay of the post to which he was appointed after the technical resignation. The OM also provides various other benefits such as carry forward of leave benefits, LTC, GPF transfer, pension, transfer of service book, retention of lien, joining time, pay and transferring allowance, etc. If a view is to

be taken that the applicant forfeited his past service only for the reason that he went through a direct recruitment process comprising written examination and interview, logically all other facilities would also have to be forfeited besides the pay protection. Such a view would be preposterous as it would completely defeat the very objective of granting protection to persons who are permitted to change their job by submitting technical resignation.

15. We are unable to appreciate the respondents' contention that the applicant's pay had to be reduced only with a view to satisfying his seniors as the latter were drawing a lower pay in the relevant pay band. Such difference in pay and instances of juniors drawing a higher pay than the senior are accepted as inevitable where people have entered the same service/cadre from different sources. Persons with longer experience in the feeder cadre/service are often fixed at a higher pay as compared to seniors who have entered the same service or cadre as direct recruits with their initial pay fixed at the lowest of the pay scale. As long as the seniority is protected, there could be no valid grievance of seniors in such cases.

16. In any case, the alleged seniors of the applicant had only represented for stepping up of their pay and not stepping down the applicant's pay which appeared to have been correctly fixed in terms of Annexure A7 note of the 3<sup>rd</sup> respondent dt. 20.02.2016. If the 1998 clarification of the DoPT making a distinction between direct recruitment through interview along and direct recruitment through open competitive examination plus interview is sustained, it

would discourage healthy competition leading to suboptimal outcomes in selecting the best among the interested and eligible persons as it would require a needless sacrifice on the part of persons who have put in long service elsewhere.

17. In the light of the observations and conclusions of the Hon'ble Delhi High Court in the cases cited supra, we have no hesitation in declaring that Annexure A11 order dt. 15.02.2017 of the respondents cancelling the previous order dt. 22.05.2016 is bad in law and fails objective legal scrutiny. Accordingly, Annexure A11 office order dt. 15.02.2017 is quashed and set aside. Consequently, the applicant shall be entitled to pay protection granted to him by Annexure A7 note dt. 20.02.2016.

18. OA is allowed in the above terms and the interim order dt. 10.03.2017 staying recovery of alleged excess payment is made absolute. No costs.

**(P. Madhavan)**  
**Member(J)**

**(R. Ramanujam)**  
**Member(A)**

**06.02.2019**

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