

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.731/2013
with MA No.961/2013

OA No.732/2013 with MA 962/2013

OA No.733/2013 with MA 963/2013

OA No.734/2013 with MA 964/2013

& OA No.735/2013 with MA 965/2013

Date of Decision: 03.04.2019.

CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
R.N. SINGH, MEMBER (J)

Smt. Aditi Vinod Bandre,
Age 34 years, working as Junior
Laboratory Assistant in CDTL,
Mumbai 400 008.

R/at 4/2 Tata Colony, Khadegolawali
(Gaon) Vithalwadi, Kalyan (E). ... ***Applicant in OA No.731/13***

Shri Vadukot Jose Justin
Age 38 years, working as Junior
Laboratory Assistant in CDTL,
Mumbai 400 008. R/at Riddhi Siddhi
Apartment 'A' Wing, 5th Floor, R.No.502,
Buisewadi, Thane (W).

... ***Applicant in OA No.732/13***

Shri Santosh Dattatray Yadav,
Age 38 years, working as Junior
Laboratory Assistant in CDTL,
Mumbai. R/at Aai Niwas, Jimi Baug,
Near Old Jimi Baug, Old Swami
Samarth Mandir, Kalyan (East).

... ***Applicant in OA No.733/13***

Smt. Anindita Samir Nandi
Age 34 years, working as Junior
Laboratory Assistant in CDTL,
Mumbai 400 008. R/at C3/40,
Hyde Park, Residencey, Near Tulsidham,
Thane (W).

... ***Applicant in OA No.734/13***

Shri Amardeep Maruti Ningappagol
Age 42 years, R/at ESIS Hospital,
16/9 Road No.33, Wagle Estate, Thane

(W), Pin - 400 604.

... *Applicant in OA No.735/13*

(By Advocate Shri Vicky Nagrani)

VERSUS

1. Secretary Govt. of India,
Ministry of Health and Family Welfare,
Nirman Bhawan, Moulana Agaz Road,
At Post New Delhi 110 011.
2. Drugs Controller General of Health Services,
Ministry of Health & Family Welfare,
Nirman Bhawan Moulana Agaz Road,
At Post New Delhi 110 011.
3. Union of India, through Director Incharge,
Central Drugs Testing Laboratory-Mumbai,
Ministry of Health and Family Welfare,
Govt. Medical Store, Department Compound,
Opp. Sahil Hotel, Belasis Road, Mumbai Central,
At post Mumbai 400 008.
4. Secretary, Ministry of Finance,
North Block, At Post New Delhi 110 001. ... *Respondents
in all the OAs.*

(By Advocate Shri N.K. Rajpurohit)

ORDER (Oral)

Per : R.N. Singh, Member (J)

Heard Shri V.A. Nagrani, learned
counsel for the Applicants and Shri N.K.
Rajpurohit, learned counsel for the
Respondents.

2. In all the aforesaid five OAs^{are} filed
under Section 19 of the Administrative
Tribunals Act, 1985. The applicants are
admittedly similarly placed inasmuch as at
the time of filing of the respective OAs,

they have been working as Junior Lab Assistant (JLA) a Group 'D' post under the respondents and all of them have been aggrieved of the same/similar orders dated 18.05.2012, 22.02.2012, 30.11.2011 and 13.07.2012 (Annex.A-1(a), A-1(b), A-1(c) & A-1(d) and the aforesaid applicants have prayed for the following reliefs in the respective OAs:-

"8.a) This Hon'ble Tribunal be graciously pleased to call for the records of the case regarding implementation of recommendation of Vth Pay Commission above Lab Asstt. Ministry of Health and FW and pass orders upholding that applicants are entitled to similar benefits.

8.b) Quash and set aside letter & decisions proposal dated 18.05.2012, 22.2.2012, 30.11.2011, 13.7.2012 and A1(a), A1(b), A1(c) & A1(d) respectively.

8.c) Hold and declare that withholding of benefits to applicants although same granted to Lab Assistant in CIPL NICD NMEP is discriminatory.

8.d) Be further graciously pleased to allow the OA and direct respondents to extend all benefits granted by Hon'ble CAT Principal Bench order in OA No.1935/2005 to CIPL Lab Assistant (WP challenging it dismissed by Hon'ble High Court, Delhi) within 3 months with all consequential benefits such as arrears, affixation of pay, rectification of pay conferential in further grades.

8.e) Hold and declare that non extending of similar benefits to similarly placed person is discriminatory.

8.f) Direct respondents to consider representations sent by applicants on 17.12.2008

(Exh.A10) within 2 months by issuing speaking and reasoned order.

8.g) Any other and such further relief(s) as deemed fit and proper by this Hon'ble Tribunal.

8.h) Cost of an be saddled on respondents and paid to applicant."

3. With the consent of the parties, all the aforesaid OAs are being disposed of by a common order. However, OA No.731/2013 has been taken as a lead case by the learned counsels for the parties and accordingly the facts are being taken from the pleadings in OA No.731/2013.

4. The precise facts of the case(s) are noted as under;

The Applicants were holding Technical Posts i.e. the post of Junior Lab Assistant in the Central Drug Testing Laboratory, Mumbai under the Ministry of Health. This is the second round of litigation inasmuch as in the first round of litigation, the applicants have approached this Tribunal by filing respective OAs i.e. OA Nos.330/2009, 331/2009, 332/2009, 333/2009 & 334/2009 under Section 19 of the Administrative Tribunals Act, 1985 and the same was ^{are} disposed of by a common order/judgment dated

14.07.2010 (Annex.RJ 10). The relevant portion of the order/judgment dated 14.07.2010 reads as under:

"3. It is also brought to our notice by the learned counsel for applicants that the respondents have constituted Anomalies Committee to resolve the whole issue and submits that a suitable direction be given to the respondents to treat the present OAs as representations within the meaning of Section 20 of the Administrative Tribunals Act, 1985 and place the same before the Anomalies Committee for proper appreciation of the grievances of the applicants.

4. The learned counsel for applicants has also brought to our notice order dated 11.07.2006 passed by Division Bench of this Tribunal, sitting at the Principal Bench, New Delhi, in OA No.1935/05 (Sanjay Kumar & 8 others Vs. Union of India & Ors.) wherein similar issue had been raised by Laboratory Assistants working at CIPL, Ghaziabad and they have been granted similar benefit of pay revision based on the recommendations of the Fifth Central Pay Commission. The applicants are also similarly situated and, therefore, cannot be discriminated against.

5. After hearing the learned counsel of parties and perusing the pleadings, we are of the considered opinion that ends of justice would be met if direction is given to the respondents to place the case of the applicant before the Anomalies Committee and to expeditiously take final decision in respect of their grievance (applicants) taking into consideration the present OAs by treating the same as a representation, within the meaning of Section 20 of the Administrative Tribunals Act, 1985. Final decision to be taken within a period of four months from the date of receipt of a copy of this order.

5.1 Needless to say, while considering the above said representations and the OAs of the applicants, the Anomalies Committee will also taken into consideration the judgment of the Principal Bench in OA 1935/05 (supra) and also the fact that

the said judgment has been implemented by the respondents in respect of Laboratory Assistants working at CIPL, Ghaziabad. In case the applicants are still aggrieved, in any manner, by the decision taken by the respondents in their respective cases, they will be at liberty to approach the appropriate forum in accordance with law.

6. *With the above said directions and observations, all the five OAs stand disposed of leaving the parties to bear their own costs."*

5. From the aforesaid, it is evident that the Tribunal had relied upon the order/judgment dated 11.07.2006 of Principal Bench of this Tribunal in **OA No.1935/2005, titled Sanjay Kumar & 8 Ors. Vs. Union of India & Ors.** The relevant portion of the order/judgment dated 11.07.2006 in **Sanjay Kumar (supra)** reads as under:

"....2. It is trite law that equals cannot be treated unequally. This will violate the principle of equality enshrined under Article 14 of the Constitution of India. Merely because there had been delay in approaching the respondents would not render the continuous cause of action of grant of pay and allowances as redundant. We find that there is no reasonable justification to deny the pay scale from 1.1.96 when it has been extended to all those who are similarly circumstanced. We also note that recommendation of the 5th CPC are accepted by all the Ministries and Departments yet the department situated in the same Ministry is denying the benefits to the applicants and ultimately they have to approach for extension of benefit, which is unfortunate.

3. *In the result, we find that extending the benefit from 19.4.2005 and withholding from 1.1.96 cannot be countenanced in law. Accordingly, OA is*

partly allowed. Impugned order is set aside to the extent that the benefit of pay of Rs.4000-6000 from 19.4.2005 has been extended. Respondents are directed to accord to the applicants the pay scale of Rs.4000-6000 w.e.f. 1.1.96 with arrears within a period of three months from the date of receipt of a copy of this order. No costs."

6. It is admitted fact that the order/judgment dated 11.07.2006 of the Principal Bench of this Tribunal in **Sanjay Kumar (supra)** attained finality inasmuch as the same was upheld by the Hon'ble High Court of Delhi by dismissing the WP(C) No.1873/2007 vide order/judgment dated 12.03.2007 in the case of **Secretary, Government of India & Ors. Vs. Sanjay Kumar & Ors. (Annex.RJ-9)** and the same has further been implemented by the respondents as could be evident from the office order dated 11.06.2007.

7. The grievances of the applicants in the present aforesaid OAs are that though in compliance of the directions of the Principal Bench of this Tribunal in **Sanjay Kumar (supra)**, the respondents have granted the benefit of Pay Scale of Rs.4000-6000 to the applicants **Sanjay Kumar (supra)** from different dates as applicable in the case of

the respective applicants, however, keeping in view the fact that the Pay Scale of Rs.4000-100-6000 has been made applicable w.e.f. 01.01.1996. However, in compliance of the directions of this Tribunal in common order/judgment dated 14.07.2010 in the OAs filed by the present applicants, the respondents have granted the Pay Scale of Rs.4000-100-6000 to the present applicants only w.e.f. 01.01.2006 vide order dated 30.11.2011 and therefore they have been discriminated inasmuch they are similarly placed as the applicants in **Sanjay Kumar (supra)** and in spite of directions of this Tribunal in the common order/judgment dated 14.07.2010, the applicants in the present OAs have not been placed in the correct Pay Scale w.e.f. the correct date i.e. w.e.f. 01.01.1996.

8. In response to the notice issued by this Tribunal, the respondents have filed reply and on the basis of such reply and additional affidavit dated 01.01.2015, Mr. N.K. Rajpurohit, learned counsel for the respondents submits that the impugned orders

are apt in law. He further submits that the present applicants have not been granted the benefit of Pay Scale of Rs.4000-100-6000 w.e.f. 01.01.1996 and have been granted w.e.f. 01.01.2006 for the reason that the applicants had neither raised the issue of anomaly before the Department nor they made any representation before the 5th CPC. He further submits that the applicants who have been working as Junior Lab Assistant in Central Drug Testing Laboratory, Mumbai are holding technical post~~u~~ and were performing the same nature of duties and hold responsibility and they are similarly situated employees as the applicants in ***Sanjay Kumar (supra)***.

9. We have gone through the relevant pleadings and have considered the rival contentions. We have again gone through the order/judgment dated 11.07.2006 of the Principal Bench of this Tribunal in ***Sanjay Kumar (supra)*** as well as the common order/judgment dated 14.07.2010 of this Bench and we find that the respondents have not taken the defence that the benefits

cannot be granted to the applicants therein for the reason that they have not raised the issue before the department or before the 5th CPC. Similarly in the aforesaid common order/judgment dated 14.07.2010, a clear direction was given to the respondents to place the matter before the Anomalies Committee and therefore it was not incumbent upon the present applicants to raise the matter before the Anomalies Committee, before the 5th CPC or before the department. Moreover, once it is admitted case that the present applicants are fully identical[✓] and similar to **Sanjay Kumar (supra)** such technical objections raised by the respondents are not sustainable in the eyes of law.

10. The Applicants have also filed application seeking condonation of delay and the applicants submit that the aforesaid OAs have been filed a few days beyond the period of limitation i.e. one year from the date of impugned orders. However, by the present OA, the applicants have sought for extension of benefit of judgment which has already attained finality. Learned counsel for the

applicants further argues that the extension of benefit of judgment should have been given to the applicants by the respondents at their own without compelling the applicants to approach this Tribunal again by the present OAs, more particularly in view of the law laid down by the Hon'ble Apex Court in ***K.C. Sharma Vs. Union of India, 1998(1) AISLJ 54.*** Learned counsel for the applicants further argues that the issue in the present OA is about fixation of pay in the right pay scale and from the date from which the same has been granted to similarly placed persons and on account of grant of Pay from the wrong date, the applicants are suffering recurring loss and therefore heir OAs are within limitation, however, the respective applications have been filed by the applicants seeking condonation of delay as a matter of abundant precaution. The delay is admittedly of around two months. However, it is also found that no reply is filed to such MAs by the respondents and hence in the facts and circumstances, the aforesaid ***MAs are allowed*** and the delay in

filing of the respective OAs ~~are~~^{is} condoned.

11. In view of the aforesaid, **the OAs are partly allowed** with the following directions;

(i) The Respondents are directed to pass necessary order(s) to grant the Pay Scale of Rs.4000-100-6000 to the applicants from 01.01.1996 in place of w.e.f. 01.01.2006 as granted to the similarly placed persons in the case of **Sanjay Kumar (supra)** with all consequential benefits i.e. payment of arrears.

(ii) The Respondents are directed to complete the aforesaid exercise within twelve weeks of receipt of a certified copy of this order.

12. In the facts and circumstances, no order as to costs.

(R.N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

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