

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.2480/2013

Thursday, this the 9th day of May 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Vinita w/o Sh. Ravinder Singh
r/o 3254, Old Ranjeet Singh
Near South Patel Nagar
New Delhi – 110 008

..Applicant
(Ms. Monica Kapoor and Ms. Areeca Sanjay Massey, Advocates)

Versus

1. The Govt. of NCT of Delhi through
The Chief Secretary
5, Sham Nath Marg, Delhi
2. Special Secretary
Department of Health & Family Welfare
9th Level, A-Wing, I P Estate, Delhi Secretariat
Delhi – 110 002
3. The Director, Directorate of Health Services
The govt. of NCT of Delhi
F-17, Karkardooma, Shahdara, Delhi
4. Sardar Vallabh Bhai Patel Hospital
Through the Medical Superintendent
East Patel Nagar, New Delhi – 110 008

..Respondents
(Mrs. P K Gupta, Advocate)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

The applicant was appointed as Lab Technician in Sardar Vallabh Bhai Patel Hospital, the 4th respondent herein, under the control and administration of the 1st respondent, on

05.01.2009. She was being paid the salary of ₹12957/- by fixing her basic pay as ₹8370/- with effect from October 2011. The respondents reduced the same to ₹12640/- by keeping her basic salary of ₹5200/- with Grade Pay of ₹2800/-. This O.A. is filed challenging the action of the respondents.

2. The applicant contends that the respondents themselves have fixed the salary, duly following the relevant circulars and guidelines, and there was no justification for them to reduce the same, that too, without issuing any notice. This O.A. is filed with a prayer to direct the respondents to fix her pay at ₹8560/-, being the minimum of pay band of Lab Technician and Grade Pay of ₹2800/-. Reference is made to CCS (Revised Pay) Rules, 2008.

3. The respondents filed counter affidavit opposing the O.A. It is stated that the applicant was engaged on contractual basis for a period of 11 months and it was being extended from time to time by maintaining one day gap between each spell. It is also stated that on a wrong notion, the emoluments of the applicant were fixed at ₹12957/-, but on noticing the anomaly, the correct pay was fixed allowing her the minimum pay at ₹5200/- with Grade Pay of ₹2800/-, together with other allowances.

4. We heard Ms. Monica Kapoor, learned counsel for applicant and Mrs. P K Gupta, learned counsel for respondents, at some length.

5. The appointment of the applicant is on contractual basis. Naturally, she is not put in a regular pay scale / pay band. The pay band, referable to the post of Lab Technician in the 4th respondent – hospital, is ₹5200-20000 with Grade Pay of ₹2800/-. Earlier, some consolidated amounts used to be paid as emoluments to the employees appointed on contractual basis. Taking note of the fact that such appointments are being continued for years together, Courts have intervened and directed that at least a minimum of the pay scale, attached to the post be paid as emoluments.

6. The concept of pay band and grade pay was introduced in the recent past by the 6th Central Pay Commission. What used to be the pay scale, indicating the minimum and maximum of the pay attached to a post, has been revised to a pay band with certain modifications. In the light of these changes, what becomes payable to an employee appointed on contractual basis, is the minimum of the amounts specified in the pay band and the corresponding grade pay. The respondents are extending the same to the applicant, together with other allowances.

7. Though learned counsel for applicant has placed reliance upon the judgment of this Tribunal in O.A. No.2947/2013 & batch decided on 12.08.2014, in support of her claim that the applicant is entitled to the “entry pay”, we do not find any

support from this judgment. The Hon'ble Delhi High Court in W.P. (C) No.717/2015 & batch decided on 28.03.2017 has observed as under:-

“9. In Jagjit Singh and Others (supra), the Supreme Court emphasised that right to equality implies that even the contractual employees should be paid the minimum of the amount, which a regular employee would get on the post in question. This would ensure „equal pay for equal work“ and that the contractual employees are not paid less than what is granted to a newly recruited regular employee. The aforesaid dictum, therefore, mandates that the contractual employee should not be paid monthly emoluments, which are less than what a newly recruited regular employee would get. If the newly recruited regular employee is entitled to entry pay in the pay band plus the Grade Pay, then the amount so quantified should also be taken as the minimum pay payable to the contractual employee doing the same work. This would ensure complete parity of pay scale of a contractual employee viz. the pay, which is payable to a regular appointed direct recruit.

10. The distinction between regular and contractual employees is drawn with regard to the annual increments which are payable to a direct recruit or promotee over and above his initial pay, for the same are not taken into consideration and are not to be granted to contractual employees. This position will hold good, even after we have dismissed the present writ petition.

11. In view of the aforesaid reasoning, we do not find any merit in the present writ petitions and the same are dismissed. In the facts of the case, there would be no order as to costs.”

8. Though mention was made to “entry pay” in the said judgment, we do not find such thing in the judgment of Hon'ble Supreme Court in **State of Punjab & others v. Jagjit singh & others** (Civil Appeal No.213/2013) decided on 26.10.2016.

As a matter of fact, in **Jagjit Singh's** (supra), the Hon'ble Supreme Court held as under:-

“42 (vi) For placement in a regular pay-scale, the claimant has to be a regular appointee. The claimant should have been selected, on the basis of a regular process of recruitment. An employee appointed on a temporary basis, cannot claim to be placed in the regular pay-scale (see the Orissa University of Agriculture & Technology case).”

9. Recently, this Tribunal in O.A. No.1356/2014 decided on 16.07.2018, granted relief placing reliance on the judgment of High Court in **Govt. of NCT of Delhi & others v. Anil Kumar Sharma & others** (W.P. (C) No.812/2015) decided on 28.03.2017. However, unless we find some basis in the form of any decision taken by the Government or the judgment of a Court rendered after referring to the relevant provisions, it is difficult for us to grant any relief, straightway.

10. However, we find that a revision undertaken by the respondents has resulted in deduction of the emoluments of the applicant just by ₹317/-. Such a small adjustment should not lead to a serious complication. However, if the applicant is of the view that there is any procedure, being followed in the 4th respondent – hospital or in the administration in respect of employees similarly situated as her, she can point out the same. Further, if the applicant is able to point out any specific provision of law, which enables her to draw higher salary, it

shall be open to her to make necessary representation, in that behalf. In such a case, the respondents shall take the same into account and pass specific order, within two months.

11. The O.A. is disposed of accordingly.

There shall be no order as to costs.

(Aradhana Johri) (Justice L. Narasimha Reddy)
Member (A) Chairman

May 9, 2019
/sunil/