

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BENGALURU**

ORIGINAL APPLICATION NO.170/000762/2018

DATED THIS THE 9TH DAY OF APRIL, 2019

**HON'BLE DR.K.B.SURESH
HON'BLE SHRI C.V. SANKAR**

**...MEMBER(J)
...MEMBER(A)**

Choudappa N
Aged about 37 years,
S/o. Nayakara Lingappa,
Lab Assistant,
ESIC Hospital,
Peenya, Yeshwanthpur,
Bengaluru-560 022.

...Applicant

(By Advocate Shri N.G. Phadke)

Vs.

1. Union of India,
Represented by its Secretary,
Ministry of Labour,
Shrama Shakti Bhavan,
Rafi Marg, New Delhi-110 001.
2. Employees State Insurance Corporation,
Head Quarters Office,
'Panch Deep Bhavan', CIG Marg,
New Delhi-110 002,
By the Director General.
3. The Medical Superintendent,
ESIC Hospital,
Peenya, Yeshwanthapur,
Bengaluru-560 022.

...Respondents

(By Standing Counsel Shri Vishnu Bhat for the respondents)

ORDER (ORAL)**HON'BLE DR.K.B.SURESH ...MEMBER(J)**

Heard. The matter is covered by our order in OA.No.1183-1207/2015,
which we quote:

ORDER (ORAL)**(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))**

The applicants have filed the present OAs seeking the following relief:

"Issue a writ of mandamus directing the 5th and 6th respondents to grant the revised pay scale of Rs.5200-20200/- with enhanced grade pay of Rs.2400/-."

2. According to the applicants, they are Lab Assistants/Technicians working with the 5th and 6th respondents. At the time of joining to their respective posts, their scale were fixed at Rs.3200-4900/- corresponding to PB-I with grade pay of Rs.2000/-. In the year 2008, the 2nd respondent fixed revised pay scale at Rs.5200-20200/- with grade pay of Rs.2400/- for the Lab Assistants. Since all similar situated Lab Assistants throughout India are entitled and getting pay scale as per the revised pay scale i.e. 5200-20200 with enhanced grade pay of Rs.2400, the applicants are entitled to the same revised pay scale. However, in spite of several representations and legal notices issued to 4th & 5th respondents (Annexures-A3 to 27), they have not been granted revised pay scale so far. They submit that similarly situated employees have been granted pay scale of Rs.5200-20200 with grade pay of Rs.2400 in compliance of the order passed by the various Benches of the Tribunal and hence they prayed for granting the relief as sought for by them.
3. The respondents have filed reply statement saying that the Lab Assistants who are recruited prior to 2011 were recruited as per the then recruitment regulations in the pay scale of Rs.3200-85-4900 which correspond to revised scale of Rs.5200-20200 with grade pay of Rs.2000/-. The educational qualification for the post at that time was matriculation or equivalent qualification from recognised Board with Diploma in Medical Laboratory Technology. The educational qualification was revised to as Senior Secondary/10+2 or equivalent qualification with Diploma in Medical Laboratory Technology vide notification dated 21.5.2011. After the recruitment regulations were revised the pay of Lab Assistants was fixed. The notifications which were issued by the respondent No.5 prior to 2011 indicated that the pay scale for the post of Lab Assistant is Rs.5200-20200 with Grade Pay of Rs.2000. Accordingly, their pay was fixed at Rs.6460 with grade pay of Rs.2000. The respondents have also referred to an advertisement issued by the Medical Superintendent, Safdarjung Hospital, Govt. of India for the post of Lab Assistant wherein educational qualification was mentioned as 10+2 science subject and the pay scale offered is Rs.5200-20200 with grade pay of Rs.2000. Therefore, the applicants who are working as Lab Assistants have been offered the pay scale at par with their counterparts in Central Government. And therefore, OA does not merit any consideration.

4. The rejoinder, additional reply and additional rejoinder have been filed by the applicants and respondents reiterating the same contentions already highlighted in the OA and the reply.
5. Heard the Learned Counsel for the parties. Learned Counsel for the applicants referred to a decision of the Principal Bench of this Tribunal in OA.No.263/2014 wherein the similarly placed Laboratory Assistants were allowed pay scale of Rs.5200-20200 with grade pay of Rs.2400 from respective date of their entitlement provisionally and subject to the outcome of the Writ Petition pending before the High Court after taking a proper undertaking regarding refunds of payments made in case the judgment in the aforesaid writ petition is in favour of the ESIC. He also referred to an order of the Mumbai Bench of this Tribunal in OA.No.260/2015 wherein vide order dated 5.5.2015, the similar benefits were allowed to Laboratory Assistants working in ESIC. He also placed an order of the Jaipur Bench of this Tribunal in OA.No.91/2014 wherein the applicants were Laboratory Assistants and they were directed to be allowed pay scale of Rs.5200-20200 with grade pay of Rs.2400 with respective date of their entitlement provisionally and subject to the outcome of the Writ Petition pending before the High Court after taking a proper undertaking regarding refunds of payments made in case the judgment in the aforesaid writ petition is in favour of the ESIC. Therefore, he prayed for granting the similar relief in favour of the present applicants. Learned Counsel further indicated that the Writ Petition is still pending for consideration in the High Court of Delhi.
6. The Learned Counsel for the respondents while admitting the fact that the similar orders passed by the different Benches of this Tribunal, reiterated to the contention made in the reply statement and additional reply saying that the present applicants were recruited under earlier recruitment rules which has lower qualification and hence they cannot be entitled to higher pay scale which is meant for higher qualification.
7. We have carefully considered the facts of the case and also the submissions made by either side.
8. It clearly appears that this particular issue has already been considered by the Principal Bench in OA.No.263/2014 whereby a direction was given to the respondents to grant the Laboratory Assistants the pay scale of Rs.5200-20200 with grade pay of Rs.2400. Similar orders have also been passed by the Mumbai and Jaipur Bench of this Tribunal. Learned Counsel for the respondents tried to make a distinction saying that the applicants were recruited prior to 2011 as per the old recruitment rules and hence they are not entitled to the said pay scale. We are not inclined to accept the said contention since the functions and responsibilities of the Laboratory Assistants remain the same whether they are recruited as per the earlier regulations or not. Hence they are entitled to get the same benefit. We are in agreement with the views taken by the different Benches of the Tribunal in the matter and where direction was issued to the respondents to fix the pay of the applicants who are Laboratory Assistants with the respondent organisation in pay band of Rs.5200-20200 with grade pay of Rs.2400. Therefore, on the similar line, we dispose of the present OAs directing the respondents to fix the pay of the applicants in the pay band of Rs.5200-20200 with grade pay of Rs.2400 from the respective date of their entitlement provisionally and subject to the outcome of the Writ Petition pending before the High Court of Delhi after taking a proper undertaking regarding refunds of payments made in case the judgment in the aforesaid writ petition is in favour of the ESIC. The respondents are directed to issue necessary orders within a period of three(3) months from the date of receipt of copy of this order. The

applicants shall furnish a copy of this order to the respondent No.5 & 6 within a period of two(2) weeks from today.

9. The OA is disposed of in terms of the aforesaid direction. No order as to costs.

2. In this we had made a rider that subject to the decision of the Hon'ble High Court in similar matters, the benefits would be modulated and that will be applicable herein also. With this observation and direction, the OA is allowed to the extent stated above. No costs.

(C.V. SANKAR)
MEMBER(A)

(DR.K.B.SURESH)
MEMBER(J)

Vmr

Annexures referred to by the Applicant in OA No.170/00762/2018

Annexure A1 Copy of the order dated 18.01.2017 in OA No. 170/01183-

01207/2015

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| Annexure A2 | Copy of the Compliance order dated 24.01.2018 issued by the III Respondent |
| Annexure A3 | Copy of the representation dated 14.02.2018 of the Applicant |
| Annexure A4 | Copy of the Impugned decision of the III Respondent dated 28.05.2018 |
