

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01684/2018

DATED THIS THE 09TH DAY OF APRIL, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

J. Usha
O.T. Technician,
Aged about 36 years,
D/o M. Nirmal Raju
Working in ESIC Hospital, Peenya,
Yeshwantpur, Bengaluru – 560 012
.....Applicant
(By Advocate Shri N.G. Phadke)

Vs.

1. The Union of India,
Represented by its Secretary,
Ministry of Labour,
Sharma Shakti Bhavan,
Rafi Marg, New Delhi – 110 001.
2. Employees State Insurance Corporation,
Head Quarters Office,
'Pancha Deep Bhavan', CIG Road,

New Delhi-110 002, by the Director General.

3. Ministry of Personnel, Public Grievances & Pension,
Dept. Of Personnel & Training,
Govt. of India, North Block,
New Delhi – 110 001, by its Secretary,

4. The Medical Superintendent,
ESIC Hospital,
Peenya, Yeshwanthpur,
Bengaluru – 560 022

....Respondents

(By Shri M.V. Rao, Senior Central Government Panel Counsel)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

Apparently after hearing the matter it transpires that the matter in issue is covered by order of the Principal bench in OA No. 2995/2014 and other connected cases dated 19.04.2016 which we quote:

“O R D E R (Common)

By V. Ajay Kumar, Member (J):

The applicants, who are working as Operation Theatre Assistants, and CSSD/CSR Assistants in various Hospitals of the respondent Employees State Insurance Corporation (ESIC), filed the OA seeking a direction to extend the benefits of the 5th Pay Commission's revised report of 30.09.1997 and accordingly to grant the pay scale of Rs.4000-100-6000 w.e.f. 01.01.1996 with all consequential benefits, including interest on arrears, on par with Laboratory Assistants and Plaster Assistants of the respondent-ESIC.

2. Heard both sides, and decided to dispose of both the OAs by this common order as the facts and question of law are identical.

3. The applicants were given the scale of Rs.3050-4590 in 5th CPC. Since as per the Notification of the Central Government dated 30.09.1997, the scale of Rs.4000-6000 for the technical posts requiring matriculation with some experience was not granted to the applicants, they filed the OA.

4. *It is their case that the CSR/CSSD Assistants are having identical service conditions like the Laboratory Assistants and Plaster Assistants. In case of Laboratory Assistants, in spite of the aforesaid notification, when the respondents ESIC has not granted the pay scale of Rs.4000-6000, they have filed OA No.1464/2003 – Ashok Kumar v. Union of India before this Tribunal and this Tribunal by its order dated 13.01.2004, granted the same to them. Though, the respondents filed a Writ Petition against the said orders, as no stay was granted, implemented the same in respect of Laboratory Assistants. It is also submitted on behalf of the applicants that in respect of Plaster Assistants also, this Tribunal in OA No.3227/2011 by order dated 19.12.2013 (Annexure A6), granted the pay scale of Rs.4000-6000.*

5. *It is further submitted that since the applicants also identically placed like the Laboratory Assistants and the Plaster Assistants of the respondent-ESIC, they are also entitled for granting of the pay scale of Rs.4000-6000 w.e.f. 01.0.1996, with all consequential benefits.*

6. *Per contra, the respondents while praying for dismissal of the OA, inter alia, raised the following contentions:*

a) *OA is barred by limitation and latches as the claim is pertaining to the 5th CPC recommendations which came into force in the year 1996.*

b) *Non-Matric of Nursing Orderly, being the feeder cadre, are eligible for promotion as CSSD Assistants and hence, granting of pay scale of Rs.4000-6000 is unwarranted to the CSSDs, as the acid test for grant of the said scale is Matriculation.*

c) *The duties and responsibilities of the CSSDs are completely different and cannot be compared with Lab Assistants and Plaster Assistants.*

7. *A perusal of Annexure A6, i.e., Order dated 19.12.2013 in OA No.3227/2011 (Brham Pal & Anr. vs. Union of India) filed by Plaster Assistants of the respondent-ESIC, reveals that identical submissions were made on behalf of both sides, and this Tribunal after considering the same, in detail, allowed the OA by granting the scale of Rs.4000-6000 to the Plaster Assistants. Relevant paragraphs of the said order read as under:*

"5. We have heard both the sides and perused the documents placed on record. With regard to limitation, the law is well established that the matter of granting pay scale is a continuing cause of action and we have no hesitation in rejecting this plea of the respondents. As per the averment of

the applicants they started representing to the respondents immediately after grant of the pay scale of Rs.3200-4900, which has not been denied by the respondents. Representations were submitted by the applicants in the year 1999, 2000, 2003, 2007 and 2010 but the matter was not decided by the respondents till the applicants filed OA no.3138/2010. As such, the principle of estoppel cannot be applied in this case. The applicants had parity with Laboratory Assistants/Nurse D grade/Auxiliary Nurse and midwife till 4th Pay Commission and they were given identical pay scale of Rs.975-1540 by the 4th CPC. The 5th Pay Commission maintained that parity and recommended a common scale of Rs.3200-4900. The problem arose when subsequently vide Government notification dated 30.09.1997, the scale was upgraded to Rs.4000-6000 and the same was not implemented for the PAs. There is no averment as to why the respondents decided to discard the parity with Nurse Dgrade and Auxiliary Nurse and midwife from that point in time onwards. The Resolution dated 30.09.1997 through which the recommendations of the 5th CPC were given effect to, states as follows:-

“XXII OTHER TECHNICIANS

(a) Posts requiring Matriculation with 4000-100-6000 52.111 some experience as minimum qualification for direct recruitment”.

6. Respondents have taken the plea that since there is a component of promotion in the grade of PA from the feeder grades of Nursing orderly/stretcher bearer/ dresser/aya where no minimum qualification has been prescribed, the aforesaid recommendation of the 5th CPC as notified in the resolution dated 30.09.1997 cannot be applied. This is highly specious argument for various reasons. The scale attached to a post is a function of job content, degree of hardship, risk etc. involved in discharging the duties. The academic qualification and experience is fixed keeping the competence level required from the persons who will be occupying the posts. If the employer has taken a view that the same competence level can be achieved by a recruit by having matriculation and one years experience in the case of direct recruitment, or 5 years experience for matriculates and 7 years experience for nonmatriculates in case of promotion, there does not appear to any further scope for discrimination in the matter of remuneration. As the employer in this case has already taken care to enhance the experience level to 5 years and 7 years respectively for promotion of matriculate and non-matriculate nursing orderly etc. it does not stand to logic that the entire cadre of PA should be given a lower pay scale for this reason

alone. The hollowness of the logic put forward by the respondents gets further exposed if we consider the fact that the cadre where there is no promotion and the appointment is only by direct recruitment, a candidate with matriculation and one year experience will be eligible for higher grade of Rs.4000-6000 but a mixed cadre of direct recruit and promotees (with 5 to 7 years experience) as a whole will be downgraded to a lower pay scale. This is obviously a discrimination.

7. *This Tribunal in the case of Laboratory Assistants has already taken a view in favour of admissibility of scale of Rs.4000-6000 and the respondents have implemented it provisionally subject to the outcome of the pending Writ Petitions in the Honble High Court of Delhi. However, we are not linking up the order in this OA with the order of this Tribunal in respect of Laboratory Assistants.*

8. *In the light of the discussion in the preceding paragraph and the reasons explained, we quash the order dated 17.01.2011 passed by the respondents in compliance of the directions of the Tribunal in OA-3138/2010 and MA no.2432/2010. The respondents are further directed to implement the scale notified vide resolution dated 30.09.1997 for other technicians (Posts) requiring matriculation with some experience as minimum qualification for direct recruitment, i.e., 4000-6000. The respondents shall implement this order within a period of two months and will also pay arrears to the applicants from the date of filing of this O.A. The O.A. stands allowed in the aforesaid terms. No costs.”*

8. *Since the applicants who are working as O.T.Assistants/CSSD/CSR Assistants are identically placed like the Plaster Assistants and Laboratory Assistants of the respondent-ESIC, and for parity of reasons, we reject the contentions of the respondents and accordingly, allow the OA. The respondents are directed to implement the scale notified vide Resolution dated 30.09.1997, i.e., by granting the pay scale of Rs.4000-6000 to the applicants. However, they are entitled for arrears with effect from the date of filing of the OA, without any interest thereon. This exercise shall be completed within two months from the date of receipt of a copy of this order. This order is subject to the result of the Writ Petition filed by the respondents against the orders of this Tribunal dated 13.01.2004 in OA No.1464/2003-Ashok Kumar & Others v. Union of India and also the Writ Petition No.18/2015, filed against the orders dated 19.12.2013 in OA No.3227/2011 (Brham Pal & Others v. Union of India). No costs.*

2. But then the subject matter is challenged in the Hon'ble High Court of Delhi in Writ Petition No. 18/2015. Therefore, while the OA is being allowed in terms of Annexure-R6 order, it is also stipulated that, finally, it will be subject to the result of the Writ Petition pending in the Hon'ble High Court of Delhi. It is noted that in that matter arrears of pay has been granted with effect from 22.08.2014. If the facts are the same, we will grant liberty to the respondents to examine if they are on the same footing and, if it has been granted to others equivalently situated, then arrears may also be granted but everything must be subject to the result of the order of the Hon'ble High Court of Delhi in the matter.

3. At this point of time, Shri N.G. Phadke, learned counsel for the applicant, places before us an order in OM No. AB.14017/61/2008-Estt. (RR) dated 24.03.2009 which we quote:

“No. AB.14017/61/2008-Estt. (RR)
Government of India
Ministry of Personnel Public Grievances and Pensions
Department of Personnel and Training
New Delhi

Dated: 24th March, 2009

OFFICE MEMORANDUM

Subject : Sixth Central Pay Commission's recommendations - revision of pay scales - amendment of Service Rules / Recruitment Rules

The recommendations of 6th CPC have been considered by the Government and the CCS (Revised Pay) Rules2008 have since been notified on 29th August, 2008. Consequently, in place of the pre-revised pay scales, the revised pay structure comprising the Pay Band and Grade Pay / Pay Scales has come into effect. Some of the pre-revised pay scales have been merged and some others are

upgraded / likely to be upgraded. In the light of these, it has been decided that the following consequential steps to amend the existing Service Rules / Recruitment Rules shall be undertaken on a priority basis:

(i) Substituting the existing scales by the Grade Pay along with the Pay Band

The existing pay scales have to be substituted by the new pay structure (Pay Band and Grade Pay / Pay Scale) straightforwardly without making a reference to the Department of Personnel and Training (DOP&T) / Union Public Service Commission (UPSC). The heading of column No. 4 of the Schedule on RRs may be modified to :Pay Band and Grade Pay / Pay Scale". In cases where deputation is also one of the methods of recruitment, the field of selection for deputation, which might include various grades, should also reflect the corresponding Grade Pay along with the Pay Band / Pay Scale, and the minimum eligibility service as per the revised guidelines, as enclosed in Annexure.

(ii) Where there is an upgradation of posts

The instructions issued by Department of Expenditure under OM No. 1/1/2008-iC dated 13th September, 2008 and DoPT OM No. AB- 14017/66/08-Estt (RR) dated 9th March, 2009 may be applied in such cases. However, for each of the merged grades, a single set of Recruitment Rules may be formulated and notified.

(iii) Consequential changes

It is necessary to make consequential changes in the Recruitment Rules / Service Rules so as to prescribe eligibility conditions with re Rules / Service Rules, where some minimum service in a particular scale / grade is prescribed for consideration for appointment on deputation / absorption etc., keeping in view particularly the merger of a number of pre-revised scales, upgradation of some scales and the consequential changes in the minimum eligibility service in a grade.

(iv) Department Promotion Committee (DPC)

Where two or more scales have been merged, the existing DPC for the higher / highest grade will be the DPC for the merged grade.

(v) Regulation of regular rendered in the pre-revised scales

The revised pay structure approved includes a number of 'merged grades' with a common grade pay and the concept of pay bands with grade pay introduced effective from 1.1.2006. Insofar as the issue of regulation of service rendered prior to 1.1.2006 is concerned, while the general rule may be that such regular service be deemed to be service rendered in the corresponding grade pay / pay scale approved effective from 1.1.2006 or from a subsequent date, as the case maybe, this formulation cannot apply in cases where there has been merger of more than one grade into one with a single grade pay/ pay scale. Since the merger is effective from 1.1.2006 only, even notional benefits of the merger cannot be extended for periods falling prior to 1.1.2006. A Note to the following effect may, therefore, be inserted under col.12 of the Schedule on RRs, and under relevant provisions in Service Rules, to take care of the requirements:

Note:

For the purpose of computing minimum qualifying service for promotion, the service rendered on a regular basis by an officer prior to 1.1.2006 / the date from which the revised pay structure based on the 6th CPC recommendations has been extended, shall be deemed to be service rendered in the corresponding grade pay / pay scale extended based on the recommendations of the Commission. For purposes of appointment on deputation / absorption basis, the service rendered on a regular basis by an officer prior to 1.1.2006 / the date from which the revised pay structure based on the 6th CPC recommendations has been extended, shall be deemed to be service rendered in the corresponding grade pay / pay scale extended based on the recommendations of the Commission except where there has been merger of more than one pre-revised scale of pay into one grade with a common grade pay / pay scale, and where this benefit will extend only for the post(s) for which that grade pay / pay scale is the normal replacement grade without any upgradation.

2. The Recruitment Rules / Service Rules are of statutory nature. Therefore, the changes brought out by other relevant instructions have to be incorporated in the Recruitment Rules / Service Rules by suitable amendments so that the necessary steps like holding of DPC etc. are taken to fill the post carrying the revised Grade Pay / Pay Scale on regular basis. All the Ministries / Departments are, therefore, requested to effect necessary amendments to the Recruitment Rules / Service Rules notified by them after following the normal procedure of furnishing proposals to the Department of Personnel and Training and the UPSC in the format prescribed in the general

guidelines on Recruitment Rules circulated by the DOPT OM No. 14017/12/87-Estt.(RR) dated 18.3.1988, and also in consultation with the Legislative Department.

3. Ministries/Departments may initiate action to complete the review in this regard and furnish necessary amendment proposals to the DOPT and the UPSC in the case of Group A and Group B posts within six months from the date of issue of this Office Memorandum. They may also, simultaneously, take similar action in respect of Recruitment Rules for Group C and D posts, which are within their delegated powers. Appropriate action to update the Service Rules for organized Group A, B Services,etc. shall also be taken up with DOPT / UPSC within a period of Six Months.

4. Hindi version will follow.

(S.J.Kumar)
Deputy Secretary to the Government of India

Annexure:

Sl. No.	Grade Pay (from)	Grade Pay (to)	Minimum qualifying service for Promotion
1	1800	1900	Placement as per 6th CPC recommendations
2	1900	2000	3 years
3	1900	2400	8 years
4	2000	2400	5 years
5	2400	2800	5 years
6	2400	4200	10 years
7	2800	4200	6 years
8	4200	4600	5 years
9	4200	4800	6 years
10	4200	5400	8 years
11	4200	6600	10 years
12	4600	4800	2 years
13	4600	5400	3 years
14	4600	6600	7 years
15	4800	5400	2 years
16	4800	6600	6 years
17	5400	6600	5 years
18	6600	7600	5 years

19	6600	8700	10 years
20	7600	8700	5 years
21	7600	8900	6 years
22	8700	8900	2 years
23	8700	10000	3 years
24	8900	10000	2 years
25	10000	12000	3 years
26	12000	HAG + Scale	1 year
27	12000	Apex Scale	2 years
28	HAG + Scale	Apex Scale	1 year

This also will be kept in mind by the respondents while granting benefits to the applicant. It may be done in consonance with the benefits that has been granted to others in the connected matters as aforesaid.

4. The OA is allowed as above. The benefits to be made available, if any, within the next two months. If the decision of the respondents is not fully in favour of the applicant, we grant her liberty as well. No order as to costs.

(C.V. SANKAR)

MEMBER (A)

(DR.K.B.SURESH)

MEMBER (J)

Annexures referred to by the applicant in OA No. 170/01684/2018

Annexure A1 Copy of office order dated 12.09.2018 of Post Graduate Institute of Medical Education and Research, Chandigarh

Annexure A2 Copy of memorandum dated 08.03.2018 of AIIMS, New Delhi

Annexures with reply statement

Annexure R1: Copy of Recruitment Regulation Gazette of India, May 21, 2011

Annexure R2: Copy of Recruitment Regulation prior to May 21, 2011

Annexure R3: Copy of judgment in Civil Appeal No.10862/2014 dated 09.12.2014

Annexure R4: Copy of the statement showing pre-revised payscales and revised pay structure in Directorate (Medical), Model Hospitals and ESIC

Annexure R5: Copy of the recommended pay scales for para medical staff

Annexure R6: Copy of order dated 19.4.2016 in OA No.2995/2014 of CAT, Principal Bench

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