

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH**

DATED THIS THE 21st DAY OF AUGUST, TWO THOUSAND NINETEEN

PRESENT:

**HON'BLE MR. P. MADHAVAN, MEMBER (J)
&
HON'BLE MR. T. JACOB, MEMBER (A)**

OA/310/00766/2015

and

OA/310/00768/2015

Raja Karthikeyan
Research Assistant
Pasteur Institute of India
Coonoor, The Nilgiris.

....Applicant in OA 766/2015

G. Chandra Mohan
Senior Research Assistant
Pasteur Institute of India
Coonoor, The Nilgiris.

.... Applicant in OA 768/2015

By Advocate **M/s R. Ananda Babu**

Vs

1. Union of India
Rep. by its Secretary
Health & Family Welfare
Nirman Bhawan
New Delhi - 110 011.

2. The Pasteur Institute of India
Coonoor, The Nilgiris

3. Dr. B. Sekar
The Director
Pasteur Institute of India
Coonoor, The Nilgiris.

... Respondents in both OAs

By Advocate **Mr. R. Soundararajan (OA 766/2015)**
Mr. J. Vasu (OA 768/2015)

ORDER
(Pronounced by Honble Mr. T. Jacob, Member (A))

As a common question of law has arisen in these two OAs and the relief prayed for is also common in nature, we propose to dispose of these two OAs by way of a common order.

2. These OAs have been filed by the applicants under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- "a. To call for the records relating to the impugned order passed by the 1st respondent in Lr.No.V-11012/05/2013-VI dated 06.06.2014 and Lr.No. PII/Admin/PayFixation/1370-2014 dated 24.06.2014 of the second respondent and quash the same and direct the 1st respondent and 2nd respondent to implement the revised scale of pay of Rs.9300-34800 + G.P. of Rs. 4200/- monetarily w.e.f. 01.01.2006.
- b. For a consequential directions to pay all attendant benefits of VI pay commission..."

3. The brief facts of the case as submitted by the applicants are as follows:-

The applicant in OA 766/2015 was appointed as Research Assistant on 09.05.2006 and the applicant in OA 768/2015 presentiy working as Senior Research Assistant was appointed as Research Assistant on 17.01.2005 under the 2nd respondent Institute. The pre-revised scale of pay of the post of Research Assistant, Technical Assistant and Head Clerk during IV Central Pay Commission was Rs. 1400-2000/- and during the V Central Pay Commission, it was Rs.4500-125-7000/-. Subsequently the pre revised scale of the post of Head Clerk alone was revised as Rs.5000-1500-8000 which is equivalent to

the revised scale of Rs. 9300-34800 + Grade Pay Rs.4200/- of VI Pay Commission. The comparative table showing the pay scale of Research Assistant with similarly placed Institutions are submitted below:- Comparative Statement showing the details of pay scale of the Research Assistants in the following Institutes.

Pasteur Institute of India, Coonoor 543103.	Central Leprosy and Teaching Research Institute, Chengalpattu	Indian Council of Medical Research, New Delhi.	Central Research Institute, Kasauli
Rs. 4500-125-7000 of V CPC	Rs. 5000-150-8000	Rs. 5000-150-8000	Rs. 5000-150-8000
Rs. 5200-20200 + Grade Pay Rs. 2800/- of VI CPC	Rs. 9300-34800 + Grade Pay Rs. 4200/-	Rs. 9300-34800 + Grade Pay Rs. 4200/-	Rs. 9300-34800 + Grade Pay Rs. 4200/-

Based on the above, the Research Assistant gave representation to the 2nd respondent institute and the Director of the 2nd respondent Institute considering the duties and responsibilities and qualification etc., of the post, gave his recommendation to revise the scale of pay as Rs.9300-34800/- with Grade Pay of Rs. 4200/- w.e.f. 01.01.2006 of VI Pay Commission. The applicants further state that the 2nd respondent in the impugned order dated 24.06.2014 has stated that in terms of Government of India, Ministry of Health and Family Welfare, New Delhi Lr. No. 11012/05/2013 VI dated 06.06.2014, the pay scale of Research Assistants has been upgraded to Grade Pay of Rs. 4200/- (PB II 9300-34800/-). The revised Grade Pay will be effective notionally from 01.01.2006 and actually from 06.6.2014. Accordingly the Pay Band of the officials holding the post of Research Assistants since 01.01.2006 in

the Institution has been upgraded to Rs.9300-34800/- with Grade Pay Rs. 4200/- and other admissible allowance notionally from 01.01.2006 and the actual benefits from 06.06.2014. It is the case of the applicants that the aforesaid impugned order of the 1st respondent is affecting the entitlement of pay eligibility on par with the other counterparts of the similarly placed institutions viz., Central Leprosy Teaching and Research Institute, Chengalpattu, Indian Council of Medical Research, New Delhi, Central Research Institute, Kasauli and the Research Assistants are incurring heavy financial loss of arrears from 01.01.2006 and state that there is every justification in giving monetary effect in the revised scale of pay of Rs. 9300-34800 with Grade Pay of Rs. 4200/- w.e.f. 01.01.2006 itself on par with their counterparts of the similarly placed institutions, since the applicants herein also have been working contemporaneously with that of their counterparts w.e.f. 01.01.2006 in similarly placed institutions viz., Central Leprosy Teaching and Research Institute, Chengalpattu, Indian Council of Medical Research, New Delhi, Central Research Institute, Kasauli. Hence the applicants have filed these OAs seeking the above reliefs on the following grounds:

- i. The revision of scale of pay of the applicants viz., Research Assistants as Rs. 9300-34800 + G.P. of Rs. 4200 notionally w.e.f. 01.01.2006 and actually from 06.06.2014 is against the principles of natural justice and equity when their counterparts in the similarly placed institutions viz., Central Leprosy Teaching and Research Institute, Chengalpattu, Indian Council of Medical Research, New Delhi, Central Research Institute, Kasauli have been actually monetarily granted with

the scale of pay of Rs. 9300-34800 + Grade Pay Rs. 4200 w.e.f. 01.01.2006 itself.

ii. There must be equal pay for equal work and non-granting of Revision of Scale of pay with monetary effect from 01.01.2006 on par with their counter parts in similarly placed institutions is unjustified. When there is 'no work', then 'no pay' is the analogy. But, here the applicants have been contemporaneously working from 01.01.2006 with same job responsibility with that of their aforementioned counter parts and the non sanction of monetary effect of Revision of Scale of pay of Rs. 9300-34800 + GP Rs. 4200 from 01.01.2006 is against the principles of law.

iii. In the impugned order, the 1st respondent has not given any reasons for non granting of revised scale of pay of Rs. 9300-34800/- + GP of Rs. 4200/- with monetary effect from 01.01.2006 and it shows nothing but arbitrariness and non-application of mind and malafideness by both the first and second respondents.

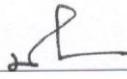
iv. The non granting of revised scale with monetary effect from 01.01.2006 to the applicants on par with their counterparts in the similarly placed institutions is against Article 14 of the Constitution of India.

v. The non-granting of scale of pay of the post of Research Assistants in PIIC, Coonoor on par with similarly placed institutions viz., Central Leprosy Teaching and Research Institute, Chengalpattu, Indian Council of Medical Research, New Delhi, Central Research Institute, Kasauli will create discontentment among the Research Assistants of the PIIC, Coonoor and their efficiency will be badly affected.

vi. The applicants in PIIC, Coonoor are also working for the National welfare on behalf of the Government of India and due recognition ought to be given in granting the revised scale of

pay with monetary effect for those Research Assistants who have worked during contemporaneous period with that of their counterparts in similarly placed institutions mentioned supra.

4. The respondents have filed reply statement. It is stated in the reply that the applicant in OA 766/2015 had earlier filed OA No.429 of 2013 before this Tribunal. The said OA was disposed of vide order dated 28.03.2013. The second respondent Institute had taken up the matter with the 1st respondent vide its letter dated 1.5.2013. The 1st respondent, thereafter vide letter No. V.11012/05/2013-VI dated 6.6.2014 had conveyed the approval of Dept. of Expenditure, Ministry of Finance for the grant of Grade Pay of Rs. 4200/- (in PB-II, Pay Scale Rs. 9300-34800) to the post of Research Assistants in PII, Coonoor. The revised GP of Rs. 4200/- will be effective notionally from 1.1.2006 and actually from the date of issue of this order. Accordingly, the 2nd respondent Institute has issued Office Order No.PII/Admin/Pay Fixation/1370/2014 dated 24.06.2014 to that effect upgrading the Pay Band of the officials holding the post of Research Assistant to Rs. 9300-34800/- with Grade Pay of Rs. 4200/- and other admissible allowances notionally from 01.01.2006 and the actual benefits from 06.06.2014. The respondents relied on the decision of the Hon'ble High Court of Judicature Madras in Writ Petition No 40701/2002 in support of their submission. Wherein the Hon'ble High Court while dealing with the issue of similar nature dismissed the Writ Petition. Hence the respondents pray for dismissal of the OA.



5. The applicants have filed rejoinder more or less reiterating the averments made in the OAs.

6. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

7. The point for consideration in these OAs is whether the applicants are entitled to upgradation of Grade Pay with financial benefit with effect from 01.01.2006 to 06.06.2014 or notionally from 01.01.2006 to 06.06.2014 ie., the date of issue of the order.

8. Admittedly the applicants are working under the third respondent Institute as Research Assistant and Senior Research Assistant respectively. The second respondent Institute is an autonomous Institute controlled and governed by the Ministry of Health and Family Welfare Department, New Delhi. The applicants pray for revision of pay scales w.e.f. 01.01.2006 on par with their counterparts working in similarly placed institutions. They seek parity with the employees working in autonomous bodies which have separate rules and procedures with different educational and other qualifications.

9. The learned counsel for the applicants would submit that there cannot be any discrimination between the applicants and others who are working in similarly placed institutions who are discharging the same work with the same required qualifications etc., and in that context, the second respondent's Institute had taken up the matter of revision of pay scale of Research Assistants w.e.f. 01.01.2006 with the first respondent vide letter dated 01.05.2013 whereafter approval of Department of

Expenditure, Ministry of Finance vide letter dated 06.06.2014 was conveyed for grant of Grade Pay of Rs.4200/- (PB-II) in the pay scale of Rs.9300-34800 to the post of Research Assistants in PIL, Coonoor. Pursuant to the above, the second respondent Institute issued Office Order dated 24.06.2014 upgrading the Pay Band of the officials holding the post of Research Assistants to Rs.9300-34800 with GP Rs.4200 notionally from 01.01.2006 and actually from 06.06.2014. The applicants seek grant of revision of pay scale retrospectively w.e.f.. 01.01.2006.

10. The learned counsel for the respondents on the other side would contend that the Pasteur Institute of India, Coonoor, the second respondent herein is a body registered under the Societies Registration Act of 1860. The Institute has its own bye-laws applicable to its various day to day administrative affairs. It is an autonomous Institute and though wholly controlled and governed by the Ministry of Health and Family Welfare, Government of India, the rules and orders of Government of India is not made applicable in toto. The Management of this Institute adopts the rules and orders of the Central Government after obtaining specific approval from the Governing Body from time to time.

11. The respondents in compliance with the order of this Tribunal in OA.429/2013 dated 28.03.2013 took up the matter with the 1st respondent. Thereafter, the 1st respondent conveyed the approval of the Department of Expenditure, Ministry of Finance for the grant of *R*

Grade Pay of Rs.4200/- to the post of Research Assistants in PII, Coonoor. The revised Grade Pay of Rs.4200/- was made effective notionally from 01.01.2006 and actually from the date of issue of the order, The 2nd respondent issued Office Order on 24.06.2014 to that effect upgrading the pay band of the officials holding the post of Research Assistants to Rs.9300-34800 with Grade Pay of Rs.4200/- and other admissible allowances notionally from 01.01.2006 and actual benefits from 06.06.2014.

12. It is settled law that fixation of pay scale is the prerogative of the employer and so long as the constitutional rights or statutory rights are not hampered, the decision of the Executive cannot be questioned. In the case of State of M.P. vs Pramod Bhartiya (1993)1 SCC 359,, the Apex Court has held as under:-

2. In Randhir Singh Chinnappa Reddy, J. speaking for the Bench of three learned Judges said:

"We concede that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the Pay Commission and not for courts but we must hasten to say that where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the power, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same

13. Again, in para 13 of the said judgment the Apex Court had observed as under:-

"13. ... It must be remembered that since the plea of equal pay for equal work has to be examined with reference to Article 14, the burden is upon the petitioners to establish their right to equal pay, or the plea of discrimination, as the case may be.

14. In so far as upgradation is concerned, the Ministry of Finance had ruminated on the subject and afforded the Grade Pay of Rs 4200/- notionally w.e.f. 01-01-2014 and actually from 06-06-2014. The claim of the applicants is that the revised pay should be effective from 01-01-2006 on actual basis. Obviously, this claim is on the basis of parity qua other Institutes. The contention of the applicant that the post of Research Assistant is identical with the post in similarly placed institutions namely Central Leprosy Teaching and Research Institute, Chengalpattu, Indian Council of Medical Research, New Delhi, Central Research Institute, Kasauli, has not, however, been accepted by the Government of India. Had there been parity with the above institutes the same would have been from the beginning itself. No evidence has been produced to show historical parity in pay scales for the Research Assistants in all these institutes. Each entity being self governing, each such Institution has its own Recruitment Rules and Pay Scales. For establishing a parity, the qualifications, experience, the subject matters in the academic qualification, the method of recruitment etc., should be comparable. The applicants have not produced any documents in this regard. Had such parity been proved, the ratio in *Randhir Singh (supra)*

would have been pressed into service in this case as well. That is not so.

15. When a proposal is considered and a decision taken, it is trite that the decision is effective from the date of the said decision. In the instant case, such a decision took place on 06-06-2014, though the grade pay of Rs 4,200/- has been prescribed in the VI Pay Commission effective from 01-01-2006. The Ministry of Finance has however, allowed the benefit of grade pay notionally w.e.f. 10-01-2006.

16. It is pertinent to mention here that in the case of certain charge electrician etc., in the Ministry of Defence, the V Pay Commission had recommended the higher pay scale for the post of Overseer (Civil) in Border Roads Organization and the V CPC accepted the claim and recommended the pay scale of Rs 5000 – 8000 w.e.f. 01-01-1996. And, the same was also accepted by the Government, but somehow, the same was not executed. When the same has been brought to the notice of the VI CPC, the Pay Commission recommended as under:-

7.39.22 Higher Pay scale has been demanded for the post of Overseer (Civil) in Board Roads Organization on the ground that the minimum qualification for the post is Diploma in Engineering. The post carries minimum direct recruitment qualifications of Diploma in Engineering. These minimum qualifications had been prescribed in 1996. Fifth CPC in their Report submitted in 1997, had recommended the scale of Rs 5000 – 8000 for all posts carrying minimum direct recruitment qualifications of Diploma in Engineering. This recommendation was accepted. The post should consequently have been extended the scale of Rs 8000 w.e.f. 01-01-1996. This was, however, not done. The Commission accordingly recommends that the post of Overseer may be upgraded and merged with their promotion post of Superintendent BR Grade(present scale Rs.4500-7000) and the

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combined cadre extended the scale of Rs 5000-8000. Since the Commission has recommended merger of the scales of Rs 5000-8000, Rs.5500-9000 and Rs 6500-10500, the post will be placed in the revised Pay band PB-2 of Rs.8700-34800 along with a grade pay of Rs. 4200. Commission also advises the Government to implement this retrospectively from 01-01-1996, atleast for the purpose of fixation of pay(emphasis already available).

17. Thus, the revised pay was made available to the beneficiaries on notional basis w.e.f. 01-01-1996 and actually from 01-01-2006. The notional fixation only had been granted in a case where the decision to grant higher pay scale took place in 1996-97, and actual w.e.f. 01-01-2006, in the case of the applicants the very decision took place only on 06-06-2014 and the Ministry of Finance extended the grant of Grade Pay with retrospective effect from 01-01-2006 on notional basis, which itself is a gratis.

18. The Hon'ble Supreme Court in the case of Union of India and another vs. Manik Lal Banerjee (2006) 9 SCC 643 has held that "it is now a well settled principle of law that financial implication is a relevant factor for accepting the revision of pay". In the case of State of Haryana and another vs. Tilak Raj and others (2003) 6 SCC 123, the Hon'ble Supreme Court held that "to claim a relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-a-vis an alleged discrimination". In the case of Steel Authority of India Limited and others vs. Dibyendu Bhattacharya (2011) 11 SCC 122, the Court held as follows:-

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"28. In Union of India and others vs. S.I Dutta and Another (1991) 1 SCC 505, Union of India and others vs. N.Y.Apte and others (1998) 6 SCC 741, State of UP and others vs. J.P. Chaurasia and others (1989) 1 SCC 121 and Kshetriya Kisan Gramin Bank vs. D.B. Sharma and others (2001) 1 SCC 353, this Court held that the determination that two posts are equal or not, is a job of the Expert Committee and the court should not interfere with it unless the decision of the Committee is found to be unreasonable or arbitrary or made on extraneous considerations. More so, it is an executive function to fix the service conditions etc., and lies within the exclusive domain of the rule-making authority (see also T. Venkateswarlu vs. Executive Officer, Tirumala Tirupathi Devasthanams and others (2009) 1 SCC 546)"

In S.C. Chandra and others vs. State of Jharkhand and others (2007) 8 SCC 279, the Hon'ble Supreme Court while observing that the grant of pay scales is a purely executive function and the court should not interfere with the same, the Court held as follows:-

"33. It may be mentioned that granting pay scales is a purely executive function and hence the court should not interfere with the same, it may have a cascading effect creating all kinds of problems for the Government and authorities. Hence, the court should exercise judicial restraint and not interfere in such executive function vide Indian Drugs & Pharmaceuticals Ltd vs. Workmen, Indian Drugs & Pharmaceuticals Ltd (2007) 1 SCC 408,

.....
35. In our opinion fixing pay scales by courts by applying the principles of equal pay for equal work upsets the high constitutional principle of separation of powers between the three organs of the State. Realising this, the Court in recent years avoided applying the principle of equal pay for equal work. Unless there is complete and wholesale identity between the two groups (and there too the matter should be sent for examination by an Expert Committee appointed by the Government instead of the court itself granting higher pay)."

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19. The Head Clerks of the Respondent institute had approached the Hon'ble High Court of Madras by filling WP No.40701/2002 against the decision of the first respondent conveyed in letter dated 24.12.2001 to upgrade the pay scale of Head Clerks/Assistants from Rs.4500-7000 to Rs.5000-8000 with effect from the date of issue of order (ie.24.12.2001) at the 2nd respondent Institute and seeking a direction to implement the same with retrospective effect from 01.01.1996. The view enunciated by the Hon'ble High Court in the above Writ Petition while dealing with an issue of a similar nature, is equally applicable to the case on hand. The Hon'ble High Court of Madras in WP.40701/2002 dated 03.11.2010 in the case of T.U. Loganathan and others vs. Union of India and another has held at paras 11 and 12 as follows:-

11. It is a well settled principle of law that the fixation of pay and the upgradation of pay scale is well within the jurisdiction of the authorities concerned. This Court cannot exercise the judicial review unless the decision is tainted with illegality or arbitrariness. In the present case on hand, the first respondent has accepted the recommendations of the second respondent only in so far as the post of the petitioners are concerned and in fact rejected the case of the other cadres. The said fact would indicate that the power to include in Part-B of the fifth pay commission recommendation is a discretionary power based upon the materials available on record. When such a discretion is exercised it cannot be stated that it should be exercised with retrospective effect in the absence of any vested right accruing to the petitioners.

12. The contention of the learned counsel for the petitioners that the persons who are similarly placed in other autonomous bodies have been given the benefit of fixation of pay scale with effect from 01.01.1996 also cannot be countenanced. Such

autonomous body is a distinctly different entity. Therefore, the violation under Article 14 of the Constitution of India would come only when there is a discriminative treatment between the same clause of persons. The mere fact that the first respondent has accepted the recommendations by also taking into consideration that such benefit has been given to the employees of other autonomous bodies, cannot be a ground to hold that the fixation for the petitioners will have to be made with retrospective effect from 01.01.1996 onwards. Further a perusal of the relevant portion containing Part-B regarding the revised pay scales for common categories of staff would indicate that by including a new set of employees into Part-B, such an order will take effect prospectively and not retrospectively.

20. A perusal of the orders impugned in these OAs would clearly show that what was done is only upgradation of pay. Therefore this Court finds that the submission made by the learned counsel for the applicants that in pursuance of the decision of the first respondent, as a natural consequence, the benefit of upgradation of pay will have to be extended to the applicants herein w.e.f. 01.01.2006, cannot be accepted. The recommendations have been made by the respondents only pursuant to the request made by the applicants. The first respondent has initially rejected the recommendations made, which order was also not challenged. The very right has accrued to the applicants only in pursuance to the recommendations made by the third respondent, which resulted in the order impugned. Therefore, the applicants being the beneficiary of the order as well as the recommendations made by the third respondent cannot turn around and challenge the same taking a contrary stand. Such a contention cannot be made permissible in law.

21. The second respondent Institute has taken consistent efforts in recommending the case of the applicants and has issued the Office Order No.PII/Admin/Pay Fixation/1370/2014 dated 24.06.2014 upgrading the Pay Band of the officials holding the post of Research Assistant to Rs.9300-34800 with Grade Pay of Rs.4200 and other admissible allowances notionally from 01.01.2006 and the actual benefits from 06.06.2014.

22. In view of what has been stated above and the Judgements of the Hon'ble Supreme Court in similar cases that in matters like fixation of pay scale, the scope of judicial review is very limited, we are not inclined to interfere with the impugned order of the respondents.

23. In the result, the OAs are liable to be dismissed and are accordingly dismissed, however, with no order as to costs.