

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
(CIRCUIT BENCH AT SRINAGAR)**

O.A.NO.062/01290/2018

Orders pronounced on: 30.08.2019
(Orders reserved on: 09.07.2019)

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MR. ARADHANA JOHRI, MEMBER (A)**

1. Tariq Ahmad Malik (Aged 37 years) S/o Farooq Ahmad Malik R/o Banakoot, Bandipora.
2. Manzoor Ahmad Dar (Aged 26 years) S/o Abdul Ahad Dar R/o Chaterhama, Wadi Mohalla, Srinagar.
3. Arshid Ahmad Mir (Aged 32 years), S/o Sona Ullah Mir, R/o Gulab Bagh, Srinagar.
4. Abdul Hamid Ganaie (aged 44 years) S/o Ghulam Ahmad Ganaie, R/o Kargam, Palachiti, Budgam.
5. Khursheet Ahmad Mir (aged 33 years), S/o Abdul Rashid Mir, R/o Nowhatta near Jamia Masjid, Srinagar.
6. Javeed Ahmad Dar (aged 39 years), S/o Ghulam Rasoor Dar R/o Daulatabad, Khanyar, Srinagar.
7. Ghulam Hassan Dhobi (aged 38 years) S/o Abdul Ahad Dhobi R/o Paizalpora, Shalimar, Srinagar.
8. Manzoor Ahmad Magray (aged : 40 years) S/o Abdul Jabar Magray R/o Chaper, Gund, Ganderbal.

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Applicants

Versus

1. Union of India through Secretary to Government of India, Ministry of health & Family Welfare, Department of Ayush, Red Cross Building, Red Cross Road, New Delhi.
2. Director General, Central Council For Research in Unani Medicine JNLBCHAB, 61-65, Institutional Area, Opp. D-Block, Janakpuri, New Delhi-110058.
3. Assistant Director I/C Regional Research Institute of Medicine, University of Kashmir, Srinagar-6.
4. Assistant Director (ADM), Central Council for Research in UNANI medicine JNLBCHAB, 61-65, Institutional Area, Opp. D-Block, Janakpuri, New Delhi-110058.

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Respondents

**Present: MR. S.A. MAKROO, ADVOCATE, FOR THE APPLICANTS.
MR. SATINDER SINGH, ADVOCATE, FOR RESPONDENTS.**

ORDER
(BY HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):

The applicants have invoked the jurisdiction of Hon'ble High Court of J&K by filing SWP No. 460/2018, which has now been transferred to this Tribunal vide order dated 18.9.2018, as jurisdiction to adjudicate the issue lies with this Court, and registered as O.A. No. 062/01290/2018, seeking quashing of the impugned order dated 23.11.2017 (Annexure 'J'), and order dated 17.1.2018 (Annexure 'K') vide which a decision has been taken that contractual Data Entry Operator (DEO) and Multipurpose Attendant (MTA), who are below 12th pass shall be paid existing remuneration and hold same designation as they were holding prior to issuance of guidelines dated 10.07.2017, whereas those having 12th class would be given revised designation of Office Assistant and Multi Tasking Attendant (MTA) and given revised remuneration of Rs.20,000/- and Rs.16,000/- respectively, w.e.f. 15.6.2017.

2. During the pendency of the Writ Petition, applicant No.4 (Abdul Hamid Ganaie) and Applicant No. 6 (Javeed Ahmad Dar) were deleted from the array of the parties, vide orders dated 19.3.2018.

3. Today, when the matter came up for hearing, learned counsel for the parties made a statement at the bar that Applicants No. 1, 3 and 5 have already been granted the due benefits. The case of applicant No.2 is under consideration and on verification of his educational qualification certificate, he too is also likely to be extended the due benefits and as such it is prayed that the case qua them be also disposed of as infructuous. Ordered accordingly.

4. The O.A. is now treated qua Applicants No.7 and 8 only. The learned counsel for the applicants vehemently argued that the nature of work performed by these two applicants is also as performed by other

applicants and as such the categorisation done by respondents on the basis of qualifications is illegal and arbitrary and the revised payment of pay and allowances is to be granted to them also.

5. On the other hand, learned counsel for the respondents vehemently argued that the higher pay scales and changed designation can be granted only to those contractual workers, who are matriculate and not to the persons like applicants who do not possess such mandatory qualification in the Scheme. He argues that the classification done by the respondents is proper and meets the requirement of law and there is no violation of Articles 14 and 16 of the Constitution of India.

6. We have considered the submissions made on both sides and are of the considered opinion that the applicants do not deserve any benefit of the Scheme, unless they fulfil the qualifications provided in the relevant Scheme. The respondents have themselves extended benefit of revised designation and higher allowances to the applicants, during pendency of petition, who possess the relevant qualification and have shown their inability to grant it to remaining two applicants, who admittedly, do not possess such qualification. The issue as to whether higher pay scales, on the basis of higher qualification can be granted or not, is no longer res-integra and stands settled by now.

7. In a number of decisions the Hon'ble Apex Court, has negatived the claim for equal pay for equal work on the ground that the different pay scales prescribed for persons doing similar or same work is permissible on the basis of classification founded on the measure of responsibilities, educational qualifications, experience and other allied matters. In

FEDERATION OF ALL INDIA CUSTOMS AND CENTRAL EXCISE STENOGRAPHERS (RECOGNISED) V. UNION OF INDIA, 1988 AIR 1291 it was held: "... there may be qualitative differences as regards reliability

and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. It is important to emphasise that equal pay for equal work is a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of that right." The Lordships further held "The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less — it varies from nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object sought for, as reiterated before a certain amount of value judgment of the administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the court unless it is demonstrated that either it is irrational or based on no basis or arrived malafide either in law or in fact."

8. In the case of **STATE OF U.P. V. J.P. CHAURASIA**, (1989 1 SCC 121) the Apex Court negatived the claim of Bench Secretaries for equal pay for equal work on the basis of reasonable classification based on merit, experience and seniority though both sets of employees were performing the similar duties and having similar responsibilities. In **MEWA RAM KANOJIA V. AIIMS**, 1989 AIR 1256 the Apex Court refused to grant relief to the petitioner for parity in pay on the application of the principle of "equal pay for equal work" on the ground of reasonable classification on the basis of educational qualifications.

9. Considering the facts of this case and the law laid down by the highest dispensation of the country, we are of the considered opinion that since remaining two respondents do not fulfil the eligibility criteria of qualification for grant of revised designation and higher pay scale, their claim has rightly been rejected and no grounds are seen to interfere with impugned orders as the respondents have drawn a reasonable classification which is in accord with constitutional provisions.

10. In the conspectus of above discussion, this O.A. qua two applicants No. 7 and 8 is dismissed, while qua rest of them it already stands disposed of as withdrawn/ infructuous. The parties are left to bear their own costs.

**(ARADHANA JOHRI)
MEMBER (A)**

**PLACE: SRINAGAR
DATED: 30.08.2019**

HC*

**(SANJEEV KAUSHIK)
MEMBER (J)**

