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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 10645/2016 & C.M. APPL. 34498/2019**

AMAR CHAND AND ORS. Petitioners

Through Mr. Sudarshan Rajan and Mr. Hitain
Bajaj, Advocates

versus

UNION OF INDIA AND ORS. Respondents

Through Mr. Manish Mohan, CGSC for
Respondent No. 1
Mr. Santosh Krishnan, Mr. Yakesh
Anand, Ms. Sonam Anand and
Mr. Akshay Thakur, Advocates for
Respondents.

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+ **W.P.(C) 10649/2016 & C.M. APPL. 34497/2019**

SABU THOMAS AND ORS. Petitioners

Through Mr. Sudharshan Rajan and Mr. Hitain
Bajaj, Advocates

versus

UNION OF INDIA AND ANR. Respondents

Through Mr. Ajay Digpaul, CGSC for
Respondent No. 1.
Mr. Santosh Krishnan, Mr. Yakesh
Anand, Ms. Sonam Anand and
Mr. Akshay Thakur, Advocates for
Respondents.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

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ORDER
16.01.2020

Dr. S. Muralidhar, J.:

1. Radiographers working at the Employees State Insurance Corporation ('ESIC') have filed these petitions against a common order dated 10th August, 2016 passed by the Central Administrative Tribunal ('CAT'), Principal Bench, New Delhi rejecting their prayer to be granted the pay scale of Rs.5,000-8,000/- as given to their counterparts in other Ministries/Departments of the Government of India with effect from the due dates in accordance with the recommendations of the Anomalies Committee.

2. In the first round of litigation, the Petitioners filed O.A. Nos. 3627/2009 and 926/2010 before the CAT seeking grant of the pay scale of Rs.5,000-8,000/- that was granted to their counterparts in other Ministries/Departments. By an order dated 16th November, 2010, the CAT disposed of the said application with a direction to the Respondents to process their claim for the grant of such pay scale.

3. The genesis of the said O.A.s before the CAT was an earlier O.A. No.308/2005 filed before the Madras Bench of the CAT by similarly placed Radiographers in the ESIC. Against the order dated 25th July, 2006 of the CAT, Madras Bench in O.A. No.308/2005 allowing the prayer for grant of the pay scale of Rs.5,000-8,000/-, the Respondents filed W.P. No.27142/2008 in the High Court of Madras, which, by its order on 28th April, 2009, modified the order of the CAT, Madras Bench and directed the Respondents herein to

consider the claim of the applicants and pass an order.

4. In O.A. Nos.3627/2009 and 926/2010, it was contended by the applicants that unless there was going to be any departure from the rules and orders applicable to officers and employees of the Central Government while extending them to employees of the ESIC in terms of Section 17(2) of the ESIC Act, for which prior approval of the Central Government had to be obtained, the applicants could not be denied the same pay scale as was applicable to Radiographers employed in the medical establishments of/and under the control of the Central Government. The plea was resisted by the Respondents on the ground that the Central Government had till then not implemented the pay scale in respect of the Radiographers working under it. It may be mentioned here that the grant of the pay scale of Rs.5,000-8,000/- had been recommended by the 5th Central Pay Commission ('CPC').

5. However, in those proceedings, along with their rejoinder, the applicants enclosed certain documents which showed that the said pay scale had in fact been implemented by the Central Government. Considering this to be "a new fact", a direction was issued by the CAT by its order dated 16th November, 2010 to the Central Government "to process the claim of the applicants for such grant of pay scale" within a period of three months.

6. Pursuant to the above order dated 16th November, 2010 of the CAT, the Respondents purported to process the claim of the applicants by way of a speaking order dated 11th April 2011, which found them ineligible for the grant of the higher pay scale of Rs.5,000-8,000/- on the ground that it was "to be

granted only to such of the post of Radiographer for which minimum qualification of three years diploma has been prescribed”, which was not a prerequisite for appointment of Radiographers in the ESIC.

7. A C.P. No. 702/2011 was filed before the CAT against the abovesaid speaking order dated 11th April, 2011, which was disposed of by way of an order dated 31st October, 2011, holding that while there was no contumacious conduct on the part of the Respondents in the passing of the aforementioned order, the applicants would be at liberty to challenge the said speaking order dated 11th April, 2011 in appropriate proceedings. This led to the second round of litigation in which two sets of O.A.s, O.A. No. 707/2012 and O.A. No. 1338/2012 were filed afresh.

8. It requires to be noticed that under the Recruitment Rules (‘RRs’) for the post of Radiographers in the ESIC, the education qualification is “matric or equivalent qualification from a recognised board, diploma (2 years course) in radiography.” A further requirement is that the applicant has to have at least one year’s experience in Radiography. The pay scale attached to the post was Rs.330- 560/-, revised to Rs.1350-2200/-. At the time of filing of the petitions, the Petitioners were drawing a pay scale of Rs.4000-6000/-.

9. The pay scales for Radiographers/X-Ray staff have been discussed at length in the recommendations of the 5th CPC, the relevant portions of which are as under:

“52.105. Radiography and x-ray staff, numbering about 383 have different cadre structures in different central Government Hospitals in the following pay scales:

1. Sr. Radio therapy Tech. (supervisor)/ Sr. Tech. Asstt./ Radiographer (Sup) Sr. Radiographer/ Sr. Radiographer Supervisor/ Radiographic Gr. I	Rs. 1640-2900
2. Sr. Radiographer	Rs. 1600-2660
3. Sr. Radiographer/Sr. X-ray Tech/Radiographer Gr. I	Rs. 1400-2600
4. Sr. Radio Therapy Tech/ Sr. Radiographer/Tech. Asstt./Radiographer Gr. II	Rs. 1400-2300
5. Radiographer/X-ray Technician/Radiographer Gr.II	Rs. 1350-2200
6. Sr. Dark Room Asstt. Technicians	Rs. 1200-2040
7. Dark Room Asstt. Radiographer Gr. III	Rs. 975-1540
8. Dark Room Asstt/ Jr., Radiographers	Rs. 950-1500
9. Tech. Asstt. (X-ray)	Rs. 825-1200
10. Dark Room Attendant	Rs. 800-1150

52.106. Radiography and x-ray staff have demanded that their posts should be upgraded in view of enhancement of entry level qualifications. Apart from provision of adequate promotion prospects, grant of a radiation risk allowance has also been asked for.

52.107. On an analysis of the recruitment rules of various institutions engaging these personnel, we find that Radiographers usually enter service at three levels. As dark room Assistants in the scale of pay of RS. 950-1500 recruitment is 100% direct with qualifications of Matric plus certificate in Radiography. The next higher level is that of x-ray Assistant/Sr. Dark room Assistant (RS. 1200-2040) recruited 50% by promotion from among dark room Assistants and 50% by direct recruitment with the same qualifications. Radiographers in the scale of pay of Rs. 1350-2200 are recruited 20% by direct recruitment with Matric plus a Assistants. Higher posts of Technical Assistant (Radiography) Sr. Radiographer (SUP), Radio Therapy Technician etc. are usually filled by promotion from these lower grades. The Association of these employees has represented that a lot of hospitals and institutions have converted this minimum 2 years requirements of diploma certificate, in Radiography to a 3 year Diploma in Radiological technology. And accordingly the minimum entry for radiographers with these qualifications should be placed in the scale of pay of Rs. 2000-3500 keeping in view the nature of duties and educational qualifications and the existing levels in various hospitals and institutions. We recommend following entry levels for this category for future recruitments, as for Laboratory and OT personnel as follows:

S.No.	Existing	Present scales (Rs.)	Proposed scales (Rs.)	Proposed designation	
1.	Radiographer technician/supervisor/Sr. Radiographer		2000-3500	Radiographer	Dynamic ACP Scale
2.	Radiographer Technician/supervisor/Sr. Radiographer	1640-2900	1640-2900	Radiographer-II	No change
3.	Radiographer	1350-	1600-2660	Radiographer	Upgradation

		2200			
				III	In view of DR qualification
4.			1400-2300	Asstt. Radiographer-I	Dynamic ACP Scale
5.	Senior Dark Room Asstt. Technician (X-ray)	1200-2040	1320-2040	Asstt. Radiographers -II	Post redesignated, pay scale rationalized
6.	Dark room Asstt. Tech. Asstt. (X-ray)	950-1500	950-1500	Asstt. Radiographer-III	Post redesignated

The present incumbents in the posts of Radiographers, requiring a minimum of 2 years, diploma/certificate after 10+2 may be placed at the level of Rs.1320-2040. Entry level qualification for Asstt. Radiographers will be at least 10+2 with science, besides a certificate in Radiography. Since posts at SI. No. 1 form feeder to the latter, the gap may be bridged by placing Sr. Dark Room Assistants at the level of Rs. 1320-2040; with an ACP at the level of Rs. 1400-2300. Radiography Technician/supervisors and Sr. Radiographers being promotion posts, may be placed at the level of Rs.1640-2900. There will be one more level for 2nd ACP of Radiographers at the scale of Rs. 2000-3500. Dark Room Attendants may be merged with the common category of group D. As Radiographers are trained to handle risks of radiation, a special radiation risk allowance is not recommended.”

10. Thus, the pay scale of Radiographers i.e. Rs.1350-2200/- was first to be upgraded to Rs.1600-2660/-, after which the replacement scale was to be granted in accordance with the general recommendations, which was Rs.5,000-8,000/-.

11. The 5th CPC categorised the Radiographers as a group into two sub-categories as under:

“a. Radiographers with three intermediate degrees in between:

(i) Radiographers Grade I with the pay scale of Rs. 2000-3500 under Dynamic ACP II

(ii) Radiographers Grade II with the erstwhile pay scale of Rs. 1640-2900 with corresponding replacement and

(iii) Radiographers Grade III with the erstwhile pay scale of Rs. 1350-2200 upgraded to Rs. 1600-2660 with corresponding replacement scale of Rs. 5000-8000

b. Sub grades of Radiographers

(i) Assistant Radiographer Grade I with the pay scale of Rs. 1400-2300 and corresponding replacement scale tenable under the dynamic ACP scale.

(ii) Senior Dark room assistant called Assistant Radiographer Grade II with the erstwhile pay scale of Rs. 1200-2040, to be upgraded to Rs. 1320-2040 and given the corresponding replacement scale.

(iii) The Dark room Assistant called Assistant Radiographer Grade III with the erstwhile pay scale of Rs. 950-1500 a corresponding replacement.”

12. The recommendations of the 5th CPC were accepted by way of a notification dated 30th September, 1997. The Petitioners have pointed out how the abovesaid replacement scale has been granted to Radiographers in the Central Government Health Scheme (‘CGHS’) as well as government-run hospitals in Delhi like the Safdarjung Hospital and the All India Institute of Medical Sciences (‘AIIMS’). The latter came to be done by virtue of an order dated 13th April, 2004 of the CAT in OA Nos. 2672/2003, 2748/2002 & 2438/2002.

13. The said O.A.s were filed by Senior Radiographers in various hospitals of the Government of NCT of Delhi. They went before the CAT after the revised pay scale of Rs.5,000-8,000/- granted to them pursuant to the recommendations of the 5th CPC which was sought to be withdrawn by notifications dated 1st July, 2002, 15th July, 2002, and 2nd August, 2002 in purported compliance with an order dated 8th August, 2001 passed by the CAT in O.A. No.1219/1999 filed by Technical Assistants and Technical Supervisors from Departments of Radiology.

14. In defending the said decision to revert the pay scale of the applicants from Rs.5,000-8,000/- to Rs.4,500-7000/-, it was contended by the Respondents that in terms of the qualification for the post of Radiographer, the pay scale of Rs.5,000-8,000/- could only be extended to those posts for which the minimum qualification was the three year diploma in Radiological Technology. The Health Department had moved a proposal on 18th April, 2002 for the removal of the anomaly pointed out in O.A. No.1219/1999, after which the Department of Personnel and Training ('DoPT') took a decision to remove the anomaly by placing Senior Radiographers in the pay scale of Rs.4300-7000/- and Junior Radiographers in the pay scale of Rs.4,000-6,000/-. Thus, the pay scale of Rs.5,000-8,000/- of Senior Radiographers stood withdrawn with effect from 1st January, 1996.

15. The CAT, in the aforementioned order dated 13th April, 2004 found that the withdrawal of the pay scale of Rs.5,000-8,000/- retrospectively from 1st January, 1996 was without issuing any Show Cause Notice to the applicants, and was therefore violative of the principles of natural justice. It was further observed that:

“24. Another aspect which has to be looked into is invidious discrimination. The hostility in action is apparent as the counterparts in various other Ministries and departments despite having identical qualifications have been placed in the higher pay scale of Rs.5000-8000 a similar treatment has been denied to applicants which would amount to creating a class within the class which does not pass the test of reasonableness and violates principles of equality.”

16. Accordingly, the following directions were issued:

“25. Having regard to the aforesaid discussion and conclusion arrived at, we are of the considered view that the issue requires reconsideration by the Government. Respondents are directed to re-examine the entire matter in the light of our observations and take a final decision within a period of six months from the date of receipt of a copy of this order. Till then status quo with respect to applicants in the context of the present pay scale be maintained and recovery shall not be given effect to. No costs.”

17. The challenge by the Union of India to the abovesaid order dated 13th April, 2004 of the CAT was negatived by this Court in W.P.(C) 3070/2007 by an order dated 29th August, 2007. It was noted, *inter-alia*, as under:

“The petitioner approached this Court in April, 2007, i.e. three years after the impugned judgment and after giving assurances to the Tribunal to implement the judgment and taking extension on the basis of this plea. In view thereof, we are not inclined to exercise our extraordinary jurisdiction under Article 226 of the Constitution. This petition is dismissed as barred by laches and delay as well as on the principles of estoppels, with costs quantified at Rs. 10,000/.”

18. In the meanwhile, on 8th November, 2006, the CAT passed a similar order in a batch of O.A.s, of which the lead matter was O.A. No. 791/2006 (***K. Upendra Mohan vs. Government of India***). These O.A.s were by Radiographers working

with the Ordnance Wing of Ministry of Defence at different stations. By the said order dated 8th November, 2006, the CAT directed the Respondents to re-examine the question of the reversal of the pay scale from Rs.5,000-8,000/- to Rs.4500-7,000/- in light of the observations of the CAT in its order dated 13th April, 2004 in O.A. Nos. 2672/2003, 2748/2002 & 2438/2002.

19. The Respondents, thereafter, themselves convened a Committee for the removal of anomalies. The said 'Pay Committee' submitted its detailed report where, *inter-alia*, the revision of the pay scale of Radiographers in the pay scale of Rs.4,500–7,000/- was fixed at Rs.5,000-8,000/-.

20. Meanwhile, as noted hereinbefore, Radiographers working in South India approached the CAT, Madras Bench in O.A. No.308/2005 seeking implementation of the recommendations of the Pay Committee. By an order dated 25th July, 2006, the CAT, Madras Bench allowed the said OA and directed the Respondents to implement the said recommendations.

21. The aforesaid order dated 25th July, 2006 was challenged by the Union of India in the High Court of Madras by way of W.P. No.27142/2009. In modification of the said order of the CAT, Madras Bench, the High Court directed the Respondents to consider the applicants' prayer for the implementation of the recommendations of the Pay Committee.

22. Thereafter, by an office order dated 3rd October, 2008, the Safdarjung Hospital in New Delhi granted to Radiographers the pay scale of Rs.5,000-8,000/- in terms of the order of the CAT in OA Nos. 2672/2003, 2748/2002 & ***W.P.(C) 10645/2016 & W.P.(C) 10649/2016***

2438/2002 as upheld by this Court in W.P.(C) 3070/2007. It has been pointed out how the Recruitment Rules ('RRs') for the post of Radiographers in the Safdarjung Hospital are the same as the RR for Radiographers in the ESIC.

23. Similarly, the pay scale of Radiographers in Ordnance Factories was fixed at Rs.5,000-8,000/- pursuant to an office order dated 29th October, 2010. It has been further indicated that the qualifications for the post of Radiographers in Ordnance Factories were the same as that for Radiographers in the Safdarjung Hospital. Radiographers in the CGHS are also evidently drawing the same pay-scale, whose RRs are also similar to the RRs of the ESIC as far as Radiographers are concerned.

24. Radiographers working in the Sashastra Seema Bal ('SSB'), under the control of the Ministry of Home Affairs ('MHA'), have also been granted the pay scale of Rs.5,000-8,000/- by an office order dated 15th February, 2011. Likewise, Radiographers in the Municipal Corporation of Delhi ('MCD') have been granted the pay scale of Rs.5,000-8,000/-.

25. As already noticed, in the first round, the Petitioners filed O.A. Nos. 3627/2009 and 926/2010, which came to be disposed of on 16th November, 2010, directing the Central Government to process the claim of the Petitioners within three months. The claim of the Petitioner was rejected by the Respondents by the speaking order dated 11th April, 2011. Thereafter, the Petitioners approached the CAT and the impugned order dated 10th August, 2016 in O.A. Nos. 707/2012 and 1338/2012 was passed.

26. The Petitioners point out how in the meanwhile Radiographers of Ram Manohar Lohia ('RML') Hospital also approached the CAT in O.A. No. 3627/2012, which was allowed on 7th November, 2012.

27. Learned counsel for the Respondents at the outset pointed out that since there was no stay granted by this Court on the impugned order of the CAT, the Respondents, by way of implementing the directions contained in the impugned order, constituted yet another 'Independent Expert Committee' which submitted a report dated 24th August, 2017. The Respondents submit that the said 'Independent Expert Committee' observed as under:

"The Committee observed that though Ram Manohar Lohia (RML) Hospital, Ministry of Health & Family Welfare (MoH&FW), had granted the Grade Pay of Rs.4200/- to Radiographers, the same did not resolve the issue of merging of posts of Radiographer and Sr. Radiographers. Both the posts were drawing same Grade Pay of Rs.4200/-, but earlier drew different pre-revised pay scales of Rs.5000-8000/- and Rs.5500-9000/- respectively. The Committee in its report, recommended to confirm the grade pay of Rs.4200/- to Radiographers from RML Hospital (MoH&FW) in view of the recommendation of 6th Pay Commission. The Committee further recommended to restructure the cadre and amend the Recruitment Regulations of the Radiographers by including degree in the field with relevant experience as eligibility qualification criteria for appointment strictly in accordance with RRs in Central Health Services."

28. It is pointed out by the Respondents in the counter affidavit that:

"The Respondent Corporation granted the pay scale of Rs.4500-7000/- as per the recommendation of 5th CPC. The pay scale was further revised to Pay Band-1 of Rs.5200-20200/- with grade pay of Rs.2800/- as per 6th CPC. Thereafter, the pay scale of Rs.5000-8000/- and Rs.5500-9000/- merged together with grade pay of

Rs.4200/- for both the posts i.e. Sr. Radiographers and STA (Radiology) and similar action was taken by ESIC, which merged the posts of Sr. Radiographers with STA (Radiology) with grade pay of Rs.4200/-.”

29. In paragraph 11 of the counter affidavit, a table showing the comparison between Radiographers in the ESIC and Central Health Services, in terms of the existing RRs, has been set out. While there is hardly any dramatic change or difference in the minimum qualifications for the different posts of Radiographers, it is sought to be demonstrated that the post of Senior Radiographer now stands merged into the post of Senior Technical Assistant (Radiology), pursuant to the recommendations of the 6th CPC.

30. It is further pointed out that the RML Hospital also placed both Radiographers and Senior Radiographers “in the same pay grade of Rs.4,200/- (pre-revised).” According to the Respondents, the Expert Committee concluded that:

“ESIC cannot upgrade the pay of Radiographers only, in parity with Central Health Services as both have different hierarchy and requisite educational qualifications. It required complete cadre review subsequent to amendment in RR by Ministry of Health & Family Welfare, if any, may be taken up in future.”

31. In the present case, it is seen that there was already a Pay Committee that recommended the grant of the revised pay scale of Rs.5,000-8,000/- to Radiographers, accepting the recommendations of the 5th CPC. There was no justification for the withdrawal of the said revised pay scale on the ground of difference in educational qualifications. As far as the education qualifications for the post of Radiographers in the ESIC is concerned, they differ very slightly

from the qualifications for the post of Radiographers in the CGHS and other Government Hospitals. While the qualification for the post of Radiographers in the ESIC is matriculation or equivalent qualification from a recognised board and a two years' diploma course in Radiography, the corresponding qualification in the CGHS is different only to the extent that a three years' diploma course is required. This difference of a year in the lengths of the required diploma courses cannot be used to justify not giving the pay scale of Rs.5,000-8,000/- to Radiographers working in the ESIC. This is made all the more significant when it is seen that the requirement of experience is the same for either Radiographers working in the CGHS, or with the ESIC.

32. Turning now to Section 17 (2) of the ESIC Act, it is seen that there was no decision taken to depart from the applicable norm of extending to employees of the ESIC the pay scales granted to employees of the Central Government. Therefore, even from the perspective of Section 17 (2) of the ESIC Act, the impugned decision to withdraw the revised pay scales of Rs.5,000-8,000/- cannot be sustained.

33. The CAT ought to have granted the relief itself to the Petitioners instead of relegating the matter to the Respondents to examine it afresh. Since the Pay Committee had already examined this question in light of the recommendations of the 5th CPC, there was no need for re-consideration on the part of the Respondents.

34. In that view of the matter, the impugned order dated 10th August, 2016 of the CAT is set aside to the extent that it denies the relief prayed for by the *W.P.(C) 10645/2016 & W.P.(C) 10649/2016*

Petitioners. The Petitioners will be granted the revised pay scale of Rs.5000-8000 from the date on which the 5th CPC recommendations became effective, i.e. 1st January, 1996. The arrears will be paid to the Petitioners within a period of 12 weeks failing which simple interest at 6% per annum will be payable on the said sum for the period of delay. The corresponding orders implementing the present judgment and granting the subsequent revision of pay on the above basis will be issued within the same period of 12 weeks.

35. The petitions are allowed but in the circumstances no order as to costs. The pending applications are also disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 16, 2020

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