

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

Date of decision: July 01, 2013

+ **W.P.(C) 2641/2010**

GNCT OF DELHI

..... Petitioner

Represented by: Ms.Avinash Ahlawat
and Mr.Nitesh Kr.Singh,
Advocates

versus

**DELHI MEDICAL TECHNICIANS AND EMPLOYEES
ASSOCIATION AND ANR.**

..... Respondents

Represented by: Mr.Rakesh Kumar
Dudeja, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J. (Oral)

1. Undisputed position is that the post of Laboratory Technician and Technical Assistant are feeder posts to the promotional post of Senior Laboratory Technician. All 3 posts came to be placed in the pay scale ₹4500-7000. Indeed, an anomalous situation came into existence because 2 feeder posts and the 1 promotional post were placed in the same pay scale.

2. Issue came up as to what should be the pay scale in which Laboratory Technician and Technical Assistant need to be placed under the Assured Career Progression Scheme. The scheme in question, at the relevant time, envisaged one financial upgradation if

an employee had rendered 12 years service and had not earned a promotion. Such an employee was to get, what is technically known in law as an '*in situ*' promotion.

3. The scheme envisaged that if there was a hierarchy in the posts the ACP benefit would be by placing the employee in the pay scale of the promotional post. If there was no hierarchy in the posts the scheme envisaged that the employee concerned would be placed in the next pay scale.

4. The exact problem was that the post of Laboratory Technician and Technical Assistant had the hierarchical promotion post of a Senior Technical Assistant.

5. The next above pay scale was ₹5500-9000. Proposals sent by the Government of Delhi to the Central Government to permit it an in between pay scale of ₹5000-8000 was responded to by the Government as under:

*Subject:-C.P.(c) No.373/2004 in O.A. No.2615/2003
filed by S.Manju Kalagaonkar and other Technical
Assistants of MAMC-*

Sir,

*I am directed to refer to your letter
No.PHC/TRC/CAT/373/04/12351 dated
14.12.2004 on the above mentioned subject and
to say this matter relates to the request of the
Technical Assistants of MAM College, New
Delhi for upgradation of their pay scale to
Rs.5500-9000 from Rs.4500-7000 w.e.f. 1.1.96
due to alleged anomalous situation of granting
pay scales (i.e. Rs.4500-7000) to Lab.
Technicians and Technical Assistants, which
are feeder and promotional post respectively.*

As already pointed out in this Ministry's letter of even number dated 9.11.2004, this matter requires consideration in the light of the instructions dated 24.11.2000. According to those instructions in such cases appropriate restructuring of the cadres is to be carried out and in case this restructuring is not feasible on functional, operational and administrative considerations, only extension of benefit of fixation of pay under FR 22(1)(a)(1) can be considered on the merits of each case and provided that all the conditions for the grant of this benefit are fully satisfied and promotion to the posts in question actually involves the assumption of higher responsibilities. All such cases have to be sent to the Department of Expenditure for their prior approval consideration.

Accordingly, mere upgradation of pay scale of feeder post does not in itself entitle grant of higher scale to the promotional post. The instructions dated 24.11.2000 clearly provide that mere fact of a post in a hierarchy being a promotion post is not an adequate justification for placing the promotion post in the hierarchy in a higher pay scale in your letter under reference it has been indicated that the OM dated 24.11.2000 had been gone through and the proposal sent by GNCT vide letter dated 18.3.2003 has been reiterated which was for the upgradation of the pay scale of the pay scale of the Technical Assistant from Rs.4500-7000 to Rs.5000-8000 due to alleged anomalous parity in the pay scale i.e. Rs.4500-5700 of Lab. Technician and Technical Assistant because the former post is a feeder post for the latter post.

Accordingly it is seen that the ground for upgradation proposed is only the placement feeder and promotional grade in the same pay scale as a result of Vth CPC recommendation. There is no additional reasons/ grounds provided in support of proposal for upgradation in view of the clear instructions contained in the OM dated 24.11.2000 it will not be possible to recommend your proposal for upgradation of the pay scale of the Technical Assistants Maulana Azad Medical College New Delhi to the Ministry of Finance for their consideration. Petitioners/ Applicants in the matter clearly bringing out the instructions of the Ministry of Finance for not agreeing to upgradation of the pay scale, under intimation to this Ministry. The position may also kindly be explained before the Hon'ble CAT Delhi suitably in regard.

This issues with the approval of the Secretary (Health and Family Welfare).

6. Suffice would be it to state that the letter dated December 17, 2004 addressed by the Central Government to the Government of Delhi recognizes an anomalous situation: that of a feeder cadre post being in the same pay scale as that of the promotional post. The Central Government recognized the fact that the ACP scheme required to be worked out in such situation by placing the employee, who was entitled to an ACP benefit, in the upgraded pay scale. But what would be that upgraded pay scale was not responded to by the Central Government.

7. The solution projected in paragraph 2 by the Central

Government i.e. of giving benefit under FR 22(1)(a)(1), to say the least, is absurd. Benefit under the Fundamental Rule in question is given when a person assumes responsibility of a higher post. The Rule requires such a person to pay fixation by stepping up the pay by one increment. It is not applicable to an Assured Career Progression Scheme.

8. In our view, the simple logic would be that where a feeder cadre post and a promotional post are placed in the same pay scale ACP benefit has to be in the next above pay scale; be it in the hierarchy of posts or the next above pay scale.

9. In the instant case the undisputed position is that whether it is the hierarchy of posts or the next above pay scale, above the pay scale of ₹4500-7000 is the pay scale of ₹5500-9000; this is the pay scale in which ACP benefit has been directed to be granted to the respondents as per the impugned decision dated September 15, 2009.

10. We find no infirmity in the view taken by the Tribunal and accordingly we proceed to dismiss the Writ Petition but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

JULY 01, 2013
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