

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

Judgment Reserved on October 28, 2013

Judgment Delivered on November 27, 2013

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W.P.(C) 4391/2010

GOVERNMENT OF NCT OF DELHI Petitioner

Represented by: Ms.Zubeda Begum,
Advocate with Ms.Sana
Ansari, Advocate

versus

RAJA RAM Respondent

Represented by: Dr.Ashwani Bhardwaj,
Advocate
Mr.Raj Kumar Sherawat,
Adv. for applicant in C.M
No.12433/2013

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W.P.(C) 4899/2011

GNCT OF DELHI AND ORS Petitioners

Represented by: Ms.Zubeda Begum,
Advocate with Ms.Sana
Ansari, Advocate

versus

UMA LOHANI Respondent

Represented by: Ms.Avnish Ahlawat,
Advocate with Ms.Rashmi
Chopra, Adv.

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W.P.(C) 3176/2011

GNCT OF DELHI Petitioner

Represented by: Ms.Zubeda Begum,
Advocate with Ms.Sana
Ansari, Advocate

versus

GOPAL SINGH NEGI

..... Respondent

Represented by: Dr.Ashwani Bhardwaj,
Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. These 3 writ petitions involve common issue of law, with the consent of the counsel for the parties, are being disposed of by this common order.

2. The issue which falls for our consideration is whether the respondents are entitled to pay scale of ₹5000-8000 with effect from January 01, 1996 as Operation Theatre (Technician) without insisting on the qualification of B.Sc. with 2 years Diploma/Certificate in the relevant subject. The litigation has a chequered history. The genesis of this litigation is the recommendations of the 5th Central Pay Commission which were implemented by the Government of India through its notification dated September 30, 1997.

3. **Brief history**

We are in this case concerned with the post of Operation Theatre (Technician). The recruitment rules for the said post as notified on April 12, 1984 stipulates as under:

Name of the post	No. of posts	Classification	Scale of pay	Whether selection for post or non-selection post	Age limit for direct recruits	Educational & Other qualifications required for direct recruits
Technician	27	Group 'C'	Rs.330-10-	Selection	21-30 yrs.	1. B.Sc. from

(Anaesthesia/ Pipeline/CSSD/ Operation/Theatre/ Anaesthesia Workshop		Non-Gazetted Non-Minister- ial	3-80-EB-12- 500-EB-15- 560.		(Relaxable For Govt. Servants upto 35 years).	a recognised University or equivalent. 2. 2 years' Operating Room Assistant Course OR 1. Matriculation/Hr.Secondary/Sr.Secondary (10+2) with Science 2. 10 years' experience in Operation Theatre/CSSD/ Anaesthesia/ Pipeline Technician/ Anaesthesia Workshop in an recognised hospital
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Whether age And period of educational qualifications prescribed direct recruits will apply in the case of promotees	Period of Probation, if any	Method of rectt. whether by direct rectt. or by promotion or by deputation/transfer & percentage of the vacancies to be filled by various methods	In case of rectt. by promotion/ deputation/transfer, grades from which promotion/deputation/transfer to be made	If a DPC exists, what is its composition?	Circumstances in which UPSC is to be consulted in making rectt.
Educational Qualifications: Yes	2 years	By promotion failing which by direct recruit-	Promotion:- Operation Theatre/CSSD/	Group 'C' Departmental Promotion	Not applicable

Age : No		ent – 50% By direct recruit- ment – 50%	Anaesthesia/ Gas Plant/Ana- esthesia Work- shop Assistant with 8 years; regular service in the grade.	Committee	
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4. An amendment was carried out in the year 1988 which is to the following effect:

*Column 1 Technician
(Operation Theatres including CTS/Neuro
Surgery/ Gastro Surgery/ CSSD/
Anaesthesia/ Gas Plant/ Anaesthesia
workshop/ IOU Surgical/Resuscitation).*

*Column 7 (i) Matriculation/Hr.Sec.Sr.Sec. (10+2) with
science
(ii) 2 years Diploma in operating Room
Asstt. Course*

Column 8 age : No

*Column 10 (i) 75% by promotion failing which by direct
recruitment*

(ii) 25M by direct recruitment.

*Column 11 By promotion from Asstts. (Rs.950-1500)
working in the Group of these specialities
with 8 year regular service in the grade.*

5. A further amendment was carried out in the year 1997. The same was to the following effect:

*“In the said schedule, for the existing entries under
column 2 (No. Of posts), Column 4 (Scale of pay),
Column 6 (Age limit for direct recruitment), Column 7
(New column) (Whether benefits of added years of*

service admissible under rule 30 of CCS (Pension) Rules, 1972; Column 7 (New column 8) Educational & other qualifications required for direct recruits will apply in the case of promotes) Column 11 (New column 12) (in case of recruitment by promotion/deputation/transfer grades from which promotion/deputation/transfer to be made), the following shall be substituted namely: -

Column 2 117(1997)

Subject to variation depending on workload.

Column 4 Rs. 1200-30-1560-EB-40-2040

Column 6 Below 25 years (relaxable for Govt. Servants of NCT of Delhi upto 40 years for general employees and 45 years for SC/ST employees) and relaxable for Govt. Servants in accordance with the instructions/orders issued by the Central Government.

Column 7 No

(New Column)

Column 7 (i) Matriculation/Hr.Sec./Sr.Sec.(10 plus 2) with

(Now 8) science from a recognised Institution/Board

(ii) Operation room Asstt. Course from a recognised institution.

(iii) 5 years experience as O.T.Assistant in O.T./CTS/Neuro-Surgery/Gastro Surgery CSSD/Anaesthesia/Gas plant/Anaesthesia workshop/ICU Surgical/Resuscitation in a recognised Hospital/Institution.

Column 8 Age: No

(Now 9) Education No, but must possess matriculation with science

Column 11 Promotion from Assistants (Rs.950-1500) working

(Now 12) in O.T./CTS/Neuro Surgery/Gastro Surgery/CSSD/Anaesthesia/Gas Plant/Anaesthesia workshop/ICU surgical/Resuscitation possessing 8 years service as Assistant in a hospital of Govt. Of N.C.T. of Delhi.

6. The 5th Central Pay Commission vide para No.52.78 had made the following recommendations:

“The Administrative Ministry have observed that, there is similarity in the training, qualification & recruitment rules among the laboratory technical staff and the O.T. Technical Staff. In view of comparable qualifications and duties, we recommend parity of O.T. Technicians and Lab Technicians at the initial levels also. Accordingly, the following grades are proposed for O.T.staff in future.

-i) OT Attendant – Rs.750-940 with 2 ACP levels of Rs.775-1025 and Rs.800-1150 with minimum 8th Standard qualification, at entry;

ii) OT Assistant – Rs.950-1500 with 2 ACP levels of Rs.1200-2040 and Rs.1400-2300 with minimum qualification of matric (with Science) plus certificate or 10+2 with Science for direct recruitment; and

iii) OT Technician – Rs.1600-2660 with 2 ACP levels of Rs.1640-2900 and Rs.2000-3500 with minimum B.Sc. plus Diploma/Certificate in the relevant subjects. The existing incumbents in each organization in operation theatres as well as sterilisation services will be placed in appropriate matching pay scales. ”

7. Two Original Application Nos.521/2002 and 522/2002 were filed by Technical Staff (O.T). Their grievance was that by the 5th Central Pay Commission the post of Operation Theatre (Technician) has been placed in the pay scale of ₹5000-8000. In the hierarchy, the promotion post of O.T. (Technician) is that of Technical Assistant and the said post could not have been placed in the pay scale of ₹4500-7000. Further the promotion post of Technical Assistant is that of Technical Supervisor and the said post could not have been placed in the pay scale of ₹5500-9000. The prayer in the two original applications was that the

post of Technical Assistant be put in the pay scale of ₹5500-9000 and the Technical Supervisor be put in the pay scale of ₹6500-10500. The Original Applications were disposed of by the Tribunal vide its order dated November 07, 2002 calling upon the respondents i.e. Union of India and the Lt. Governor to consider the issue of pay scale in the light of observation made by the Tribunal and pass a detailed, speaking and reasoned order.

8. Pursuant to the order dated November 07, 2002 the petitioners herein passed an order dated January 29, 2004 whereby it was decided to roll back the pay scale of Operation Theatre (Technician) working in various hospitals from ₹5000-8000 to ₹4000-6000 with effect from January 01, 1996. The Operation Theatre (Technician) challenged the order dated January 29, 2004 in an Original Application No.401/2004 before the Tribunal. The Tribunal vide its order dated January 13, 2005 had quashed the order dated January 29, 2004 on the ground that while passing the said order no show cause notice was issued by the petitioners.

9. The petitioners in compliance of the order dated January 13, 2005 issued show cause notices to the Operation Theatre Technicians including some of the respondents herein to submit their representation as to why their pay scales should not be reduced from ₹5000-8000 to ₹4000-6000. The petitioners sustained their show cause notice and reduced the pay/retiral benefits of the respondents in WP(C) No.3176/2011 and WP(C) No.4391/2010 to ₹4000-6000 with effect from January 01, 1996 vide order dated September 20, 2005. The respondent in W.P.(C) 4391/2010 filed an Original Application No.1167/2006, the details of which would be given hereinafter.

10. Some of the Operation Theatre Technicians approached the Tribunal challenging the order dated September 20, 2005 by way of Original Application No.2184/2005. Suffice would it be to say that the Tribunal did not find any merit in the Original Application and it upheld the rolling back of the pay scale of the Operation Theatre (Technician) from ₹5000-8000 to ₹4000-6000.

11. The two petitions, Original Application No.266/2000 and Transfer Application No.4/2005 filed by Operation Theatre Technicians working in Safdarjung Hospital under the Government of India claiming the pay scale of ₹5000-8000 were dismissed vide order dated August 03, 2006 holding that they are not entitled to higher pay scale of ₹5000-8000.

12. The order dated August 03, 2006 of the Tribunal as referred above was challenged by way of writ petition No.13566-80/06 in this Court. This Court disposed of the writ petition vide its order dated August 23, 2006 upholding the order of the Tribunal. In the operative para, this Court had given liberty to the petitioners therein namely Mahender Pal Sharma & Ors. to raise the issue whether imposition of the condition of possessing higher qualification of B.Sc with diploma/certificate in relevant subjects is necessary for all such Operation Theatre (Technicians), including the existing incumbents or it is for the future recruits for grant of higher scale of ₹5000-8000.

13. We may state here that the order dated May 17, 2005 in Original Application No.2184/2005 was also challenged before this Court in writ petition No.6405/2007. The said writ petition was dismissed on November 21, 2007. In other words the order dated September 20, 2005 of the respondent was upheld. Suffice would it be to say that the writ

petition No.6405/2007 was disposed of on the same lines of writ petition No.13566-80/2006 Mahender Pal Sharma & Ors. vs. Union of India & Ors. decided on August 23, 2007. In the aforesaid background the brief facts of each of the writ petitions which we are considering in this order are as under:

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The respondent Raja Ram was appointed as a Nursing Orderly on March 25, 1963. He was promoted to the post of Operation Theatre (Assistant) on April 20, 1987. He was subsequently promoted to the post of O.T (Technician) with effect from March 07, 1996. As an O.T (Technician) he was drawing the pre-revised pay scale of ₹1200-2040 (4th Central Pay Commission). Pursuant to the recommendations of 5th Central Pay Commission his pay scale was revised as ₹5000-8000. He superannuated on December 31, 2004. By an order of the Health & Family Welfare Department the pay scale of ₹5000-8000 was rolled back to ₹4000-6000 retrospectively with effect from January 01, 1996 which resulted in re-fixation of his retiral benefits. He filed Original Application No.1167/2006 challenging the order dated August 22/23, 2005 whereby the petitioners had rolled back the pay of the respondent from ₹5000-8000 to ₹4000-6000. The Original Application No.1167/2006 was referred to a Full Bench which decided the issue on January 07, 2009 by holding that in terms of the recommendations of 5th Central Pay Commission in para No.52.78 the Operation Theatre (Technician) would be entitled to pay scale of ₹5000-8000 irrespective of the qualification. Based on the conclusion of the Full Bench the Division Bench allowed the Original Application No.1167/2006 of the respondent and granted the pay scale of ₹5000-8000 vide its order dated

February 20, 2009. The petitioners have impugned both the orders dated January 07, 2009 and February 20, 2009 in this writ petition. This writ petition was dismissed by this Court on July 06, 2010. An SLP was filed against order dated July 06, 2010 by the petitioners herein which was withdrawn on the submission that the department would like to file a review petition in writ petition(civil) No.4391/2010. The review petition was allowed by this Court on May 27, 2011 and the writ petition was directed to be listed for hearing. The primary reason for this Court to allow the review petition was that the impugned decision of the Tribunal need to be looked into with reference to the decision of this Court in writ petition (civil) No.13566-80/2006 Mahender Pal Sharma & Ors. vs. Union of India & Ors.

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The respondent herein was appointed as O.T (Technician) in G.B. Pant Hospital in the pay scale of ₹5000-8000 pursuant to an offer of appointment issued to her on September 07, 1999. In the month of May 2010 the competent authority decided to reduce the pay scale from ₹5000-8000 to ₹4000-6000. It is this action of the petitioners which was challenged by the respondent by filing Original Application No.2732/2010 which was allowed and directed the continuance of the respondent in the grade which has been prescribed in the advertisement and indicated in the offer of appointment.

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The respondent had joined the service of the petitioners as Nursing Orderly on August 29, 1979. He was promoted as Operation Theatre (Assistant) in the year 1987. Thereafter he was promoted as O.T (Technician) in the month of March, 1995. Pursuant to the

recommendations of the 5th Central Pay Commission, his pay was revised to ₹5000-8000. Pursuant to the directions in an earlier litigation the petitioners issued a show cause notice dated March 31, 2005 and considering the various representations passed an order dated September 20, 2005 whereby the pay scale of O.T (Technician) had been rolled back to ₹4000-6000 retrospectively with effect from January 01, 1996. Being aggrieved by the action of the petitioners the respondent had filed Original Application No.3517/2009. The Tribunal allowed the Original Application on the ground that the case of the respondent is covered by the decision of the Full Bench in the case of Raja Ram vs. GNCTD, Original Application No.1167/2006 vide order dated March 08, 2010. It is this order which has been impugned by the petitioners in this writ petition.

14. We may note here that certain persons holding the post of Technical Assistant, which is a promotion post to the post of Operation Theatre (Technician), have filed three original application Nos.2594/2011, 2595/2011 and 2587/2011 before the Tribunal inter-alia seeking scale of ₹5500-9000. This claim of the Technical Assistants is premised on the ground that the Operation Theatre (Technician) which is a feeder post has been granted ₹5000-8000 by the Tribunal, necessarily the promotion post must also be in the higher scale of ₹5500-9000. The claim of the Technical Assistants was allowed by the Tribunal vide order dated March 26, 2012 read with order dated October 11, 2012 whereby the Tribunal has directed the petitioners to grant the scale of ₹5500-9000 to the applicants therein who are working as Technical Assistants which is a promotion cadre to the Technician.

15. The Technical Assistants, on the strength of the order of the Tribunal dated March 26, 2012 and October 11, 2012 has filed C.M No.12433/2013 in Writ Petition No.4391/2010 seeking their impleadment on the premise that the relief granted by the Tribunal in their original application Nos. 2594/2011, 2595/2011 and 2587/2011 is directly dependent upon the outcome of the present application. According to them, if the respondents in the writ petitions under consideration are granted the pay scale of ₹5000-8000 then the Technical Assistants would also become eligible for ₹5500-9000.

16. It is not clear whether the petitioners have implemented the orders dated March 26, 2012 and October 11, 2012 in favour of the Technical Assistants.

17. One more fact which is of relevance here is the issuance of letter dated June 02, 2011 whereby the Ministry of Health & Family Welfare, Hospital Division has conveyed to the Medical Superintendents of Dr.Ram Manohar Lohiya Hospital, New Delhi and Safdarjung Hospital, New Delhi its decision that the additional qualification cannot be imposed on the existing staff at the time of promotion, linking of the B.Sc qualification to the O.T (Technician) at the time of promotion is not justified. According to the Ministry the amendment of the recruitment rules would only bind the future recruitments and action with regard to scale of pay be taken with respect to the existing O.T (Technical Staff). In other words the Ministry of Health & Family Welfare was of the view that the qualification of B.Sc is not a pre-requisite for the existing staff for grant of higher scale.

18. The issuance of the letter dated June 02, 2011 was during the pendency of the writ petitions, this Court being conscious of the fact,

granted time to the counsel for the petitioners to file additional affidavit. In fact, an affidavit dated December 02, 2011 of Mr.Vipin Garg, Deputy Secretary, Health & Family Welfare, Govt. of NCT of Delhi was filed wherein the stand of the Govt. of NCT with regard to letter dated June 02, 2011 is as under:

“That as regards the letter dated 2/6/2011, the annexure to the reply, the said letter at best gives fresh cause of action to the respondent in respect of which the Competent Court of the jurisdiction is Central Administrative Tribunal.”

19. We have heard the learned counsel for the parties.

20. Ms.Zubeda Begum, learned counsel for the petitioners would submit that the respondents are not entitled to the higher scale of ₹5000-8000. The issue stands decided by this Court in writ petition Nos.13566-80/2006 and 6405/2007. These petitions need to be allowed, otherwise grant of scale to the Operation Theatre (Technician) would have a hierarchical effect on the higher posts as well.

21. On the other hand, Ms.Avnish Ahlawat, learned counsel for the respondents appearing in Writ Petitions (C) No.4899/2011 would submit that the respondents were rightly granted the pay scale of ₹5000-8000. The condition of higher qualification is not required to be fulfilled by the respondent. The same is for future recruits. She would also submit that the issue stands decided after the issuance of letter dated June 02, 2011 by the Ministry of Health & Family Welfare. She would also rely upon the judgment of the Tribunal in the case of Mahender Singh & Ors. vs. Union of India & Ors. Original Application No.3018/2010 decided on August 30, 2011, wherein the Tribunal relying upon the aforesaid letter of the Ministry of Health & Family

Welfare dated June 02, 2011 has allowed the O.A of the Operation Technicians working in Lady Harding Medical College and Smt.S.K.Hospital.

22. Dr.Ashwani Bhardwaj, learned counsel for the respondents in other writ petitions would make similar submissions that the respondents are entitled to the higher pay scale of ₹5000-8000 which is not dependent upon possessing a higher qualification.

23. We have considered the rival submissions made on behalf of the parties and the written submissions filed by the counsel for some of the parties.

24. On a reading of the facts, it is noted that this Court in an earlier round of litigation has upheld the order of the Tribunal wherein the Tribunal has denied the grant of higher scale of ₹5000-8000 to the respondents. This Court had granted liberty to the respondents to take up the matter with the 6th Pay Commission as to whether the imposition of the condition of requisition of higher qualification of B.Sc with diploma/certificate in relevant subject is necessary for all such O.T Technicians including the existing incumbents or it is only for future recruits. It appears that no such reference was made to the 6th Pay Commission. Rather the Ministry of Health & Family Welfare issued an O.M dated June 02, 2011 with the approval of its finance division to say that the insistence of higher qualification at the time of promotion is not justified and action with regard to the scale of pay of existing Operation Theatre (Technical Staff) and amendment of recruitment rules for future recruitments in pursuance of the recommendations need to be taken.

25. We note that the aspect of grant of pay scale of ₹5000-8000 vide order dated June 02, 2011 was referred to the Department of

Expenditure, Ministry of Finance, Government of India for its approval. The same was not accepted by the Ministry of Finance vide its note dated December 21, 2011 wherein the following was recorded:

“2. The matter has been examined. It would not be feasible to place O.T Technicians in the upgraded pay scale of Rs.5000-8000 without adhering to the minimum education qualifications stipulated by the 5th CPC (Para 52.78).”

26. In view of the aforesaid decision, whether the Operation Theatre (Technician) is entitled to the scale of ₹5000-8000 on an interpretation of para No.52.78 is the issue before us. The recommendations in para No.52.78 are confined to O.T (Attendant), O.T (Assistant) and Operation Theatre (Technician). We have not been shown any similar recommendations made with regard to promotional posts of Technical Assistant and Technical Supervisor. Holders of the said posts were given the normal replacement pay scale of ₹4500-7000 and ₹5500-9000 respectively with effect from January 01, 1996. If the claim of the respondents, Operation Theatre (Technician) is to be accepted for ₹5000-8000 without insistence of higher qualification then surely it would have an impact/cascading effect on the higher post as well inasmuch as the pay scale of higher posts need to undergo a change. Can this Court in judicial review grant a relief which may create an anomaly? The answer is “No”. The grant of a higher scale of ₹5500-9000 to the holders of the next higher post of Technical Assistant by the Tribunal while deciding three Original Application Nos.2594/2011, 2595/2011 and 2587/2011 vide order dated March 26, 2012 would not remove the anomaly, as there exists a higher post of Technical Supervisor, which is still in the scale of ₹5500-9000. We note that even

the Tribunal was conscious of the fact, while deciding the aforesaid three Original Applications, that the Technical Assistants would be entitled to the pay scale of `5500-9000 only if Operation Theatre (Technicians) get the pay scale of `5000-8000 and not otherwise.

27. The interpretation with regard to recommendations of 5th Central Pay Commission in para No.52.78 should be left to the Government. The scope of judicial review is very limited when ex-facie the denial of a particular scale is arbitrary, which is not the case here. This Court while deciding writ petition No.13566-80/2006 on August 23, 2007 has upheld the order of the Tribunal dated August 03, 2006 by holding that the view taken by the Tribunal that the higher pay scale of ₹5000-8000 could only be granted to those Operation Theatre (Technicians) who were having minimum qualification of B.Sc plus Diploma/Certificate in the relevant subjects as a plausible view. This Court having already upheld the action of the petitioners for rolling back the pay scale to ₹4000-6000 we see no reason to differ with that view. Rather in the interregnum, the Ministry of Finance, had considered the issue and did not accord the approval for grant of pay scale of ₹5000-8000.

28. The Courts/Tribunals cannot grant a particular pay scale. In this regard reference is made to the judgment of the Supreme Court reported as (2007) Vol.7 SCC 472 Union of India vs. Arun Jyoti Kundu wherein it is held as under:

“19. We are afraid that the tribunal has exceeded its jurisdiction in issuing the direction, it has issued. The fact that notwithstanding the Fifth Pay Commission not recommending, particularly, the payment of higher scale to two sets of typists, typists in English language and typists in Hindi language, the Government chose to give them relief with effect from 31-1-2000 would not justify an inference of discrimination or a finding that

the authority has acted arbitrarily or unreasonably. As this Court has clarified in the decisions adverted to, it is for the Government to act on the report of the Pay Commission or either to accept or not to accept its recommendation. Once the recommendations of the pay commission are accepted, in full, it could also give effect to it from the date recommended in that behalf. But when admittedly no provision was made in respect of the English and Hindi typists and they pointed to the anomalies and the Government on the basis of the recommendation of the Anomalies Committees decided to given them the scale with effect from 31-1-2000, it could not be held to be discriminatory or to be beyond the power of the Government.

20. When a concession was being extended as distinct from implementing a specific recommendation of the Pay Commission with reference to a particular point of time, it is open to the Government to provide that the benefit it proposes to give, would be available only from a notified date. As this Court has observed, neither the Central Administrative Tribunal nor the High Court, can direct the merger of any cadre. That is a policy decision for the Government to take. So long as it is not done, it is not open to the tribunal or the court to issue directions in that regard and to follow it up with what are thought to be consequential directions.”

29. We find that the Full Bench of the Tribunal in its order dated January 07, 2009 has held grant of two scales of ₹5000-8000 and ₹4000-6000 on the basis of qualifications as arbitrary and discriminatory. Regrettably, while holding so the Full Bench had overlooked the position of law that on the basis of qualification different pay scales can be prescribed. In this regard reference is made to the opinion of the Supreme Court in the case reported as (2007) Vol.5 SCC 528 Sohan Singh Sodhi vs. Punjab State Electricity Board, Patiala, wherein it is held as under:

“11. The circular issued by the Board provided for parity in the scale of pay in the induction post and not on a

higher post. The said circular, therefore, has no application in this case. The jurisdiction of the Board to lay down different scales of pay for the employees on the basis of educational qualification per se is not discrimination. (See Triloki Nath Khosa, see also State of Punjab v. Kuldip Singh)

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14. . In Govt. of W.B. v Tarun K. Roy, a three-Judge Bench of this Court, noticing several other decisions opined that parity in the pay cannot be claimed when the educational qualification is different.”

30. As has been noted above, the Ministry of Finance has not approved grant of the scale of ₹5000-8000 to the matriculates. It is a settled law that the revision of pay scale becomes effective when a decision has been taken to accept it. Since there is no acceptance by the Nodal Ministry for grant of higher scale of ₹5000-8000 with regard to the matriculates, the same cannot be given by the Court in exercise of judicial review. Reference is made to the opinion of the Supreme Court reported as (2009) 1 SCC 73 Chandrashekar A.K. vs. State of Kerala & Anr., wherein it is held as under:

“14. The question as to whether the scale of pay would be revised or not is a matter of policy decision for the State. No legal right exists in a person to get a revised scale of pay implemented. It may be recommended by a body but ultimately it has to be accepted by the employer or by the State, who has to bear the financial burden. This aspect of the matter has been considered by this Court in [HEC Voluntary Retd. Employees Welfare Society v. Heavy Engg. Corpn. Ltd.](#) stating: (SCC p.716, para 19)

“19. It is not in dispute that the effect of such voluntary retirement scheme is cessation of jural relationship between the employer and

the employee. Once an employee opts to retire voluntarily, in terms of the contract he cannot raise a claim for a higher salary unless by reason of a statute he becomes entitled thereto. He may also become entitled thereto even if a policy in that behalf is formulated by the Company.”

31. Having concluded that the respondents are not entitled to grant of the scale of ₹5000-8000 we find that there are two set of cases here: (i) where the respondents (in W.P.(C) 4391/2010 and W.P.(C) 3176/2011) were working with the petitioners as on January 01, 1996 i.e. date of implementation of 5th Central Pay Commission; (ii) where the respondent is appointed as Operation Theatre (Technician) in G.B.Pant Hospital on September 07, 1999 in the pay scale of ₹5000-8000 pursuant to an advertisement prescribing the scale of ₹5000-8000. In the former cases the pay scale of ₹5000-8000 was granted to the respondents with effect from January 01, 1996 but later on withdrawn with effect from the said date. In Writ Petition No.4391/2010 the respondent is a pensioner whose pension has been re-fixed after the pay scale has been rolled back from ₹5000-8000 to ₹4000-6000.

32. The case of respondent in Writ Petition No.4899/2011 before the Tribunal was that she having been appointed in the pay scale of ₹5000-8000, the same cannot be rolled back to the pay scale of ₹4000-6000. It was her submission that the terms of appointment must be maintained. The Tribunal accepted the said submission of the respondent. It is true that the respondent in Writ Petition No.4899/2011 was appointed in the pay scale of ₹5000-8000. This was during the period when the petitioners had granted the higher pay scale to the Operation Theatre (Technicians). It was subsequently on a consideration that the

petitioners decided to roll back the pay scale of ₹5000-8000 to ₹4000-6000. It is not the case of the respondent that despite having higher qualification her pay scale has been rolled back to ₹4000-6000. An appointee whose appointment is regulated by recruitment rules is eligible to get pay scale as prescribed for the post to which he/she is appointed. We are conscious of the fact that on her appointment the respondent started drawing salary in a higher pay scale. How to reconcile a position where the benefits which she had earned because of grant of higher scale are protected and simultaneously her appointment is made compatible with the pay prescribed. This can be done by protecting the pay she had drawn till the roll back was effected in the pay scale of ₹4000-6000. The difference of pay be made personal to her.

33. We, therefore, allow the writ petitions and set aside the order dated January 07, 2009 and February 20, 2009 passed in Original Application No.1167/2006, order dated February 08, 2011 passed in Original Application No.2732/2010 and order dated March 08, 2010 in Original Application No.3517/2009 passed by the Tribunal. Consequently the Original Applications filed by the petitioners before the Tribunal are dismissed.

34. No costs.

C.M No.12433/2013 (u/o 1 Rule 10 CPC)

This is an application filed by the Technical Assistants on the strength of the order passed by the Tribunal on March 26, 2012, whereby the Tribunal granted pay scale of ₹5500-9000 to them, which has been made subject to the outcome of these petitions. Since in these batch of writ petitions we are concerned with grant of pay scale of

₹5000-8000 to O.T (Technician), the present application is not maintainable and is dismissed.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

NOVEMBER 27, 2013
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