

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

Reserved on: 26.09.2014  
Pronounced on: 31.10.2014

+ **W.P.(C) 2259/2012, C.M. NO.6050/2014**  
SH. NARENDRA AND ORS. .... Petitioners  
Through: Ms. Pragnya Routray, Advocate.

Versus

MUNICIPAL CORPORATION OF DELHI ..... Respondent  
Through: Sh. Gaurang Kanth, Advocate.

**CORAM:**  
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**  
**HON'BLE MR. JUSTICE VIPIN SANGHI**

**MR. JUSTICE S. RAVINDRA BHAT**  
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1. The petitioners in these proceedings under Article 226 of the Constitution of India, challenge the order of the Central Administrative Tribunal (hereafter "CAT") dated 23.11.2011, in O.A. No. 1179/2011, by which the CAT held that the petitioners were not entitled to the grant of pay-scale of ₹ 5000 – 8000, or to be designated Public Health Inspectors (PHIs) in the respondent (hereafter "MCD").

2. The brief facts are that in the 1970s, MCD had employed vaccinators in the pay-scale of ₹ 260 – 430, for the purposes of vaccinations for smallpox. In 1977, smallpox was eradicated. Under the expanded immunization program, introduced in 1978, every vaccinator was re-designated as an "Immunizer", and was required to perform the tasks of vaccinations/inoculations for smallpox, cholera, typhoid, diptheria, tetanus, and pertusis, as well as of birth and death registration. Meanwhile, the MCD had also appointed "inoculators" in

the pay-scale of ₹ 330 – 560. The duties of the inoculators were the same as those of the vaccinators/Immunisers. The latter, however – as stated above – were in the pay-scale of ₹ 260-430.

3. This disparity in pay scales led, on 31.12.1979, the Delhi Municipal Karamachari Ekta Union to – unsuccessfully - demand from MCD that the Immunizers should also be given the pay-scale of ₹ 330 – 560 as well. This dispute was referred to the Industrial Tribunal. The Tribunal held that the immunizers and the inoculators were performing the same work, and consequently, directed by its award, dated 23.9.1988 (hereafter "the first award") that the vaccinators/immunisers also be placed in the pay-scale of ₹ 330-560, with effect from 23.5.1981, which was the date the reference was made to the Industrial Tribunal. The MCD challenged the award before this Court, but did not succeed. The MCD, accordingly, issued a circular dated 25.3.1992, according to which the pay-scale ₹ 330 – 560 was approved for all Vaccinators who were, at the time, working in the ₹ 260 – 430 pay-scale.

4. The said pay-scale ₹ 330 – 560 was revised to ₹ 1200 – 2040, and then to ₹ 4000 – 6000, pursuant to recommendations of the 5<sup>th</sup> Pay Commission. Meanwhile, the applicants/petitioners were appointed as Vaccinators in the MCD in 1999, in the pay-scale of ₹ 950 – 1500, which was revised to ₹ 3050 – 4590, in terms of the 5<sup>th</sup> Pay Commission's recommendations. Through a circular in 2000, the MCD re-designated the applicant/petitioner Vaccinators as "Assistant Inspectors".

5. In the meanwhile, in 1996, another reference to the Tribunal had been made at the behest of the demands of the Karamchari Sangh

being I.D. No. 107/1996. The issue in this dispute was whether certain other vaccinators were entitled to the pay-scale of ₹ 1200 – 2040 or ₹ 950 – 1500. On 29.1.2001, an award was made by the Industrial Tribunal (hereafter "the second award") according to which the Vaccinators were to be granted a pay-scale of ₹ 330 – 560 (Now ₹ 4000 – 6000). Crucially, it was during the pendency of this industrial dispute that the applicants were appointed in the ₹ 3050 – 4590 scale.

6. On 7.12.2001, based on the recommendations of one Pattanayak Committee, (set up to review the structure and functions of the public health services of MCD), an order dated 6.12.2001 was issued, in terms of which Health Inspectors, Vaccination Inspectors and Assistant Inspectors, working in the pay-scale of ₹ 4000 – 6000, were classified as Public Health Inspectors ("PHIs"), and those in the pay-scale of ₹ 3050-4590, were designated as Assistant Public Health Inspectors ("APHIs"). The petitioners/applicants, who were in the second category, challenged this by W.P. No. 4419/02 before this Court, under Article 226 of the Constitution of India.

7. Subsequently, the pay-scale of the PHIs was upgraded to ₹ 5000 – 8000, whereas those of the APHIs was upgraded to ₹ 4000 – 6000. Thus, the effect of all this was that Vaccination Inspectors working in the pay-scale of ₹ 4000 – 6000 (i.e., the beneficiaries of the first awards) were now entitled to work as PHIs with the pay-scale of ₹ 5000 – 8000, but those Vaccination Inspectors working in the pay-scale of ₹ 3050 – 4590 (i.e., the applicants/petitioners), were not so entitled. This, in turn, was challenged in W.P. (C) No. 1540-63/2006, which was subsequently transferred to the Central Administrative Tribunal, Delhi ("the Tribunal"), as T.A. No. 375/2009; W.P. No.

4419/02 was, accordingly, withdrawn.

8. On 14.5.2009, the CAT disposed of the application by directing MCD to consider the claims of the petitioners. MCD, however, passed an order dated 5.10.2009 rejecting those claims. By O.A. No. 3632/2009, the petitioners impugned the order before the CAT which set it aside and directed MCD to consider the claims of the petitioners for higher pay and re-designation as per its order of 7.12.2001. By office order dated 24.01.2011, the petitioners' claim for re-designation as PHI, and for the pay-scale of ₹ 5000 to 8000, was rejected. According to the MCD, the petitioners were not entitled to the said pay-scale, because they did not perform the duties of the Inoculators. This triggered another round of litigation before the CAT - O.A. No. 1179/2011.

9. Before the CAT the applicant employees argued that the rejection of their claim for the pay scale ₹ 5000-8000 amounted to hostile discrimination, since the beneficiaries of the first award (of the Industrial Tribunal, dated 23.9.1988) were granted a pay-scale of ₹ 330 – 560 (now ₹ 5000 – 8000), whereas the applicants – who were *also* working as vaccinators – were only upgraded to the ₹ 3050 – 4590 pay-scale. It was argued that there was no difference in the duties and responsibilities of the two categories of vaccinators. Thus, the applicants asked for their re-designation as PHIs, as well as being placed in the pay-scale of ₹ 5000 – 8000.

10. CAT rejected the petitioners' contention, and held they were not entitled to re-designation as PHIs in the pay-scale of ₹ 5000 – 8000. Its decision is premised on the fact that the petitioner-vaccinators had not undergone inoculation training, like the original vaccinators; and

that furthermore, relying upon the Supreme Court case of *P.U. Joshi vs Accountant General* (2003) 2 SCC 632. In particular, the Tribunal cited paragraph 10 of that case, wherein it was held:

*"Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."*

11. The CAT by its impugned order merely directed a verification of what pay scales the applicants were enjoying as on 07.12.2001. In case it was ₹ 4000 – 6000, they were entitled to the grade of ₹ 5000 – 8000; not otherwise.

12. Ms. Pragnya Routray, learned counsel for applicants argues that the CAT's findings are in error. She submitted that till date no recruitment rules for the post of APHIs have been notified and all Vaccinators, including applicants and those who are re-designated as PHI, were appointed in terms of recruitment regulations to the post of Vaccinators only. It was reiterated that the pay scale mentioned in recruitment regulation for the post of Vaccinator is ₹ 260-430. It was next submitted that the first award resulted in parity between Innoculators and Immunizers which was sought to be undone by the subsequent order of MCD. This led to a second reference, which too culminated in an award in favour of workmen, reiterating the parity declared by the first award. The latest order, re-designating one homogenous class into two could be justified only on the basis of intention to discriminate. The so-called report did not result in any legitimate effort to bifurcate one class, in a manner known to law. Since the applicants were recruited when the second reference was pending adjudication, they were entitled to the directions in the second award, which meant the pay scale of ₹ 5000 – 8000. MCD was and continued to be the same establishment which was a party to the first and second award; consequently in terms of provisions of the Industrial Disputes Act, the entire establishment, i.e the MCD was bound to follow it.

13. Mr. Gaurang Kant, learned counsel for the MCD, argued that the impugned order of CAT does not call for interference. He argued that the first award granted the higher pay scale to only those performing the task of small pox vaccinators, who had been given special training. The applicant petitioners, being later employees, could not benefit from the award declaring parity. It was submitted that in matters such as designation, parity of pay scales, etc, judicial review is minimal. Unless the petitioners or employees are able to establish demonstrable and manifest discrimination, which has no justification, the courts would not issue a direction which would supplant executive policies.

#### *Analysis & Findings*

14. Before discussing the merits of the contentions, it would be useful to notice that the events which led to the second reference, and the second award, were the denial of the pay scale (₹ 330 – 560) revised as ₹ 1200 – 2040, and then to ₹ 4000 – 6000. The claimants in the second reference (ID 107/1996) were post-first award recruits. Their claims, in terms of the second award, were that:

*"The case of the present workmen concerned is that the Municipal Corporation of Delhi recruited them after the Award in Case ID 253/83 duly implemented on 25-3-92 in the pay scale of ₹ 950-1500 and accordingly, the present workmen are being paid in that scale despite that they had been performing identical work for some working hours as is being done by their counterparts whose scale was revised by the Tribunal in case ID 253/83. According to the Union, this is discrimination on the part of the management... It is alleged that the Corporation by violating the provisions of their own orders based upon the judicial decisions and that the workmen concerned are entitled to be paid the same pay scale of ₹ 1200-2040 revised from time to time as is being*

*paid to their counterparts by virtue of Award in Case ID 253/83.*

4. *The management who contested the claim of the workmen submitted that the Vaccinators who were given an award in their favor have been granted the said scale preliminary subject to final decision by the Hon'ble High Court and that since the workmen concerned had been recruited as Vaccinators in the pay scale of in the pay scale of ₹ 950-1500 and they being paid the same payscale, their claim against the management for a higher scale is unjustified and without merit. According to them the matter is sub judice..."*

15. To substantiate their claim, the workmen had relied on the deposition of 5 witnesses besides that of their General Secretary. MCD, however, did not lead any evidence but cross-examined the workmen's witnesses. One of the important issues decided by the 2nd award was whether the claimant workmen were parties to the earlier award. The claimants clearly admitted that they were recruited much after implementation of the first award. However, they deny that they were not entitled to parity of pay with the claimants in the deference that led to the first award. After considering all these, the industrial Tribunal directed that the claimants in the second reference too were entitled to the parity in pay scales which they had sought. The relevant discussion in the second award is to the following effect:

*"Having considered the testimony as briefly stated above of the workmen witnesses duly corroborated by the documents proved on their behalf, have failed to find out any reason why the management have declined to pay the same scale of Vaccinators to the workmen concerned in this case as is being paid to their counterparts in pursuance of the award Ex WW-1/M1. I fully agree with the learned A.R. for the workmen that the action on the part of the management in this regard is arbitrary and discriminatory.*

*Assuming that the Award in question has been challenged by the management in the Hon'ble High Court, yet there can be no ground for the management to adopt different yard sticks in case of employees of the same categories doing identical work for identical hours. I am therefore of the considered view was that the workmen concerned in this case can not be denied the pay scale of Rs. 1200 – 2040 simply for the reason that there were recruited in the lower payscale..."*

It is therefore evident that the second award was premised upon identical work performed by the claimant workmen; they had been recruited by MCD after the first award was implemented.

16. Interestingly, the MCD's position with respect to the present petitioners- in OA 1179/2011 before CAT, can be gathered from the following extract of their counter-affidavit, filed before the CAT:

*"The Vaccinators who are appointed prior to 23-05-1981 and discharging the duties of Vaccinators/Immunizers were given the pay scale of Rs.330 – 560(Pre-Revised) on the analogy of Inoculators and LHVs on the basis of equal work equal pay, as the payscales of Immunizers at that time was Rs.260-430 (Pre-revised) but the pay scale of Inoculators at that time and LHVs was Rs.330 – 560(Pre-Revised) where the petitioners neither attained the training of Inoculation nor ever discharged the duties of Innoculators/Immunizers as they were appointed in 1998 – 99 in the pay scale of Rs. 3050-4590 [as per revised pay scale in the 5th Pay Commission] as per the Recruitment Rules of the post of Vaccinators and were redesignated as Assistant Public Health Inspectors and were granted the pay scale of Rs. 4000-6000 as per the Hon'ble High Court Orders and were given the appointment from back date, i.e 30-10-1998, later on this pay scale was revised upgraded to Rs. 4000-6000 vide Corporation Resolution No. 84 dated 28-04-2005 referred to above. Whereas Vaccinators who were the beneficiary of Award in ID No. 253/83 were granted the pay scale of Rs. 5000-8000 (pre-revised) and were designated*

*as PHI.*

*Now these Vaccinators i.e Petitioners in the instant case who were appointed in 1998-99 are asking for higher pay scale & designation of the post of PHI i.e the pay scale which they will get after their first promotion on the grounds that the Vaccinators were granted higher pay scale by virtue of the Award in ID No. 253/83 passed by the Industrial Tribunal vide orders dated 23-09-1988 referred to above.*

*The present Vaccinators/APHI's cannot claim parity with Inoculators/Vaccinators as they never performed the duties of Inoculators. Since PHI is promotional post of A PHI as per our RRs being framed A PHI will be considered for promotion to the post of PHI after fulfilling qualifying service in the post of A PHI. A PHI cannot be placed in the grade of Rs. 5000-8000."*

17. It is quite apparent that the parity sought by the workmen claimants in the first reference leading to the first award in ID No. 253/83 is no different from what was sought by the claimant workmen in the second reference, ID 107/1996. The extract of the second award would show that the same defence, sought to be set up by the MCD - in the second reference- was rejected by the Industrial Tribunal in the second award. There is no material, or even averment by or on behalf of MCD to show how the petitioners are any different from those who had sought the reference in ID 107/1996. The latter, i.e claimants in the second reference leading to the second award, were post first award employees (recruited after 28.3.1992, the date when the first award was implemented). Their position and that of the Petitioners is identical; the latter, i.e the petitioners were appointed/recruited in 1998-1999. Thus, the Petitioners, in the opinion of the Court, have

been clearly able to establish their identity as those Vaccinators who were part of the same class of such employees, in favour of whom the second award was made.

18. Section 18 of the Industrial Disputes Act deals with binding nature of industrial awards and settlements. Section 18 (3) reads as follows:

*"(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable] shall be binding on-*

- (a) all parties to the industrial dispute;*
- (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator,]<sup>8</sup> Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;*
- (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;*
- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.*

(emphasis supplied)

Section 19 deals with the duration of time for which an award is binding and provides as follows:

*"19. Period of operation of settlements and awards.-*

- (1) A settlement<sup>1</sup> shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.*

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months<sup>2</sup> from the date on which the memorandum of settlement is signed by the parties to the dispute], and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

(3)<sup>3</sup> An award shall, subject to the provisions of this section, remain in operation for a period of one year<sup>4</sup> from the date on which the award becomes enforceable under section 17A]: Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit: Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit so, however, that the total period of operation of any award does not exceed three years from the date on which it came into operation.

(4) Where the appropriate Government, whether of its own motion or on the application of any party bound by the award, considers that since the award was made, there has been a material change in the circumstances on which it was based, the appropriate Government may refer the award or a part of it<sup>5</sup> to a Labour Court, if the award was that of a Labour Court or to a Tribunal, if the award was that of a Tribunal or of a National Tribunal] for decision whether the period of operation should not, by reason of such change, be shortened and the decision of<sup>6</sup> Labour Court or the Tribunal, as the case may be] on such reference shall,<sup>7</sup> be final.

(5) Nothing contained in sub- section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award.

*(6) Notwithstanding the expiry of the period of operation under sub- section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award."*

19. A close reading of the above provisions would reveal that by virtue of Section 18 (3) (d), not only parties to a proceeding leading to an industrial award, but all workmen employed in the establishment-management (on the date of the award) and future employees too, are bound by the award; equally the management is bound by the award. The duration of the award is -subject to express stipulation to the contrary- one year from its enforceable date (i.e date of publication under Section 17). By virtue of Section 19 (6) the expiration of that one year period does not end the binding nature of the award; it continues to bind the parties alike till a notice intending to terminate is issued, and a period of two months lapses after issuance of such notice. These features were dealt with and commented upon by the Supreme Court in *Life Insurance Corporation v D.J. Bahadur* AIR 1980 SC 2181:

*"The award or settlement under the ID Act replaces the earlier contract of service and is given plenary effect as between the parties. It is not a case of the earlier contract being kept under suspended animation but suffering supersession. Once the earlier contract is extinguished and fresh conditions of service are created by the award or the settlement, the inevitable consequence is that even though the period of operation and the span of binding force expire, on the notice to terminate the contract being given, the said contract continues to govern the relation between the parties until a new agreement by way of settlement or statutory contract by the force of an award takes its place. If*

*notice had not been given, the door for raising an industrial dispute and fresh conditions of service would have been legally open. With action under Section 9-A, Section 19(2) or (6), the door is ajar for disputes being raised and resolved. This, in short, is the legal effect not the lethal of invitation to industrial trial of strength with no contract of service or reversion to an obsolete and long ago 'dead' contract of service.*

.....

*47. At this stage, I may record my firm conclusion that for the reasons already given the settlement under the ID Act does not suffer death merely because of the notice issued under Section 19(2). All that is done is a notice "intimating its intention to terminate the award". The award even if it ceases to be operative qua award, continues qua contract. Therefore, if the ID Act regulates the jural relations between the LIC and its employees -- an 'if' we will presently scan -- then the rights under the Settlement of 1974 remain until replaced by a later award or settlement."*

20. In the present case, there is no material shown by MCD to suggest that the duration of the award was curtailed by any notice; in fact it is conceded on its behalf that both the claimant employees in the second reference and the present petitioners were appointed after 1992. In the absence of any notice (terminating the award) so as to enable MCD to say that the petitioner workmen were not entitled to its benefits, Section 18 (3) (d) bars any argument on their behalf to the effect that being later recruits, they were disentitled to the higher pay scale decreed by the second award.

21. *P.U. Joshi (supra)*, no doubt, cautions courts from second guessing policy decisions such as appropriate pay scales, pay fixation, etc. Yet even that decision concedes that that such executive primacy is "subject, of course, to the limitations or restrictions envisaged in the Constitution of India." It is nobody's case that ordinarily, the creation

of posts, promotional avenues, eligibility criteria, and so on, are matters of policy. However, the policy (and whatever rules might be framed in accordance with it) must conform to Articles 14 and 16 of the Constitution. It is the case of the petitioners/applicants that differential pay-scales for equivalent work violates those constitutional principles. In fact, a perusal of the prior history of this case adequately demonstrates that the question of equalizing pay-scales was repeatedly determined by the question of the nature of the tasks performed by the employees placed in different pay-scales. This is in line with established Supreme Court rulings on the point.

22. This court is mindful that the basic constitutional principle is of equal pay for equal work (*Roop Lal vs Lt. Governor*, (2000) 1 SCC 644). In *Union of India vs P.K. Roy*, (1968) 2 SCR 186, it was held that equivalence in pay scales (in a States Reorganization scenario) depends on four factors: the nature and duties of a post; the responsibilities and powers exercised by the officer holding a post; the minimum qualifications; and salary. Furthermore, in *Vice-Chancellor, L.N. Mithila University vs Dayanand Jha*, 1986 (3) SCC 7, a three-judge bench of the Supreme Court held that equivalence depends upon the status and nature and responsibility of the duties attached to the two posts. Therefore, it is within that framework – and within the framework of the judgments of the Supreme Court determining the application of Articles 14 and 16 to pay-scales – that this Court must consider this question.

23. Besides *P.U. Joshi (supra)* which, as seen earlier, does not help MCD's case on its own, CAT also relied upon the fact that the petitioner/applicants were not provided inoculation training. This was

also the basis of the Office Order, dated 5.10.2009, in which it was stated:

*“The present Vaccinators cannot claim parity with Inoculators/Vaccinators as they never performed the duties of the Inoculators. Since Public Health Inspector is promotional post of Assistant Public Health Inspector and as per RRs being framed Assistant Public Health Inspector will be considered for promotion to the post of Public Health Inspector after fulfilling qualifying service in the post of Assistant Public Health Inspector, APHI cannot be placed in the grade of Rs. 5000 – 8000.”*

24. Therefore, this case must turn upon the fact as to whether that is a relevant difference, justifying the difference in pay-scales. Here this Court notes four important sets of facts in this regard. *The first is that the bifurcation between the posts of PHI and APHI, with different pay-scales, was not undertaken pursuant to any amendment in the Recruitment Rules.* The Recruitment Rules, therefore, continue to have only one category of “Vaccinators”, with identical qualifications and pay-scale. These qualifications are limited to sanitary/health inspector diploma from a recognized institution or equivalent, and draw no distinction on the basis of prior training in inoculation. The second is the MCD Circular dated 18.10.2007, which lists out the duties of the PHI and the APHI. Both sets of employees are required to investigate the occurrence of any illness/outbreak/unusual event, distribute chlorine tablets and ORS packets, set up chlorine and ORS depots, and take health education measures; both sets of employees are required to perform “immunizations as and when required”, “supervision of cremation grounds, burial grounds etc.”, prosecutions under the

*DMC Act against unlicensed trades”, “surveillance of communicable and non-communicable diseases under Integrated Disease Surveillance Project” etc. Furthermore, one of the responsibilities of the APHI is to “assist PHIs in any job/duty assigned to him”. These facts reveals that, for the most part, the APHIs and the PHIs are performing identical functions, for which identical qualifications are needed. The differences – e.g, the responsibility of the APHIs to attend fairs and festivals for preventive health measures – are cosmetic, and are not relevant to the distinction between the two categories, i.e. the fact that the category of vaccinators working in the PHI category had received extra inoculation training.*

25. The third is the “List of Business” document, circulated by the MCD, for the meeting of the Medical Health and Public Relief Committee, held on 22<sup>nd</sup> May 2008, and obtained through RTI. Here, during the discussion of the re-designation of “vaccinators, LHV/inoculators” to “APHI/PHI respectively”, it is stated that:

*“after the eradication of smallpox in the year 1977 the vaccination staff is not doing any vaccination work and was assigned the duty of prevention and control of Cholera, gastro-entritis, registration of births and death and other duty of public health importance. For last thirty years, the most of vaccination staff is not doing vaccination work. Therefore there is need to change the designation of these posts.”*

26. It is clear from the above statement – and is also further borne out in the document – that “Vaccinators” is treated as a single class, with no mention of the bifurcation between PHI and APHI on the basis of the extra inoculation training received by the vaccinators who

were beneficiaries of the 1988 award. In fact, the document simply goes on to state that:

*“Commissioner, MCD vide order dated 07.12.2001 accorded approval for designating vaccinators/assistant inspector (Epid) in the pay scale of 3050-4590 as Assistant Public Health Inspectors. Vide order dated 07.12.2001 Health Inspectors/Vaccination inspectors/Inspectors (Epid) and Vaccinators/Assistant Inspectors (Epid) working in the pay scale of Rs. 4000 – 6000 were designated Public Health Inspectors.”*

These facts reveal that the bifurcation appears to have been made *solely* on the basis of differential pay-scale, and nothing more.

27. In its order in T.A. No. 266/2009, directing the Respondent to consider the claims of the vaccinators, the CAT had earlier pointed at how a revision and re-designation of the cadre had “*arbitrariness writ large on the face of the decision.*” Similarly, in its order in O.A. No. 3632/2009, the Tribunal observed:

*“Once the pay scale of Rs. 4000 – 6000 is that sole criterion of re-designating PHI applicants, who were admittedly in the pay-scale from 1.1.1998 when the decision was taken to re-designate on 7.12.2001, they cannot be re-designated as APHI and accorded the same pay scale of Rs. 4000 – 6000. The basis of grant of higher pay scale of Rs. 5000 – 8000, being the erstwhile pay scale of Rs. 4000 – 6000, cannot deny the benefits to the applicants.*

*Moreover, though the respondents maintain that PHI and APHI are performing the different duties, PHI applicants, who were admittedly in the pay-scale from 1.1.1998 when the decision was taken to re-designate on 7.12.2001, they cannot be re-designated as APHI and accorded the same pay scale of Rs. 4000 – 6000. The basis of grant of higher pay scale of Rs. 5000 – 8000, being the erstwhile pay scale*

*of Rs. 4000 – 6000, cannot deny the benefits to the applicants.*

*Moreover, though the respondents maintain that PHI and APHI are performing the different duties, yet we find that the qualifications for both posts in the recruitment rules being identical, the additional factor of training for immunization is a device methodology of the respondents to save all vaccinators earlier with the nomenclature of inoculators being ousted from the Department.” As such, they were given re-designation to the post of Vaccinator otherwise we do not find any real difference in Vaccinators and Inoculators, as both the words by their literal sense refer to as a basic ingredient of Vaccinator.”*

28. On examination of the record, this court is in agreement with the CAT's above observation. Under the recruitment rules, which have not been amended, there is a common post of “vaccinator”, with common qualifications. The functions of the PHI and the APHI are similar (if not wholly identical) with a few cosmetic differences having nothing to do with the stated reason for a differential pay-scale, i.e., prior inoculation training. Furthermore, the documents of the MCD reveal that the bifurcation was made purely on the basis of pay-scale (which, in turn, was determined by whether or not a particular employee had been employed before the Industrial Tribunal's award), and not on any objective differentiation in qualifications or duties. In light of the judgments of the Supreme Court discussed above, we hold that the Respondent's classification of vaccinators into “PHIs” and “APHIs”, with different pay-scales, is illegal and arbitrary.

29. This court is also unpersuaded by the MCD's argument that the Pattnayak Committee's recommendations could have been the basis of the distinction in pay scales. Concededly, the petitioners and those

who were initiators of the second reference (ID 107/1996) belonged to the same class (i.e post first award recruits). The MCD could not have under the circumstances made a hyper classification between those who sought the reference and those who did not- such classification is forbidden in view of the express terms of Section 18 (3) (d) of the Industrial Disputes Act. Besides, the report of the Committee could at best be recommendatory and a justification for a future change in the recruitment rules. However, the stand of the MCD was that the rules "are being amended" - as late as in 2011 in their counter affidavit before CAT.

30. The Court is conscious that the State can prescribe pay scales, depending upon the nature of duties and functions attached to the post, the qualifications prescribed and the experience gained. Yet, when historically equivalence has been established -through successive judicial determinations which attain finality, the route to set at naught such established parity has to be a Constitutionally recognized mode, i.e amendment of rules and overriding a judgment or award in a manner known to law. Here no such thing has happened; the MCD blandly prescribed two pay scales in respect of persons falling within the same class. The only justification it could fall back upon was that the petitioners here were not parties to the previous reference. As seen earlier, the dictates of provisions of the Industrial Disputes Act, overbear such an argument. There is consequently a palpable arbitrariness in the resultant classification which this Court cannot tolerate. Here it would be useful to recollect the opinion of the Supreme Court in *Re The Special Courts Bill, 1978-* [1979] 2 SCR 476 to the following effect:

*"6. The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.*

*7. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be rounded on' an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act.*

*8. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon person arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense above mentioned."*

Later, applying those principles, the Court again stated, in *Federation Of Hotel & Restaurant Association vs Union Of India & Ors* AIR 1988 SC 1291, that:

*"We must, therefore, look beyond the ostensible classification and to the purpose of the law and apply the test of 'palpable arbitrariness' in the context of the felt needs of the times and societal exigencies informed by experience to determine reasonableness of the classification."*

31. The classification - in the present case- between the petitioners and the others enjoying the PHI pay scales is neither rational nor intelligible; it is based entirely on the existence of the power to classify; consequently, it is a case of palpable arbitrariness.

32. Consequently, the CAT's impugned order cannot be sustained and is set aside. The Respondent is directed to designate the petitioners/applicants as PHIs, with the pay-scale of ₹5000–8000, with all benefits of arrears of pay and allowances, on parity with that enjoyed by the other Vaccinators who have that benefit. The MCD is directed to issue consequential directions within eight weeks from today. The writ petition is allowed in the above terms along with the pending application without order as to costs.

**S. RAVINDRA BHAT**  
**(JUDGE)**

**VIPIN SANGHI**  
**(JUDGE)**

**OCTOBER 31, 2014**