

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.14707 of 2017
Date of Decision: July 12, 2017

Nasib Singh & others

...Petitioners

Versus

Union of India & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL, JUDGE
HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Dhiraj Chawla, Advocate,
for the petitioners.

AMIT RAWAL, J.

The petitioners are aggrieved of the order dated 6.12.2016 (Annexure P-5) rendered by the Central Administrative Tribunal, Chandigarh (for short "CAT") dismissing the Original Application seeking the following reliefs:-

"(i) Quashing of the order dated 30.09.2014 (Annexure A-9) whereby the representation dated 11.11.2013 filed by the applicants for the grant of the benefits of upgradation flowing from the accepted recommendations of the 5th Central Pay Commission Report has been rejected.

(ii) Directions to the respondent authorities for the grant of the benefits of upgradation flowing from the accepted recommendations of the 5th Central Pay Commission report and the quashing of the inaction thereof which has resulted into further downgrading of the cadre of technicians in the respondent department in the accepted recommendations of the 6th Central Pay Commission wherein the technician cadre to

which the applicant belong has suffered disparity and financial loss viz-a-viz Technical as well as Non-Technician Staff in the respondent department itself and also the other Departments of the Government of India.”

Mr.Dhiraj Chawla, learned counsel representing the petitioners submitted that the petitioners have not been granted scale and it being a recurring cause of action, therefore, could not be dislodged or thrown out on the ground of limitation as the principle of “equal pay for equal work” strictly applies to the facts and circumstances of the case. In such circumstances, the CAT ought to have considered the merits of the matter instead of dismissing the Original Application on the ground of limitation.

He further submitted that the case of the petitioners before the CAT was that they were working on various posts in technical cadre, the hierarchy of which is Technician A” in the Pay Band-1, grade pay of Rs.1900/-, Technician “B” in the Pay Band-1, grade pay of Rs.2400/-, Technician “C” in the Pay Band-1, grade pay of Rs.2800/-, Technical Assistant “B” in the Pay Band-2, grade pay of Rs.4200/- and Technical Officer Pay Band-2, grade pay of Rs.4600/-. The aforementioned posts are governed by Defence Research and Development Organization Technical Cadre 1995 Rules. The same was followed by another Notification dated 19.4.1999, vide which Defence Services (Revised Pay) Amendment Rules, 1999 were introduced and the post of Technician “C”, existing in the pay scale of Rs.1320-2040, was placed in new pay scale of Rs.4500-7000 and the claim of the petitioners accrued from the accepted recommendations of 5th Central Pay Commission.

It was also urged that in 2000, the Government of India notified, Defence Research and Development Organization, Technician

Cadre Recruitment Rules, 2000 providing that there would be two categories viz.category A and B in DRDO providing for promotion from Technician A to B and B to C, but ignored that the scales of pay had merged in pay scale of Rs.1320-2040 and as such anomaly occurred w.e.f. 1.1.1996. However, the petitioners having deprived of the aforementioned relief, submitted detailed representation dated 11.11.2013 (Annexure A-7), which remained unattended, compelling them to file Original Application No.060/00098/2014 before CAT, who, vide order dated 5.2.2014 (Annexure A-8), directed the respondents to dispose of the representation, which was rejected through impugned order dated 30.9.2014 (Annexure A-9). It is in this backdrop of the matter, the petitioners preferred Original Application and, thus, argues before this Court that the order of the CAT is liable to be set-aside and the matter may be remitted for fresh adjudication, on merits.

We have heard the learned counsel for the petitioners, appraised the paper book, impugned order and of the view that the claim of the petitioners is highly belated. The conceded position on record, much less as per the argument of Mr.Chawla, the cause of action had accrued to the petitioners in 1996 and they continued to work in the same pay scale and did not seek redressal of their grievance, with promptitude, despite the fact that on two occasions, the rules were duly amended, but woke up from the slumber to make representation only in November, 2013.

Dismissal of the representation preferred by the petitioners would not give them fresh cause of action, as vide the impugned order, the rejection of the claim of the petitioner was not only on the ground of delay, but on merit as well. The relevant conclusion while declining the claim of the petitioner in the order passed by the CAT on merits in Paras 7 to 9 reads

thus:-

“7. A conjunctive perusal of the pleadings would disclose that the claim of the applicants for grant of Technician `C' working in DRTC the higher grade pay of Rs.4200 as against the grade pay of Rs.2800 has been rejected vide order dated 30.9.2014 by passing a speaking order, the relevant part of which reads as under :-

“As per rule 6 (5) (a) of DRTC Rules, 1995, all the persons holding the posts of Photographer Assistant, Pharmacist, Junior Scientific Assistant-II, Tradesman `A', Glass Blower, Draughtsman Grade-II, Senior Artist, Photographer Grade-I and Senior Computer were to be placed in Grade I of Category II (i.e. Technical Assistant `A') provided they possessed the qualification prescribed for the post of Tech Assistant `A' as laid down in the Schedule III (B. Sc. Or 03 years' Diploma in Engineering or Technology) failing which they were to be placed in grade III of Category I (i.e. Technician `C'). It is pertinent to mention that all the posts which were clubbed together and placed in the grade of Technical Assistant `A' and Technician `C' were having different pre-revised pay scales. In the 5th CPC, the post of Technical Assistant `A', for which the entry level qualification was B.Sc. or 03 years' diploma in Engineering or Technology, was granted pay scale of Rs.5000-8000, whereas the post of Technician `C', whose incumbents possessed the qualification of 10th Class and ITI, were granted pay scale of Rs.4000-6000. As explained in sub para (a) above, the post of Technician `C' was granted higher pay scale of Rs.4500-7000 on the basis of hierarchy in DRTC. Thus, it is not possible for organization to grant higher scale to applicants at par with Technician Assistant `A' when posts are having different entry level qualifications and the 5th CPC had recommended different pay scales for

both the posts.

(d) That all the applicants, except Sl. No. 2,3,11,12 & 13 of the OA, joined service after formation of DRTC in 1995 and have absolutely no basis to relate back to the post of Tradesman 'A' or Junior Scientific Assistant-II.

(e) That the applicants to justify their claim have also referred to various posts like Postman in Ministry of Communication and Assistant Class II in Kolkata Mint, which were granted a lower pay scale earlier but were subsequently granted higher pay scale for various reasons by the respective departments. That some incomparable posts in other departments have been granted higher pay scale cannot form basis for grant of higher pay scale to the applicant, when the post of Technician 'C' has already been granted a higher pay scale than what was initially notified under 5th CPC.

(f) That once the applicants joined the DRTC which has attributes like merit based Flexible Complimenting Scheme of promotion and other incentive schemes, they cannot draw parallel with cadres in other departments where the promotions are vacancy based”.

8. The stand taken by the respondents does not appear to be illogical or arbitrary and they have given enough reasons which are convincing for grant of pay scale that has been granted to the applicants. It is well settled law that a court of law cannot enter into domain of determination of pay scales and it is for the expert bodies like Pay Commission on the recommendations of which the competent authority acts upon. The Hon'ble Apex Court in Union of India v. Dineshan K.K. [(2008) 1 SCC 586], has held :-

“16. Yet again in a recent decision in State of Haryana v. Charanjit Singh a Bench of three learned Judges, while affirming the view taken by this Court in State of Haryana v. Jasmer Singh, Tilak Raj, Orissa University of Agriculture & Technology v. Manoj K. Mohanty and

Govt. of W.B. v. Tarun K. Roy has reiterated that the doctrine of equal pay for equal work is not an abstract doctrine and is capable of being enforced in a court of law. Inter alia, observing that equal pay must be for equal work of equal value and that the principle of equal pay for equal work has no mathematical application in every case, it has been held that Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who are left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. Enumerating a number of factors which may not warrant application of the principle of equal pay for equal work, it has been held that since the said principle requires consideration of various dimensions of a given job, normally the applicability of this principle must be left to be evaluated and determined by an expert body and the court should not interfere till it is satisfied that the necessary material on the basis whereof the claim is made is available on record with necessary proof and that there is equal work of equal quality and all other relevant factors are fulfilled.”

9. The principle of “equal pay for equal work” has been a subject matter of a number of decisions. A large number of factors such as educational qualification, nature of duties and responsibilities, mode of recruitment have been held to be relevant factors for determining the equivalence in the matter of fixation of scale of pay.”

Further, no prayer for quashing of any orders vide which the lower pay scales were granted to them has been made. The principle of “equal pay for equal work” requires consideration of various dimensions of a given post and if there is a classification to grant a different pay scale, it

cannot be said to be arbitrary so as to attract judicial interference.

The findings rendered by the CAT by touching the merits as well as the grounds of delay, do not suffer from any illegality and perversity or can be said to be suffering from non-applicability of mind, thus, do not require any judicial interference at our end.

Resultantly, the impugned order is upheld and the writ petition is dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

**July 12, 2017
ramesh**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No