

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

+ **W.P.(C) 10393/2015**

Reserved on: 9th November, 2016
Date of decision: 04th January, 2017

NON-MEDICAL SCIENTIST FORUM (GROUP B & C) FORUM
NCDC Petitioner

Through: Mr. J.S. Mann, Advocate.

Versus

THE SECRETARY MINISTRY OF HEALTH AND FAMILY
WELFARE AND ORS. Respondents
Through: Mr. Anil Panwar, CGSC and Ms.
Mani Chaudhary, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. CHANDER SHEKHAR

SANJIV KHANNA, J.

The Non-Medical Scientists Forum (Group B & C) Forum NCDC in the present writ petition impugns order dated 23rd July, 2015, whereby the Principal Bench of the Central Administrative Tribunal has dismissed OA No. 3054/2013.

2. The petitioner is a forum of Group B and C employees of the National Centre for Disease Control, which was earlier known as National Institute of Communicable Diseases. The National Centre for Disease Control (NCDC, for short) is a scientific and technological institute in the field of research, teaching, and training which is also engaged in the execution of work and planning. The dispute raised by the petitioner forum relates to the pay scale

of Laboratory Assistants (Group C) who, vide letter dated 22nd February, 2000 were granted the pay-scale of Rs.4000-6000 with effect from 1st January, 1996. With effect from 22nd February, 2000, 20 posts of Laboratory Assistants (Group C) were upgraded to the pay-scale of Rs.4500-7000. The case set up by the petitioner is that the laboratory assistants have wrongly been placed in the aforesaid pay-scale of Rs.4000-6000/4500-7000 and as per the recommendations of the 5th Pay Commission, were entitled to pay in the scale of Rs.5000-8000 with effect from 1st January, 1996. On this premise, it is submitted that upon implementation of Sixth Pay Commission's recommendations, Laboratory Assistants are entitled to Grade Pay of Rs.4200 in Pay Band-2 (Rs.9300-34800) instead of grade pay of Rs. 2400 and Rs. 2800 respectively, as the earlier scale of Rs.5000-8000 was merged in the scale of Rs.6500-10500.

3. It is obvious that the impugned order dated 22nd July, 2015 has rejected the said prayer made by the petitioner forum, inter alia, holding that the principle of "equal pay for equal work" as pleaded was not established, for the petitioner forum had failed to establish parity by referring to the method of recruitment, the level at which the recruitment was made, hierarchy in the service in the given cadre, the minimum educational/technical qualification required, avenues of promotion, nature of duties and responsibilities, horizontal and vertical relativities with similar jobs, public dealings, satisfaction level, the employer's capacity to pay etc. Reliance was placed on the decisions of the Supreme Court in *State of Haryana & Anr. Vs. Haryana Civil Secretariat Personal Staff Association*, 2002 (Suppl.) 1 SCR 118 and *Union of India & Anr. Vs. P.V. Hariharan and Anr.*, (1997) 3 SCC 568.

4. The contention of the petitioner forum is that they were/are not claiming or predicating their case on the dictum “equal pay for equal work”, but premise their prayer on wrong fitment in the replacement scale, i.e. the failure of the respondents to correctly apply the recommendations of the Fifth and Sixth Pay Commission, as per which they should have been granted the replacement pay-scale of Rs.5000-8000 with effect from 1st January, 1996 and the grade pay of Rs. 4200 in Pay Band II with effect from 1st January, 2006.

5. As the petitioners have placed reliance upon paragraphs 55.142 to 55.151 of the Fifth Pay Commission’s report which pertain to laboratory staff, the same have been reproduced below:-

“55.142 Alongside the scientific staff there is a category of employees working in various laboratories of the Central Government which assists in the conduct of experiments, analysis of samples and tests, and other matters connected with pure and applied research, experimental development or products, quality testing and control, etc., Personnel in this category have a science background at matriculation/Higher Secondary level, and in addition have to possess a Laboratory Technicians Certificate/diploma including Diplomae in Medical Laboratory Technology (DMLT).

55.144 Laboratory Boys, Helpers, Attendants, Bearers, etc. are placed in scales of pay ranging from Rs.750-940 to Rs.825-1200 and are classified as Group D. These are about 1856 in number, with the largest concentration in the scale of pay of Rs.800-1150, where the majority enter with middle/VIII Std./High School/Matric with one year Lab Attendant Course or experience of laboratory work. The level above this is that of Laboratory Assistants. They are placed in pay scales ranging from 950-1500 to Rs.1200-2040, with qualifications of Matric with Physics, Chemistry or Maths or 10+2 with Science or even B. Sc. Degrees and a Trade Certificate/Diploma relevant to the subject, including DMLT. This group covers another 1469 employees. The majority of these are recruited in the scale of Rs.975-1540, though a substantial number also enter in the grade of

950-1400/950-1540. Third rung in this category is the Laboratory Technician, the highest of the three, recruited with qualifications of 10+2 with science, B. Sc. or Diploma in Engineering and/or other subject matter diploma (including DMLT). The bulk of these personnel enter at the scale of Rs.1320-2040, though a fairly large number are also observed to enter at the level of Rs.1400-2300. This group has a strength of about 1432. A summary grade-wise position of the total strength of laboratory staff is given in Annexe 55.4. Intervening scales between those described above, are usually promotional scales. The above major three entry grades account for 4282 (or 89.45%) of the total Laboratory personnel in the Central Government.

55.145 Among the major employers of Laboratory personnel and Defence Research & Development Organisation (426), Directorate of Marketing and Inspection (346), Geological Survey of India (330), Indian Railways (265), Department of Space (203), Central Water and Power Research Station (194), Central Research Institute (192), Safdarjang Hospital (183), Central Revenue Control Laboratories (155) and Indian Meteorological (152). These 10 laboratories/organisations together account for 2446 (or 51.45) of the total establishment of laboratory personnel.

55.146 Upto the Third CPC, Laboratory staff were not dealt with as a separate category, but were included as a part of Scientific staff. The Fourth CPC covered laboratory staff under a separate common category and the pay scales recommended by it followed the pattern given below:-

S No.	Qualifications	Pay-scale attached by Fourth CPC
1.	Matriculation with science	Rs.950-1400
2.	Higher Secondary/Intermediate With science with some experience	Rs.1200-2040
3.	Degree with Chemistry	Rs.1400-2300

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55.149 The laboratory staff are presently distributed over 17 pay-scales. As per the general scheme in Chapter 49 on the rationalisation of pay-scales, the existing scales of 950-1400, 975-1540, 1150-1500, 1350-2200 and 1400-2600 will be merged with other scales. The existing staff in these scales will be placed in the corresponding replacement scales. The following scales of pay may be retained for the category as a whole:-

SNo.	Designation	Pay-scales	Minimum Qualifications	Remarks
1.	Lab Attdt. III	Rs.750-940	VIII Standard	100% Direct Recruitment
	Lab Attdt. II	Rs.775-1025	"	1 st ACP
	Lab Attdt. I	Rs.800-1150	"	2 nd ACP
2.	Lab Asstt. III	Rs.975-1500	Matric (with science) + Cert/Dipl. In Lab Tech. Including (DMLT)	85% Direct Recruitment 15% promotion
			10 + 2 with science	
	Lab Asstt. II	Rs.1200-2040	"	1 st ACP
	Lab Asstt. I	Rs.1400-2300	"	2 nd ACP
3.	Lab Tech III	Rs.1600-2660	B.Sc. with Dip/Cert	50% direct recruitment
	Lab Tech II	Rs.1640-2900	1 st ACP	50% promotion
	Lab Tech I	Rs.2000-3500	2 nd ACP	

NOTE. Those Laboratory Technicians presently in the grade of Rs.1320-2040 will be placed in the pay-scale of Rs.1400-2300.

55.150 On the demand of promotional avenues, while the two assure career progressions as per general scheme will bring relief, most Laboratories have very few post to provide substantive vacancy based promotions. We recommend that the promotion from Auxiliary to Support staff may be retained upto 15% without insisting on certificate requirements, provided the incumbents are at least matriculates. Within the support staff categories promotions from the level of Laboratory Assistant to Laboratory Technicians may be about 50% without linking it to qualifications. We have given our recommendations regarding Flexible Complementing Scheme in

Chapter 23. As indicated therein the scheme will apply to R&D professionals in the Executive category. For others the provisions of ACP scheme will be applicable. This will take care of the problem of stagnation among the laboratory staff.”

6. Paragraph 55.142 records that laboratory staff within the Central Government conducts experiments, analysis of samples and tests, and other matters connected with pure and applied research. The employees in this category have a Science background at matric/higher secondary level and also possess Laboratory Technicians Certificate/diploma including a diploma in Medical Laboratory Technology (DMLT). At the lowest rung, there were Laboratory Boys, Helpers, Attendants, etc., who were earlier in the pay-scale of Rs.800-1150. Above them in the hierarchy were Laboratory Assistants in the pay-scales ranging from Rs.950-1500 to Rs.1200-2040 with qualification of matric with Physics, Chemistry or Maths or 10+2 with Science or even B.Sc. degree and a trade certificate/diploma relevant to the subject including DMLT. The third rung in the hierarchy was of Laboratory Technicians in the pay-scale between Rs.1320-2040 to Rs.1400-2300. Laboratory Technicians are recruited with qualifications of 10+2 with Science, B.Sc. or diploma in engineering and/or other subject matter diploma including DMLT.

7. Paragraph 55.145 gives break-up of laboratory personnel in different organisations and research centres. Paragraph 55.146 refers to the Fourth Pay Commission and different categories of laboratory staff and the pay-scales pattern. As per the 4th Pay Commission, employees possessing the qualification of : (a) matriculation with Science were accorded pay-scale of Rs.950-1400; (b) Higher Secondary/Intermediate with Science and some experience were granted pay in the scale of Rs.1200-2040; and (c) those with a degree with Chemistry that of Rs.1400-2300.

8. Paragraph 55.149 is the important and relevant paragraph. It states that then 17 different pay-scales were applicable to laboratory staff. As per the general scheme, existing pay-scales of Rs. 950-1400, 975-1540, 1150-1500, 1350-2200 and 1400-2600 had been merged with other pay-scales and accordingly, the existing staff in these scales would be placed in the corresponding pay-scales. Thereafter, in a tabular form, it is stated that the stipulated pay-scales could be retained for the category as a whole. As per the table, at the lowest rung were Laboratory Attendant III in the pay scale of Rs.750-940 with minimum educational qualification of VIIIth standard. They were to be recruited entirely by way of direct recruitment and entitled to two financial upgradation under the Assured Career Progression (ACP) Scheme to the scale of Laboratory Attendant II (Rs.775-1025) and Laboratory Attendant I (Rs.800-1150).

9. The second in the hierarchy were Laboratory Assistants III in the pay scale of Rs. 975-1500 with minimum educational qualification of Matriculation with science and Certificate Diploma in Laboratory Technology, including DMLT or 10+2 with science. 85% of the posts were to be filled by direct recruitment and the remaining 15% by way of promotion. It was stipulated that first ACP would be as Laboratory Assistant II in the pay-scale of Rs.1200-2010 and second as Laboratory Assistant I in the pay-scale of Rs.1400-2300.

10. The third pay-scale post in the hierarchy was that of Laboratory Technicians with a minimum qualification of B.Sc with diploma/certificate. They were allocated the pay-scale of Rs.1600-2660. It was recommended that the first ACP would be as Laboratory Technician II in the pay-scale of Rs.1640-2900 and second ACP as Laboratory Technician I in the pay-scale of

Rs.2000-3500. Appointment as Laboratory Technician III would be 50% by direct recruitment and 50% by promotion. Laboratory Technicians already in the pay-scale of Rs.1320-2040 would be given pay-scale of Rs. 1400-2300.

11. Paragraph 55.150 had stipulated that promotion to the extent of 50% of the posts from the level of Laboratory Assistants to Laboratory Technicians could be without linking it to the qualifications. Reference was also made to the recommendations regarding the Flexible Complementing Scheme as this would take care of the problem of stagnation.

12. The petitioners have placed reliance on paragraph 51.34 of the Fifth Pay Commission recommendation to urge that those with B.Sc degree/diploma in engineering were entitled to minimum pay-scale of Rs.1600-2660. The petitioners have not enclosed/filed paragraph 51.34 of the Fifth Pay Commission recommendation. We have, however, downloaded the same from the internet. Paragraphs 51.30 to 51.34 read as under:-

51.30 Scientific staff man about 15,112 posts. Nearly one-third of them are part of a common category of laboratory technicians and staff, who have been covered elsewhere in this report. The remaining personnel are usually placed at Group B and C levels between scales ranging from Rs.2375-3500 to Rs.1200-2040. They are also promotion posts for Laboratory staff and technicians and feeder grades to posts of Scientists and R&D professionals. A large number of designations and job titles exist under this category of staff in different organisations, the most usual ones being Scientific/Technical/Research Assistants (both Senior as well as Junior) and Officers.

51.31 The Second CPC observed that Class II posts are generally filled by direct recruitment though a small percentage is set aside for promotion. The incumbents are required to possess at least a Master's degree; Class II posts

generally require a Master's degree or any Honours degree. That C.P.C. justified a qualitative distinction between class II and lower posts on the basis of qualification and duties. It also pointed out a difference in the work in National Laboratories, pertaining to long range problems of fundamental research. It recommended one scale as sufficient at the level of Senior Scientific Assistants and reduction in the number of scales for lower posts. That CPC also recommended relaxation in age to enable scientific staff to compete for higher level posts and standardization of designations. The Third CPC also recommended along similar lines, but attempted no direct distinction between laboratory and other S&T staff. It advise that 4 scales below the Group B Gazetted level were sufficient for this category of staff. Both CPCs pointed out lack of promotion avenues in these grades on account of small cadres and isolated posts. The Fourth CPC did not make any observations on S&T staff except granting replacement scales under various Ministries.

51.32 A large number of demands made in memoranda received by us, concentrate on the issues of anomalies in pay-scales, isolation of posts, small cadres and multiple levels of direction recruitment, stagnation problems, organising the Scientific Staff into a common service has been demanded along with extension of the Flexible Complementing Scheme, permitting private consultancy and grant of Non-practice allowance. Special Allowances have been sought for higher qualifications, difficult postings, risk, conveyance, purchase of special journals and membership of profession bodies. Enhancement of the age of superannuation has also been demanded on account of higher achievements of scientific staff and a general increase in longevity.

51.33 To analyse the demands made in memoranda, the implications thereof, and for examination of pay-scales, qualifications and designations, we constituted an inter-Ministrial Working Group on Scientific staff with representatives of Ministries/Departments which have a

substantial components of such personnel in their establishments. We have kept in view the Working Groups' suggested, in making our recommendations.

51.34 Direction recruitment among the scientific staff exists at almost every level of pay-scales and without any uniform linkage with qualification. We observe that some post-graduate and engineering degree entrants are placed in the scale of pay Rs.1400-2300, while some are placed in higher scales. The entry level of graduates in Science also varies from the scale of pay or Rs.1200-1800 to Rs.1640-2900. Scientific staff have demanded that Ph. D degree holders must uniformly be placed in Group A and Engineers in Group B Gazetted levels, irrespective of the post in which initial recruitment has taken place. The Second CPC favoured elements of direct recruitment at Class II and Senior non-gazetted positions based on a uniform application of qualifications. The 3rd CPC also based its recommendations on qualification. We have been informed that direct entry at too many levels creates problem of stagnation. We have not noticed Ph. D as an essential minimum qualification at any of the Group B or C levels. Taking into account various aspects, we recommend that for direct recruitment qualification should be prescribed uniformly as follows, as far as possible:-

M i n i s t r i c t e s	PAY-SCALE QUALIFICATIONS		SUGGESTED
1.		Rs.950-1500	Matric + one-year certificate
2.		Rs.1320-2040	Matric with Science +two-year diploma
3.		Rs.1600-2660	B.Sc. Graduates/Dip in Engg.
4.		Rs.2000-3500	Engineering degree/Post-graduation

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hould avoid prescribing very high or specialized qualification against these posts as “essential”. Posts at Sr. No.1 and 2 above usually exists in laboratory and in the field forming feeder grades to the other scientific posts. In view of the above recommendations, combined with rationalization of certain scales of pay, we also recommend that direct recruitment should usually not be made in the scales of pay of Rs.1350-2200, Rs.1350-1800, Rs. 1400-2300, Rs.1640-2900, and Rs.2000-3200 except where functional requirements specially demand direct recruitment. Direct recruitment at the level of Rs.2000-3500 should be reduced wherever justified, taking into account direct recruitment and stagnation at the immediately next lower levels. Direct recruitment at this level should not generally exceed 60%, and educational qualifications laid down for direct recruitment should apply to promotions also.”

Paragraph 51.30 specifically states that scientific staff, who were part of a common category of laboratory technicians and staff, have been covered elsewhere in the report. This obviously has reference to paragraphs 55.142 to 55.150, which have been quoted above. Paragraph 51.30 deals with the remaining personnel of scientific staff placed at Group B and C levels and was noticed that they had been given different designations. Paragraph 51.34 observed that direct recruitment of the scientific staff exists at almost every level without any uniform linkage with qualification. It was recommended that for direct recruitment, qualification should be prescribed uniformly. In this context, the pay-scale and suggested qualifications were stipulated with the observation that the Ministry should avoid prescribing very high or specialized qualifications against these posts. Further, the posts at Sr. Nos.1 and 2 in the pay-scales of Rs.950-1500 and 1320-2040 were feeder grades to

other scientific posts. It was accordingly recommended that direct recruitment should not be made in the higher pay-scales, except when functional requirements demand direct recruitment. Lastly, direct recruitment at the level of pay-scale of Rs.2000-3500 should be reduced and should not generally exceed 60%, and educational qualifications laid down for direct recruitment should apply to promotions also.

13. We now turn to the Recruitment Rules in NCDC and the hierarchy of posts as they exist. Reference, in fact, was made by the petitioner to the Gazette of India Notification published on 22nd October, 1980, by which the National Institute of Communicable Diseases (Group C posts) Recruitment Rules, 1980 were published under the proviso to Article 309 of the Constitution. As per the said Rules, the post of Senior Laboratory Assistant/Laboratory Assistant (Pay Scale of Rs. 975-1540) is to be filled up 50% by direct recruitment and 50% by promotion from Insect Collectors with three years of regular services in the grade. The essential qualification prescribed is B.Sc. and the desirable qualification is one year's experience in medical/biological laboratory. The post of Insect Collector was in the scale of Rs.950-1500 and the essential qualification as prescribed was Higher Secondary with Science and desirable qualification was one year's experience in medical/biological laboratory. Laboratory Assistants/Junior Technicians are eligible for promotion as Technicians/Senior Technicians in the scale of Rs. 1320-2040 against 50% promotion quota, failing which, these posts are to be filled up by direct recruitment. The essential qualification prescribed is Science graduate in Biology/Biochemistry/Microbiology and desirable qualification is one year's practical experience in the medical/biological

laboratory. The requirement of Diploma/Certificate like DMLT is not stipulated or mandated for any of the aforesaid posts.

14. Pursuant to the Fifth Pay Commission recommendation, the pay-scale of technical posts including Laboratory Assistants in NCDC was revised in the following manner:-

“

Sr. No.	Name of post	Pay Scale before 5 th CPC i.e. 1-1-1996	Pay Scale Revised by 5 th CPC w.e.f. 1.1.96
1.	Lab Assistant	975-1540	3200-4900
2.	Technician	1320-2040	4000-6000
3.	Research Assistant	1400-2300	4500-7000
4.	Sr. Research Asstt..	1640-2900	5500-9000
5.	Asstt. Research Officer	2000-3500	6500-10500

”

This revision was by way of grant of replacement pay scales. However, it appears that representations were made for enhancement and grant of better pay-scales rather than the replacement pay-scale. The Director General, Health Services vide his letter dated 22nd February, 2000 agreed to upgradation of pay-scales of the above mentioned posts including Laboratory Assistants in the following manner:-

“

Sr. No.	Name of post	Pre Revise Pay Scale as per 4 th CPC before 1-1-1996	Revised pay scale as per 5 th CPC on 1.1.96	Upgraded pay scale
1.	Lab Assistant	975-1540	3200-4900	4000-6000 4500-7000
2.	Technician	1320-2040	4000-6000	5000-8000
3.	Research Assistant	1400-2300	4500-7000	5500-9000
4.	Sr. Research Asstt.	1640-2900	5500-9000	6500-10500
5.	Asstt. Research Officer	2000-3500	6500-10500	6500-10500

”

It was directed that the post of Senior Research Assistant would be merged with the post of Assistant Research Officer subsequent to upgradation. There would be restructuring in the cadre of Laboratory Assistants and 20% posts would be upgraded prospectively to the scale of Rs.4500-7000. However, those holding the post of Laboratory Assistants would be placed in the pay-scale of Rs.4000-6000 with effect from 1st January, 1996.

15. In the light of the aforesaid, we have no hesitation in holding that the respondents had granted replacement pay-scale and in fact, had upgraded the pay-scale of those holding the post of Laboratory Assistants after the Fifth Pay Commission recommendation. The contention of the petitioner that Laboratory Assistants were not given the replacement pay-scales or the upgraded pay-scales on the basis of the Fifth Pay Commission recommendation is factually incorrect and wrong. The hierarchical pattern as per the National Institute of Communicable Diseases (Group C posts) Recruitment Rules, 1980 is different and distinct from the pattern in other services. The qualifications prescribed are distinct in the absence of the requirement of Diploma/Certificate like DMLT. Any change or alteration made in the pay-scales of Laboratory Assistants would have necessary cascading affect on the other posts both below and above the hierarchy. The case setup by the petitioner relying upon paragraph 51.34 of the Fifth Pay Commission recommendation, as noticed above, is weak and is unacceptable. It relates to post for which there was direct recruitment. In the present case, as noticed above, 50% posts of Laboratory Assistants are filled by way of promotion and 50% by way of direct recruitment. The claim of the petitioner for the grant of corresponding pay-scale pursuant to the Sixth Pay Commission recommendation of Grade Pay of either Rs.4200 would

accordingly falter and has to be rejected. We would for the sake of clarity refer to the following table which gives the pay scales pursuant to the recommendation of the Fourth, Fifth and Sixth Pay Commission applicable to group S-6 to S14. The same is as under:-

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SL. No.	4 th CPC Pay scale w.e.f 1.1.1986	5 th CPC Post/Grade and Pay scale w.e.f. 1.1.1996		6 th Central Pay Commission w.e.f. 1.1.2006 Corresponding		
		GRADE	SCALE	Name of Pay Band/Scale	Pay Bands/Scale	Grade Pay
7	975-25-1150-30-1540/ 975-25-1150-30-1660	S-6	3200-85-4900	PB-1	5200-20200	2000
8	1200-30-1440-30-1800/ 1200-30-1560-40-2040/ 1320-30-1560-40-2040	S-7	4000-100-6000	PB-1	5200-20200	2400
9	1350-30-1440-40-1800- 50-2200/1400-40-1800- 50-2300	S-8	4500-125-7000	PB-1	5200-20200	2800
10	1400-40-1600-50-2300- 60-2600/1600-50-2300- 60-2660	S-9	5000-150-8000	PB-2	9300-34800	4200
11	1640-60-2600-75-2900	S-10	5500-175-9000	PB-2	9300-34800	4200
12	2000-60-2120	S-11	6500-200-6900	PB-2	9300-34800	4200
13	2000-60-2300-75- 3200/2000-60-2300-75- 3200-3500	S-12	6500-200-10500	PB-2	9300-34800	4200
14	2375-75-3200-100- 3500/2375-75-3200-100- 3500-125-3750	S-13	7450-225-11500	PB-2	9300-34800	4600
15	2500-4000	S-14	7500-250-12000	PB-2	9300-34800	4800

”

The Government of India vide their letter dated 25th March, 2016 had stated that prior to implementation of the Fifth Pay Commission recommendation, there were 74 posts of Lab Assistant/Junior Technicians (4 Lab Assistants and 70 Junior Technicians) in NCDC, which were in the pay-scale of Rs.975-1540. 50% of the said posts were to be filled by promotion from Insect Collectors and remaining 50% by direct recruitment with B.Sc. qualification. These two posts were divided into two categories i.e. Laboratory Assistant, Grade I (34 posts) in the pay-scale of Rs.4500-7000 and Laboratory Assistant,

Grade II (40 posts) in the pay-scale of Rs.4000-6000. The posts of Laboratory Assistant, Grade I were to be filled 50% by promotion from Laboratory Assistant, Grade II and 50% by way of direct recruitment. Posts of Laboratory Assistant, Grade II were to be filled 50% by promotion from Insect Collectors and 50% by way of direct recruitment. The corresponding pay-scale pursuant to the Sixth Pay Commission recommendation for the scale of Rs.4000-6000 is Rs.5200-20200 plus Grade Pay of Rs.2400 and of Rs.4500-7000 is Rs.5200-20200 plus Grade Pay of Rs.2800.

16. The Supreme Court recently had the occasion to examine the principle of 'equal pay for equal work' in *State of Punjab and Others versus Jagjit Singh and Others*, (2016) SCC Online SC 1200. This judgment takes notice of several earlier judgments wherein the question of upgradation of pay scale or pay parity was considered. Upon consideration of earlier judgments or parameters, deductions have been delineated when principle of 'equal pay for equal work' should or should not be invoked and applied. The question raised by the petitioner forum is that they have been wrongly denied benefit of the Fifth Pay Commission recommendation, which has been given to others and in this context some deductions or precepts laid down in *Jagjit Singh* (supra) would be relevant. For the purpose of the present decision, we would only refer to deductions (i), (ii), (iii), (iv), (v), (viii) and (ix), which read as under:-

- “(i) The ‘onus of proof’, of parity in the duties and responsibilities of the subject post with the reference post, under the principle of ‘equal pay for equal work’, lies on the person who claims it. He who approaches the Court has to establish, that the subject post occupied by him, requires him to discharge equal work of equal value, as the reference post (see - *the Orissa University of*

Agriculture & Technology case, Union Territory Administration, Chandigarh v. Manju Mathur, the Steel Authority of India Limited case, and the National Aluminum Company Limited case).

- (ii) The mere fact that the subject post occupied by the claimant, is in a “different department” vis-a-vis the reference post, does not have any bearing on the determination of a claim, under the principle of ‘equal pay for equal work’. Persons discharging identical duties, cannot be treated differently, in the matter of their pay, merely because they belong to different departments of Government (see - *the Randhir Singh case*¹, and *the D.S. Nakara case*).
- (iii) The principle of ‘equal pay for equal work’, applies to cases of unequal scales of pay, based on no classification or irrational classification (see - *the Randhir Singh case*). For equal pay, the concerned employees with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity (see - *the Federation of All India Customs and Central Excise Stenographers (Recognized) case, the Mewa Ram Kanojia case, the Grih Kalyan Kendra Workers' Union case and the S.C. Chandra case*).
- (iv) Persons holding the same rank/designation (in different departments), but having dissimilar powers, duties and responsibilities, can be placed in different scales of pay, and cannot claim the benefit of the principle of ‘equal pay for equal work’ (see - *the Randhir Singh case, State of Haryana v. Haryana Civil Secretariat Personal Staff Association, and the Hukum Chand Gupta case*). Therefore, the principle would not be automatically invoked, merely because the subject and reference posts have the same nomenclature.
- (v) In determining equality of functions and responsibilities, under the principle of ‘equal pay for equal work’, it is necessary to keep in mind, that the duties of the two posts should be of equal sensitivity, and also, qualitatively

similar. Differentiation of pay-scales for posts with difference in degree of responsibility, reliability and confidentiality, would fall within the realm of valid classification, and therefore, pay differentiation would be legitimate and permissible (see - *the Federation of All India Customs and Central Excise Stenographers (Recognized) case* and *the State Bank of India case*). The nature of work of the subject post should be the same and not less onerous than the reference post. Even the volume of work should be the same. And so also, the level of responsibility. If these parameters are not met, parity cannot be claimed under the principle of 'equal pay for equal work' (see - *State of U.P. v. J.P. Chaurasia*, and *the Grih Kalyan Kendra Workers' Union case*).

(vi) XXXXX

(viii) XXXXX

(viii) If the qualifications for recruitment to the subject post vis-a-vis the reference post are different, it may be difficult to conclude, that the duties and responsibilities of the posts are qualitatively similar or comparable (see - *the Mewa Ram Kanojia case*, and *Government of W.B. v. Tarun K. Roy*). In such a cause, the principle of 'equal pay for equal work', cannot be invoked.

(ix) The reference post, with which parity is claimed, under the principle of 'equal pay for equal work', has to be at the same hierarchy in the service, as the subject post. Pay-scales of posts may be different, if the hierarchy of the posts in question, and their channels of promotion, are different. Even if the duties and responsibilities are same, parity would not be permissible, as against a superior post, such as a promotional post (see - *Union of India v. Pradip Kumar Dey*, and *the Hukum Chand Gupta case*)."

Precept (i) states that onus of proof of parity in the duties and responsibilities is on the person who claims discrimination and approaches

the Court. Precept (ii) stipulates that mere fact that the subject posts is in a different department would not have any bearing on the claim for the employee discharging identical duties cannot be treated differently because the others belong to different departments of the Government. Precept (iii) stipulates that unequal pays cannot be justified on the basis of no classification or irrational classification. However, there would not be irrational classification if persons holding the same rank/designation have dissimilar power, duties and responsibilities. In this context, mere nomenclature is not sufficient and "parity" has to be proved and established by the claimant. The Court must keep in mind the duties of the two posts, the sensitivity and qualitative obligations and responsibilities, reliability and confidentiality, even when the volume of the work would be the same. As per precept (viii), qualifications for recruitment when different it would be difficult to conclude that the duties and responsibilities are quantitatively similar or comparable. Similarly, precept (ix) states that the Court/Tribunal must take notice of the hierarchy in service of the subject posts. Pay scales of posts may be different if the hierarchy of posts in question and the channels of promotion are different. Even if duties and responsibilities are same, a person cannot claim parity in respect of the promotional post. In the present context, having elucidated the differences, we do not think the claim for parity relying upon the Fifth Pay Commission Recommendation has been made out by the petitioner forum.

17. The petitioner along with the writ petition have also filed certain papers to show the pay-scales of Technical Supervisors, Assistants, etc. in different ministries/organizations. As noticed above, this plea or contention has not been factually elucidated and elaborated. Indeed, the petitioner

during the course of arguments did not make any attempt or assert that on the basis of parity i.e. “equal pay for equal work”, they would be entitled to the same pay-scale.

18. In view of the aforesaid discussion, we do not find any merit in the present writ petition and the same is dismissed. There will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(CHANDER SHEKHAR)
JUDGE

JANUARY 04, 2017
NA /ssn

