

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No.16116 of 2015

Reserved on : December 15, 2018

Date of decision : March 07, 2019

Jagjit Singh and others

--Petitioners

Versus

Union of India and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. H.P.S. Ishar, Advocate
for the petitioners.

Mr. Amit Jhanji, Advocate
for respondent No.2.

HARINDER SINGH SIDHU, J.

This petition has been filed impugning the order dated 2.12.2014 of the Central Administrative Tribunal, Chandigarh Bench in O.A. No.420/CH/2013, whereby, the Original Application filed by petitioners has been dismissed.

Petitioners No.1 to 60 are serving as Operation Theatre Assistants, while petitioners No.61 to 65 are serving as Operation Theatre Technicians in the Post Graduate Institute of Medical Education and Research, Chandigarh (PGI). They had filed the Original Application impugning the action/order of respondent No. 1 in rejecting their claim for grant the revised pay-scales w.e.f. 1.1.1996 notionally and w.e.f. 5.3.2001 regularly with financial benefits/ arrears of pay on the pattern of All India

Institute of Medical Science, New Delhi (AIIMS). It was their case that the AIIMS revised pay scales to its Operation Theatre Assistants from Rs.3050-4590 to 4500-7000 w.e.f. 5.3.2001 vide Memorandum dated 1.5.2001. In continuation thereof, another memorandum dated 9.3.2002 was issued vide which the Operation Theatre Assistants of AIIMS were granted the revised pay scales w.e.f. 1.1.1996 notionally and w.e.f. 5.3.2001 regularly with financial benefits. After this pay revision, the Operation Theatre Assistants (OTAs) of AIIMS started getting more pay than the OTAs at PGI Chandigarh though the job description of the OTAs in both the Institutions was similar and identical. The resulting disparity is clear from the comparative statement of their pay scales which is as under:-

<u>“OTAs of AIIMS</u> <i>Post Revised Pay Scale</i>		<u>OTAs of PGI</u> <i>Post Pay Scale</i>
<i>OT Assistant</i>	<i>4500-7000</i>	<i>OTA Gr.III 3050-4590</i>
		<i>OTA Gr.II 4000-6000</i>
<i>OT Technician</i>	<i>5000-8000</i>	<i>OTA Gr.I 4500-7000”</i>

The petitioners served a legal notice upon the respondents to remove this disparity. Vide order dated 30.7.2013 respondent No.1- Ministry of Health and Family Welfare, New Delhi rejected their claim by stating that the case was referred to the Ministry of Finance, which has conveyed that as a policy in all such cases only prospective benefits are extended. Hence there was no case for extending retrospective benefits.

In the written statement filed by respondent No.2 – PGI it was stated that the PGI follows the pattern of cadre structure, designation of posts, pay scale of its employees in respect of the posts existing at the Institute on the pattern of AIIMS after approval of the Standing Finance Committee, the Governing Body of the Institute and subsequently with the

approval of the Central Government. It stated that it had taken up the grievance of the petitioners with the Ministry which had finally approved the proposal on 17.3.2011 and the pay scale of OTAs was revised accordingly vide order dated 17.3.2011. In its reply it had referred in detail to the correspondence between the PGI and respondent No. 1 from 2004 till the final approval for revision of pay scales was accorded.

The reply filed on behalf of respondents No.1 and 3 also details the progress since the initiation of the proposal till its acceptance. Briefly the stages were that the PGI forwarded a proposal in 2006 for restructuring of Operation Theatre Assistants cadre on the proposed cadre of Operation Theatre Assistants at AIIMS New Delhi based on approval of the Standing Finance Committee and the Governing body of the PGI in their respective meetings held on 6.2.2006 and 19.9.2006. The Ministry of Finance did not agree to the said proposal. Consequently, the PGI dropped the proposal and instead of restructuring asked for revision of pay scale of OTAs Grade-I/II and III at par with AIIMS New Delhi. This proposal was referred to the Department of Expenditure in the Ministry of Finance in August, 2007. The Department of Expenditure approved only the up-gradation of pay scale of Operation Theatre Assistants Grade-I by observing as under:

*“The proposal has been considered in the Department and the Competent authority has approved the upgraded pay scale of Rs.5000-8000/- in respect of the post of OT Assistant Grade-I only in PGI **on Prospective basis**. The necessary amendments in the RRS may be made to bring them at par with the OT technician in AIIMS.”*

As up-gradation of pay scales of OT Assistants Grade-II/ III

was not approved by the Department of Expenditure, the file for reconsideration of the proposal for up-gradation of pay-scales of OT Assistants Grade-II and III from pay scale of Rs.3050-4590 and 4000-6000 respectively to the combined pay scale of Rs.4500-7000 was again referred to the Department of Expenditure in November, 2007. The Department of Expenditure made the following observations:-

*“The matter was examined in this Department and the administrative **Ministry is advised to await recommendation of 6th CPC.**”*

The matter was again discussed in a Group of Officers meeting held on 2.12.2008. It was again taken up with the Department of Expenditure in September, 2009, which did not approve the proposal by observing as under:-

“The proposal has been examined in this Department as per 5th & 6th CPC recommendations and the observations of this Department are as follows:

- a) The pay scale recommended by the 5th CPC for the post of OT Assistant is Rs.3050-4500/- only.*
- b) The pay scale of Rs.4500-7000 had been approved by AIIMS on their own without obtaining specific approval of the Government.*
- c) The pay scale proposed is substantially higher as compared to that recommended by 5th CPC. Therefore, the proposal for merging the posts of OT Assistant Grade III and OT Assistant Grade II and placing them in the pay scale of*

Rs.4500-7000 is not agreed to.

d) The 6th CPC vide para 3.8.15 (Para Medical Staff) has recommended the placement of the Operation Theatre (OT) Assistant in PB-1 with Grade Pay of Rs.1900/- corresponding to Rs.3050-4590. Therefore no upgradation has been recommended by the 6th CPC for the common category post of Operation Theatre (OT) Assistant. Any upgradation of the post of the OT Assistant will disturb the horizontal relativities.

In view of above, there is no case for placement of the post of OTA Grade III (Rs.3050-4590) and OTA Grade II (Rs.4000-6000) at PGIMER, Chandigarh in the scale of Rs.4500-7000/- (pre-revised) as per the recommendations of 5th CPC and 6th CPC”.

On the recommendations of the Institute Body of PGI in its meeting held on 12.3.2010, the matter was again taken up with the Ministry of Finance in March, 2011. The Ministry after due consideration observed as under:-

“The matter has been examined. It has been agreed to place the post of OTA Gr-III in the pay band PB-1 with grade pay of Rs.1900 and OTA Grade II in the pay band PB-1 with Grade pay of Rs.2400 in the revised pay structure of PB-1 with Grade pay of Rs.2800 from the date of issue of orders. OTA Grade II and Grade II in PGIMER Chandigarh, will now be a merged grade.”

Accordingly the pay scale of O.T. Assistant Grade II and III was revised

from PB-1 with Grade Pay of Rs. 1900 and PB-1 with Grade Pay of Rs. 2400 to revised pay structure of PB-1 with Grade Pay of Rs. 2800/- from the date of issuance of the order i.e., 11.3.2001..

The PGI requested for grant of retrospective benefit. The proposal was again taken up with the Department of Expenditure in May, 2012 which declined the request by observing as under:-

“The matter has been examined in this Department and it is observed that vide this Department's UO dated 11.03.2011, OTA Gr.III and OTA Gr.II in PGIMER, Chandigarh stands merged grade which in effect is redistribution of posts. Moreover, the proposal from Ministry of Health & Family Welfare was agreed to on merit and it was not based on specific recommendations of 5th CPC. As a policy, in all such cases, prospective benefits are extended to the posts. In view of the above, there is no case for extending the retrospective benefit to the post. Hence, our earlier stand communicated vide this Department's OM dated 11.03.2011 is re-iterated.”

The learned Tribunal held that there is a clear procedure through which matters of pay revision of employees of PGI have to be processed. Approval has to be obtained from the Governing body of PGI, the Ministry of Health and Family Welfare and finally from the Department of Expenditure, Ministry of Finance. As the budgetary support to PGI is provided by the Ministry of Health and Family Welfare, Government of India decisions on matters involving financial implication such as revision

of pay scales of employees which have a long term cascading effect cannot be taken without reference to likely expenditure and the budgetary allocation.

Moreover, the PGI and AIIMS are separate institutes governed by their separate Acts. They are located at different locations. They have their separate Executive and Governing Bodies. Decisions regarding financial matters are taken separately in respect of both the Institutions. They cannot be considered identical in all respects. It was accordingly held that the Ministry of Health and Family Welfare is not bound to allow the same scales to the staff of these two Institutions from the same date. Accordingly, the Original Application was dismissed.

There appears to be no infirmity with the order of the Tribunal.

The petitioners had based their claim on the assertion that the PGI follows the same pattern as AIIMS in the matter of cadre structure, pay etc regarding the posts of Operation Theatre Assistants and Technicians and after revision of pay scales by AIIMS notionally w.e.f., 01.01.1996 and actually w.e.f., 5.3.2001 there arose a disparity. The petitioners claimed that their pay scales which had been revised w.e.f., 11.3.2011 be revised retrospectively from the same date and on the same pattern as in the case of AIIMS which plea has not been accepted by the Tribunal.

Hon'ble Supreme Court recently in *State of Punjab v. Jagjit Singh, (2017) 1 SCC 148* after exhaustively reviewing the entire case law where the principle of 'equal pay for equal work' was invoked and considered delineated the parameters for application of this principle. Its conclusions in this regard are summarized in paragraph 42 of the judgment.

It has been held that the principle cannot be invoked where the posts are in different establishments having different managements . It cannot also be invoked where the establishments are in different geographical locations though owned by the same management.

The relevant extract from the paragraph is as under :

“42. All the judgments noticed in paras 7 to 24 hereinabove, pertain to employees engaged on regular basis, who were claiming higher wages, under the principle of “equal pay for equal work”. The claim raised by such employees was premised on the ground, that the duties and responsibilities rendered by them were against the same post for which a higher pay scale was being allowed in other government departments. Or alternatively, their duties and responsibilities were the same as of other posts with different designations, but they were placed in a lower scale. Having been painstakingly taken through the parameters laid down by this Court, wherein the principle of “equal pay for equal work” was invoked and considered, it would be just and appropriate to delineate the parameters laid down by this Court. In recording the said parameters, we have also adverted to some other judgments pertaining to temporary employees (also dealt with, in the instant judgment), wherein also, this Court had the occasion to express the legal position with reference to the principle of “equal pay for equal work”. Our consideration, has led us to the following deductions:

42.1. 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 Orissa University of

Agriculture & Technology case, UT Chandigarh, Admn. v. Manju Mathur, SAIL case and National Aluminium Co. Ltd. case).

xxx xxx xxx

42.10. *A comparison between the subject post and the reference post under the principle of “equal pay for equal work” cannot be made where the subject post and the reference post are in different establishments, having a different management. Or even, where the establishments are in different geographical locations, though owned by the same master (see Harbans Lal case). Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity (see Official Liquidator v. Dayanand).*

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Accordingly, there is no merit in the petition and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

March 07, 2019
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No