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Panchdeep Bhawan and Others**

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Court : Central Administrative Tribunal Principal Bench New Delhi

Decided On : May-07-2014

Judge : The Honourable Mr. G. George Paracken, Member (J) & the Honourable Mr. Shekhar Agarwal, Member (J)

Appeal No. : O.A.No. 3679 of 2012

Appellant : Sheeja Santosh and Others

Respondent : The Director General Esic Headquarters Panchdeep Bhawan and Others

Judgement :

G. George Paracken, Member (J)

Applicants are working as Staff Nurses in different Hospitals under the Respondent No.1, namely, the Employees State Insurance Corporation (ESIC for short). Their claim is that they are entitled for the minimum pay of Rs.13860/- and Grade Pay of Rs.4600/- making their basic pay of Rs.18460/- as per the fixation table for Rs.7450/- with bunching being done as applicable w.e.f. 01.01.2006. In the alternative, they have sought a direction to the Respondents to grant them at least the minimum of Rs.12540/- and the Grade Pay of Rs.4600/- making it Rs.17140/- w.e.f. 01.01.2006 as an interim measure, as has been granted to the

direct recruits who joined the cadre as Nursing Staff as on 01.01.2006 till a decision by the Respondent No.1 on the issue of grant of basic pay of Rs.18460/- is taken.

2. They had earlier approached this Tribunal vide OA No. 1865/2012 seeking the aforesaid reliefs. This Tribunal, vide its order dated 28.05.2012, directed the Respondents to consider their representations treating copy of the OA as a supplementary representation and to dispose of them by passing a reasoned and speaking order within 3 months. It is in pursuance to the said order that the Respondents have passed impugned order dated 27.08.2012 in this case. According to the said order, after the implementation of the 6th CPC, the pay of the Nursing Staff in the pre-revised scale of Rs.5000-8000 was re-fixed with reference to the prescribed fitments table (Government of India, OM dated 30.08.2008) and the pay of the Nursing Staff who were recruited directly on or after 01.01.2006 has been fixed at Rs.12540/- with Grade Pay of Rs.4600/- in the scale of Rs.9300-34800/- in accordance with Section-II, Part A of the First Schedule to CCS (RP) Rules, 2008, according to which, those Government servants who were already in service as on 01.01.2006 cannot be fixed with reference to the pay of those who joined services as direct recruits on or after 01.01.2006. Therefore, as a result, the basic pay of the juniors who have been recruited directly on or after 01.01.2006 have become higher than their seniors.

3. The brief facts of the case are that Applicants have joined as Staff Nurses in the Hospitals under the Respondent-Corporation during the period 1999 to 2003. In other words, they have joined as Staff Nurses prior to 01.01.2006, i.e., the date from which the Revised Pay Rules, 2008, has been implemented for the employees of the Central Government which was also adopted by the Respondent-Corporation. During the 5th Central Pay Commission period, the Staff Nurses of the Central Government as well as ESIC Hospitals were given the pay scale of Rs.5000-8000. The 6th Central Pay Commission revised the said pay scale of the Staff Nurses from Rs.5000-8000 to that of Rs.7450-11500 and then placed them in the revised pay scale of Rs.9300-34800 with Grade Pay of Rs.4600/-. The Part B of the Revised Pay Rules, 2008 deals with Revised Pay Scales of Certain Common Categories of Staff. Section-I (i) of Part B states that

initial fixation as on 01.01.2006 shall be done in accordance with Note-2 below Rule 7 of the Notification. However, no such Note-2 under Rule 7 exists whereas there is Note-2A which reads as under:-

œWhere a post has been upgraded as a result of the recommendations of the Sixth CPC as indicated in Part-B or Part-C of the First Schedule to these Rules, the fixation of pay in the applicable pay band will be done in the manner prescribed in accordance with Clause (A)(i) and (ii) of Rule 7 by multiplying the existing basic pay as on 1.1.2006 by a factor of 1.86 and rounding the resultant figure to the next multiple of ten. The grade pay corresponding to the upgraded scale as indicated in Column 6 of Part B or C will be payable in addition. Illustration 4A in this regard is in the Explanatory Memorandum to the Rules?.

The said Rule also contains a statutory provision as to what should be the minimum pay of a direct recruit who joined the service as on 01.01.2006 or thereafter with a particular revised pay scale or Grade Pay. As per the Section-II of Part A of the First Schedule of the Revised Pay Rules, 2008, the entry level pay in the Pay Band 2 and the basic pay for various Grade Pays are as under:-

Grade Pay	Pay in the Pay Band	Basic Pay
4200/-	9,300/-	13,500
4600/-	12,540/-	17,140/-
4800/-	13,350/-	18,150/

4. In the case of the Applicants while upgrading their pay scale from Rs.5000-8000 to Rs.7450-11500/- two scales in between, i.e., Rs.5500-9000 and Rs.6500-10500/- have been left behind. This has resulted in a situation when the direct recruited employees were given the minimum of Rs.12540/- + Rs.4600/- and the senior employees like the Applicants were given less than the direct recruits as on 01.01.2006. According to the Applicants, they are at least entitled to the corresponding pay in the revised pay band of the minimum of the upgraded pay scale of the Rs.7450/- by arriving at the said amount by the accepted computation of the multiple of 1.86. Therefore, the Applicants are entitled to Rs.7450/- X 1.86 = Rs.13857/- (rounded off to Rs.13860) + 4600/- as Grade Pay. The above basic

pay of Rs.13860/- was also granted in other Ministries where the pay scale of Rs.5000-8000 was upgraded to Rs.7450-11500. According to the Applicants, even in other Hospitals under the ESIC, the Staff Nurses who joined prior to 01.01.2006 were granted at least Rs.12540/- but they are aggrieved by the discriminatory, illegal and arbitrary action of the Respondents having fixed their pay much less than the direct recruit employees whose pay has been fixed at the minimum of Rs.12540/-.

5. In this regard, the learned counsel for the Applicants Shri Padma Kumar S. has relied upon the order of the Ernakulam Bench of this Tribunal in OA No. 856/2011 - K.K. Vijayan S/o Shri Krishnankutty Panicker and Others Vs. The Principal Registrar, Central Administrative Tribunal, Principal Bench and Others decided on 13.07.2012. The Applicants in the said OA were functioning as Assistants, Court Master (Stenographer Gr. 'C') and Upper Division Clerk in the Central Administrative Tribunal, Ernakulam Bench. The pay scales of both Assistant and Stenographer Gr. 'C' are identical right from the beginning. The 3rd applicant in the said case has been granted the second financial upgradation under the ACP scheme in the pay scale of Rs.5,500-9,000 w.e.f. 18-04-2005. Thus, all of them, for the purposes of fixation of pay are in the same pedestal. The post of Assistant and Stenographer Gr. C in the Central Administrative Tribunal is equated with those of in the Central Secretariat Services (CSS)/Central Secretariat Stenographers Services (CSSS) for all purposes. This historical parity has been reiterated in the decision of the Tribunal in the case of S.K. Sareen vs Union of India and Others (OA No. 777 of 1992 (decided on 20-12-1992) and later on in OA No. 164 of 2009 decided on 19-02-2009. Prior to 01-01-2006, the pay scale of the Assistants had been Rs.5500-9000. On the recommendations of the VI Central Pay Commission, the pay scale of Assistants of the CSS and Stenographers of the CSSS cadre underwent an upward revision from the above scale to Rs.6,500-10,500/- effective from 15-09-2006. Later on, the pay scale of Assistants in the CSS Cadre and the Stenographer in the CSSS cadre was revised from Rs.6,500-10,500 to Rs.7450-11500 and in so far as further revision on the basis of the Revised Pay Rules, 2008, the pay scale admissible to these posts has been Rs.9,300-34,800 with grade pay of Rs. 4,200/-. Since the revision of the pay scale in the pre-revised pay scale effective from 01-01-2006 was made effective from

15-09-2006, option had been made available for deferring the revision under the provisions of Rule 7 of the CCS(Revised Pay) Rule, 2008 to such Assistants in CSS cadre and the Stenographers in the CSSS Cadre. In so far as the staff of Central Administrative Tribunal was concerned, since the above upward revision in the pre revised scale was not initially afforded, some of the Stenographers Gr. C moved the Principal Bench of the C.A.T. in OA No. 1165 of 2010 (Smt. Sunita Dutt and others) and the Tribunal by its order dated 09-04-2010 directed the Department of Personnel and Training (Do PT) to treat the entire OA as a representation and consider the claim of the Applicants therein. Thereafter, the Do PT, on due consideration had issued an order dated 6th July, 2010 granting the revised pay structure to the Assistants in the scale of Rs.5500-9000 PB-2 Rs.4600 and Stenographers Gr.'C' Revised to Court Masters Rs.7450-225-11500. By the time the aforesaid order was issued, the pay scale of the counter parts in CSSS cadre (as also CSS cadre) had been revised from Rs.6500-10500/- to Rs.7450-11500. This has resulted in some disparity consequent upon which the Applicants therein have made representations to the Respondents. However, the stand of the Respondents that in view of the fact that the pay scale of the Applicants never been fixed at any stage in the scale of Rs.6,500-10,500/-, they cannot be given higher pay scales. However, the contention of the Applicants was that since the pay scale had been directly revised from Rs.5,500-9,000 to Rs.7,450-11,500 fixation in the pay scale of Rs.6500-10500 was not necessary. They have also referred to a decision of the Bangalore Bench in the case of Shri T. Srinivasa, the fixation has been made on the basis of pay fixed prior to the revisions in the last pay scale was in the scale of Rs.7450-11500 as on 01.01.2006 and thereafter, his pay should be fixed in the pay scale of Rs.9300-34800/- plus Grade Pay of Rs.4600/. Considering the aforesaid facts and circumstances of the case, the Ernakulam Bench of the Tribunal directed the Respondents to adopt the same method of fixation of pay of the Applicants as on 01-01-2006 first in the pay scale of Rs. 7450-11500 notionally and actually thereafter in the pay scale of Rs.9300-34500 plus grade pay of Rs.4600/- as has been adopted in the case of T. Srinivasa of Bangalore Bench.

6. The Ernakulam Bench of this Tribunal has again considered the same issue in OA No.840/2011 - C. Sreekantan and Others Vs. The Principal Registrar, Central

Administrative Tribunal, Principal Bench and Others decided on 07.03.2013. The relevant part of the said order reads as under:-

11. Srinivasa was decided by the Bangalore Bench on the above method, by first upgrading and then fixing in the Revised pay. In that case, the pay of the applicant therein was Rs.6,000/- in the scale of Rs.5,500 - 9000. This was notionally fixed w.e.f. 01-01-2006 in the scale of Rs.7,450 - 11,500 and actually in the revised pay scale of Rs.9,300 - 34,800 plus G.P. of Rs.4,600 and the pay of the individual after such pay fixation came out to be Rs.13,860/-.

12. Referring to the aforesaid decision, this Bench, in the case of K.K. Vijayan had held as under:-

"13. Arguments were heard and documents perused. The matter is not complex. The claim of the applicants is that the manner in which the Bangalore Bench had fixed the pay of Shri T. Srinivasa should be adopted in the pay fixation of the applicants as well. It is not the case of the respondents that the pay fixed by the Bangalore Bench is erroneous. Once the manner of fixation of pay is held not erroneous, justice demands that the same is adopted in all identical cases. Admittedly, the cases of Shri T. Srinivasa and the applicants in the present O.A. are identical. Be it promotion to the post of Assistant, or financial upgradation to the pay scale of Assistant, as long as both are prior to 01-01-2006, fixation of pay as on 01-01-2006 in the pay scale of Rs.7,450 - 11,500 first and thereafter, fixation in the revised scale of Rs.9300 - 34500 plus grade pay of Rs 4600 should be uniform.

14. In view of the above, the O.A. is allowed. Respondents are directed to adopt the same method of fixation of pay of the applicants as on 01-01-2006 first in the pay scale of Rs 7450 - 11500 notionally and actually thereafter in the pay scale of Rs 9300 - 34500 plus grade pay of Rs 4600/- as has been adopted in the case of T. Srinivasa of Bangalore Bench. This order may be complied with, within a period of three months from the date of communication of this order?.

13. In the above order, it has also been directed that that decision be considered as a judgment in rem and similarly situated persons be also granted the same

benefit, in order to avoid multiplicity of litigation, keeping in view the decisions of the Apex Court in the case of Amrit Lal Berry vs CCE (1975) 4 SCC 714, Inder Pal Yadav vs Union of India (1985) 2 SCC 648, Uttaranchal Forest Rangers' Ass'n (Direct Recruit) vs State of UP (2006) 10 SCC 346 and also para 126.5 of the recommendations of the Fifth Central Pay Commission.

14. The instant case is identical in all respect to that of K.K. Vijayan. Thus, the decision in the case of Srinivasa of Bangalore Bench followed by that in the case of K.K.Vijayan should be extended to this case as well.

15. The decisions in the case of Srinivasa and Vijayan (supra) are, therefore, fully endorsed and accordingly, this OA, being identical to that of the aforesaid cases, is allowed. It is declared that the pay of the applicants has to be fixed as directed in the case of T.Srinivasa and K.K. Vijayan (supra). Respondents are directed to accordingly pass suitable orders and release the arrears of pay and allowances admissible to the applicants and similarly situated others.

16. Time calendared for the implementation of this order is three months from the date of communication of the order.

17. No costs?.

7. Respondents in their reply have submitted that pay scale of the Applicants has been revised as per the Circular dated 13.05.2009 issued on the basis of the recommendations of the 6th CPC. In the said Circular, it was intimated to all the Medical Superintendents of ESI Hospitals of Delhi/Noida that stepping up of pay of seniors will be permitted with reference to such of their directly recruited juniors who were recruited on or after 01.01.2006 and whose basic pay is more than their seniors, subject to certain conditions. In view of the above Circular, the Respondents had issued a letter dated 17.05.2012 containing clarifications of fixation of pay/stepping up of pay in accordance with the Sixth CPC. The said letter clarified that the pay scale of the Staff Nurses of the Corporation has been fixed on the basis of the fitment table attached with the Government of India OM dated 30.08.2008. Further, clarification was issued vide Memorandum dated 22.06.2012 having its relevant part as under:-

œ(a) Stepping up the basic pay of seniors under the above provision can be claimed only in the case of those cadres which have a direct element of direct recruitment and in cases where a directly recruited junior is actually drawing more basic pay than the seniors. In such cases the basic pay of the seniors will be stepped up with reference to the basic pay of the junior.

(b) Using the above provision, individuals cannot claim stepping up of their revised basic pay with reference to entry pay in the revised pay structure for direct recruits appointed on or after 01.01.2006 as laid down in Section 2 of Part A of first Schedule to the CCS (Revised Pay) Rules, 2008 if their candidates does not have an element of direct recruitment or in cases, where no junior is drawing higher pay than them?.

8. They have also stated that after implementation of the Sixth CPC, the pay of Nursing Staff of ESIC who were recruited directly on or after 01.01.2006 was fixed at Rs.12540/- with Grade Pay of Rs.4600/- in the scale of Rs.9300-34800 in accordance with Section-II, Part-A of the First Schedule to CCS (RP) Rules, 2008. As per the said Rules, the pay scale of those Government servants who were already in service on 01.01.2006 cannot be fixed as the pay scale of direct recruits who joined the services on or after 01.01.2006. Hence, the pay of juniors who were directly recruited on or after 01.01.2006 has become higher than those who were already in service. In the above position, a senior whose pay was fixed as above and is drawing lesser pay than his junior who has been directly recruited, the pay of such a senior has been stepped up from the date of joining of the said junior making them similar in pay scales. The decision to make such stepping up the pay scale of the senior from the date of joining of their junior was taken in accordance with the Circulars dated 13.05.2009 and 17.05.2012, as the Applicants herein joined the service of the Respondent-Corporation between 1999 to 2003. Their pay scale becomes lower than those who joined the Corporation on or after 01.01.2006. Therefore, as per Circular dated 17.05.2012, the pay scale of the Applicants will be stepped up to an amount equal to any such junior who joins the Corporation directly.

9. However, according to the Applicants, the issue is not about stepping up of pay of the senior to that of junior. But the issue is that the seniors who have worked for years together are being treated differently from the juniors who were appointed as on 01.01.2006 and the latter is given higher initial pay. Therefore, the issue with regard to discrimination as meted out on the basis of mode of existence in the cadre, i.e., the Applicants who are already in the cadre and the direct recruits joining on or after 01.01.2006 by way of same Recruitment Rules and qualifications. Such a discrimination is directly in conflict with Articles 14 and 16 of the Constitution of India.

10. We have heard the learned counsel for the applicants, Shri Padma Kumar S. and learned counsel for the respondents Ms. Ishita Barua for Shri Gaurang Kanth, in this case. The substantive question for consideration in this case is whether the direct recruits who have been appointed prior to 0.01.2006 can be placed at a lower pay scale than those direct recruits who have been appointed after 01.01.2006. The applicants were in the pre-revised scale of Rs.5000-8000/- and were drawing the basic pay between Rs.5300 to Rs.5900/- as on 31.12.2005. The fixation of pay w.e.f. 01.01.2006 after the acceptance of the 6th Pay Commission was made in terms of the Central Civil Service (Revised) Pay Rules, 2008. The said statutory rule upgraded the pay scale of Rs.5000-8000/- to Rs.7450-11500/- and then brought the Staff Nurses to PB 2 pay scale of Rs.9300-34800 with the grade pay of Rs.4600/-. In between the scales of Rs.5000-8000/- and Rs.7450-11500, there were two more scales in the pre-revised scale, viz., Rs.5500-9000 and Rs.6500-10500/-. As both Rs.5000-8000 and Rs.7450-11500 are the 5th Central Pay Commission scales, the 6th Central Pay Commission cannot give the upgraded pay scale of Rs.7450-11500 to a date prior to 01.01.2006. The upgraded pay scale of Rs.7450-11500 was to happen as on 01.01.2006 and thereafter the conversion to the 6th CPC PB2 scale of Rs.9300-34800/- was to be made. The minimum pay in the pay band for a person even with Rs.7450/- is to get Rs.13860/- as per the said statutory rule. Therefore, there should have been some provision for fixation of pay in the revised pay scale of 6th CPC, when pre-revised pay scale has been upgraded to a level after skipping two intermediate scales, so that the employees who have been serving in the pre-revised scales for years are not falling below at least the corresponding minimum of the 6th CPC revised

scales of the upgraded pay scale. However, Revised Pay Rules, 2008 did not contain any such provision for upgradation after skipping two intermediate scales. But at the same time, the said Rules stipulate that all Direct Recruits in the Grade Pay of Rs.4600/- appointed as on 01.01.2006 or after would get a minimum of pay in the pay band of Rs.12540/- (excluding Grade Pay) (which will make their basic pay including Grade Pay Rs.12540 + 4600 =Rs.17140/-). Admittedly, the applicants have had several years of service as direct recruit Staff Nurses as on 01.01.2006 were granted the pay in the pay band ranging from Rs.9860 to Rs.10980/- excluding Grade Pay as against the direct recruit with the same educational qualification and conditions of service who joins on 01.01.2006 who would get Rs.12540/- (excluding Grade Pay). Therefore, the Applicants are entitled to get at least the minimum of Rs.13860/- (Rs.18460 with Grade Pay) as on 01.01.2006 but in any eventuality not less than Rs.12540/- (Rs.17140/- with Grade Pay) as on 01.01.2006, as the same post when held by a direct recruit who joins on or after 01.01.2006 and one who joined as direct recruit years earlier, cannot be given different pay scales, that too prejudicial to the persons who joined much earlier as it would violate Article 39 (d) of the Constitution of India which has now assumed the level of a Fundamental Right and also Article 14 and 16 of the Constitution being irrational and arbitrary. The settled law is that no rules can be made in violation of the provisions contained in the Constitution of India.

11. In view of the above position, we allow this OA and quash and set aside the impugned speaking order dated 27.08.2012. Further, we declare that the discrimination in granting the pay scales to the directly recruited Staff Nurses prior to 01.01.2006 and after 01.01.2006 is in violation of Articles 14, 16 and 39(d) of the Constitution of India. We, therefore, direct the Respondent No.1 to treat the Applicants at par with the Direct Recruit Staff Nurses appointed after 01.10.2006 and grant the PB 2 scale of Rs.9300-34800 with the grade of pay of Rs.4600 with effect from 01.01.2006 and fix their pay accordingly. The Applicants are also entitled for all consequential benefits including arrears of pay and allowances with up to date interest at rate applicable to GPF deposits. The aforesaid directions shall be complied with, within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.