

(2020) 01 DEL CK 0471

In the Delhi High Court

Case No : Civil Writ Petition No. 4171 Of 2011

Sanjeet Singh & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 24-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2020) 01 DEL CK 0471

Hon'ble Judges : Dr. S. Muralidhar, J; Talwant Singh, J

Bench : Division Bench

Advocate : Sudarshan Rajan, Ramesh Rawat, Rajesh Kumar

Final Decision : Disposed Of

Judgement

Talwant Singh, J

1. The Petitioners have invoked the writ jurisdiction of this Court and have challenged the order dated 18th January, 2010 passed in Original Application (OA) no. 682/2019 and subsequent order dated 28th April, 2010 passed in Review Application (RA) no. 108/2010 passed by learned Central Administrative Tribunal (CAT) in the OA filed by the present Petitioners. The Petitioner no. 1 to 12 were stated to be working as Radiotherapy Technicians/Senior Radiotherapy technicians whereas petitioner no. 13 was working as Mouldroom Technician, the Petitioner no.14 was working as Radium Curator with Respondent no.3 Safdarjung Hospital. The post of Mouldroom Technician and Radium Curator are the promotional course from the cadre of Radiotherapy Technicians. Respondent no.1 is Union of India, represented by Secretary, Ministry of Health and Family Welfare; Respondent no.2 is the Director General of Health Services and Respondent no.3 is the Medical Superintendent, Safdarjung Hospital, New Delhi. The OA was filed praying for grant of pay scale of Rs.5,000-8,000 from 1996 along with consequential benefits as being granted to their counter parts Radiographers in Safdarjung Hospital, New Delhi.

2. The brief facts leading to the filing of the present petition are that till 3rd December, 1986, the Radiographers as well as Radiotherapy Technicians were having the common designation of "Radiographers" and they were part of paramedical staff of Safdarjung Hospital. However, on 3rd December, 1986, the Radiographers working in the radiotherapy department were re-designated as Radiotherapy Technicians in the same pay scale in the category of paramedical staff vide office order of the even date. They were considered together by the pay commissions and were granted similar pay scales. The recruitment rules for the post of Radiotherapy Technicians provide for the pay scale of Rs.330-650 (revised to Rs.1350-2200). The Fifth Central Pay Commission discussed the pay scales to be provided to Radiographers/X-ray staff etc. including the Radiotherapy Technicians vide para nos. 52.104 to 52.107 in its recommendations and the pay scales of Radiographers including Radiotherapy Technicians of Rs.1350-2200 was first to be upgraded to Rs.1600-2660 and then replacement scale to be granted was Rs.5,000-8,000. Hence, even in the recommendations of the Fifth Central Pay Commission, the Radiographers and Radiotherapy Technicians were considered equal. As per the said recommendations, pay scale of Rs.5,000-8,000 was provided to Radiographers as well as Radiotherapy Technicians. The said pay scale was implemented in the case of Radiographers in Safdarjung Hospital but before implementing it in case of Radiotherapy Technicians, the same was ordered to be kept in abeyance.

3. Subsequently, the pay scale of Radiographers as well as Radiotherapy Technicians was purported to be reduced to Rs.4,500-7,000. The Radiographers challenged this move of the Respondents by filing OA no. 2748/2002 before CAT. On 13th April, 2004, CAT directed the Government to re-examine the entire matter and take a final decision within a period of six months and till then status-quo regarding pay scales was to be maintained. On 12th August, 2005, a joined meeting of Radiographers and Radiotherapy Technicians was held with the Medical Superintendent of Safdarjung Hospital where the matter of pay scales of Radiotherapy Technicians was also deliberated and it was decided that the scale of pay of Radiotherapy Technicians may also be considered at par with Radiographers on the same terms and conditions as and when the pending court cases are decided. On 5th September, 2005, the Respondents, in response to the representation of the Petitioners, re-assure that their pay scale will be taken at par with Radiographers and similarly the case related to senior Radiotherapy Technicians will be considered as per the outcome of the court case.

4. The Respondents challenged the outcome of OA no. 2748/2002 by filing a writ petition bearing no. 3070/2007 before this Court but the said writ petition was dismissed on 29th August, 2007 and a cost of Rs. 10,000/- was imposed on the Respondents. Thereafter, the Respondents accorded a pay scale of Rs.5,000-8,000 to the Radiographers vide order dated 3rd October, 2008 but they refused to accord the similar pay scale to the Petitioners.

5. Aggrieved by failure of the Respondents to accord pay scale of Rs.5,000-8,000

to the Petitioners, they filed OA No. 682/2009 before CAT. Reply was filed by the Respondents, to which rejoinder was filed by the petitioners and vide impugned order dated 18th January, 2010, CAT dismissed the OA primarily on the ground that Petitioners have failed to produce any glaring infirmities in the recommendations of Fifth Pay Commission and the Radiographers and Radiotherapy Technicians have different qualifications and their promotional hierarchies are also separate. The Review Application no. 108/2010 was also dismissed.

6. Aggrieved by the said orders, the present petition has been filed on the grounds that the action of the Respondents is arbitrary, illegal and contrary to the Article 14 of the Constitution of India and the same is without any justification; the Petitioners should have been given the similar treatment as was given to the Radiographers; four of the petitioners were appointed prior to 1986 and their initial appointment was as Radiographers and they were re-designated as Radiotherapy Technicians so they were entitled to the similar treatment as was given to Radiographers; the educational qualification for both the streams is the same i.e. matriculation plus two-years certificate in radiography. Further, the Radiographers required one-year experience but Radiotherapy Technicians need a specialisation as they have to clear Radiotherapy as a special subject and the Radiotherapy Technicians perform a more skilled and specialised job, so they are entitled to at least parity with Radiographers if not a higher pay scale than the Radiographers. On this basis, it has been prayed that the order of the CAT in OA as well as RA be set aside and Respondents be directed to grant pay scale of Rs.5,000-8,000 w.e.f. 1st April, 1996 to the Petitioners with consequential benefits.

7. Along with the petition, the complete proceedings of the CAT were also filed on record which contained the Original OA as well as reply filed by the present Respondents before CAT. The case set up by the Respondents is that the pre-revised scale of pay Rs.5,000-8,000 is in respect of Senior Radiographers and claim of the Applicants does not subsist. It has been denied that the Fifth CPC has considered the Radiographers and Radiotherapy Technicians as similar to each other. No specific pay scales for Radiotherapy Technicians have been recommended. The educational qualifications for both these posts are different. The Government of India, Ministry of Finance has not notified any separate pay scales in respect of Radiotherapy Technicians after Fifth CPC and as such, the Applicants are entitled to the replacement scale of Rs.4,500-7,000. Applicants have been granted the appropriate pay scales. The CCS (RP) Rules, 1997 notified by the Government of India having been challenged by the Petitioners but the Tribunal has no jurisdiction to adjudicate any challenge to the said rules. The writ petition filed by the Respondents bearing no. 3070/2007 could not be heard on merits as it was dismissed due to delay in filling. The Applicants cannot claim any right on the basis of order dated 13th April, 2004 in OA no. 2748/2002 passed by the CAT in the OA filed by the Radiographers. The pay scale of Rs.5,000-8,000 was granted only to the Applicants in OA no. 2748/2002 in the light of order

dated 13th April, 2004 of CAT. The office order dated 03.10.2008 issued in reference to the order of CAT in OA no. 2748/2002 cannot be a ground for grant of higher pay scales to the Applicants. The recruitment to the post of Radiographer is governed under Recruitment Rules of 1974 wherein the educational qualification prescribed is different so there is no applicability of Article 14 of the Constitution of India. The Applicants are not of the same class as the Radiographers and no class within the class has been created in respect of the Applicants by the Respondents. Moreover, the Tribunal has no jurisdiction to pass any orders regarding the recommendations of the Pay Commission and job evaluation is to be left to expert bodies like Pay Commission. On this basis, it has been prayed that OA be dismissed.

8. We have heard the arguments. It is not in dispute that till 2nd December, 1986, there was no separate cadre of Radiotherapy Technicians and they were covered under the designation of Radiographers only. Vide office order dated 3rd December, 1986, a separate cadre of Radiotherapy Technician was created. The said office order is reproduced hereunder:

"No. A 11017/7/85-MH (H)

Government of India

Ministry of Health and Family Welfare

Nirman Bhavan, New Delhi

Dated the 3rd December, 86.

To

The Director General

of Health Services,

Nirman Bhavan,

New Delhi.

Subject:- Safdarjang Hospital, New Delhi - Change of designation of Radiographers working in Radiography Department in Safdarjang Hospital, as Radiography Technician. Sir,

With reference to your I.D. No. A. 11017/7/85 -III dated 25-11-86 on the above noted subject, I am directed to convey the sanction of the President for the redesignation of the post of Radiographers working in the Radiography Department of Safdarjang Hospital as Radiography Technician in the same pay scales.

2. This is with the approval of Finance Division vide their Dy. No. 5050/DS (IF)/86 dated 3-12-86."

9. It is to be noted here that in the above office order, it has been specifically

mentioned that re-designation of the Radiographers as Radiotherapy Technicians has been done in the same pay scales. This notification does create a separate class of Radiographers to be known as Radiotherapy Technicians but on the same pay scale. It is also not in dispute from 1986 to 31st December, 1995, the Radiography Technicians and Radiographers were treated equally. Now, the question arises that in the recommendations of the Fifth CPC what exactly was considered and how the Radiographers as well as Radiotherapy Technicians were treated. The relevant paragraphs of the recommendations of the Fifth CPC related to the Radiographers/X-ray staff are in paragraph no. 52.104 to 52.107 which are reproduced herein below:

"Introduction

52.104 Radiographers, X-Ray Staff and Radiography Technicians are paramedical professionals responsible for technical viability of Radiology in the department of Radiodiagnosis and Radio Therapy of the health care institutions. They also manage radiology in the emergency services. Radiographers are involved in the teaching of under graduatedegree courses in Radiological Technology and also various allied professions. The field of Radiography has seen the emergence of new diagnostic techniques like Computerised Digital Radiography, Computerised Tomography, Magnetic Resonance Imaging (MRI), Colour and Doppler Ultrasonography, Digital Subtraction, Angiography etc. These have to be handled by Radiographers, who also perform X-Ray and other special investigations and protecting patients and self from radiation hazards.

Distribution of Establishment

52.105 Radiography and X-Ray Staff, numbering about 383 have different cadre structures in different Central Government Hospitals in the following pay:

1. Sr. Radio Therapy : Rs. 1640-2900

Tech. (Supervisor)

Sr. Tech Asstt./

Sr. Radiographer/

Sr. Radiographer

Supervisor/Radiographer

Gr.I

2. Sr. Radiographer : Rs. 1600-2660

3. Sr. Radiographer/Sr. X-ray : Rs. 1400-2600

Tech./Radiographer

Gr.I

4. Sr. Radio Therapy Tech./ : Rs. 1400-2300

Sr. Radiographer/Tech. Asst./Radiographer

Gr.II

5. Radiographer/X-Ray : Rs. 1350-2200

Technician/Radiographer Gr.II

6. Sr. Dark Room Asstt./ : Rs. 1200/2040

Technicians

7. Dark Room Asstt./ :Rs/ 975-1540

Radiographer Gr.III

8. Dark Room Asstt./ : Rs. 950-1500

Jr. Radiographers

9. Tech. Asstt. (X-Ray) : Rs. 825-1200

10. Dark Room Attendant : Rs. 800-1150

Demands in that Memoranda

52.106 Radiography and X-Ray Staff have demanded their posts should be upgraded in view of enhancement of entry level qualifications. Apart from provision of adequate promotion prospects, grant of radiation risk allowance has also been asked for.

Our recommendations

52.107 On an analysis of the Recruitment Rules of various institutions engaging these personnel, we find that Radiographers usually enter service at three levels. As Dark Room Assistants in the scale of pay of Rs. 950-1500 recruitment is 100% direct with qualifications of Matric plus certificate in Radiography. The next higher level is that of XRay Assistant/Sr. Dark Room Assistant (Rs. 1200-2040) recruited 50% by promotion from among Dark Room Assistants and 50% by direct recruitment with the same qualifications. Radiographers in the scale of pay of Rs. 1350- 2200 are recruited 20% by direct recruitment with Matric plus 2-year Diploma course in Radiography, and 80% by promotion from among X-Ray Assistants. Higher posts of Technical Assistant (Radiography), Sr. Radiographer (SUP), Radio Therapy Technician etc. are usually filled by promotion from these lower grades. The Association of these employees has represented that a lot of hospitals and institutions have converted this minimum 2-year requirement of Diploma Certificate in Radiography to a 3-year Diploma in Radiological Technology. And accordingly the minimum entry for Radiographers with these qualifications should be placed in the scale of pay of Rs. 2000-3500, keeping in view the nature of duties and educational qualifications and the

existing levels in various hospitals and institutions. We recommend following entry levels for this category for future recruitments, as for Laboratory and OT personnel as follows:

Sl.No

Existing

Present Scales(Rs.)

Proposed Scales(Rs.)

Scales(Rs.) Designation

1.

Radiographer Technician/ Supervisor/ Sr.Radiographer

-

2000-3500

Radiographer-I

Dynamic ACP Scale

2.

Radiographer Technician/ Supervisor/ Sr.Radiographer

1640-2900

1640-2900

Radiographer-II

No Change

3.

Radiographer

1350-3200

1600-2660

Radiographer-III

Upgradation in view of DR qualification

4.

-

-

1400-2300

Asstt. Radio- grapher-I

Dynamic ACP Scale

5.

Senior Dark Room Asstt. Technician (X-Ray)

1200-2030

320-2040

Asstt. Radio- grapher-II

Post Re- designated. Pay scale rationalized

6.

Dark Room Asstt. Technician (X-Ray)

950-1500

950-1500

Asstt. Radio- grapher-III

Post Re- designated."

The present incumbents in the posts of Radiographers, requiring a minimum of 2 yrs. Diploma/ certificate after 10+2 may be placed at the level of Rs. 1320-2040. Entry level qualification for Asstt. Radiographers will be atleast 10+2 with science, besides a certificate in Radiography. Since posts at Sl. No. 1 form feeder to the latter, the gap may be bridged by placing Sr. Dark Room Assistants at the level of Rs. 1320-2040; with an ACP at the level of Rs. 1400-2300. Radiography Technician/Supervisors and Sr. Radiographers being promotion posts, may be placed at the level of Rs. 1640-2900. There will be one more level for 2nd ACP of Radiographers at the scale of Rs. 2000-3500, Dark Room Attendants may be merged with the common category of group D. As Radiographers are trained to handle risks of radiation, a special radiation risk allowance is not recommended".

10. It is to be noticed that in para no. 52.104, the Fifth CPC has started discussions in the introductory part about Radiographers, X-Ray staff and Radiotherapy Technicians and has mentioned that they were considered as part of paramedical professionals. In para no. 52.105 while detailing about the existing establishment, there is a discussion about Senior Radiotherapy Technicians at point no.1 and point no.4 but inadvertently the designation of Radiotherapy Technician is missing. However, when the Fifth Pay Commission wrote its recommendations in para no. 52.107, it came up with a new and unknown designation called a Radiographer Technician which relates to a non-existent post. As per the Petitioners, there is no post of Radiographer Technician anywhere as the employees are either known as Radiographers or as Radiotherapy Technicians and it was an inadvertent error which had crept in

the recommendations of Fifth Pay Commission in para 52.107. The Counsel for the Respondents has not given any specific reply denying this contention. The stand of the Respondents is that Fifth Pay Commission had altogether made no recommendation in respect of Radiotherapy Technicians so they were to be given only the replacement scale as there was no specific recommendation made in respect of pre-revised scale of Radiotherapy Technicians. Keeping in view the fact that there is no denial to the stand of the Petitioners that there is no such post as "Radiographer Technician" and in fact that recommendation relates to Radiotherapy Technician finds it support from the discussion in the introductory paragraph no. 52.104 of the recommendations of the Fifth Pay Commission where the three expressions used are "Radiographers, X-Ray staff and Radiotherapy Technicians".

11. The contentions of the Petitioners also get support from the minutes of the meeting dated 12th August, 2005, which was held with the Medical Superintendent wherein it was assured as under:

"The scale of pay of Radiotherapy Technician may also be considered at par with the Radiographers on the same terms and condition as and when the pending court case is decided. Similarly, the case related to the Senior Radiotherapy Technician may be considered as per the outcome of the court case filed by them."

12. Another factor to be kept in mind is that under similar circumstances, the Radiotherapy Technicians working in All India Institute of Medical Sciences, which is also a Government hospital, were granted revised pay scale of Rs.5,000-8,000 vide office order dated 23rd May, 2001 and 17th May, 2006. The said revised pay scales were applicable both for employees working in radiotherapy as well as radiology.

13. The main contention of the Respondents is that the educational qualifications and experience etc. provided in the Recruitment Rules are different for the Radiotherapy Technicians when compared with the Radiographers. It is to be noticed that although the educational qualifications are same but the Radiotherapy Technicians should have studied a compulsory subject in Radiotherapy in the certificate course whereas that is not a mandatory condition for the Radiography, meaning thereby that the Radiotherapy Technician's job is more specialised. Similarly, although one-year experience has been provided for appointment to the Radiographers but that does not make that post superior to that of Radiotherapy Technician. It is to be borne in mind that initially when the cadre of the Radiotherapy Technicians was carved out in 1986, the letter 3rd December, 1986 specifically mentioned that the Radiotherapy Technicians shall have same pay scales as that of Radiographers.

14. Learned counsel for the Respondents has referred to the judgment reported as Ramesh Singh vs. Union of India & Ors. (2008) 5 SCC 173 and Secretary Finance Department and Ors. vs. West Bengal Registration Service Association

and Ors. AIR 1992 SC 1203 to bring home the point that the courts should not interfere in fixing of the pay-scales as it is a specialised job assigned to the specialised bodies like Pay Commissions and merely on the ground that the professional duties and responsibilities of two cadres are same, there is no ground to grant similar pay scales to two different sets of employees. This Court clarifies that the judicial review is done only to remove the typographical error and the disparity and the views of this Court are not being substituted for the views of the Pay Commission as the Pay Commission has missed out the pay scale of the Petitioners and gave wrong nomenclature to "Radiotherapy Technicians" as "Radiographer Technicians".

15. In these circumstances, there is no occasion for the CAT to decline the relief of the revision of pay scale of Radiotherapy Technicians from Rs.4,500-7,000 to Rs.5,000-8,000 to remove the anomaly.

16. The orders of the CAT dated 18th January, 2010 in OA No. 682/2009 and 28th April, 2010 in RA no. 108/2010 in OA No. 682/2009 are hereby set aside and it is hereby directed that the Radiotherapy Technicians be granted upgraded pay scale of Rs.5,000-8,000 w.e.f. 01.01.1996 on the same lines as was granted in the case of Radiographers. The consequential benefits be also granted to all the Petitioners. The order of the court be complied within eight weeks from the date of this order and the arrears be released within twelve weeks from today. In case of any delay in releasing the arrears, interest of 6% per annum shall be liable to be paid by the Respondents to the Petitioners.

17. The writ petition is disposed of.