CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 1524/2004
OA NO. 2542/2004
OA NO. 1505/2004
OA NO. 1987/2004
OA NO. 2135/2004

This the 31st day of March, 2006

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)
HON'BLE MRS. CHITRA CHOPRA, MEMBER (A)

OA NO. 1524/2004

1. S.K.Upadhyaya
H.No. C-99, Gali No.9,
Khajouri Khass, Delhi-94.

2. M.P.Singh
3. Vijay Kumar
4. Umesh Jha
5. Uday Prakash
6. S.S.Rawat
7. S.B.Kaushik
8. Shashikala
9. Prem Lata
10. Ram Kumar
11. Sunil Kumar Sharma

All C/o Malaria Research Centre
(Indian Council of Medical Research)
22, Sham Nath Marg,
Delhi-110054.

(None).

Versus

1. Union of India
through the Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan.
New Delhi.

2. Indian Council of Medical Research
through Director General
Ansari Nagar,
New Delhi-110029.

3. Malaria Research Centre,
(Under Ministry of Health and Family Welfare)
through its Director,
22, Sham Nath Marg,
Delhi-110054.

(By Advocate: Sh. V.K.Rao)

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OA NO.2542/2004

1. Dr.Rohini Sehgal
R/o B-4/125, Safdarjung Enclave
New Delhi-110029.

2. Dr.V.L.Jindal
R/o T-20, Green Park,
New Delhi-110 016.

3. Mr. Arun Kumar,
S/o Shri Prem Chandar,
R/o D-201, 2nd Floor,
Gautam Nagar,
New Delhi-100 049. ..... Applicants.

(By Advocate: Sh. S.K.Das)

VERSUS

1. Union of India, Through
Its Secretary,
Ministry of Health and Family Welfare
Nirman Bhawan, Maulana Azad Road,
New Delhi- 110 011.

2. Indian Council of Medical Research
Through its Director General
Ansari Nagar, Ring Road,
New Delhi-110029

3. The Administrative Officer,
Human Reproduction Research Centre
Indian Council of Medical Research
Department of Obstetrics & Gynaecology,
All India Institute of Medical Sciences,
New Delhi-1110 029.

(By Advocate: Sh. V.K.Rao)

OA 1987/2004

1. Mrs. Renu Walesha
W/o Mr. G.C.Walesha
Aged 45 years,
R/o CC-150-C Shalimar Bagh,
Delhi-110052.

2. Mrs.J.L.Saxena
Aged 55 years,
W/o Mr.N.C.Saxena
R/o E-471, Mayour Vihar Phase-II,
DELHI-110091.

3. Mr.Subash Chand
Aged 44 years,
Daughter of Sh. J.N.Tiwari,
A-63, Yojana Vihar,

Delhi-110092. ....Applicants.

(By Advocate: Sh. Kailash Vasdev, Sr. counsel with Sh. S.K.Das)

VERSUS

1. Union of India
represented by:
The Secretary,
Ministry of Health and Family Welfare
Nirman Bhawan,
New Delhi

2. Indian Council of Medical Research
Represented by: its Director General
Ansari Road,
Ring Road,
New Delhi-110029

3. The Officer Incharge
Human Reproduction Research Centre
Indian Council of Medical Research
Department of Obstetrics & Gynaecology,
New Delhi-110002. ..... Respondents.

(By Advocate: Sh. V.K.Rao)

OA NO.2135/2004

1. Mrs. Kamlesh Sharma
W/o Mr. O.P.Sharma
R/o Qr.No.65, Type-III,
North West Moti Bagh,
New Delhi.

2. Dr.Shivani Agarwal
W/o Dr.Neeraj Gupta
R/o YZ-25, Sarojini Nagar,
New Delhi

3. Dr. Vrijesh Tripathi
S/o Late J.N.Tripathi
R/o DA-314,SFS Flats
Shalimar Bagh Delhi-88,

4. Mrs. Pritam Gupta
W/o Sh.Kuldeep Gupta
E-8, Amar Colony, Lajpat Nagar-IV
New Delhi-110024.

5. Mrs.Madhu Bala
W/o Sh. P.N.Kapoor
R/o F-140, Vishnu Garden,
Chand Nagar, New Delhi.

6. Mr. Raj Pal,
S/o Late Chaudhary Ram Swaroop Mahawal,
R/O 123, Humayun Pur, New Delhi ... Applicants.

(By Advocate: Sh. S.K.Das)

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VERSUS

1. Union of India, Through
Its Secretary,
Ministry of Health and Family Welfare
Nirman Bhawan, Maulana Azad Road,
New Delhi- 110 011.

2. Indian Council of Medical Research
Through its Director General
Ansari Nagar, Ring Road,
New Delhi-110029

3. The Officer Incharge,
Human Reproduction Research Centre
Indian Council of Medical Research
Department of Obstetrics & Gynaecology,
VMMC and Sardarjung Hospital
New Delhi-1110 029. ..... Respondents.

(By Advocate: Sh. V.K.Rao)

OA NO.1505/2004

Shri Anoop Rawal
S/o Shri R.P.Rawal
Computer Programmer,
Malaria Research Centre
Indian Council of Medical Research,
22, Sham Nath Marg Delhi- 100054. Applicant.

(None)

VERSUS

1. The Director General
Indian Council of Medical Research
22, Sham Nath Marg,
Delhi-110 054.

2. The Director
Malaria Research Centre
Indian Council of Medical Research,
22, Sham Nath Marg, Delhi-110054.

3. The Secretary
Ministry of Health and Family Welfare
Nirman Bhawan
New Delhi.

4. The Secretary
Ministry of Finance,
Department of Expenditure
South Block, New Delhi. ... Respondents.

(By Advocate: Sh. V.K.Rao)

ORDER

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

Identical questions are involved in all the aforesaid OAs, so they are being decided by a common order.

2. Applicants in these OAs are working in different capacities in long-term extramural research projects of Indian Institute of Medical Research (ICMR). The applicants in OA Nos. 1524/2004 and OA No. 1505/2004 are working in IDVC Project and applicants in OA No.1987/2004, 2135/2004 and 2542/2004 are working in Human Reproduction Research Centre in Kasturba Hospital, Department of Obstetrics and Gynaecology, VMMC and Safdarjung Hospital and All India Institute of Medical Science respectively. The case of the applicants in these OAs is similar so for the sake of brevity, we may narrate the relevant facts pleaded in the OA No. 1524/2004 and OA No.1987/2004 which is treated as a leading case by the parties. Facts stated are as follows.

3. Applicants in OA No.1987/2004 are working in long term extramural project of ICMR known as Human Reproduction Research Centre in Kasturba Hospital. They have rendered service ranging between 7 years to 24 years in the project. By order dated 2.7.99 read with letter dated 3.9.2001 their pay was fixed in the replacement scale recommended by the 5th Central Pay Commission adding 40% fitment benefit w.e.f. 1.4.1998. The arrears of differential pay was also paid to them. Now the respondents vide order dated 5.5.2004 seek to withdraw 40% fitment benefit conferred on all the employees of the long term extramural project including applicants. Acting on the direction of respondent No.1 issued vide letter dated 13.5.2004 the respondent No.2 vide letter dated 18.5.2004 has rescinded and withdrawn the earlier order of grant of 40% fitment benefit and initiated action for recovery of excess payment made to these project employees in instalments. The applicants prays for quashing of order dated 5.5.2004 whereby Ministry of Health and Family Welfare of Government of India clarified that long term extra mural employees are not eligible to 40% fitment benefit, order dated 13.5.2004 by which ICMR withdrew 40% fitment benefit form employees of long term extramural research project of CMR including Human Reproduction Reserarch Centre

and IDVC –S&T Mission Project on Integrated Diseases Vector Control, and order dated 18.5.2004 whereby ICMR has stopped paying salary to the project employees with 40% fitment benefit and sought to recover the payment of excess amount in suitable instalments.

4. The applicants in OA No.1524/2004 are working in a long term extramural project of ICMR known as IDVC. They have rendered services varying from 18 to 24 years. By order dated 15.10.2001 their pay was fixed in the replacement scale recommended by the 5th Central Pay Commission reckoning 40% fitment benefit with effect from 1.4.1998. They allege that they were entitled to this fitment benefit w.e.f. 1.1.96 at par with regular employees of ICMR. They started drawing their pay fixed/computed after 40% fitment benefit was taken into account w.e.f. October 2001. The arrears for the period from 1.4.98 to 30.9.2001, however, have not been disbursed so far. Applicant filed OA-225/2003 which was disposed of at the admission stage on 22.9.2003 and the respondents were directed to dispose of their representation by a speaking order. After taking further time to implement the order the respondents have finally rescinded the grant of 40% fitment to long-term extramural project staff by the impugned order dated 13.5.2004 (Annexure A-1) pursuant to a clarification issued by the Ministry of Finance, Department of Expenditure dated 2.12.1997. Applicants have filed the present OA for quashing of the orders dated 13.5.2004 and 21.5.2000 whereby 40% fitment benefit, which was extended to the long-term extramural research project staff funded by the ICMR w.e.f. 1.4.98, was withdrawn and excess payment made is sought to be recovered from them and they also seek a direction to the respondent to release the arrears of 40% fitment benefit to the applicant along with 18% interest w.e.f. 1.1.96 as per the recommendation of the 5th Central Pay Commission.

5. Applicants in these OAs have raised diverse pleas challenging the order of the respondents whereby 40% fitment benefit granted to the long term extramural project employees like them, while fixing their pay in Vth CPC recommended pay scale w.e.f. 1.4.98, has been withdrawn and the excess payment made is sought to be recovered from their salaries on the grounds, amongst others, that the order was rescinded without serving a show cause notice and providing an opportunity of hearing to them.

6. All these OAs are contested by the respondents.

7. We have heard the learned counsel for the parties.

8. At the hearing counsel for respondent has submitted that similar OAs filed by the staff of long term extramural project have been dismissed on merit by the Ahmedabad Bench, Madras Bench, Cuttack Bench, Mumbai Bench and Jabalpur Bench of this Tribunal. He also stated that a writ petition filed challenging the order of the Madras Bench of the Tribunal has also been dismissed. He stated that the writ petitions in which the orders of Mumbai, Ahmedabad and Cuttack Bench were challenged were pending. He also fairly submitted that the order of the Jabalpur Bench of this Tribunal was challenged before Madhya Pradesh High Court in writ petition No.4948/2005 which has been disposed of on 8.9.2005 with certain directions and the present OA may also be decided in terms of the said order as the writ petitioners are being provided opportunity of hearing by the respondents in accordance with that order.

9. Learned counsel for applicants has tried to distinguish the orders passed by other benches of this Tribunal by which the similar relief claimed by the long term extramural project staff has been refused by the Tribunal. We desist from delving into the various contentions of the learned counsel raised while challenging the impugned orders of the respondents except his submission that before the order was rescinded and withdrawn the applicants should have been given an opportunity of hearing. Madhya Pradesh High Court has disposed of the writ petition on two grounds; firstly that the writ petitioners were not given an opportunity of hearing before the 40% fitment benefit already granted to them was recalled and secondly they were not issued any show cause notice mentioning in as to why they intended to withdraw the said benefit. The present OA may also be decided on the same terms on which the writ petition was decided by the High Court by order dated 8.9.2005. Any discussion of other argument which have been submitted by the parties in the matter may cause prejudice to one or the other parties, so we need not discuss them.

10. Accordingly, the present OAs are disposed of in terms of the order of Madhya Pradesh High Court in writ petition No.4948/2005 in the case titled Ramesh Kumar Bhatia and others vs. Union of India and others decided on 8.9.2005 and give the following directions:-

(i) No recovery shall be made against the petitioners.

(ii) The petitioners shall be given an opportunity of hearing with regard to the alleged withdrawal of the benefit of 40% fitment by the respondents.

(iii) The respondents after affording an opportunity of being heard to the petitioners, shall pass a reasoned order within a period of three months from the date of receipt of the order passed today.

(iv) On an adverse order being passed against the petitioners they would be at liberty to agitate the matter further, before an appropriate forum.

(v) Till the decision on the objection, the petitioners would not be entitled to receive the benefit of 40% fitment.

(vi) The petitioners if so desire, shall send their authorized representative for putting forth their stand.

Parties are left to bear their own costs.

(CHITRA CHOPRA)
Member (A)

(M. A. KHAN)
Vice Chairman (J)

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