

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK**

Original Application No. 70 of 2006

Thursday, this the 27th day of September, 2007

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER**

Shri Bhasker Chandra Rout,
S/o. Late Narendra Rout,
Ex-Physiotherapist, Aviation Research Centre (A.R.C),
Hospital, Charbatia, At present residing at
House No. L/3, Housing Board Colony,
At/PO: Charbatia, District : Cuttack : 754 028. **Applicant.**

(By Advocate Mr. B.S. Tripathy)

v e r s u s

1. Union of India represented through
the Cabinet Secretary, Cabinet Secretariate,
Bikaner House Annexe, Sahajahan Road,
New Delhi : 110 001
2. The Special Secretary,
Aviation Research Centre (A.R.C.),
East Block – V, R.K. Puram,
New Delhi : 110 066
3. The Deputy Director (Admn.),
Aviation Research Centre (ARC),
Headquarters, Director General of Security,
Cabinet Secretariate, East Block – V,
R.K. Puram, New Delhi : 110 066
4. The Assistant Director (Co-Ord),
Aviation Research Centre (ARC),
Headquarters, Director General of Security,
Cabinet Secretariate, East Block – V,
R.K. Puram, New Delhi : 110 066
5. The Deputy Director (Admn.),
Aviation Research Centre (ARC),
At/PO : Charbatia, District Cuttack: 754 028
6. The Senior Medical Officer,
Aviation Research Centre (ARC), Hospital,
At/PO : Charbatia, District Cuttack: 754 028 **Respondents.**

(By Advocate Mr. D.K. Behera, ACGSC)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant working as Physiotherapist was afforded revised pay scale of Rs 4,500 – 7,000/- w.e.f. 01-01-1996, whereas in many institutions (as for example in Safdarjang Hospital, vide Annexure A-1, the replacement pay scale for the said post had been Rs 5,500 – 9,000/-, which was as per the Recommendations of the V Central Pay Commission. On his representation, the Dy. Director A.R.C. Had vide Annexure A-2 letter dated 26-09-2000 requested the Cabinet Secretariat for affording the applicant the higher pay scale. This was followed by Annexure A-3 representation addressed to the Special Secretary, vide Annexure A-3. While the case was under consideration, the applicant superannuated w.e.f. 01-09-2002. The applicant pursued his case by Annexure A-5 representation and ultimately, the respondents had granted the higher pay scale of Rs 5,500 – 9,000/- to the applicant, but w.e.f. 09-09-2003, vide Annexure A6 and A-7 orders. Pay w.e.f. 01-01-1996 was stated to be on notional basis. The applicant thus penned a representation for arrears of pay as according to him, there was no reason not to grant him on actual basis revised pay scale of 5,500 – 9,000 as his counterparts in other institutions. Annexure A-8 refers. This representation of the applicant was, by Annexure A-9 order, rejected. Hence this O.A.

2. Respondents have contested the O.A. No specific reason for not granting the applicant the revised pay scale w.e.f. 01-01-1996 on actual basis had been specified by them. It was only stated, "*Having regard to the totality of the issue, the benefit of higher pay scale was allowed to the applicant prospectively w.e.f. 9.9.2003 so that he could draw retirement benefits based on the revised higher*

pay scale" (Para 5(f) of the reply refers).

3. Arguments were heard. Counsel for the applicant submitted that all through, the pay scale attached to the Physiotherapist in the Respondents' organization had been equated with their counterparts in other institutions and as such, there is no justification in discriminating the case of the applicant from that of others. That there had been parity throughout had not been denied by the counsel for the respondents. In fact he has drawn a comparison of his case with those in other institutions vide ground No. 5(b) to which there has been no denial. It is settled law that when all through the respondents have treated the post of Physiotherapist of the Respondents' organization at par with the counterparts in other organizations, there ought to have been pay parity at par with those of other counterparts. In this regard, the decision of the Apex Court in the case of *Union of India v. Debasish Kar, 1995 Supp (3) SCC 528*, held as under:-

In this context, it would be relevant to mention that as per the pay scales fixed on the basis of report of the First Pay Commission of 1947 there was no difference in the pay scales of Draughtsmen and Tracers in the Ordnance Factories on the basis of the report of the Third Pay Commission in 1973, Tracers in the Ordnance Factories and Draughtsmen Grade III in CPWD were placed in the same pay scale of Rs 260-430, Draughtsmen in Ordnance Factories and Draughtsmen Grade II in CPWD were placed in the same pay scale of Rs 330-560 and Senior Draughtsmen in Ordnance Factories and the Draughtsmen Grade I in CPWD were placed in the same pay scale of Rs 425-700. This would show that Tracer in Ordnance Factories has all along been treated as equivalent to Tracer/Draughtsman Grade III in CPWD and Draughtsman in Ordnance Factories has all along been treated as equivalent to Assistant Draughtsman/Draughtsman Grade II in CPWD. As a result of the revision of pay scales in CPWD on the basis of the Award of the Board of Arbitration, the pay scale of Draughtsman Grade III was revised to Rs 330-560, while that of Draughtsman Grade II was revised to Rs 425-700 and of Draughtsman Grade I was revised to Rs 550-750. The denial of similar revision of pay scale to Draughtsmen in Ordnance Factories would result in their

being downgraded to the level of Tracer/Draughtsman Grade III in CPWD. Office Memorandum dated 13-3-1984 cannot, in our opinion, be construed as having such an effect. (Emphasis supplied).

4. Respondents have not given any justification, much less a satisfactory justification in not granting the applicant the revised pay scale of Rs 5,500 – 9,000 on actual basis w.e.f. 01-01-1996. The date of effect of revised pay scale has been uniformly prescribed w.e.f. 01-01-1996. There has not been any qualitative change in the work of the counterparts of the applicant. Thus, there is a clear discrimination in not having granted the revised pay scale of Rs 5,500 – 9,000 on actual basis to the applicant and the same infringes upon the constitutionally guaranteed right to equality in matters of employment to the applicant. The contention of the applicant that grant of revised pay scale to the applicant w.e.f. 09-09-2003 was with a view to enabling the applicant to have the retirement benefits worked out on the basis of the revised pay scale, vide para 5 (e) of the reply would mean that the respondents are doing a favour to the applicant, whereas, his entitlement to the pay scale of Rs 5,500 – 9,000 w.e.f. 01-01-1996 on actual basis is his rightful entitlement.

5. Hence, the OA is allowed. It is declared that the applicant is entitled to revised pay scale of Rs 5,500 – 9,000 w.e.f. 01-01-1996 on actual basis and not on notional basis. The applicant's pay w.e.f. 01-01-1996 should therefore be fixed in that scale and the difference between the pay drawn and due from 01-01-1996 till the date of retirement i.e. 31-08-2002 shall be worked out and paid to the applicant within a period of ten weeks from the date of receipt of this order.



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6. Under the above circumstances, there shall be no orders as to costs.

(Dated, the 27th September, 2007)

Tarsem Lal
(TARSEM LAL)
ADMINISTRATIVE MEMBER

DR. KBS Rajan
(DR. K B S RAJAN)
JUDICIAL MEMBER