

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No. 430 of 2011**

Wednesday, this the 16<sup>th</sup> day of November , 2011.

**CORAM:**

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER  
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBE**

1. U.K. Sasidharan,  
S/o. Late U, Kunjuraman,  
Foreman, Naval Aircraft Yard,  
Naval Base, Kochi -4,  
Pazhangattu House,  
Kannanthodath Road,  
Edappally, Kochi -24.
2. K.T. Gireesan,  
S/o. N. Gangadharan Nambisan,  
Foreman (A/L), Assistant Manager,  
(PCO) Naval Aircraft Yard,  
Naval Base, Kochi -4,  
Residing at Sreeragam, Ambadimala,  
Thiruvankulam P.O., Kochi – 682 305.
3. K. Balachandran,  
S/o. K. Kochukunju Kurup,  
Foreman (AR), Naval Aircraft Yard,  
Naval Base, Kochi -4,  
Residing at Kannimel, No. VII/44H,  
Sreyas Nagar, Kniyampuzha Road,  
Eroor P.O., Kochi – 682 306
4. P.K. Vinodhkumar,  
S/o. P.K. Kumaran,  
Foreman (AE), Naval Aircraft Yard,  
Naval Base, Kochi -4,  
Residing at P4/4, Vikram Flat,  
MES Officers Qtrs.,  
Panampilly Nagar, Kochi – 20
5. P. Sargadharan,  
S/o. A. Parameswaran Pillai,  
Foreman (AE), Naval Aircraft Yard,  
Naval Base, Kochi -4,  
Residing at 'Sarikam', South Chilavannoor,  
Kadavnthra, Kochi -20

... Applicants.

(By Advocate Mr. K.S. Bahuleyan)

## v e r s u s

1. Flag Officer Commanding-in-Chief,  
Southern Naval Command,  
Headquarters, Kochi - 04
2. Commodore Superintendent,  
Naval Ship Repair Yard, Kochi-4
3. Deputy Controller of Defence Accounts,  
Area Accounts Office (Navy),  
Perumanoor, Kochi-10
4. Union of India, represented by  
Secretary to the Government of India,  
Ministry of Defence, North Block,  
New Delhi.

... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

This Original Application having been heard on 16.11.2011, the Tribunal on the same day delivered the following:

**ORDER****HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

The applicants in this O.A. were promoted from the post of Assistant Foreman to the post of Foreman after 01.01.2006. They were given the benefit of pay fixation under F.R. 22 (1)(a)(i). On implementing the recommendation of VI CPC, the pay of the applicants on promotion to the post of Foreman was fixed as per the clarification No. 2 issued by the Ministry of Finance, Department of Expenditure, in O.M. No. F.No.1/1/ 2008-IC dated 13.09.2008. As the posts of Assistant Foreman and Foreman were merged//upgraded from 01.01.2006 and was given a common scale/Grade Pay as per letter No. CP(P)/8416/VI CPC/Policy Corres. dated 24.08.2009, the promotion granted in the merged scale during the period from 01.01.2006 to the date of amendment of the Recruitment Rules would be ignored. The applicants were informed that the



excess amount paid on account of pay fixation on promotion to the same Grade Pay would be recovered. Aggrieved, the applicants have filed this O.A. for the following reliefs:

- (i) Call for the records leading to the issue of Annexures A-7 to A-11 and quash the same;
- (ii) Direct the respondents to stop forthwith further recovery of the benefits of pay fixation granted to the applicants on promotion to the present posts;
- (iii) Direct the respondents to repay the pay fixation benefits already recovered from the applicants;
- (iv) Declare that the applicants are entitled to the fixation benefits granted to them on their promotion to the post of Foreman on the basis of extant rules and that it cannot be taken away with retrospective effect;
- (v) Award costs of and incidental to this application;
- (vi) Grant such other reliefs, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The applicants contended that in the light of various judgements of Hon'ble High Court of Kerala and Hon'ble Supreme Court, the action of the respondents for recovery of the excess amount paid to the applicants on account of the alleged wrong fixation of pay is arbitrary, unreasonable and discriminatory. This Tribunal has quashed the Annexure A-5 order to the extent it directs the recovery of the benefits granted on promotion to the merged/upgraded scale from the pay and allowances of the applicants in O.A. No. 53/2010 and connected cases (Annexure A-13). As such the Annexures A-7 to A-11 informing the applicants about the recovery are liable to be quashed. The applicants were promoted to the higher posts as per the Recruitment Rules against the existing vacancies, having higher duties and



responsibilities. The benefits accrued as per such fixation of pay cannot be taken away on the basis of instructions. They are entitled to protection of pay already fixed. In O.A. No. 740/2003 and connected cases, this Tribunal held that it is wrong to deprive an employee of the benefit of seniority enjoyed by virtue of regular promotion by an act of retrospective revision of cadre structure entitling forfeiture of promotional seniority already availed. The applicants in the present O.A. are identically situated as the applicants in O.A. No. 53/2010 and connected cases and as such the pay fixation benefits given to them upon their promotions to the higher post of Foreman cannot be recovered.

3. The respondents in their reply statement submitted that as per the clarification issued by the Ministry of Defence, the audit authorities directed the cancellation of the pay fixation in all cases where promotions had been granted among the merged/upgraded posts with the same Grade Pay after 01.01.2006 and to recover the excess paid pay and allowances till date. The respondents have taken steps strictly in accordance with Annexure A-5(3). The applicants are not aggrieved by the decision to revise the fixation of pay on promotion to the grade which was merged. They get the benefit of higher pay and better promotional avenues and the benefit of MACP Scheme as per the recommendations of the VI CPC. There is no wrong fixation of pay or wrong construction of orders in the instant case.

4. We have heard Mr. K.S. Bahuleyan, learned counsel for the applicant and Mr. Sunil Jacob Jose, learned SCGSC appearing for the respondents and perused the records.



5. The respondents have no case that the applicants had resorted to fraud or misrepresentation to get a higher fixation of pay. This Tribunal in O.A. No. 53/2010 and connected cases which are identical to the present O.A, held as under:

"10. However, the impugned orders of recovery from the applicants are on a different footing. The applicants were promoted as per the extant rules and their pay was fixed under FR 22(I)(a)(1) correctly. The retrospective application of CDS (RP) Rules, 2008, cannot legally take away the vested right of the applicants in the pay fixation accrued on regular promotion as per Recruitment Rules. The undertakings given by the applicants were for refunding the excess payment, if any, on account of incorrect fixation of pay in the revised pay scale in accordance with the notification of the CDS (RP) Rules, 2008 on 09.09.2008 for implementing the VI CPC recommendations and can have only prospective effect. The undertaking was not for refunding the benefit of pay fixation correctly made under FR 22(I)(a)(1) on regular promotion granted to them. The issue of refund arose only because of the retrospective effect of implementation of the CDS (RP) Rules, 2008 with subsequent clarifications. No rule can be implemented with retrospective effect adversely affecting the vested right of the affected parties without following the due procedure.

11. In **Sahib Ram vs. State of Haryana**, 1995 Supp. (1) SCC 18 and **Purushotam Lal Das and Ors. vs. State of Bihar and Ors.**, 2006 (11) SCC 492, the Hon'ble Supreme Court held that the law is equally clear that when an overpayment is made by the Government not on the basis of any misrepresentation by the employees, Government cannot effect any recovery. In **Satyapalan vs. Dy. Director of Education**, 1998 (1) KLT 399, Hon'ble High Court of Kerala held that the amount obtained by reason of wrong fixation of pay made by the administrative authority cannot be directed to be refunded. Again, in **Sivankutty Nair vs. Secretary to Government**, 2005 (3) KLT 512, Hon'ble High Court of Kerala held that the excess amount paid on account of wrong fixation of pay cannot be recovered unless the employee has in any way contributed to the mistake.

12. In the instant cases, the recovery now proposed by the respondents is the amount that was paid on fixation of their pay on regular promotion correctly made under FR 22(I)(a)(1). It is not directly related to fixation of pay in revised pay scale in accordance with the VI Central Pay Commission. In the light of the various decisions of the Hon'ble Supreme Court and the Hon'ble High Court of Kerala, the recovery of the amount which was paid as per the extant rules, cannot be justified by the



retrospective application of CDS (RP) Rules, 2008. The respondents are justified in refixing the pay of the applicants in the revised pay scale in the wake of implementation of the VI Central Pay Commission. But they cannot recover the amount already paid legally to the applicants upon their promotion as per Recruitment Rules.

13. In **Sahib Ram v. State of Haryana**; 1995 Supp (1) SCC 18 and **Shyam Babu Verma v. Union of India**; (1994)2 SCC 521, it is contended that any excess payment made to the employees should not be recovered from them. In **Registrar, Cooperative Societies Haryana and Others vs. Israil Khan and Others**; (2010)1 SCC(L&S) 1123, the Apex Court held that:-

"There is no "principle" that any excess payment should not be recovered back by the employer. This Court, in certain cases has merely used its judicial discretion to refuse recovery of excess wrong payments of emoluments/allowances from employees on the ground of hardship, where the following conditions were fulfilled:

"(a) the excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous".

Therefore, we have to examine as to whether the excess payment made in this case falls under any of the two conditions aforementioned before we grant any relief. In this case the fixation benefit was admitted as admissible under FR 22(I)(a)(1) in the pre-revised pay scale initially and was subsequently extended to the revised pay scale as per the VI Central Pay Commission recommendations. But as per the VI Pay Commission recommendations, the posts were merged into an identical grade pay. It is only by virtue of the subsequent clarifications issued by the Department dated 4.12.2009 (copy of which is produced as Annexure A4 in O.A. No. 53/2010), it has become necessary to revise the fixation of the pay effected in all cases of identical pay scales/grade pay and benefit granted to the merged/upgraded pay scale. Thus the excess payment was made only because of applying a wrong principle based on particular interpretation of a rule or order which was subsequently found to be erroneous and thus falls under condition No.(b) referred to in the Apex Court's judgement (supra). Therefore, even though the respondents are entitled to refix the pay, the recovery sought



to be made has to be set aside as it will cause undue hardship especially when one of the conditions for granting such relief is satisfied in this case.

14. In the light of the above, it is ordered as follows :

The order dated 04<sup>th</sup> December, 2009 to the extent it directs recovery of the benefits granted on promotion to merged/upgraded pay scale from the pay and allowances of the applicants is hereby quashed and set aside. The interim stay orders on the recovery of benefit of pay fixation granted to the applicants in O.A. Nos. 53/10, 213/2010, 539/2010, 544/2010 and 549/2010 on promotion to the present posts are made absolute. However, the applicants are not entitled to protection of their pay fixed allowing the benefit of pay fixation on promotion effected to the merged/upgraded pay scale/posts after 31<sup>st</sup> December, 2005.

15. The O.As are disposed of as above. No order as to costs."

6. As the applicants in the instant O.A are similarly placed as the applicants in O.A. No. 53/10 and connected cases, the decision of this Tribunal in the said O.As is applicable to the applicants in this O.A as well. Accordingly, the O.A is allowed to the extent indicated below.

7. The respondents are directed not to recover the benefit of pay fixation granted to the applicants on their promotion to the present posts and to repay the fixation benefits, if any, recovered from them within a period of 2 months from the date of receipt of a copy of this order. However, the respondents are free to refix the pay of the applicants as per rules with prospective effect. No order as to costs.

(Dated, the 16<sup>th</sup> November, 2011)

  
**K. GEORGE JOSEPH**  
ADMINISTRATIVE MEMBER

  
**JUSTICE P.R. RAMAN**  
JUDICIAL MEMBER