

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.470/2001.

Wednesday this the 29th day of January, 2003.

CORAM:

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

Shri K.P.Kunhimoideenkutty,
SC.No:23110, Scientist/Engineer-SB,
EID, LVIG, ICF, TERLS Area,
VSSC, Thiruvananthapuram,
Residing at: Kavumpurath House,
Vellanchery, Trikkaanapuram P.O.
Thavanur, Malappuram. Applicant

(By Advocate Shri S.Ramesh Babu)

VS.

1. Union of India, represented by the General Manager, Department of Space, New Delhi.
2. Vikram Sarabhai Space Centre, Department of Space, Government of India, Thiruvananthapuram-695 022, represented by the Deputy Director.
3. Senior Administrative Officer, Vikram Sarabhai Space Centre, Department of Space, Government of India, Thiruvananthapuram-695 022. Respondents

(By Advocate Shri C.N.Radhakrishnan)

The application having been heard on 29.1.2003, the Tribunal on the same day delivered the following:

Q R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant aggrieved by A-6 memorandum No. VSSC/EST/F/Misc/2000 dated 20.11.2000 issued by the 3rd respondent rejecting his request contained in A-5 representation dated 10.8.2000 seeking refixation of his pay so as to protect emoluments drawn by him while working in Indian Telephone Industries (ITI for short) Ltd., Kanjikode West, Palakkad filed this O.A. seeking the following reliefs:

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- a) Call for the records leading to the issue of Annexure A6 and quash the same.
- b) Direct the respondents to refix the pay of the applicant on and from 27.4.1994 reckoning and protecting the pay of Rs.3681/- received by the applicant while employed in the ITI Ltd. in accordance with GOI orders under FR 22 and pay the arrears thereon with interest at 12% per annum
- c) Award costs of and incidental to the application.
- d) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

2. According to the averments of the applicant in the O.A., he, while working in the ITI Ltd, Palakkad from 17.3.88 to 26.4.94 applied through proper channel to VSSC for selection to the post of Technical Assistant-B. Pursuant to the interview the applicant was selected and appointed as Technical Assistant-B in the scale of Rs.1400-40-1600-50-2300-EB-60-2000. The applicant joined duty in the VSSC on 27.4.1994. According to the applicant the revised basic pay + FDA + VDA drawn by him as on 26.4.94 in ITI Ltd., (Government of India Public Sector Undertaking) was Rs. 3681/- (A1). The applicant submitted A-4 representation dated 11.2.99 seeking refixation of pay on the basis of pay protection and also for reckoning his service in the ITI Ltd. for service benefits in VSSC. He followed it up by A-5 representation dated 10.8.2000. He received A-6 reply dated 20.11.2000 rejecting his request. Aggrieved he filed this O.A. seeking the above reliefs.

3. According to the applicant he is entitled for protection of pay as per Government of India, DOPT's O.M. No.12/188-Estt (Pay - I), dated 7th August 1989, as he satisfied all the conditions mentioned in the said O.M. Further the reasons mentioned in A-6 for rejecting the claim were untenable and



inconsistent with the said O.M. Further according to him his appointment in VSSC as a Technical Assistant-B, was higher than the post of Junior Technical Assistant, and hence the respondents' statement that the appointment of the applicant in lower post in VSSC was baseless and incorrect. Therefore, A-6 was bad in law and was liable to be set aside.

4. The respondents filed reply statement resisting the claim of the applicant. Applicant filed a rejoinder and the respondents filed additional reply statement. When second additional reply statement was filed by respondents, additional rejoinder was filed by the applicant.

5. Heard the learned counsel for the parties. Learned counsel for the applicant took us through the factual aspects as contained in the O.A. He submitted ths at the emoluments received by the applicant while working in the ITI Ltd. on 26.4.94 was Rs.3681/- and the applicant was entitled for protection of pay as per Government of India, DOPT's O.M.No.12/188-Estt. (Pay-I), dated 7.8.89, appearing in Swamy's Compilation of FRSR Fourteenth Edition, appearing as Government of India's decision No.28 under FR 22 and Annexure appearing thereunder.

6. Learned counsel for the respondents took us through the reply statement and submitted that as per the Government of India Allocation of Business Rules, 1961, all matters relating to personnel under the Department of Space(DOS for short)/Indian Space Research Organisation(ISRO for short) had been allocated to

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DOS and this conferred certain flexibilities on the Department in Personnel and administrative matters vis -a -vis other Ministries/Departments considering the specialized scientific nature of work in a frontier Area of hi-technology. It was submitted that DOS was exempted from consulting Union Public Service Commission(UPSC) in recruitment matters and also the Staff Selection Commission (SSC). Further, against the VSSC's notification for filling up of the post of Technical Assistant-B during 1991, the applicant who was working as Head, Technical Assistant-C (Category G) in Indian Telephone Industries, Kanjikode, Palakkad submitted his application. He was called for interview along with other eligible candidates and having been found suitable in the interview held on 16.3.1992, the applicant was offered the post of Technical Assistant -B with initial pay of Rs.1400/- in the scale of Rs.1400-2600 as recommended by the duly constituted Departmental Selection Committee through A-3 Offer of Appointment dated 15.3.1994. In the said offer of appointment it had been clearly stated that the initial pay offered to the applicant was based on evaluation of his qualification, experience, performance in the interview etc. and no claim for higher pay or higher grade or premature promotion would be entertained. Counsel submitted that, having accepted such conditions, the applicant could not seek the reliefs that were made in this O.A. It was further submitted that, FR 22 was not applicable to Public Sector Undertakings. The applicant was offered the initial pay of Rs.1400/- as recommended by the Departmental Selection Committee which took into consideration his past service in ITI Ltd., performance in the interview etc. It was further submitted by the counsel that even though when the



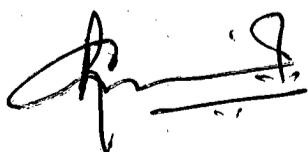
applicant was appointed in the post of Technical Assistant in VSSC, his basic pay was Rs.1400/-, the total emoluments were Rs.3381/- and the same had fully protected the applicant's emoluments as envisaged in the O.M. dated 7.8.89.

7. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have perused the documents brought on record.

8. It is now well settled that a Government servant's rights in service matters emanate from the rules framed by the Government of India under Article 309 of the Constitution and by the instructions and directives issued by the Government of India. The applicant in this case is claiming refixation of pay on the basis of the Government of India's instructions contained in OM.No.12/188/Estt(Pay-1) dated 7.8.89. As this O.M. is relevant, we feel it worthwhile to reproduce the same.

"(28) Protection of pay is admissible for candidates recruited from Central Autonomous Bodies/Public Sector Undertakings.--As per extant rules/orders, pay protection is granted to candidates who are appointed by the method of recruitment by selection through the Union Public Service Commission, if such candidates are in Government service. No such pay protection is granted to candidates working in Public Sector Undertakings, Universities, Semi-government Institutions or Autonomous Bodies, when they are so appointed in Government. As a result of this, it has not been possible for Government to draw upon the talent that is available in non-Government organizations.

2. The question as to how pay protection can be given in the case of candidates recruited from Public Sector Undertakings, etc., has been engaging the attention of the Government for some time. The matter has been carefully considered and it has been decided that in respect of candidates working in Public Sector Undertakings, Universities, Semi-Government Institutions or Autonomous Bodies, who are appointed as direct recruits on selection through properly constituted agency including departmental authorities making recruitment directly, their initial pay may be fixed at a stage in the scale of pay attached to the post, so that the pay and DA, as admissible in the

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Government will protect the pay plus DA, already being drawn by them in their parent organization. In the event of such a stage not being available in the post to which they have been recruited their pay may be fixed at a stage just below in the scale of the post to which they have been recruited, so as to ensure a minimum loss to the candidates. The pay fixed under this formulation will not exceed the maximum of the scale of the post to which they have been recruited. The pay fixation is to be made by the employing Ministries/Departments after verification of all the relevant documents to be produced by the candidates who were employed in such Organizations.

3. These orders take effect from the first of the month in which this Office Memorandum is issued, i.e., 1st August, 1989.

(G.I.Dept.of Per.&Trg., O.M.No.12/188-Estt.(Pay-1), dated the 7th August, 1989.)

9. We find from the above O.M. that the Government of India has decided from 1st August, 1989 to practically protect the emoluments by way of pay + DA drawn by the employees of Public Sector Undertakings when they join the Government as direct recruits. When the Government of India through the above O.M. had decided a policy to protect the emoluments of the Public Sector Undertaking employees joining under the Government of India, we are of the view that the respondents who are subordinate to the Government of India, cannot flout such instructions and are bound to follow the same. The respondents' contention contained in their reply statement that the Department of Space has certain flexibilities and hence they are not bound by the orders of the Government of India, is not substantiated with any orders of the Government exempting the Department of Space from following the instructions of the Government of India/Department of Personnel & Training. They had also not produced anything to show that they are not governed by the O.M. dated 7.8.1989.

10. From the pleadings of the respondents contained in their

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reply statement it is evident that, the applicant was drawing revised emoluments of Rs.3681.00/- (Amendment A-1) at the time of making application for recruitment as Technical Assistant in VSSC and on his joining VSSC; even though his pay was fixed at Rs.1400, the total emoluments being given to him was Rs.3381/-. Thus, by fixation of his pay at Rs.1400 at that time, his revised emoluments were not protected.

11. The applicant in his representation (A4) dated 11.2.99 had sought the protection of the Government of India's O.M. dated 7.8.89 for the reason that, the revised basic pay + FDA + VDA at the time of his releasing from ITI had become to Rs.3681/- and he sought on the basis of the said O.M. dated 7.8.89 and the subsequent O.M. dated 10.7.98 to refix his pay, so that his basic pay + FDA + VDA which was effective at the time of his joining would be protected. We find that, the request of the applicant contained in those representations, is fully covered by the Government of India's instructions, which we reproduced above. The respondents seem to have come to the conclusion that the applicant is seeking protection of pay. Though in the O.A. we find that in some places the applicant had sought for protection of pay, the applicant's basic claim is for protection of emoluments as is evident from his representation at A-4 and this is fully covered by the Government of India's O.M. dated 7.8.89. We are of the considered view that, when the Government of India issues instructions and directives, these are applicable to all the subordinate authorities, and all the subordinate authorities are bound to follow the same. Another contention taken by the respondents is that, the applicant had moved from a



higher grade to a lower grade and hence, he is not entitled for the protection of pay. It is evident from the Government of India's instructions that the pay scale of Public Sector Undertakings and Government of India are not identical. We are also of the view that, when the scales of pay are not identical the question of higher and lower scales do not arise. The applicant's contention that he was working as Junior Technical Assistant and he applied for Technical Assistant has also not been denied by the respondents. In any case when the O.M. directs the protection of emoluments, the respondents are bound to follow the same.

12. In the result, we hold that this O.A. succeeds and the reasons given in A-6 for rejecting the claim of the applicant are not sustainable and are liable to be set aside and quashed.

13. Accordingly,

- i) we set aside and quash A-6,
- ii) We direct the respondents to consider the representation of the applicant (A4) dated 11.2.99 and A-5 representation dated 10.8.2000 afresh as regards the protection of the emoluments drawn by the applicant while working in ITI on 26.4.94, on the basis of his revised pay + FDA + VDA therein in accordance with the directives of the Government of India, Department of Personnel and Training dated 7.8.89 and the subsequent orders issued if any, and refix the pay of the applicant in time with the instructions contained in the above mentioned O.Ms.

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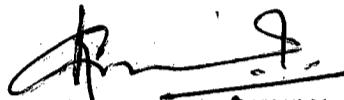
iii) The above exercise shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order, and
iv) We leave the parties to bear their respective costs.

14. O.A. is disposed of as above.

Dated the 29th January, 2003.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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