

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No. 593 of 2009**

**MONDAY, this the 25<sup>th</sup> day of July, 2011**

**C O R A M :**

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

1. P.A. Parameswaran,  
S/o. Shri Appukuttan Menon,  
Junior Stenographer,  
Directorate of Cashewnut and Cocoa Development,  
Ministry of Agriculture, 'Kera Bhavan',  
SRV School Road, Cochin – 682 011,  
Residing at 'Pazhayillathu' House,  
T.K.S. Puram, Kodungallur P.O.,  
Thrissur : 680 664
  
  2. N. Vijayan,  
S/o. The late V.G. Narayana Pillai,  
Junior Stenographer,  
Directorate of Cashewnut and Cocoa Development,  
Ministry of Agriculture, 'Kera Bhavan',  
SRV School Road, Cochin – 682 011,  
Residing at 'Vattolil' House,  
Perumbavoor, Ernakulam District,  
Iringole : 683 548
  
  3. Gopinathan I,  
S/o. The late K.K. Menon,  
Technical Assistant,  
Directorate of Cashewnut and Cocoa Development,  
Ministry of Agriculture, 'Kera Bhavan',  
SRV School Road, Cochin – 682 011,  
Residing at 'Kuttikkattu Madom',  
Narakkal P.O., Cochin : 682 505
- ... Applicants.

(By Advocate Mr. O.V. Radhakrishnan (Sr.) with  
Mrs. K. Radhamani Amma)

v e r s u s

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1. Union of India, represented by its  
Secretary, Ministry of Agriculture,  
Department of Agriculture & Co-operation,  
Krishi Bhavan, New Delhi – 110 011.
2. The Director,  
Directorate of Cashewnut and Cocoa Development,  
Ministry of Agriculture,  
Department of Agriculture & Co-operation,  
8<sup>th</sup> and 9<sup>th</sup> Floor, 'Kera Bhavan',  
SRV School Road, Cochin – 682 011, ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The application having been heard on 06.07.2011, the Tribunal on 25-07-11 delivered the following:

### **ORDER**

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

This O.A has been filed by the applicants praying for the following reliefs :

i. To declare that the applicants 1 and 2 are entitled to the scale of pay of Rs. 5000-8000 (pre-revised) with effect from 4.7.2005 and 1.6.2002 respectively and in the revised scale of pay of Rs. 9300-34800 (GP : Rs. 4200/-) with effect from 1.1.2006 and the applicant No. 3 is entitled to the scale of pay of Rs. 1400-2600 (pre-revised) with effect from 6.2.1989 to 31.12.1995 and in the revised scale of pay of Rs. 5000-8000 with effect from 1.1.1996 to 4.7.2005 with all consequential benefits including arrears of pay and allowances;

ii To call for the records leading to Annexure -A23, A24 and A25 and to set aside the same to the extent they deny the scale of pay attached to the post of Stenographer (Gr.II) with effect from their respective dates of entitlement of the applicants;

iii To direct the respondents to place the applicants 1 and 2 in the revised scale of pay of Rs. 5000-8000 (Rs. 1400-2600 pre-revised) admissible under Annexures A-10 to A-12 with effect from 04.07.2005 and 01.06.2002 respectively and in the revised scale of pay of Rs. 9300-34800 with Grade Pay of Rs. 4200/- with effect from 01.01.2006 based on the 6<sup>th</sup> Pay Commission Report and to disburse the higher scale of pay to the applicants 1 and 2 from the respective dates of their entitlement including arrears of pay and allowances in implementation of A-10 to A-12 and as found and directed in Annexure A-20

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Judgement dated 09.09.1991 in O.A. No. 539 of 1990 of this Hon'ble Tribunal;

iv To direct the respondents to place the 3<sup>rd</sup> applicant in the revised scale of pay of Rs. 1400-2600 admissible under Annexures A-10 to A-12 with effect from 06.02.1989 to 31.12.1995 and in the revised scale of pay of Rs. 5000-8000 with effect from 01.01.1996 to 04.07.2005 and to disburse the arrears of pay and allowances to the 3<sup>rd</sup> applicant for the above period in implementation of A-10 to A-12 and as found and directed in Annexure A-20 Judgement dated 09.09.1991 in O.A. No. 539/90 of this Hon'ble Tribunal;

v To grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case; And

vi To award costs to the applicants."

2. The applicants are working in the Directorate of Cashewnut and Cocoa Development, Kera Bhawan, Cochin. The 1<sup>st</sup> applicant was promoted and appointed as Junior Stenographer with effect from 04.07.2005 in the pay scale of Rs. 4000-6000 and has been attached with the Director until further orders. The 2<sup>nd</sup> applicant was promoted as Junior Stenographer in the pay scale of Rs. 4000-6000 with effect from 01.06.2002 and has been attached with the Deputy Director (Development) and the Deputy Director (Marketing) until further orders. The 3<sup>rd</sup> applicant was appointed as Junior Stenographer by transfer as per office order dated 26.04.1985 and was attached with the Director Incharge. He was later promoted and appointed as Technical Assistant with effect from 04.07.2005 in the pay scale of Rs. 4500-7000. The entitlement of officers for stenographic assistance in subordinate offices was revised vide DoP&T O.M. 28034/1/88-Est.(D) dated 06.02.1989. The officers in the pay scale of RS. 3700-5000 and above and below Rs. 5100-5700 are entitled for stenographic assistance in the level of Stenographer Grade-II (Rs. 1400-2300). As per order of Government of India, Department of Personnel and Training, dated 30.01.1991, in order to relieve stagnation in the lowest



grade of Stenographers (Grade-III), wherever possible, on functional considerations one Stenographer Grade-II (Rs.1400-2600) may be provided to two officers entitled for a Stenographer Grade-III (Rs.1200-2040) each and such arrangement once made will be final. Vide order dated 01.04.2010, the respondents placed the 1<sup>st</sup> and 2<sup>nd</sup> applicants holding the posts of Stenographer Grade-III in the scale of pay of Rs. 4000-6000 (pre-revised) as on 26.03.2010 as Stenographer Grade-II in the scale of Rs. 5000-8000 (pre-revised) subject to the outcome of this O.A. However, the request for retrospective upgradation of the posts and grant of consequential financial benefits thereof was not allowed to the applicants as per order dated 05.04.2010. Hence the O.A.

3. The applicants submitted that the benefits granted under Annexure A-10 dated 06.02.89, Annexure A-11 dated 04.05.90 and Annexure A-12 dated 30.01.91 cannot be denied by the official respondents taking advantage of the ignorance of the applicants regarding their entitlement by withholding the information and by not circulating and making known Annexures A-10 to A-12. The applicants cannot be excluded from the applicability of Annexures A-10 to A-12 for any conceivable reason. The applicants are entitled to rely on the sense of responsibility of the Government or the Department to extend the benefit of declaration of law to all similarly situated persons as declared by the Hon'ble Supreme Court in **Amrit Lal Berry's** case, AIR 1975 SC 538. The applicants have been continuously discharging the duties of the post of Stenographer Grade-II with effect from their respective dates of attachments and the applicants 1 and 2 are still discharging the same. In O.A. No. 539/1990 of this Tribunal and in O.A. No. 79/1998 of the Mumbai Bench of this



Tribunal, the benefits were granted to the applicants therein with effect from the respective dates of their entitlement. The applicants herein are similarly placed like the applicants in O.A. No. 79/1998 and are entitled to equal treatment. Therefore, Annexures A-23, A-24 and A-25 orders by which they are denied the benefit of Annexures A-10 to A-12 with effect from the respective dates of their entitlement and allowing the scale of pay only prospectively with effect from 26.03.2010 are clearly illegal , arbitrary and discriminatory.

4. In their reply statement, the respondents submitted that the applicant No. 1 is continuously attached with the 2<sup>nd</sup> respondent with effect from 04.07.05 till date; the applicant No. 2 is continuously attached with the two Deputy Directors with effect from 01.06.2002 and the applicant No. 3 was attached with the Director Incharge with effect from 26.04.85 to 04.07.05, the date on which he was promoted as Technical Assistant. It was further submitted that two posts of Stenographer Grade-III under the 2<sup>nd</sup> respondent was required to be upgraded to Stenographer Grade-II as per the provision contained in Annexure A-12. As no restructuring of the cadre of Stenographer was undertaken and at that particular point of time, in the instant case, the benefit of upgradation cannot be allowed retrospectively now. It was also submitted that no functional difference is effected to any of the applicants on account of the issue of Annexures A-23 and A-24 orders. In the above circumstances, the O.A. is devoid of any merit.

5. In the rejoinder, the applicant submitted that Annexure A-10 is dated 06.02.1989 and the entitlement of the applicants for upgradation of the scale



is with effect from the respective dates of their attachment as per Annexures A-7 to A-9. The Mumbai Bench of this Tribunal had granted the benefits to the applicants in O.A. No. 79/1998 with effect from the dates of their entitlement. The applicants being similarly placed are entitled to the same relief. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> applicants are legally entitled to get the upgraded scale of pay with effect from 04.07.2005, 01.06.2002 and 06.02.1989 respectively. The respondents have admitted that there is no functional difference to any of the applicants on account of issue of Annexures A-23 and A-24 orders. It means that the applicants are entitled to the benefits from the date of their entitlement and not from the date of issuance of Annexure A-23. Inaction on the part of the respondents to upgrade the post of Stenographer Grade-III as per the provisions contained in Annexure A-12 cannot be offered as a reason for granting the benefits prospectively. The applicants cannot be penalised for the fault of the respondents in not implementing Annexures A-10 and A-12 within a reasonable time.

6. We have heard Mr. O.V. Radhakrishnan (Sr.) with Mrs. K. Radhamani Amma, learned counsel for the applicant and Mr. Sunil Jacob Jose, SCGSC, appearing for the respondents and perused the records.

7. The short question to be decided is whether the applicants are entitled to retrospective upgradation and grant all consequential financial benefits or not.

8. By Annexure A-10 dated 06.02.1989, the entitlement of officers for stenographic assistance in Subordinate Offices was revised and by Annexure



A-12 dated 30.01.1991, the Government had decided to upgrade the post of Stenographer Grade-III to Stenographer Grade-II in order to improve the promotion prospects of the incumbents. The aforesaid O.Ms were not circulated for made known to the applicants nor the respondents implemented the Annexures A-10 and A-12 orders in time. This has resulted in denial of benefits to which the applicants are entitled to. The concept of justice is that one should get what is due to him or her in law as observed by the Hon'ble Supreme Court in **State of Karnataka and Others vs. C. Lalitha**, (2006) 2 SCCC 747. A co-ordinate Bench of this Tribunal at Mumabi in O.A. No. 79/1998 dealt with the same issue as in this O.A and allowed the applicants therein the benefits deriving from the DoP&T O.M. Dated 06.02.89 with retrospective effect. The relevant part of the order in the aforesaid O.A is reproduced as under :

"5. We have heard the learned counsel for the parties and have gone through the pleadings and the documents annexed therewith. During the course of hearing, the learned counsel for applicant has brought to our notice an order of this Tribunal dated 07.07.2006 passed in O.A 781/1998, Yeshwant Mahadeo Mhangare vs. Union of India & two others. The learned counsel for applicant has contended that this is a similar case and grievance of the applicant is also the same and hence it is covered by the above said order of this Tribunal. We have minutely gone through the above said order of this Tribunal in O.A 781/1998. The relevant portion is reproduced below:-

"8. We have heard both the learned counsel and have gone through the material placed on record. We observe that O.M dated 6.2.1989 of DOP&T only lays down entitlement of officers for stenographic assistance. It does not mean that the stenographers working with a senior officer has to be given the pay scale of Stenographer Grade-II irrespective of number of posts in the organisation and his seniority in the cadre of Stenographer Grade-III. In O.A. No. 1023/93 a decision relied



upon by the applicant, there were as many as 61 persons belonging to different grades. It was held by the Tribunal that these persons are entitled for the benefit in accordance with DOP&T O.M. 6.2.1989. "In such cases" the total entitlement of officers in particular organisation has to be worked out and thereafter an appropriate number of posts in various pay scales of Stenographers are to be sanctioned based upon the entitlement of officers. In other words, it is the post which (is) upgraded and not incumbent. After completion of such exercise the filing of upgraded post has to be done by following the procedure laid down in the Recruitment Rules. The respondents in their written statement have not given any information about the number of posts upgraded and action taken for filling them up. Keeping in view the number of upgraded post if the applicant qualifies for upgradation on the basis of parameters mentioned in the Recruitment Rules then he would be entitled for the higher grade. The action of the respondents in reverting the applicant from Stenographer Grade-II to Stenographer Grade-III merely on the ground that he is working with an officer of the rank of the Colonel who according to Ministry of Defence O.M dated 19.11.1993 is only entitled for Stenographer Grade-III is not legally sustainable. We, therefore, quash and set aside the impugned order dated 26.8.1992 and direct the respondents to work out the number of posts of Stenographer which, would be available in the unit on the basis of guidelines contained in DOP&T O.M dated 6.2.1989 and then consider the case of the applicant for promotion to Stenographer Grade -II based upon his seniority and recruitment rules. As far as recovery of Rs. 7,960/- from the applicant on the ground that his earlier pay fixation not being in conformity with the Ministry of Defence OM dated 19.11.1993 is concerned, the applicant is entitled for the benefit of the ratio laid down by the Apex Court in Shyam Babu Verma vs. Union of India (Supra). Keeping in view the facts of the case the respondents are directed to refund the amount of Rs. 7,960/- in one installment without any interest.



9 The O.A is allowed on above terms, with no order as to costs."

A perusal of the above said judgment clearly shows that the case of the applicant is squarely covered by the above said earlier judgment of this Tribunal dated 07.07.2006 passed in O.A 781/1998. We are in respectful agreement with this order of the Tribunal and following the same.

6. We allow the O.A in terms of prayers 'A' and 'B'. The respondents are directed to carry out these directions within a period of three months from the date of receipt of a copy of this order."

9. The prayers in the aforesaid OA were as under:-

"a) to direct the respondents to upgrade the applicants to higher posts as per the DOPT letter dated 6.2.1989 and to place them in appropriate grade/posts/scale of pay retrospectively with effect from 1.1.1986.

b) to direct the respondents to fix the pay of the applicants on their upgradation as prayed in a) above with effect from 1.1.1986 and to pay them arrears of salary accordingly."

10. In **M.R. Gupta vs. Union of India and Others**, (1995) 5 SCC 628, the Hon'ble Supreme Court held as under :

"6. .... The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See *Thota China Subba Rao v. Mattapalli Raju*, AIR 1950 FC 1.)"



The Apex Court then observed that the question limitation with regard to consequential benefits and other reliefs including arrears, if any, has to be considered in accordance with law.


11. It is the right of the applicants to be paid correct salary. The benefit of upgradation granted by the Government cannot be denied by the inaction on the part of the respondents in upgrading the post of Stenographer Grade-III to Stenographer Grade-II. Following the decision of the Mumbai Bench of this Tribunal in O.A. No. 79/1998, we declare that the applicants are entitled to the benefits of Annexures A-10 and A-12. Going by the reliefs sought for, it is for a declaration that the applicants are entitled to a particular scale of pay from a specified date and for consequential benefits including the arrears. As such the O.A. filed is on a subsisting cause and hence not barred by the limitation prescribed under Section 21 of the Administrative Tribunals Act. But at the same time, it is also settled that a claim for monetary benefit could be granted only subject to the Law of Limitation. In this connection, we may refer to the decisions of the Apex Court in *Madhav Lakshman Vaikunte vs. State of Mysore*; AIR 1962 SC 8, *Mohd. Kutubuddin vs. State of Andhra Pradesh*; 1969 SLR 819, *Anand Swaroop Singh vs. State of Punjab*; AIR 1972 SC 2638, *Sakaldeep vs. Union of India*; AIR 1974 SC 338, wherein it has been held that the period of limitation as prescribed under Article 102 will apply for claiming arrears of salary. Thus the consequential benefits including arrears, if any, has to be subject to the ordinary law of the land. Accordingly, it is ordered as under.



12. The applicants 1 and 2 are entitled to the scale of pay of Rs. 5000-8000 (pre-revised) with effect from 04.07.2005 and 01.06.2002 respectively and in the revised scale of pay of Rs. 9300-34800 + G.P. Rs. 4200/- with effect from 01.01.2006 and the applicant No. 3 is entitled to the scale of pay of Rs. 1400-2600 (pre-revised) with effect from 06.02.1989 to 31.12.1995 and in the revised scale of pay of Rs. 5000-8000 with effect from 01.01.1996 to 04.07.2005. However, the applicants will be entitled to arrears of pay and allowance limited to 3 years prior to the date filing of this O.A (26.08.2009) and subsequent arrears, if any, till the actual date of payment. Annexures A-23, A-24 and A-25 are set aside to the extent they deny the scale of pay attached to the post of Stenographer (Grade-II) with effect from the respective dates of entitlement of the applicants. The second respondent is directed to grant all consequential benefits including arrears of pay and allowances subject to the limit indicated to eligible applicants within three months of receipt of a copy of this order.

13. The O.A. is allowed as above with no order as to costs.

(Dated, the 25<sup>th</sup> July, 2011)



**(K. GEORGE JOSEPH)**  
**ADMINISTRATIVE MEMBER**



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

cvr.