

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 72 of 2006

Wednesday, this the 28th day of March, 2007

CORAM:

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

1. K.V. Elias, S/o. Late K.C. Varghese,
Technical Officer 'A', Works & Estate Division,
Naval Physical & Oceanographic Laboratory,
Defence Research & Development Organisation,
Thrikkakara P.O., Kochi -21,
Residing at Kalarikkal, Irimpanam Post,
Tripunithura, Ernakulam District.
2. N.S. George, S/o. Late N.M. Scarla,
Technical Officer 'A', M.M. Division,
Naval Physical & Oceanographic Laboratory,
Defence Research and Development Organisation,
Thrikkakara P.O., Kochi - 21,
Residing at Njarathadathil, Kanakkary Post,
Kottayam District.
3. Jacob Abraham, S/o. K.C. Abraham,
Technical Officer 'A', CT Group,
Naval Physical & Oceanographic Laboratory,
Defence Research and Development Organisation,
Thrikkakara P.O., Kochi - 21,
Residing at Kondackal, Neerattupuram Post,
Alappuzha District. ... Applicants.

(By Advocate Mr. U. Balagangadharan)

v e r s u s

1. Union of India represented by its Secretary,
Ministry of Defence, South Block, New Delhi
2. Director, Naval Physical & Oceanographic Laboratory,
Defence Research and Development Organisation,
Thrikkakara P.O., Kochi - 21



3. The Scientific Adviser to the Defence Minister,
Ministry of Defence, North Block, New Delhi

4. Director General,
Defence Research and Development Organisation,
New Delhi.

5. The Secretary,
Department of Expenditure,
Ministry of Finance, North Block,
New Delhi. ... Respondents.

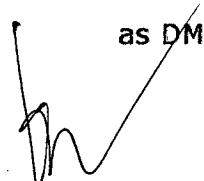
(By Advocate Mr. S. Abhilash, ACGSC)

The Original Application having been heard on 21.03.07, this
Tribunal on 28.03.07 delivered the following :

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

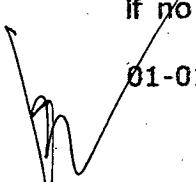
Three applicants, who had exercised their option under Rule 23 of the Fundamental Rules to have their pay fixed w.e.f. 01-04-1996 in the revised pay scale, when their posts were upgraded from the pay scale of Rs. 1600- 2660 to Rs. 1640 - 2900 are aggrieved by the fact that their junior has started drawing more pay than them when pursuant to V Pay Commission Recommendations, the pay scale attached to the post was revised to Rs. 6500 - 10500. Thus, the applicants have claimed equation of pay at par with their juniors.

2. Certain basic facts are crucial to decide the claim of the applicants. In the Defence Research Development Organization, earlier there was a hierarchy of DM Grade III, II and I in their ascending order. Applicants were functioning as DM Grade I in the pay scale of Rs 1600 - 2660. In 1995, a new cadre called



Defence Research Technical Cadre (DRTC for short) was constituted and the earlier DM Grade-I was redesignated as "Senior Technical Assistant" with a revised pay scale of Rs 1640 - 2900, w.e.f. 26-08-1995. Under F.R. 23, in such circumstances, option is called for from the persons concerned as to whether they would like to shift to the new pay scale from the date of effect of the pay scale or at any other date. All the applicants whose date of next increment was 01-04-1996, chose to opt for 01-04-1996 and accordingly, their pay was fixed respectively at Rs 2000, Rs 1950 and Rs 1950 w.e.f. 01-04-1996. One of their juniors, whose date of increment was 01-10-1995 opted for 01.10.1995. Accordingly, his pay was fixed at Rs 2000/- in the revised pay scale, which meant that the junior was drawing his pay in the revised pay scale of Rs 1640 - 2900 w.e.f. 01-10-1995, while the seniors could have their revised pay scale only from 01-04-1996. There was however, no grudge amongst the applicants on account of the above situation.

3. The Vth Central Pay Commission furnished its recommendations for revision of pay scales of all the categories and on acceptance of the same, the revised pay scales came to be effective from 01-01-1996. (The order for revised pay came only in 1997, with retrospective effect from 01-01-1996). The replacement scales for Rs 1600 - 2660 was Rs 5,000 - 8,000 and that of Rs 1640 - 2900, Rs 5,500 - 9000. Of course, options were called for whether to stick to the pre revised scale upto any specific period or w.e.f. 01-01-1996 and if no option was exercised, presumption was for replacement pay scale w.e.f. 01-01-1996 itself. According to the applicant, they had opted for replacement



scale w.e.f. 01-01-1996 and their pay was fixed respectively at Rs 6200/-, Rs 6050 and Rs 6050/- w.e.f. 01-01-1996. Their Junior accordingly was placed in the replacement scale w.e.f. 01-01-1996. Thus, while the applicants were in the lower scale, their junior was at the higher scale as on 01-01-1996. The replacement pay scale of Rs 5,500 – 9000/- was afforded to the applicants only w.e.f. 01-04-1996. Here again, there was no grudge for the applicants.

4. In 1999, the aforesaid replacement scale for Rs 1640 – 2900 was replaced from Rs 5500 – 9000 to Rs 6500 – 10500/-, w.e.f. 01-01-1996. All that the respondents did was, just to replace the above said pay scale w.e.f. 01-04-1996 in respect of the applicants and w.e.f. 01-01-1996 in respect of their junior. No fresh option was asked from any of the individuals, as the revision was only a substitution of the already revised pay scale. However, this has resulted in a telescopic difference in the pay of the applicants and their junior, inasmuch as, while the pay of the applicants was revised to Rs 6,500/- in the revised pay scale of Rs 6500 – 10500 w.e.f. 01-04-1996, that of their junior was revised w.e.f. 01-01-1996 itself at Rs 7,100/- (i.e. with a huge difference of Rs 600/-). According to the applicants, this anomaly was directly attributable to the fixation of pay of the applicants in the replacement pay scale. The applicants had made Annexure A-1 representation stating that the above difference arose on account of the fact that the option exercised by the applicants at the time of constitution of DRTC was w.e.f. 01-04-1996 and the same had the telescopic effect. Hence, the applicants requested for permission to exercise re-option so as to remove the huge difference in pay between the

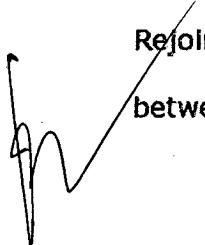
applicants and their junior. However, the D.R.D.O. rejected the request of the applicants, vide Annexure A-3 order dated 14-06-2001. However, referring to Note 6 under Rule 7 of the CDS(RP) Rules, 1997, the applicants requested by Annexure A 4 representation dated 14-02-2002 for stepping up of their pay at par with their junior. (The said note 6 states, "*Wherein the fixation of pay under sub rule (i) Pay of a Government servant, who, in the existing scale was drawing immediately before the 1st day of January 1996 more pay than another Government Servant junior to him in the same cadre, gets fixed in the revised scale at a stage lower than of such junior, his pay shall be stepped from the same stage in the revised scale as that of the junior.*") Respondents had, ~~stated that~~ however, on the ground that the difference having arisen on account of the option exercised earlier at the time of constitution of DRTC, and the option once exercised having become final under F.R. 23, no action can now be taken at that belated stage. Annexure A 5 order dated 25-02-2003 refers. After consulting the DOPT, the respondents have communicated the decision in negative of the DOPT, vide Impugned order at Annexure A-7, dated 6th January, 2006. The communication of the DOPT is, "*The proposal of Ministry of Defence for allowing revision of Option exercised under FR 23, while implementing DRTC Rules, 1995 in DRDO has been considered in consultation with Ministry of Finance, Dept. of Expenditure, grant of any special relaxation of the rules in this case is not warranted or justified and cannot therefore, be agreed to.*" It is this Annexure A-7 order that has been challenged through this O.A. The spinal ground of attack was that re-option is necessary when earlier option gets nullified due to change of circumstances. And, in any event, under the provisions of stepping of

pay at par with that of Junior as per Note 6 under Rule 7 of the CCS(RP) Rules, 1997, stepping up of pay is fully justified.

5. Respondents have contested the OA. Their contention is that fixation had been strictly on the basis of the option exercised by the applicants at the time of constitution of DRTC and there is no provision for calling for re-option under FR 23. The details of pay as given in the application have not been disputed save that the pay of junior w.e.f. 01-01-1996 was at Rs 6,900/- and w.e.f. 01.10.1996 it was increased to Rs 7100/- in the revised Pay Scale of Rs 6500 - 10500.

6. Rejoinder was filed by the applicants, while additional reply by the respondents, each sticking to their own stand as given, respectively in the O.A. and the counter.

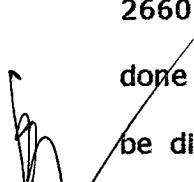
7. Counsel for the applicants submitted that the anomaly is writ large on the very face that junior gets more pay than seniors. He has contended that re-option ought to have been asked for when the pay scale of Senior Technical Assistants was revised from Rs 5,500 - 9000 to Rs 6,500 - 10500/-. In addition, he has invited our attention that in respect of the applicants, the pay fixed as on 01-01-1996 in the revised pay scale was erroneous inasmuch as their pay as per the table of concordance (as per Annexure A-8 filed with the Rejoinder) works out to Rs 6,900/-. In that event, the difference in pay between the applicants and the junior would be minimized to Rs 200/- only.



And, as per the provisions of note 6 to Rule 7 of the RP Rules, 1997, the same too could be made good.

8. Counsel for the respondents on the other hand contended that the pay has been correctly fixed and needs no interference.

9. Arguments were heard and documents perused. In 1995, when DRTC was introduced uniformly options were called for and the applicants and the junior, taking into account their date of next increment, opted for the higher pay scale of Rs 1640-2900 w.e.f. a particular date (01-04-1996 by the applicants and 01-10-1995 by the junior). True, at that time there was no inkling that revised pay would be effective from 01-01-1996, much less that replacement scale for 1640 - 2900 would undergo two changes, i.e. first at Rs 5,500 - 9000/- and next at Rs 6500 - 10500. But, when opportunity was made available for switching over from old pay scale to the new pay scale, the applicants had opted for w.e.f. 01-01-1996 vide Annexure A-4 application and the respondents respected the same. It was thus, that, w.e.f. 01-01-1996 their initial pay scale of Rs 1600 - 2660 was replaced by Rs 5500 - 9000. Again, in 1999 when the aforesaid revised pay scale was replaced by Rs 6500 - 10500, obviously, the pay scale was effected w.e.f. 01-01-1996 only, whereby the pay of the applicants which was Rs 2,060/- in the pay scale of Rs 1600 - 2660 was to be revised in the scale of Rs 6500 - 10500. This has also been done (though there has been some dispute as to correct fixation, which would be discussed later*). The pay revision is independent of the constitution of



DRTC and as such, there is no link between the two. Consequently, just because there had been a pay revision in pursuance of enactment of the CCS (RP) Rules, 1997, it cannot be held that the option made available to the applicants at the time of constitution of DRTC should be reviewed. Thus, the claim of the applicants that they should be permitted to re-opt is not tenable.

10. The counsel for the applicant submitted that when the replacement pay scale for Rs 1640 – 2900 underwent change from Rs 5500–9000 to Rs. 6500 – 10500 at least then there should have been an option available to the applicants. This again is untenable. For, in respect of the applicants, the replacement of scale of Rs 6,500 – 10,500 is effective from the date they got the pay scale of Rs 1640 – 2900 which was 01-04-1996 and the applicants have chosen the same even at the time when the pay scale revision initially took place. Thus, no further option is admissible on this score.

11. But one aspect that is to be considered is whether the respondents have fixed the pay of the applicants as of 01-04-1996 correctly. The pay of the applicants as of 01-04-1996 is stated to be Rs 2060/- in the scale of Rs 1640 – 2900. The table of concordance as filed with the rejoinder reflects the replacement pay corresponding to Rs 2060/- in the scale of Rs 6500 – 10500 is Rs 6,900/-. Admittedly, the respondents have fixed the pay only at Rs 6500/- which is the minimum in the afore said pay scale. This error has to be rectified. If this is rectified, the pay of the applicants would be Rs 6,900/- w.e.f. 01-04-1996 and the difference between the pay of the applicants and the junior

would be minimised.

12. The next question is whether note 6 under Rule 7 of the CCS(RP) Rules, 1997 would be applicable in this case. The condition attached to the stepping up of pay under this provision is that the senior must be drawing a higher pay than the junior just prior to 01-01-1996. In the instant case, the applicants were placed in Rs 1600 - 2660 as of 01-01-1996, and their pay scale was, at their option, to be revised to Rs 1640 - 2900 w.e.f. 01-04-1996, while the junior had already been placed in the pay scale of Rs 1640 - 2900 w.e.f. 01-10-1995. Thus, though seniors, the pay of the applicants prior to 01-01-1996 being less than that of the junior, the stepping up under this provision is inadmissible.

13. Thus, the only error that could be surfaced in the fixation of pay of the applicants in the scale of Rs 6500 - 10500 is that their pay as of 01-04-1996 which was originally at Rs 2060/- (subject to verification from the records) would get revised to Rs 6900/- as per table of concordance and not Rs 6,500/- as fixed by the respondents. This shall be verified and if the error subsists the same shall be duly rectified and the pay of the applicants refixed correctly. The applicants shall be paid their salary on the basis of the corrected pay in future and the arrears of pay and allowances arising out of this rectification is also to be made available to the applicants. Respondents are directed to verify the records of the applicants and on ascertaining the existence of the afore said error in fixation of pay as of 01-04-1996, suitable orders revising the pay of the applicants be passed and arrears thereof worked out and paid to the applicants,

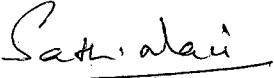


In addition to the applicants' being paid future salary at the correct rate. This drill shall be performed within a period of three months from the date of communication of this order.

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

(Dated, the 28th March, 2007)


Dr. K B S RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

cvr*