

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

Original Application No. 01 of 2011

*wednesday*., this the 30<sup>th</sup> day of November, 2011.

**CORAM:**

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

1. C.G Suresh, aged 53 years  
S/o.Chandran, Unskilled Labourer  
Naval Ship Repair Yard  
Naval Base, Kochi – 4  
Residing at Chaneparambil House  
Mattanchery, Kochi – 2
2. P.K Paramu, aged 58 years  
S/o Kannan, Unskilled Labourer  
Naval Ship Repair Yard, Naval Base  
Kochi – 4  
Residing at Puthenkari House  
Kumblanghi South P.O,  
Kochi – 7
3. K.K Balakrishnan, aged 50 years  
S/o.K.K Krishnan, Unskilled labourer  
Naval Ship Repair Yard,  
Naval Base, Kochi – 4  
Residing at Konathara House  
Kadavanthra  
Near Kallupalam, Kochi - 20

..... Applicants

(By Advocate Mr. T.A Rajan)

versus

- 1 Union of India represented by its Secretary  
Ministry of Defence, South Block  
New Delhi - 1
- 2 The Flag Officer Commanding-in-Chief  
Head Quarters, Southern Naval Command  
Naval Base, Kochi - 4
- 3 The Chief Staff Officer (P&A)  
Head Quarters, Southern Naval Command  
Naval Base, Kochi – 4



- 4 The Commanding Superintendent  
Naval Ship Repair Yard  
Naval Base, Kochi – 4
- 5 Senior Accounts Officer (Navy)  
Area Accounts Office (N)  
Perumanoor  
Kochi – 15.

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The Original Application having been heard on 17.11.2011, the Tribunal on 30.01.11. delivered the following:

**ORDER**

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

The applicants in this O.A. were initially engaged as casual labourers in the Naval Ship Repair Yard, Naval Base, Kochi, on 09.05.1987, 15.03.1980 and 25.10.1984 respectively. They were granted temporary status with effect from 13.09.2001, 16.01.2002 and 16.08.2001 respectively. On attaining temporary status, they are entitled to wages at daily rates with reference to the minimum of the pay scale corresponding to regular Group-D employee including DA, HRA and CCA. Besides, increment at the same rate as applicable to Group-D employee would be taken into account for calculating pro-rata daily wages for every one year of service subject to performance of duty for at least 240 days ( 206 days in offices observing 5 days week) in the year from the date of conferment of temporary status. Applicants were regularly appointed as unskilled labourers with effect from 06.02.2006. Consequent upon implementation of the recommendations of VI CPC, the pay scale of the Group-D employees was revised from Rs. 2550-3200 to the Pay Band Rs. 5200-20200 with Grade Pay of Rs. 1800/- with effect from 01.01.2006. Upon regularisation, the pay of the applicants was fixed with

✓

effect from 01.01.2006 in the revised pay scale and the first increment in the revised pay structure was granted on 01.07.2006. As per the impugned orders, pay fixation done on 01.01.2006 was not in order as they were eligible for pay fixation on the date of regularisation, i.e. 06.02.2006 only. Accordingly, the increment granted to them on 01.07.2006 was not warranted. The arrears of pay and allowances paid to each of them in excess consequent to granting of increment with effect from 01.07.2006 was worked out to be Rs. 16105/-, which is sought to be recovered. Aggrieved, the applicants have filed this O.A. for the following reliefs:

- “(i) To call for the records leading to Anns.A9 and A10, A-11 and A-12 orders and quash them;
- (ii) Declare that the re-fixation of the pay of the applicants by Annexure A-10 order is arbitrary and illegal;
- (iii) Declare that Annexure A-11 and A-12 orders to recover an amount of Rs.16105/- from each of the applicants as alleged overpayment is illegal;
- (iv) Award costs of an incidental to this application.”

2. The applicants submitted that their pay was refixed and an amount of Rs. 16105/- was ordered to be recovered from each of them without issuing a notice and without giving them an opportunity of being heard. They are entitled to get increment every year. The regularisation will not postpone their increment date as they have got the same pay even after regularisation. The statement that after regularisation, their next increment fell due on 01.01.2007 is incorrect and wrong. As the date of increment of the applicants falls between 01.07.2006 and 01.07.2007 the applicants are entitled to get first increment on 01.07.2006. The recovery of the alleged overpayment is arbitrary and illegal as the overpayment was not given to the applicants on



the basis of any misrepresentation or fraud on the part of the applicants. Therefore, the excess payments already made cannot be recovered. Based on the above, the applicants pray that the O.A. should be allowed.

3. The respondents in their reply statement submitted that on the basis of VI CPC, the Civilians in Defence Services (Revised Pay) Rules, 2008 [CDS (RP) Rules, 2008], have been implemented with effect from 01.01.2006. As per Rule 2(2) of CDS (RP) Rules, 2008, the rules shall not apply to persons not in whole time employment and persons paid otherwise than on a monthly basis. The applicants were engaged as temporary status casual labourers on as required basis and drawing wages at daily rates till 05.02.2006. As per O.M. No. F.No.1/1/2008-1C dated 13.03.2009, the Government servants who have rendered less than six months as on 1<sup>st</sup> July of a year will not be eligible to draw increment on that day and their increment will fall 12 months later on the next 01<sup>st</sup> July. Therefore, the applicants are not entitled for annual increment as on 01.07.2006. As the applicants were paid arrears of pay and allowances based on the above erroneous pay fixation, the action taken for recovery of excess payment made erroneously is in order. While implementing the CDS (RP) Rules, 2008 and subsequent pay fixation, an undertaking was obtained from the employees to the effect that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded to the Government either by adjustment against future payment or otherwise. On regularisation, the pay of the applicants was fixed with effect from 06.02.2006 taking into consideration the increment earned during the temporary status in the Pay Band Rs. 5200-



20200 + Grade Pay of Rs. 1800/-. The applicants were informed of the proposed recovery of the excess payment made to them vide Annexure A-11. It has been held by the Hon'ble Supreme Court in C.A. No. 2338/2008 filed by *Videsh Sanchar Nigam Limited and Another vs. Ajit Kumar and Others*, 2008 (2) SCC (L&S) 1047, that "Bonafide mistake committed in payment does not confer any right on any party and it can be corrected." In the above circumstances, the interim order dated 03.01.2011 may be vacated and the O.A. is liable to be dismissed.

4. We have heard Mr. T.A. Rajan, learned counsel for the applicants and Mr. Sunil Jacob Jose, learned SCGSC, appearing for the respondents and perused the records.

5. To facilitate consideration of the applicability of CDS (RP) Rules, 2008, the relevant part of Rules 2 of the Rules is extracted as under :

" 2. Categories of Government servants to whom the rules apply:-

(2). These rules shall not apply to:-

- (i) xxxxxxxx xxxxxx
- (ii) xxxxxxxx xxxxxx
- (iii) persons not in whole-time employment;
- (iv) xxxxxxxx xxxxxx
- (v) persons paid otherwise than on a monthly basis including those paid only on a piece-rate basis; "

The applicants were engaged as temporary status casual labourers on as required basis and were paid daily wages for the days they worked. Their wages at daily rates were calculated with reference to the minimum of the pay scale for a corresponding regular Group-D employee including DA, HRA ,

*[Handwritten signature]*

CCA and increment subject to the condition that they should have worked at least 240/206 days in the year from the date of conferment of temporary status. They were not in whole time employment and they were not being paid on monthly basis. Therefore, as the respondents rightly stated, the applicants are not covered by the CDS (RP) Rules, 2008, as on 01.01.2006. The applicants were regularised on 06.02.2006 when they came under the said rules. For the period from 01.01.2006 to 05.02.2006, they are not eligible for the benefits available to regular employees. Their pay could be fixed only from 06.02.2006 upon their regularisation. For the period from 01.01.2006 to 05.02.2006, being temporary status casual labourers they are eligible for daily wages calculated with reference to the pay of a regular Group-D employee during the said period for the days they worked. It was a mistake on the part of the respondents to have fixed their pay on 01.01.2006 as if they were regularised on that day. It is a bonafide mistake that can be corrected without conferring any right on the applicants. Hence excess payment, if any made, over daily wages payable for the days they worked during the period from 01.01.2006 to 05.02.2006 are recoverable from the applicants.

6. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> applicants were granted temporary status with effect from 13.09.2001, 16.01.2002 and 16.08.2001 respectively. From those dates onwards they were eligible to get the daily wages for the days they worked at the rate of 1/30<sup>th</sup> of the emoluments of corresponding regular Group-D employee. Upon their regularisation against Group-D posts on 06.02.2006, they became entitled to get their monthly salary fixed after taking into account the increments already earned by them in the Group-D pay scale which was taken into account for payment of wages while working as casual labourers

1

with temporary status. But for the uniform date of annual increment on 1<sup>st</sup> July every year, the next date of increment in the revised pay structure for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> applicants would be 01.09.2006, 01.01.2007 and 01.08.2006. Rule 10 of the CDS (RP) Rules, 2008 reads as under:

" 10. Date of next increment in the revised pay structure - There will be a uniform date of annual increment, viz. 1<sup>st</sup> July of every year. Employees completing 6 months and above in the revised pay structure as on 1<sup>st</sup> of July will be eligible to be granted the increment. The first increment after fixation of pay on 01.01.2006 in the revised pay structure will be granted on 1.7.2006 for those employees for whom the date of next increment was between 1<sup>st</sup> July, 2006 to 1<sup>st</sup> January, 2007."

Accordingly, the 1<sup>st</sup> increment after fixation of pay on 06.02.2006 in the revised pay structure for the applicants would be on 01.07.2006 because the date of next increment was between 01.07.2006 to 01.01.2007 as per Rule 10 quoted above although their pay was fixed on 06.02.2006, because they have completed more than six months, like those employees whose pay was fixed on 01.01.2006. To make the applicants wait for 17 months to earn their first increment in the revised pay structure is not fair. If need be, the respondents can resort to power to relax under Rule 16 of the CDS (RP) Rules, 2008 to deal with any of the provisions causing undue hardship in a just and equitable manner. As increments fall due on the 1<sup>st</sup> of a month, 1<sup>st</sup> January, 2007 in Rule 10 should be taken as inclusive. Therefore, granting of increments to the applicants from 01.07.2006 is in order.

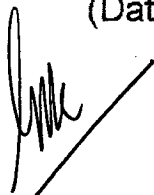
7. In view of the above position, it is ordered as under.



8. The excess payment, if any, made to the applicants for the period from 01.01.2006 to 05.02.2006 only to be recovered from the applicants in convenient instalments as deemed fit by the respondents. The interim order granted on 03.11.2011 stands modified to this extent and made absolute. There is no mistake in granting the first increment to the applicants on 01.07.2006. As per the relevant rules, the applicants are eligible to get their first increment in the revised pay structure on 01.07.2006. Appropriate orders complying with the above directions should be issued within a period of 2 months from the date of receipt of a copy of this order.

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

(Dated, the 30<sup>th</sup> November, 2011)



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



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

**cvr.**