

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

Original Application No. 88 of 2006

*Wednesday*, this the 4<sup>th</sup> day of July, 2007

**C O R A M :**

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

1. C.V. Elsi,  
Demonstration Officer,  
Community Food and Nutrition Extension Unit,  
Food and Nutrition Board,  
Kendriya Bhavan, C3 Block,  
3<sup>rd</sup> Floor, P.O. CSEZ, Cochin-37.
2. Valsamma Mathew,  
Demonstration Officer,  
Community Food and Nutrition,  
Extension unit, Peace Home,  
TC 26/930, Panavilla Junction, Trivandrum. ... Applicants.

(By Advocates M/s. Sukumaran & Usha)

**v e r s u s**

1. Union of India represented by  
Secretary to Government of India,  
Ministry of Human Resources Development,  
Department of Women and Child Development,  
Shastri Bhavan, New Delhi - 1.
2. The Under Secretary,  
Ministry of Home Resources Development,  
Department of Women and Child Development,  
Food and Nutrition Board, Jeevan Deep Building,  
Parliament Street, New Delhi - 1.
3. Deputy Technical Advisor,  
Food and Nutrition Board, Southern Region,  
Shastri Bhavan, 26, Haddour Road,  
Chennai - 6. ... Respondents.

(By Advocate Mr. C.M. Nazar, ACGSC)

**O R D E R**

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

The Issue Involved is short and in fact, as per the counsel for the applicant has already been answered by the Principal Bench in a very recent

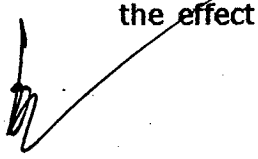
case.

2. The applicants entered the services of the Respondents in 1976 as Demonstrator/Technical Assistant. While the first applicant was selected as a direct Recruit through the UPSC as Demonstration Officer in 1982, the second one got his promotion to that post in 1997. The said post from 01-01-1996 carries a pay scale of Rs 5,500/- - 9,000/-. The next promotional post as per the Recruitment Rules carries pay scale of Rs 8,000 - 13,500, while the next one to that has Rs 10,000 - 15,200/-.

3. ACP has been introduced w.e.f. 09-09-1999<sup>by</sup> which provides for first financial upgradation after 12 years (subject to no promotion having been earned, though qualified and suitable for promotion) and the second after 24 years (subject to not more than one promotion having been earned, though qualified and suitable).

4. In the case of the first applicant, his appointment as Demonstration Officer being taken as the Direct Recruitment, he completed 12 years of service by 1994 and the second having got his first promotion, was eligible for consideration for 2<sup>nd</sup> ACP in 1980. Accordingly, vide Annexure A-1, the first applicant was afforded the upgradation in the pay scale of Rs 8,000 - 13,500 w.e.f. 09-08-1999 and the second applicant the said pay scale as second ACP w.e.f. the same date, vide Annexure A-2.

5. The 5<sup>th</sup> Central Pay Commission had, vide para 71.25 (b) of its report, in respect of the services under the Respondents, made certain recommendation to the effect that the post of Demonstration Officer/Senior Technical Assistant in



the scale of Rs 5,500 – 9,000 be bifurcated in equal ratio as Grade I and Grade II, and the pay scale of Rs 6,500 – 10,500/- for Grade I. This was, however, immediately not considered by the respondents, though the Ministry of Finance had accepted the recommendations in 1997. Thus, when after the above ACP had been granted to the applicants and similarly situated persons, on the raising of an objection by the Audit authorities, the Respondents have considered the same and brought into force the aforesaid bifurcation with retrospective effect from 01-01-1996 vide Order dated 11<sup>th</sup> March, 2005. Result, as per the advice of the audit authorities, the pay scales of the applicants and similarly situated were revised and over payment sought to be recovered, vide order dated 18<sup>th</sup> January, 2006 (Annexure A-3) and 31<sup>st</sup> January, 2006 (Annexure A-4). The applicants have come against the aforesaid orders.

6. Respondents have contested the OA. According to them, though the respondents have taken up the matter for revision of the audit report vide Annexure R-4 letter dated 23-12-2004, the DG ACR stuck to his gun and rejected the request of the respondents. Hence, there was no option save to effect recovery and refixation of pay of the applicants and the similarly situated persons.

7. In the rejoinder the applicants contended that there is no question of revising the pay scale when the Recruitment Rule stands as it is without any amendment to it and the same should hold the fort.

8. Counsel for the applicant submitted that there is no logic in recovery of the alleged overpayment nor for that matter revising the pay scale of the



applicants. The counsel had also filed a copy of the order dated 25<sup>th</sup> May, 2007 in OA No. 477/2006 and connected O.As of the Principal Bench in support of the case of the applicants.

9. Counsel for the respondents did not refute the existence of the said order of the Tribunal.

10. Arguments were heard and documents perused. The Principal Bench in O.A. No. 477 of 2006, had held as under:

"11. On careful consideration of the rival contentions of the parties, insofar as recovery of excess amount is concerned, recently the Apex Court in **Purushottam Lal Das v. State of Bihar**, 2007 (2) SLJ SC 68 in a similar situation when the overpayment has been objected to by the Audit, ruled that when there is no fault, misrepresentation or fraud played by applicants in their wrong promotion, recovery of overpayment shall not be made. Principles of natural justice though cannot be put in a straightjacket formula and peculiar circumstances of the case are to determine their applicability, yet the trite law is that even in a mistake committed by the Government if civil consequences ensue upon a Government servant, then without following, as a condition precedent, the principles of *audi alteram partem*, any order issued without accord of reasonable opportunity to show cause would be violative of Rule of law, as ruled by the Apex Court in **Shekhar Ghosh v. Union of India**, 2007 (1) SCC (L&S) 247.

12. Insofar as grant of ACP is concerned, though the recommendations of the Vth Central Pay Commission earlier not implemented were later on implemented made the only difference in the pay scale of the applicants of Rs. 5500-9000, the other 50% of the posts are to fall in the pay scale of Rs. 5500-9000, the other 50% of the posts are to fall in the pay scale of Rs. 6500-10500/-. However, in so far as grant of ACP is concerned, it is the next hierarchy under the Service Rules, which would govern grant of financial upgradation. If the Recruitment Rules with regard to promotional post of ATA, which in the pay scale of Rs. 8000-13500, stipulate as a feeder category post of DO the next hierarchy in the Rules for grant of upgradation as to the pay scale has to be picked up from the intermediate grade, as stated by the respondents though introduced by DOP&T, is on a legal fiction when deemed to be non-existent, as the Recruitment Rules are yet to be amended. Accordingly, the next hierarchy in the Rules as per clause 7 of



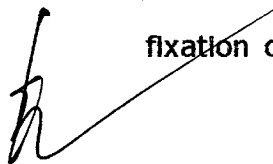
the conditions for grant of ACP envisage grant of pay scale in the next hierarchy. The next hierarchy would pertain to the recruitment rules and not otherwise on extraneous consideration or a thing non est in the Rules or alien to the cadre. Accordingly, applicants who have been accorded the pay scale in ACP the pay scale attached to the post of ATA, which is the hierarchy and as Annexure-2 of the ACP would not apply to a post which is not isolated, the grant of pay scales to the applicants is not a mistake committed by the respondents and rather is a conscious decision in accordance with Rules. The acceptance of recommendations of V Central Pay Commission had not brought any change in this position, which could have been by way of amending the recruitment rules. Having not done so, the justification and the impugned orders issued by the respondents to correct their mistake is unfounded and misconceived.

13. We also find that this pay scale accorded to some of the DOs, who have retired, were instrumental in getting their pension fixed, at this point of time unsettling the settled position to the detriment of applicants in their service conditions, that too without accord of prior reasonable opportunity to show cause, is not apt in law. Assuming that applicants were aware of the letter issued by respondents on 11.3.2005, yet it does not absolve them as an obligation to afford them a prior reasonable opportunity to show cause before civil consequences ensue upon them, principles of natural justice have been violated. The above position of law would mutatis mutandis cover the other three OAs on all fours.

14. In the result, for the forgoing reasons, OAs are allowed. Impugned orders are set aside. Applicants are entitled to the pay scale of Rs. 8000-13500 w.e.f. 9.8.1999, which would be granted to them, if not granted earlier, with all consequential benefits of arrears etc. And no recovery shall be effected from them on this account. The respondents are directed to comply with the aforesaid directions within a period of three months from the date of receipt of a copy of this order. No costs."

11. We fully endorse the views of the Principal Bench in the above order.

12. In view of the above, the OA is allowed. It is declared that the applicants are entitled to the ACP as originally afforded to them and the Impugned orders at Annexure A-3 and A-4 are quashed and set aside in so far these relate to the fixation of pay scale of the applicants. As there was a stay of recovery of the



amount, vide order dated 15-02-2006, it is presumed that no recovery had been made. However, in case the applicants were placed at a lower pay scale than the one they were afforded as per Annexure A-1 and A-2 orders, the respondents shall work out the difference and pay the same to the applicants within a period of two months from the date of communication of this order.

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

(Dated, the 4<sup>th</sup> July, 2007)

  
**Dr. K B S RAJAN**  
**JUDICIAL MEMBER**

  
**SATHI NAIR**  
**VICE CHAIRMAN**

cvr.