CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application Nos. 254/2009, 261/2009, 275/2009, 276/2009, 277/2009, 278/2009, 279/2009, 280/2009, 281/2009, 285/2009, 286/2009, 287/2009, 288/2009, 289/2009, 290/2009, 291/2009, 292/2009, 293/2009, 294/2009, 295/2009, 301/2009, 302/2009, 303/2009, 304/2009, 305/2009, 306/2009, 307/2009, 308/2009, 309/2009, 310/2009, 327/2009, 329/2009, 330/2009, 331/2009, 379/2009, 380/2009 and 381/2009.

Wednesday., this the 06th day of January, 2010.

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. **O.A. No. 254 of 2009 :**

K. Unnikrishna Pillai,
Radio Fitter (Highly Skilled),
Naval Ship Repair Yard,
Southern Naval Command, Kochi-682 004,
residing at 'Vysakham', Inchakkal Road,
Maradu PO, Kochi 682304. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command,
Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

2. **O.A. No.261 of 2009 :**

K.K. Raghuram,
Radio Fitter (Highly Skilled),
Naval Ship Repair Yard, Southern Naval
Command, Kochi-682 004, residing at
Thayyil House, Koottungal Temple Road,
Nettoor North, Maradu P.O., Kochi 682 304. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command,
Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

3. **O.A. No.275 of 2009 :**

Kurian K. Kurian,
Electrical Fitter (Highly Skilled),
Naval Ship Repair Yard, Southern Naval
Command, Kochi-682 004, residing at
Kaladimadathil house, Eravinalloor P.O,
Puthupally, Kottayam-686011. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command,
Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

4. O.A. No.276 of 2009 :

M.C. Soman,
Electrical Fitter (Master Craftsman),
Naval Ship Repair Yard, Southern Naval
Command, Kochi-682 004, residing at
Maniyara House, South Naluvazhy,
North Paravoor PO, Ernakulam -683513. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

5. O.A. No.277 of 2009 :

K.K. Madhu,
Machinist (Master Craftsman),
Naval Ship Repair Yard, Southern Naval
Command, Kochi-682 004, residing at
Kuppakkat House, Elamkunnappuzha P.O.,
Vypeen, Kochi- 682 506. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

6. **O.A. No.278 of 2009 :**

P.M. Antony Xavier,
Sheet Metal Worker (Master Crasftsman),
Naval Ship Repair Yard,
Southern Naval Command,
Kochi-682 004, residing at
Pazhamadathil House, Thykoodam,
Vyttila PO, Kochi-19. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

7. **O.A. No.279 of 2009 :**

A. Aliyar Kunju,
Unskilled Labourer, Naval Ship Repair Yard,
Southern Naval Command, Kochi-682 004,
residing at Anjilivelil Parabu, Nettoor,
Maradu P.O, Ernakulam District. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer (Personnel and Administration), Headquarters, Southern Naval Command, Kochi- 682 004.

2. Flag Officer Commanding-in-Chief, Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary, Ministry of Defence, South Block, New Delhi 110 001. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

8. **O.A. No.280 of 2009 :**

T. Suresh Babu,
Electrical Fitter (Highly Skilled),
Naval Ship Repair Yard, Southern Naval Command, Kochi-682 004, residing at Velutheril house, Puthuppally P.O, Kayamkulam (via), Alappuzha district. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer (Personnel and Administration), Headquarters, Southern Naval Command, Kochi- 682 004.

2. Flag Officer Commanding-in-Chief, Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary, Ministry of Defence, South Block, New Delhi 110 001. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

9. **O.A. No.281 of 2009 :**

N.P. Xavier Roy,
Radio Fitter (Highly Skilled),
Naval Ship Repair Yard, Southern Naval Command, Kochi-682 004, residing at Nedumparabil House, Maradu PO, Kundannur - 682 304. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command,
Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

10. O.A. No.285 of 2009 :

Antony George,
Engine Fitter (Highly Skilled),
Naval Ship Repair Yard,
Southern Naval Command,
Kochi-682 004, residing at
Pappanathu House, Thazhava P.O,
Karunagappally, Quilon. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command,
Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. George Joseph, ACGSC)

11. O.A. No.286 of 2009 :

M.T. Sebastian,
Sheet Metal Worker (HS-II), Naval Ship
Repair Yard, Southern Naval Command,
Kochi-682 004, residing at Mulloly House,
Erumathala P.O, Aluva. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. Subhash Syriac, ACGSC)

12. O.A. No.287 of 2009 :

P.P.Aji, Platter (SK), Naval Ship Repair Yard,
Southern Naval Command, Kochi-682 004,
residing at Parayamkandathil House,
Thiruvaniyoor P.O, Puthencruz (via),
Ernakulam District - 682308. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

13. O.A. No.288 of 2009 :

V.Baiju, ICE (Master Craftsman), Naval Ship Repair Yard, Southern Naval Command, Kochi-682 004, residing at Kadavil House, Panangadu P.O, Ernakulam District. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer (Personnel and Administration), Headquarters, Southern Naval Command, Kochi- 682 004.

2. Flag Officer Commanding-in-Chief, Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary, Ministry of Defence, South Block, New Delhi 110 001. ... Respondents

(By Advocate Mr. Varghese P. Thomas, ACGSC)

14. O.A. No.289 of 2009 :

V.J.Paul, Unskilled Labourer, Naval Ship Repair Yard, Southern Naval Command, Kochi-682 004, residing at Valiamarathungal House, Pyari Junction, Thoppumpady P.O, Kochi -5. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer (Personnel and Administration), Headquarters, Southern Naval Command, Kochi- 682 004.

2. Flag Officer Commanding-in-Chief, Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary, Ministry of Defence, South Block, New Delhi 110 001. ... Respondents

(By Advocate Mr. Millu Dandapani, ACGSC)

15. O.A. No.290 of 2009 :

M.G. Sebastian, Radio Fitter (Highly Skilled),
Naval Ship Repair Yard, Southern Naval
Command, Kochi-682 004, residing at
Mullappillil House, Vadakkumpuram P.O,
Ernakulam district-683 521. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

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

16. O.A. No.291 of 2009 :

Jacob C.J, Pipe Fitter (Highly Skilled),
Naval Ship Repair Yard, Southern Naval Command,
Kochi-682 004, residing at Chamaparayil House,
Koottickal P.O, Narakampuzha,
Idukki District - 686514. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

17. **O.A. No.292 of 2009 :**

S.R. Sankara Kumar,
Electronic Fitter (Highly Skilled), Naval Ship
Repair Yard, Southern Naval Command,
Kochi-682 004, residing at Raju House,
Udaya Nagar, Kureekad (P.O),
Ernakulam District. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration), Headquarters,
Southern Naval Command, Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

18. **O.A. No.293 of 2009 :**

K.G. Lallu, Engine Fitter (Master Craftsman),
Naval Ship Repair Yard, Southern Naval
Command, Kochi-682 004, residing at
Type -III C-11, Dawson Vihar, Thykkodam,
Vyttila, Kochi 682 019. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

19. **O.A. No.294 of 2009 :**

K.B.Sunil Kumar,
Electrical Fitter (Master Craftsman),
Naval Ship Repair Yard, Southern Naval
Command, Kochi-682 004, residing at
Sopanam House, Chunakara P.O,
Allapuzha District. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

20. **O.A. No.295 of 2009 :**

R. Joseph, MCM (Engine Fitter),
Naval Ship Repair Yard, Southern Naval
Command, Kochi-682 004, residing at
Pulikkal House, H/No. X/825(B), S.S.Krishnan
Road, Amaravathy, Cochin-682001. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration), Headquarters,
Southern Naval Command, Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

21. O.A. No.301 of 2009 :

P.S. Sasikumar, Engine Fitter (Highly Skilled),
Naval Ship Repair Yard, Southern Naval Command,
Kochi-682 004, residing at Puthenpurayil House,
Koottingal Temple Road, Nettoor North,
Maradu PO, Ernakulam Dist. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration), Headquarters,
Southern Naval Command, Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. M.M. Saidu Muhammed, ACGSC)

22. O.A. No.302 of 2009 :

M.N. Subramaniam, Painter (Highly Skilled),
Naval Ship Repair Yard, Southern Naval
Command, Kochi-682 004, residing at
Erayattur Parambil House, Elamkulam,
Kaloor P.O, Kochi - 17. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. M.V.S. Namboothiri, ACGSC)

23. O.A. No.303 of 2009 :

P.A Joseph,
Tradesmanmate (SS), Naval Ship Repair Yard,
Southern Naval Command, Kochi-682 004,
residing at Puttilithara House,
Chottanikkara PO, Eruveli. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mrs. Mini R. Menon, ACGSC)

24. O.A. No.304 of 2009 :

A.P. Jaimy,
ICE Fitter (Highly Skilled),
Naval Ship Repair Yard, Southern Naval
Command,Kochi-682 004, residing at
Ackapadical House,Nettoor PO, Ernakulam. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. A.D. Raveendra Prasad, ACGSC)

25. O.A. No.305 of 2009 :

C.K.Rajive, Shipwright (HS),
Naval Ship Repair Yard, Southern Naval
Command, Kochi-682 004, residing at
Periyarvihar, Quarter No.H-89/I, NAD PO,
Ambalapady, Kalamassery, Ernakulam Dist. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

26. O.A. No.306 of 2009 :

P. Mani, Ship Wright (Skilled),
Naval Ship Repair Yard, Southern Naval
Command, Kochi-682 004, residing at
Palliyarankandi House, PO Kunnamangalam,
Kozhikode District 673571. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

27. **O.A. No.307 of 2009 :**

P.Sivakumar, ICE (Master Craftsman),
Naval Ship Repair Yard, Southern Naval
Command, Kochi-682 004, residing at
Pournami, Maruthorvattom PO, Cherthala,
Alappuzha District. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

28. **O.A. No.308 of 2009 :**

M.H. Bhagaval Singh, Ship Wright (SK),
Naval Ship Repair Yard, Southern Naval
Command, Kochi-682 004, residing at
Marottikal House, SP Puram,
Palluruthy, Kochi-6. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

29. O.A. No.309 of 2009 :

S.V. Sanadanam, Painter (Master Craftsman), Naval Ship Repair Yard, Southern Naval Command, Kochi-682 004, residing at Thaiparambil house, S.D.P.Y Road, Palluruthi, Kochi-6. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer (Personnel and Administration), Headquarters, Southern Naval Command, Kochi- 682 004.

2. Flag Officer Commanding-in-Chief, Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary, Ministry of Defence, South Block, New Delhi 110 001. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

30. O.A. No.310 of 2009 :

M. Shajahan, ICE Fitter (Skilled), Naval Ship Repair Yard, Southern Naval Command, Kochi-682 004, residing at Cresent, Near LPS Madavana, Nettoor PO, Ernakulam District. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer (Personnel and Administration), Headquarters, Southern Naval Command, Kochi- 682 004.

2. Flag Officer Commanding-in-Chief, Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary, Ministry of Defence, South Block, New Delhi 110 001. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

31. O.A. No.327 of 2009 :

T.A. Anil, Chargeman-II (Pipe Fitting Shop),
Naval Ship Repair Yard, Southern Naval
Command, Kochi-682 004, residing at
Gayathri House, Thevara Colony, Kochi-13. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mrs. Aysha Youseff, ACGSC)

32. O.A. No.329 of 2009 :

P.I. Xavier, Engine Driver-III,
Naval Ship Repair Yard, Southern Naval
Command, Kochi-682 004, residing at
Puthenveettil House, Kumbalam PO,
Kochi-682 506. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. S. Abhilash, ACGSC)

33. O.A. No.330 of 2009 :

P.A.Sivan, Chargeman-II (Power),
Naval Ship Repair Yard, Southern Naval
Command, Kochi-682 004, residing at
Dawson Vihar, Type III - C 16,
Thykoodam, Kochi -19. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. P.S. Biju, ACGSC)

34. O.A. No.331 of 2009 :

P.M. Jaleel, Unskilled Labour,
Naval Ship Repair Yard, Southern Naval
Command, Kochi-682 004, residing at
Padinjareveettil House,
Palluruthy, Kochi- 682 006. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

35. O.A. No.379 of 2009 :

K.M. Salim, Mechinist (Highly Skilled),
Naval Ship Repair Yard, Southern Naval
Command, Kochi-682 004, residing at
Kandamparambil House, Deshabhimani
Road, Kaloor, Kochi-17. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mrs. Aysha Youseff, ACGSC)

36. O.A. No.380 of 2009 :

M. Abraham,
Sheet Metal Worker (Highly Skilled),
Naval Ship Repair Yard, Southern Naval
Command, Kochi-682 004, residing at
Uppoodan House, Thiruvaniyoor,
Attinikkara, Ernakulam. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration), Headquarters,
Southern Naval Command, Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mr. M.M. Saidu Muhammed, ACGSC)

37. O.A. No.381 of 2009 :

T.O. Thampan, Ship Wright (Highly Skilled),
Naval Ship Repair Yard, Southern Naval
Command, Kochi-682 004, residing at
Thacholy House, Vengola PO,
Perumbavoor (Via), Ernakulam District. ... Applicant

(By Advocate Mr. O.V.Radhakrishnan Sr. with
Mr. C.S.G. Nair)

versus

1. Commodore, Chief Staff Officer
(Personnel and Administration),
Headquarters, Southern Naval Command,
Kochi- 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-682 004.

3. Union of India, rep. by its Secretary,
Ministry of Defence, South Block,
New Delhi 110 001. ... Respondents

(By Advocate Mrs. Aysha Youseff, ACGSC)

The applications having been heard on 14.12.2009, the Tribunal on ...6.-1-.2.010.. delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

These O.As, having one common legal point to be decided, have been clubbed together, heard together and a common order is passed. For the purpose of reference, requisite details as contained in O.A. No. 254/2009 have been referred to. It is this O.A. which has also been referred to at the time of final hearing by the senior counsel appearing for the applicants.

2. The facts, being admitted, obviate debate. Disciplinary proceedings were initiated against the applicants in these O.As which culminated into the imposition of **penalty of reduction of pay by one stage for one year in the relevant scale of pay in respect of all the applicants** and with a direction

that the applicants will not earn increments of pay during the period of reduction and that on the expiry of that period, reduction will have the effect of postponing the future increments of pay.

3. Details of reduction of pay, the pay scale etc., in respect of the applicant in O.A. No. 254 of 2009 go as hereinafter. The applicant's pay was reduced from Rs.5000 to 4900 in the time scale of pay of Rs.4000–100–6000 w.e.f. 01-01-2007 with a direction that the applicant will not earn increments of pay during the period of reduction and that on expiry of that period, the reduction will have the effect of postponing the future increments of pay vide Annexure A-1 Order dated 18-12-2006. Appeal preferred was not successful as the same was rejected, vide order dated 16th April, 2007 at Annexure A-2. Implementation of the penalty order was carried out vide Annexure A-3 Civilian Establishment List dated 01-01-2007. Vide Annexure-4 Civilian Establishment List dated 17th January 2008, pay of the applicant was placed after the currency of penalty at Rs.5100/- w.e.f. 01-01-2008. A slight modification to Annexure A-4 was issued vide Annexure A-5, which however, did not affect the above stipulation of fixation of pay at Rs.5100/- w.e.f. 01-01-2008. As the revised pay Rules came into existence in 2008, effective, however, from 01-01-2006, the pay of the applicant was revised at the revised pay, and option exercised by the applicant was also considered and taken into account. Accordingly, fitment table was followed, and the pay scale corresponding to the erstwhile scale of pay of Rs.4000–100–6000 was revised to PB-1 Rs.5200–20200 with grade pay of Rs.2400/-. The table of concordance reflected that the erstwhile basic pay of Rs.4900/- was Rs.9,120/- which, together with the Grade pay of Rs.2400/- resulted in the revised basic pay of Rs.11,330/-. Likewise, replacement pay for Rs.5000/-

was Rs.11,700/- and that for Rs.5100/- it was Rs.11,890/-. (It could be seen that in contra distinction to the earlier fixed increment, the increment as per the revised scale differed, as the same was worked at 3% of the basic pay). The pay bill of the applicant in O.A. No. 254/2009 for the month of January 2009 reflected the basic pay of Rs.12,810/- but that of February, 2009 it was brought down to Rs.12,430/-. Annexure A-8 refers. The applicant therefore, penned a representation dated 12-03-2009 stating that the pay worked out had taken into account the penalty suffered by the applicant earlier which has resulted in reduction of the pay, whereas, the said penalty being reduction of a fixed amount of Rs.100/- and having already been suffered, the revised pay cannot be affected by such earlier penalty. In response to the above, the respondents have issued Annexure A-10 order stating that since the pay scale was revised with retrospective effect, the reduction imposed under the penalty order was reckoned with in the revised pay structure w.e.f. the date of penalty. Hence, the pay would be reduced by one stage from the date of imposition of punishment. This would be effected from the salary prospectively and the excess amount paid to the applicant due to non implementation of penalty while fixing the pay in the revised pay structure will be recovered from the 60% of arrears of pay and Allowances as and when the payment is made in the next financial year.

4. The applicant has filed this OA against the aforesaid Annexure A-5 and A-10 order and at the time of admission, the Tribunal granted stay of recovery as contemplated in Annexure A-10 order.

5. The following are the main grounds of the said O.A:-

(a) That the decision by the respondents vide Annexure A-10 that the

order imposing penalty would be applicable to the revised pay structure also with effect from the date of penalty order is patently illegal, arbitrary and wholly unsustainable.

(b) Annexure A-1 order, passed by the disciplinary authority, imposing penalty, gets merged with the appellate order vide Annexure A-2 whereby, the disciplinary authority cannot enjoy any powers, to make modifications to the Annexure A-1 order.

(c) Annexure A-1 order was current only upto 31st December, 2007 and cannot be treated as subsisting when on the basis of option exercised, the revised pay rules were made applicable. The penalty order depriving the applicants of only one increment of Rs 100/- for one year only and which has been given effect to, cannot be said to be operative after the suffering of the penalty.

(d) Reduction in the pay of the applicants without notice is again illegal and violative of principles of natural justice.

(e) The action of the respondents amounts to revision of the penalty order, for which there is no provision in the CCS(CC& A) Rules, 1965.

6. Respondents have contested the O.A. According to them, the applicants were afforded the revised Pay Scale w.e.f. 01-01-2006 and while working out the same, the fact of reduction of pay from 01-01-2007 to 31st January 2007 due to imposition of penalty was not taken into account purely by oversight. The over payment so made is sought to be recovered from the applicants on the strength of the undertaking given by all the applicants. (Annexure R-1 refers). Such a recovery of excess payment made by way of oversight or mistake can well be resorted to as per the Apex Court judgment in the case of ***Videsh Sanchar Nigam Limited and another vs Ajit Kumar and others (2008 SCC (L&S) 1047)***. Decision by the High

Court of Kerala in regard to a similar nature of case exists, vide judgment in O.P. No. 34867/2000.

7. Learned Senior Counsel for the applicants, succinctly brought out the facts of the case and laid emphasis on the legal issue involved. According to the Senior Counsel, the entire action of the respondents is liable to be held illegal and consequently orders impugned vide Annexure A-5 and A-10 are necessarily to be set aside, as there is absolutely no provision either in the Revised Pay Rules or in the CCS (CC&A) Rules, 1965 for effecting modification to the penalty order passed by the disciplinary authority and further, the authority which has issued the orders vide Annexure A-5 and A-10 does not enjoy any power to make any modification to the penalty order, which got merged with the appellate authority's order. Again, it has been argued that the penalty imposed is not in a general but a specific term, prescribing the extent of reduction, the pay scale, the stage from which and to which the pay has been reduced. And such reduction has already been suffered by the applicants. Hence, there is no question of the same being substituted as per Annexure A-5 or A-10 orders. It has also been contended that in any event, the impugned orders are bad in law as the same is not in conformity with the principles of natural justice.

8. The following decisions have been cited by the senior counsel for the applicants in support of his contentions:-

(a) ***Bhagwan Shukla v. Union of India, (1994) 6 SCC 154,*** wherein, the Apex Court has held as under:-

> *"**2.** The controversy in this appeal lies in a very narrow compass. The appellant who had joined the Railways as a Trains Clerk*

w.e.f. 18-12-1955 was promoted as Guard, Grade-C w.e.f. 18-12-1970 by an order dated 27-10-1970. The basic pay of the appellant was fixed at Rs.190 p.m. w.e.f. 18-12-1970 in a running pay scale. By an order dated 25-7-1991, the pay scale of the appellant was sought to be refixed and during the refixation his basic pay was reduced to Rs.181 p.m. from Rs.190 p.m. w.e.f. 18-12-1970. The appellant questioned the order reducing his basic pay with retrospective effect from 18-12-1970 before the Central Administrative Tribunal, Patna Bench. The justification furnished by the respondents for reducing the basic pay was that the same had been 'wrongly' fixed initially and that the position had continued due to 'administrative lapses' for about twenty years, when it was decided to rectify the mistake. The petition filed by the appellant was dismissed by the Tribunal on 17-9-1993.

***3.** We have heard learned counsel for the parties. That the petitioner's basic pay had been fixed since 1970 at Rs.190 p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs.181 p.m. from Rs.190 p.m. in 1991 retrospectively w.e.f. 18-12-1970. The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the (sic employee) concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25-7-1991, which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant. The order of the Tribunal deserves to be set aside. We, accordingly, accept this appeal*

and set aside the order of the Central Administrative Tribunal dated 17-9-1993 as well as the order (memorandum) impugned before the Tribunal dated 25-7-1991 reducing the basic pay of the appellant from Rs.190 to Rs.181 w.e.f. 18-12-1970."

(b) ***State of Karnataka v. Mangalore University Non-Teaching Employees' Assn.,(2002) 3 SCC 302,*** wherein the Apex Court has held as under:-

*"**11.** The only other question to be considered is whether the government orders impugned in the writ petitions are liable to be quashed on account of infraction of the principles of natural justice. It is true, in a case of this nature where the payment already made is sought to be recovered, thereby visiting the employees with adverse monetary consequences, the affected employees should have been put on notice and their objections called for. But, it is by now well settled that in all cases of violation of the principles of natural justice, the court exercising jurisdiction under Article 226 of the Constitution need not necessarily interfere and set at naught the action taken. The genesis of the action contemplated, the reasons thereof and the reasonable possibility of prejudice are some of the factors which weigh with the court in considering the effect of violation of the principles of natural justice. When undisputably the action taken is within the parameters of the rules governing the payment of HRA and CCA and moreover the university authorities themselves espoused the cause of employees while corresponding with the Government, it is difficult to visualize any real prejudice to the respondents on account of not affording the opportunity to make representation. We cannot, therefore, uphold the view of the Appellate Bench of the High Court on this aspect of this case.*

***12.** Though the above discussion merits the dismissal of the writ petitions and the denial of relief to the respondents, we are of the view that on the special facts of this case, the employees of the University have to be protected against the move to recover the excess payments up to 31-3-1997. When the employees concerned drew the allowances on the basis of financial sanction accorded by the competent authority i.e. the Government and they incurred additional expenditure towards house rent, the employees should not be penalized for no fault of theirs. It would be totally unjust to recover the amounts paid between 1-4-1994 and the date of issuance of GO No. 42*

dated 13-2-1996. Even thereafter, it took considerable time to implement the GO. It is only after 5-3-1997 the Government acted further to implement the decision taken a year earlier. Final orders regarding recovery were passed on 25-3-1997, as already noticed. The Vice-Chancellor of the University also made out a strong case for waiver of recovery up to 31-3-1997. That means, the payments continued up to March 1997 despite the decision taken in principle. In these circumstances, we direct that no recovery shall be effected from any of the university employees who were compelled to take rental accommodation in Mangalore city limits for want of accommodation in the university campus up to 31-3-1997. The amounts paid thereafter can be recovered in instalments. As regards the future entitlement, it is left to the Government to take appropriate decision, as we already indicated above. Subject to the above direction and observation, the appeals are allowed. No costs."

(c) ***State of Bihar vs Kameshwar Singh (2000) 9 SCC 94*** relating to condonation of delay in filing petitions.

(d) ***P.H. Reddy & Ors. v. N.T.R.D. & Ors (2002) 2 JT 483***, wherein the Apex Court has held as under :-

*"2. Mr. Rao, the learned senior counsel appearing for the appellants contended that this Court having held in the case of **Director General of Posts v. B. Ravindran** [JT 1996 (10) SC 228] that the fixation of the salary on re-employment under the basis of relevant rules and regulations cannot be altered to his detriment by a subsequent administrative circulars, and therefore, the order of the appropriate authority fixing the salary could not have been set aside and the pay could not have been re-fixed, and therefore, the learned single Judge was right in his conclusion and rightly interfered with the said order of re-fixation. Mr. K. Ram Kumar appearing for the respondents, on the other hand, contended that both the circulars, one of the year 1958 and the other of the year 1983 have been duly considered in the later case of **Director General of ESI Corporation v. M.P. John** [JT 1998 (8) SC 338], and it has been held that the two circulars operate in two different fields and therefore, an ex-serviceman, who is re-employed, will get the minimum pay-scale in addition to his full pension as an ex-serviceman from the military authority, and this being the position, the appropriate*

authority, if had fixed the pay on an erroneous view was entitled to re-fix the same, and therefore, the division bench rightly set aside the judgment of the learned single judge. We have ourselves examined the two office memorandum, one of dated 25.11.58 and the other is of 8.2.1983, and we do not see any infirmity or inconsistency with those circulars relevant in the matter of fixation of pay of an employee, who on retirement from the defence service, have been re-employed in a civil post. In our view, therefore, the judgment of this Court in the ***Director General, ESI,*** *represents the correct view, and consequently the order of re-fixation done by the appropriate authority, in the case in hand, does not require any interference, but the employees-appellants, who had been in receipt of a higher amount on account of erroneous fixation by the authority should not be asked to re-pay the excess pay drawn, and therefore, that part of the order of the authority is set aside. The direction of the appropriate authority requiring reimbursement of the excess amount drawn is annulled.*

3. The appeals are disposed of accordingly."

9. Counsel for the respondents invited the attention of the Tribunal to the decision in the case of ***Videsh Sanchar Nigam Ltd and another vs Ajit Kumar Kar and Others, (2008) 11 SCC 591***, wherein the Apex Court has held *"It is well settled that a bona fide mistake does not confer any right on any party and it can be corrected."*

10. Arguments were heard and documents perused. The main issue could be bifurcated as under :-

(a) When on the basis of a penalty order, reduction of pay was effected as per the pre-revised pay scales with increment attendant thereto, whether the subsequent revision of pay scale with retrospective effect from a date anterior to the period of currency of penalty would warrant modification of penalty to be in conformity with the pay and increment under the revised pay scale or is independent of the

penalty imposed even in respect of the period of currency of penalty.

(b) If there be any excess payment made in the grant of revised pay scale purely on oversight, can the excess amount so paid is recoverable (with or without prior notice) from the individuals concerned, on the strength of an undertaking given by the individual concerned.

11. The senior counsel emphatically argued that in so far as the extent of penalty is concerned, since the same has been fully prescribed and described, there is no scope for changing the same. The reduction is one increment and the said increment was Rs.100/-. The pay scale was Rs.4000-6000. And, presently the extent of annual increment being variable, i.e. 3% of the basic pay the same cannot be substituted to the fixed Rs.100/-. The senior counsel further argued that it would have been a different matter, had the penalty order contained only to the extent of reduction by one increment in the present pay scale of the applicant in which event, there may be some justification to introduce the new pay scale and the attendant increment thereto, whereas that is not the case here. As the extent of penalty has been defined and confined, the reduction of Rs.100/- becomes inflexible.

12. This point has to be dealt with first. Prescription of pay scale, increment attendant thereto, the pay drawn before penalty, the pay admissible during the currency of penalty etc., are necessarily to be made as the same is mandated in the Rules. In this regard, reference has to be made to the prescribed proforma, under Government of India Instructions No.12 under Rule 11 of the CCS (CC&A) Rules, 1965 which reads as under:-

"(12) Reduction to a lower stage in a time-scale.- Every order passed by a competent authority under sub-rule(1) of Fundamental Rule 29 imposing on a Government servant the penalty of reduction to a lower stage in a time-scale should indicate -

(i) the date from which it will take effect and the period (in terms of years and months) for which the penalty shall be operative.

(ii)the stage in the time-scale (in terms of rupees) to which the Government servant is reduced; and

(iii)the extent (in terms of years and months), if any, to which the period referred to at item (i) above should operate to postpone future increments.

It should be noted that reduction to a lower stage in a time-scale is not permissible under the rules for an unspecified period or as a permanent measure. Also when a Government servant is reduced to a particular stage, his pay will remain constant at the stage for the entire period of reduction. The period to be specified under (iii) should in no case exceed the period specified under (i).

In order to achieve the object of not allowing increments during the period of reduction, every order passed by a competent authority imposing on a Government servant the penalty of reduction to a lower stage in a time-scale should invariably specify that stage in terms of rupees to which the Government servant is reduced as in the following form :-

"The ..... has decided that Shri..... should be reduced to a pay of Rs..... for a period of ..... with effect from ....."

[G.I., M.F., O.M. No. F. 2(34)-E. III/59, dated the 17th August, 1959; 9th June, 1960; and 24th June, 1963.]

> It has been decided that in future while imposing the said penalty on a Government servant, the operative portion of the punishment order should be worded as in the form given below :-
> "It is therefore ordered that the pay of Shri..... be reduced by ..... stages from Rs..... to Rs..... in the time-scale of pay of ..... for a period of ..... years/months with effect from ..... It is further directed that Shri..... will/will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will/will not have the effect of postponing his future increments of pay".
>
> [D.G., P.&T., Letter No.6/8/70-Disc. I, dated the 16th December, 1970.]

13. As such, prescription of pay scale as well as increment that is withheld as a matter of penalty is as per the rules and just because such a prescription has been made, the same cannot be held to be inflexible, when the pay scale for the said period undergoes a revision. Lumpsum amount as penalty as a one time measure, may have no nexus to the pay scale or increment attached thereto. But reduction of increment does have. Thus, as long as the pay scale remained Rs.4000 – 6000/- the reduction was by way of one increment attached to the said pay scale. However, when the pay scale underwent an upward revision and the applicant opted for the same, increment attached to this pay scale cannot be ignored or replaced by the earlier increment of Rs.100/-. The applicant cannot claim higher pay scale with increment at Rs.100/- during the period of currency and at a higher rate for the rest of the period. When an individual opts for a particular scale, he does so with the rate of increment attached to it. Thus, increment is attached to pay scale and once he has opted for revised pay scale, the inevitable corollary is that correspondingly increment admissible to the pay in the said revised pay scale would alone have to be taken into account. The oft quoted

words of Lord Asquith in the case of ***East End Dwellings Co. Ltd.* v. *Finsbury Borough Council*** **it was observed: (All ER p. 599 B-D)** is relevant in this regard, wherein it has been stated as under:-

> *"If one is bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. ... The statute says that one must imagine a certain state of affairs. It does not say that, having done so, one must cause or permit one's imagination to boggle when it comes to the inevitable corollaries of that state of affairs."*

14. Such a situation was visualized as early as in 1987 when the fourth Pay Commission Recommendations were accepted and Pay Revision took place. The Government had, vide order dated 4th May, 1987 has directed as under:-

Sl. No.	Point raised	Clarification
1	2	3
7.	What will be the mode/manner of fixation of pay under C.C.S. (R.P.) Rules, 1986, of persons who are drawing reduced pay as on 1.1.1986 in the existing scale on account of imposition of penalty under the provisions of C.C.S. (C.C.A.) Rules, 1965?	The pay in such cases may be fixed as under : (a) on the basis of pay actually drawn on 1.1.86; and (b) on the basis of pay which would have been drawn but for the penalty. The revised pay as fixed at (a) above may be allowed from 1.1.1986 to the date of expiry of penalty and the revised pay fixed as at (b) above from the date following the date of the expiry of the penalty after allowing increments, if any, that might have notionally fallen due in the revised scale during the period from 1.1.86 to the date of expiry of the penalty. The next increment in the revised scale will be regulated in accordance with Rule 8 of the C.C.S. (R.P.) Rules, 1986.

15. Thus, in so far as the contention that once the penalty order prescribes the reduction in pay to the tune of Rs.100/- the same cannot be varied, has to be rejected. For, the said Rs.100/- is only the increment attached to the pre-revised pay scale and the same cannot be imported when the applicant has sought to have his pay revised from any date after 01-01-2006. Nor does the contention that the Disciplinary authority cannot modify the order holds good in this case.

16. Coming to the second contention that there is no question of reduction of emoluments without show cause, the fact that the applicant has given a clear undertaking cannot be lost sight of. Such an undertaking is not an empty formality but with a specific purpose that no unintended benefit goes to any person. Thus, the possibility of any erroneous payment is foreseen in advance and such an undertaking was obtained from all the individuals. Even in the case of those who do not suffer any penalty, and in whose case there has been excess payment due to error in calculation, the excess would be recovered. The applicants cannot be an exception to the same. If one is not entitled to a particular benefit one need not be put to prior notice. The Apex Court in the case of ***P.D. Agrawal v. State Bank of India, (2006) 8 SCC 776***, held that the need to comply with principles of natural justice would arise only when actual prejudice is caused by the action of the respondents. The apex court has in that case observed as under:-

> *"principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principle/ doctrine of audi alteram partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principle. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It*

is no unruly horse. It cannot be put in a straitjacket formula."

17. There are, of course, cases, where once an excess payment has been made which was not based on the statement or mistatement of an individual, recovery of the payment made cannot be made. see (a) ***Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18:*** (b) ***Bihar SEB v. Bijay Bhadur, (2000) 10 SCC 99:*** (c) ***Col. B.J. Akkara (Retd.) v. Govt. of India, (2006) 11 SCC 709:*** (d) ***Purshottam Lal Das v. State of Bihar,(2006) 11 SCC 492*** and (e) ***State of Bihar v. Pandey Jagdishwar Prasad,(2009) 3 SCC 117.*** However, where there has been a clear undertaking, such a recovery could be effected. In the case of ***Tata Iron & Steel Co. Ltd. v. Union of India,(2001) 2 SCC 41,*** the Apex Court has held as under:-

"In the event of there being a specific undertaking to *refund* for any amount *erroneously paid or paid in excess* (emphasis supplied), question of there being any estoppel in our view would not arise."

18. In fact, even the Apex Court adopted the method of securing undertaking when payment of DCRG was sought to be released, vide judgment in ***Sita Ram Yadava v. Union of India, 1992 Supp (2) SCC 434,*** stating -

"3. *We, therefore, by this interim order direct the release of DCRG to the petitioner on the petitioner giving an undertaking to this Court to refund the same in the event this Court so directs."*

19. Notwithstanding the above, issue of show cause notice before effecting recovery is certainly a healthy practice. If in the past such practice was followed, the same has to proceed further. In the instant case, by virtue

of a stay order, recovery has been withheld. Respondents may well issue show cause notice to all concerned explaining the circumstances under which the erroneous excess payment happened to be made and on receipt of the representation filed by the individuals concerned, a judicious decision could be taken.

20. Thus, in so far as the second issue is concerned, the respondents are expected to put to prior notice of recovery, invite representations, consider the same and arrive at a decision. Till then, no recovery shall be made.

21. In view of the above the O.A. is disposed of holding as under :-

> (a) That the applicant's claim that once the penalty had been suffered, there is no scope in modification of the same is rejected as the modification is a logical corollary to the revision of pay scale. Hence, Annexures A-5 and A-10 are not liable to be quashed or set aside.
>
> (b) As regards recovery of arrears of pay and allowance erroneously granted, applicants and similarly situated individuals may be put to notice and their representations invited. On consideration, a judicious decision shall be arrived at by the competent authority.

22. No costs.

(Dated, the 06th January, 2010.)

K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER

Dr. K.B.S. RAJAN
JUDICIAL MEMBER

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