

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

Original Application No. 301 of 2010

*wednesday*, this the *09<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**

E Ebenezer Rajakumar  
(Former Group Director, Computer & Information Group,  
VSSC, Trivandrum)  
Son of (the late) J.J.D Edward  
residing at Sangeet, PJRRA No.FF2  
Pothujanam Road, Kumarapuram  
Trivandrum – 695 011

..... Applicant

(By Advocate Mr. N Nagaresh)

versus

- 1 Union of India represented by  
Secretary to Government of India  
Department of Space, Bangalore  
Antariksh Bhavan, New BEL Road  
Bangalore – 600 094
- 2 Deputy Secretary to Government of India  
Department of Space, Bangalore  
Antariksh Bhavan, New BEL Road  
Bangalore – 600 094
- 3 Director, Vikram Sarabhai Space Centre  
Trivandrum – 695 022
- 4 Senior Administrative Officer  
Establishment Section, Vikram Sarabhai Space Centre  
Trivandrum – 695 022
5. Head, Accounts and IFA (General)  
Vikram Sarabhai Space Centre  
Trivandrum – 695 022


(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The Original Application having been heard on 24.10.2011, the Tribunal  
on 29/11/11. delivered the following:



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

The applicant in this O.A. who retired from service on superannuation on 31.10.2008 from Vikram Sarabhai Space Centre (VSSC), Trivandrum, had reached the maximum of the pay scale Rs. 18400-22400 on 01.01.2004. He had drawn the first stagnation increment of Rs. 500/- on 01.01.2006. Consequent upon the acceptance of the recommendations of VI CPC, the Revised Pay Rules, 2008 were framed. His pay was fixed as per rules in September, 2008, in the Pay Band of Rs.37400-67000 with Grade Pay of Rs. 10000/- without taking into account his first increment in the revised pay structure on 01.01.2006 as specified in Rule 10 of the Revised Pay Rules, 2008. The error in not including the increment due on 01.01.2006 was corrected in the 2<sup>nd</sup> pay fixation order made in October, 2008. But his retirement benefits were settled at the lower level based on the 3<sup>rd</sup> pay fixation order at Annexure A-1. Aggrieved, the applicant had submitted a representation dated 27.04.2009. As he could not get any positive result, this O.A has been filed for the following reliefs:

- "(i) To call for the records leading to Anns.A3 and A9 and set aside the same;
  - (ii) To direct the respondents to restore the pay as reflected in Ann.A2 Pay Fixation order to the applicant, allowing the applicant to draw his first increment in the revised pay structure on 01.01.2006 in terms of Rule 10 of the Revised Pay Rules 2008;
  - (iii) To declare that clarification No.5 in Ann.10 OM dated 29.01.2009 relates grant of stagnation/additional increment to specified cases and that it cannot take away the right of the applicant to get the 1<sup>st</sup> increment allowed under the first proviso to Rule 10 of the Revised Pay Rules, 2008;
  - (iv) To refix the pay and other retiral benefits of the applicant in terms of Ann.A2 and disburse the arrears of pay and pension arising out of such refixation to the applicant forthwith."
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2. The applicant contended that he had been drawing the maximum of existing (pre-revised) scale for more than a year as on 01.01.2006 and hence, the next increment in the revised pay structure should be allowed on 01.01.2006 as per proviso to Rule 10. Annexure A-2 order was correctly drawn on the basis of the Revised Pay Rules, 2008. Therefore, the respondents committed grave illegality in withdrawing the increment granted to the applicant in terms of Rule 10 of the Revised Pay Rules, 2008. This has adverse civil consequences for the applicant. The 4<sup>th</sup> respondent never notified the applicant formally before issuing the Annexure A-3 order cancelling Annexure A-2 order issued by him. Therefore, Annexure A-3 order is liable to be set aside being in violation of the principles of natural justice. The 2<sup>nd</sup> respondent has rejected the claim of the applicant as per Annexure A-9 memorandum quoting the clarification on grant of stagnation increment, which is not at all relevant to the point under consideration, i.e. date on which a Government servant is allowed to draw the first increment in the revised pay structure. As the 1<sup>st</sup> increment to the applicant in the revised pay structure on 01.01.2006 was not allowed, his juniors are drawing higher salary.

3. In the reply statement, the respondents submitted that the request of the applicant for granting him the first increment in the revised pay structure as on 01.01.2006 was not acceded to based on Annexure A-10 clarificatory OM dated 29.01.2009, which stated that in all cases, where a Government servant has been granted an increment (whether normal annual increment or stagnation increment) after January 01, 2005, no increment will be allowed on 01.01.2006 at the time of fixation of pay in the revised pay structure. As per the then existing rules, the applicant who was drawing the maximum of the



scale of pay for 2 years, was granted stagnation increment with effect from 01.01.2006. The proviso to Rule 10 is to be read with the clarification contained in Sl. No. 5 of the Annexure A-10 O.M. As the applicant drew the stagnation increment on 01.01.2006, his case cannot be equated with the maximum reached case for more than a year as on 01.01.2006 based on Annexure A-10 O.M. Accordingly, the applicant is not eligible for the additional increment @ 3% in the revised pay structure as on 01.01.2006. The applicant cannot claim that the order Annexure A-3 was issued in violation of principles of natural justice because prior to the payment of benefits under VI CPC, the applicant made a declaration to the effect that if any excess amount is paid to him erroneously on account of fixation of pay in the revised pay structure, the same shall be recoverable or liable to be refunded to the Government. The pay of the applicant will be stepped up to an amount equal to the pay as fixed for his junior in the revised pay structure with an increase of RS. 300/- raising his basic pay from Rs. 63410/- to Rs. 63710/- as on 01.01.2006, which is communicated to him as per Annexure A-5 memorandum.

4. We have heard Mr. N. Nagresh, learned counsel for the applicant and Mr. Sunil Jacob Jose, learned SCGSC, appearing for the respondents and perused the records.

5. The contention of the applicant is that as he had been drawing the maximum of the pre-revised scale for 2 years as on 01.01.2006, by applying para 2 of Rule 10 of the Revised Pay Rules, 2008, he should be allowed his first increment in the revised pay structure as on 01.01.2006 raising his pay to Rs. 65320/-. Rule-10 is reproduced as under :




" 10. Date of next increment in the revised pay structure - There will be a uniform date of annual increment, viz 1st July of every year. Employees completing 6 months and above in the revised pay structure as on 1st 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 01.07.2006 for those employees for whom the date of next increment was between 1st July, 2006 to 1st January, 2007.

Provided that in the case of persons who had been drawing maximum of the existing scale for more than a year as on the 1st day of January, 2006, the next increment in the revised pay structure shall be allowed on the 1st day of January, 2006. Thereafter, the provision of Rule 10 would apply.

Provided that in cases where an employee reaches the maximum of his pay band, shall be placed in the next higher pay band after one year of reaching such a maximum. At the time of placement in the higher pay band, benefit of one increment will be provided. Thereafter, he will continue to move in the higher pay band till his pay in the pay band reaches the maximum of PB-4, after which no further increments will be granted.

Note 1 - In cases where two existing scales, one being a promotional scale for the other, are merged, and the junior Government servant, now drawing his pay at equal or lower stage in the lower scale of pay, happens to draw more pay in the pay band in the revised pay structure than the pay of the senior Government servant in the existing higher scale, the pay in the pay band of the senior government servant shall be stepped up to that of his junior from the same date and he shall draw next increment in accordance with Rule 10. "

6. The applicant had been drawing the maximum of Rs. 22400/- in the pre-revised pay scale since 01.01.2004. Therefore, as on 01.01.2006 he had been drawing the maximum of the existing scale for 2 years. Therefore, clearly the next increment in the revised pay structure should be allowed to him on 01.01.2006 as per Para 2 of Rule 10. The contention of the respondents is that since the applicant drew stagnation increment on 01.01.2006, his case cannot be equated with the maximum reached case for more than a year as on 01.01.2006 based on the clarification contained in Sl. No. 5 of the Annexure A-10 O.M. dated 29.01.2009, which is extracted as



under:

<p>5. <u>Grant of stagnation increment</u></p> <p>Whether the employees who have been granted stagnation increment between February 2005 or thereafter are to be granted additional increment w.e.f 1.1.2006, while fixing the pay or not ? Since they have reached at the maximum of the existing pay scale.</p>	<p>In all cases, where a Government servant has been granted an increment (whether normal annual increment or stagnation increment) after January 1, 2005, no increment will be allowed on 01.01.2006 at the time of fixation of pay in the revised pay structure.</p>
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According to the respondents, as the stagnation increment due to him as on 01.01.2006 has been granted in the pre-revised pay scale with effect from 01.01.2006, he is not eligible for the additional increment @ 3% in the revised pay structure on 01.01.2006 as claimed by him. Para 2 (iii) of O.M. dated 30.08.2008 deals with fixation of pay of the employees, whose date of next increment falls on 01.01.2006. For the sake of convenience, the same is reproduced as under :

" 2. (i) xxxxxxxxxxxx

(ii) xxxxxxxxxxxx

(iii) In terms of the CCS (RP) Rules, 2008, there shall be a uniform date of increment i.e. 1<sup>st</sup> July of the year after implementation of the revised pay structure. Consequently, in the case of employees whose date of next increment falls on 1.1.2006, the increment will be drawn in the pre-revised scale and pay fixed in accordance with the tables after including this increment. The next increment in the revised pay structure in such cases will be drawn on 1<sup>st</sup> July, 2006. "

The pay of the applicant was fixed in the revised pay structure after including the increment due on 01.01.2006 in the pre-ervised pay scale as per para 2 (iii) above. It does not matter whether the increment is normal increment or stagnation increment. The clarification No.5 in the O.M dated



29.01.2009 states that those who got an increment (normal/stagnation) after January, 2005, i.e, who had not completed one year after getting the increment, no increment will be allowed on 01.01.2006 because no increment is due before completing one year. Those who completed one year as on 01.01.2006 after an increment was granted, will be granted one increment in the pre-revised pay scale as on 01.01.2006. This clarification with reference to fixation of pay in the revised pay structure, in our considered view, does not take away the benefit available to the applicant under proviso to Rule 10, for stagnating in the pre-revised pay scale for more than one year as on 01.01.2006, in the matter of granting the first increment in the revised pay and thereafter, the next increment on 01.07.2006. The stand of the respondents that he was not eligible for this benefit meant for employees who were stagnating for more than one year as on 01.01.2006 because the granting of increment on 01.01.2006 in the pre-revised pay scale for fixing his pay in the revised pay structure is at variance with the proviso to Rule-10. It is arbitrary and, therefore, illegal. Rule 10 of the Revised Pay Rules, 2008 deals with grant of increment in the revised pay structure with a uniform date of annual increment on 1<sup>st</sup> July of every year. The O.M dated 30.08.2008 and the clarification No.5 in O.M. Dated 29.01.2009 essentially deal with fixation of pay; The clarification No.5 in the aforesaid O.M and the proviso to Rule 10 address different situations. But as a matter of coincidence, both apply to the applicant. An harmonious and holistic approach to the application of both the O.M and the proviso to Rule 10 would result in a welcome solution to the problem of the Government employees, like the applicant. The respondents counted the trees but missed the woods.

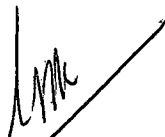
7. Seen from another angle also, the stand of the respondents is not



tenable. When there is a conflict between a Rule and an O.M., the Rule prevails. In our view, the conflict arises in the instant case only because of the wrong application of the clarification in regard to pay fixation to granting of increment in the revised pay structure. If the clarification No. 5 in O.M dated 29.01.2009 is to be interpreted as the respondents would have it, then the clarification to the extent it contradicts Rule 10 of Revised Pay Rules, 2008 is illegal. What the Rule gives, no O.M can take away.

8. In the result, the O.A. succeeds. Annexure A-3 fixation of pay dated nil and Annexure A-9 order dated 31.12.2009 are set aside. The respondents are directed to restore the pay as reflected in Annexure A-2 order to the applicant, allowing him to draw his first increment in the revised pay structure on 01.01.2006 in terms of Rule 10 of the Revised Pay Rules, 2008. It is declared that the clarification No. 5 in Annexure A-10 OM dated 29.01.2009 cannot take away the right of the applicant to get the first increment allowed under the first proviso to Rule 10 of the Revised Pay Rules, 2008. The respondents are further directed to refix the pay and other retiral benefits of the applicant in terms of Annexure A-2 and disburse the arrears of pay and pension arising out of such refixation to the applicant within a period of 60 days from the date of receipt of a copy of this order. No order as to costs.

(Dated, the 09<sup>th</sup> November, 2011)



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



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

**CVR.**