

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A.No.315/2008  
Dated the 5<sup>th</sup> day of March, 2009**

**CORAM :**

**HON'BLE Mr GEORGE PARACKEN, JUDICIAL MEMBER  
HON'BLE Ms K NOORJEHAN, ADMINISTRATIVE MEMBER**

- 1 A Janardhanan,  
Foreman (AWS),  
Naval Armament Depot,  
NAD (Post), Alwaye
- 2 N K Venu  
Assistant Foreman (AWS),  
Naval Armament Depot,  
NAD, Alwaye
- 3 K.Ramakrishnan  
Assistant Foreman(AWS),  
Naval Armament Depot,  
NAD, Alwaye
- 4 S.Satyajith,  
Chargeman I (AWS),  
Naval Armament Depot,  
NAD, Alwaye
- 5 M.Padmakumar  
Chargeman I (AWS),  
Naval Armament Depot,  
NAD, Alwaye
- 6 C.S.Sebastian  
Chargeman I (AWS),  
Naval Armament Depot,  
NAD, Alwaye
- 7 M.Sathianathan,  
Chargeman I (AWS),  
Naval Armament Depot,  
NAD, Alwaye
- 8 K.R.Madhavan  
Chargeman I (AWS),



Naval Armament Depot,  
NAD, Alwaye

- 9 P.A.Joshy,  
Chargeman I (AWS),  
NAD, Alwaye ... Applicants

By Advocate Mr S Ramesh Babu

V/s

- 1 Union of India, through the  
Secretary, Ministry of Defence,  
Government of India,  
South Block, New Delhi
- 2 The Chief of Naval Staff,  
Naval Headquarters, Sena Bhavan,  
New Delhi-110 011.
- 3 The Flag Officer Commanding in Chief,  
Southern Naval Command,  
Naval Base, Kochi-4
- 4 The Chief General Manager,  
Naval Armament Depot,  
NAD PO, Alwaye-683 563. ... Respondents

By Advocate Mr TPM Ibrahim Khan SCGSC

This application having been heard on 05.03.2009 the Tribunal on the same day delivered the following

(ORDER)

HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER

Applicant has filed this OA aggrieved by Annexure A-6 notification No S R O 18(E) dated 11.2.2004 called "the Civilian in Defence Services (Revised Pay) (Amendment) Rules 1997 deemed to have come into force on the 1<sup>st</sup> Day of January, 1996. By the aforesaid notification, the pay scale of ~~to~~ the Senior Chargeman in Naval Ammunition Workshop under in NASO was reduced from Rs 5500-175-9000 to Rs.5000-150-



8000 retrospectively. Because of the said reduction in the pay scale, the applicants were also subjected to recovery of over payment. They have, therefore, filed this OA seeking the following reliefs:-

- "a) that this Honourable Tribunal be pleased to hold and declare that the amendment to the SRO 18(E) dated 11.02.2004 whereby the pay scale of Sr.Chargeman/Chargeman Grade I is brought down from Rs.5500-9000 to Rs.5000-8000, is bad in law and without any basis and unsustainable in law and this Honourable Tribunal be pleased to quash and set aside the same;
- b) that this Honourable Tribunal be pleased to direct the respondents to give proper effect to the four grade structure among technical cadres in the Indian Navy, as recommended by the 5<sup>th</sup> Pay Commission and accepted by the Government of India, and as set out in this Original Application;
- c) that such other and further order or direction be passed as the facts and circumstances of the case may require;
- d) that cost of this Original Application be provided for."

2. Learned counsel for applicant submitted that this case is squarely covered by Annexure A-4 judgment of this Tribunal in OA 180/01 dated 19.3.2003. The applicants therein and applicants herein are similarly placed. The aforesaid OA has been allowed and its operative part is as under:-

"9 In the conspectus of facts discussed above, we are of the considered view that the impugned A-2 communication dated 30.10.2000 is unsustainable and hence liable to be set aside. We also hold that A-3 dated 11.1.2001 proposing recovery of over payment of pay and allowances with effect from 1.1.96 consequent on the downgrading of the pay scale and refixation of pay is also unsustainable and hence liable to be set aside. We therefore set aside the impugned A-2 order dated 30.10.2000 and A-3 order dated 11.1.2001. No order or action, if any, issued or taken in pursuance of A-2 and A-3 can be held to be of any consequence to the applicants. The respondents are directed to allow the applicants to continue to draw pay and allowances in the scale of pay as recommended by the Vth Pay Commission and accepted and implemented by the Government prior to A-2 order. There is no order as to costs."

4. The respondents have carried the aforesaid order before the Hon'ble High Court of Kerala in Writ Petition No.30853 of 2003 but it was



dismissed vide judgment dated 31.1.2008. The Hon'ble High Court in the aforesaid judgment has observed as under :-

"5 It is clear from the pleadings that the Vth Pay Commission had recommended the scale of pay of Rs.5500-9000 for Chargeman -I, after taking into consideration the entire nature of duties and responsibilities. This was accepted by the Government and the new scales were brought into force in accordance with the rules framed under Article 309 of the Constitution. The applicants were granted the benefit of the pay revision with effect from 1.1.1996 and they were enjoying the said scale of pay for more than 4 1/2 years. They were also not put to any notice before implementing Annexures A2 and A3. The Tribunal, on an assessment of the various circumstances, found that the reliance placed by the official respondents who are petitioners herein, on a judgment of the Tribunal in OA No.812/1998 has nothing to do with the issue as regards rectifying any anomaly on the pay scales enjoyed by the applicants. In the Tribunal's order the recommendation of the Vth Pay Commission has been extracted in paragraph 7 and it is noted that they have been incorporated in the CCS (Revised Pay) Rules 1997. The Senior Chargeman in NAW under NASO in the pre-revised scale of Rs.1400-2300 was placed in the revised scale of Rs.5500-9000 and Chargeman in the same organisation and who were enjoying the pre-revised scale of Rs.1400-2300 was placed in the revised scale of Rs.5000-8000. In fact, the Tribunal noticed that the issue raised in OA No.812/1998 was in respect of Senior Chargeman and other Technical Supervisory staff working under NAO and the complaint therein was that their pay scales were one notch below those of their respective counterparts in NASO. Therefore, what was directed to be considered was the anomaly regarding fixing a lower pay scale for the applicants in O A No.812/1998 and there was no direction with regard to any anomaly involved in the recommendation regarding the pay scales allowed to the category of employees like the contesting respondents herein. Ultimately, what was done was to the detriment of the applicants in this OA which does not benefit the applicants in O A No.812/1998 either. The Tribunal, therefore, rightly held that the decision on the part of the petitioners herein is wholly unjustified and unsustainable.

6 We are not persuaded to differ from the reasoning adopted by the Tribunal. In fact, the pay scales have been revised and relevant notifications have been issued under the rules framed under Article 309 of the Constitution and the respondents have enjoyed the said benefit for more than 4 1/2 years. There was no anomaly as far as the fixation of their pay is concerned. Therefore, the reduction by way of executive orders is wholly unjustifiable and the Tribunal was absolutely right in setting aside the impugned orders.

In the above circumstances, there is no scope for interference in exercise of the powers under Article 227 of the Constitution of India. Further, the matter is defective, as notice to respondents 3 and 10 was not returned after service, but we have heard the matter on merits and as noticed above, we agree with the reasoning adopted by the Tribunal."

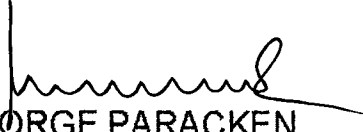
The learned counsel for the respondents did not dispute the aforesaid



submissions on behalf of the applicants. However, he has stated that the respondents have already filed a Review Petition No.425 of 2008 before the Hon'ble High Court of Kerala to review its aforesaid judgment of the Hon'ble High Court and notice has been issued to the parties on 17.7.2008. They have, therefore, submitted that this case is premature and it cannot be decided till the review petition is decided finally by the High Court.

5 We also agree with the counsel for the applicant that the present case is squarely covered by orders of this Tribunal dated 19.3.2003 in OA 180/2001 as upheld by Hon'ble High Court of Kerala vide judgment dated 31.1.2008. We have also considered the contention of respondents counsel. Mere pendency of review petition is not a valid ground to prevent this Tribunal from passing similar order, as passed by a co-ordinate Bench which was already upheld by the High Court. We, therefore, allow this OA. We declare that the amendment of rule vide SRO 18(E) dated 11.2.2004 revising the payscale of the applicants is arbitrary and unsustainable in law and direct the respondents to grant same relief to the applicants herein as has been given to the applicants in OA 180/01 (supra). However, it is made clear that implementation of the order shall be subject to outcome of the Review Petition No.425 of 2008 pending before the Hon'ble High Court of Kerala. There shall be no orders as to costs.

  
K NOORJEHAN  
ADMINISTRATIVE MEMBER

  
GEORGE PARACKEN  
JUDICIAL MEMBER

abp