

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

O.A.NO.385/2004

.....*THURSDAY*.....THIS THE 7<sup>th</sup> DAY OF JULY, 2005

**CORAM**

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN  
HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER**

1.K.A.Baby W/o C.G.Rameshan, now working  
as Accounts Officer, Office of the Accountant  
General, Thiruvananthapuram residing at TC 26/  
853, K.C.George Road, Thycaud PO  
Trivandrum.

2.Santha Joseph W/o Varghese Mathew (retd)  
TC 4/77,Brahimins Colony,  
Kaudiar, Trivandrum.3.

3.Josephine Motha, W/o late Somanathan (retd)  
TC 46/1873, Chirakal,  
Valiyasala, Chalai PO  
Trivandrum.

.....Applicants

(By Advocate Mr.Bechu Kurian Thomas)

V.

1.Accountant General (A&E)  
Office of the Accountant General,  
Thiruvananthapuram.

2.Comptroller and Auditor General of India,  
New Delhi.

3.Union of India,  
represented by Secretary, Ministry of Finance,  
New Delhi.

....Respondents

(By Advocate Mr.TPM Ibrahim Khan, SCGSC)

The application having been heard on 24.6.05 the Tribunal on  
7. 7.2005 delivered the following:

**ORDER**

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicants in this OA are Accounts Officers in the Office of the Accountant General (A&E), the second and third applicants have already retired and the first applicant was due to retire on 31.5.2004 as on the date of filing the O.A. All the applicants were promoted to the post of Selection Grade Auditors during the period 20.9.79 and 1.4.87. At that time the post of Selection Grade Auditor was regarded as non-functional. On 20.2.84 the Indian Audit and Accounts Department was restructured into Audit Wing and Accounts Wing and in the Audit Wing after restructuring, the post of Selection Grade Auditor was reclassified as functional but no such orders were passed in the Accounts Wing. Only on 12.6.87 the posts of Senior Accountants in the Accounts Wing were classified as functional with effect from 1.4.87. So those who have been promoted after 1.4.87 get the benefit of FR 22© by virtue of which their initial pay in the time scale of the higher post was fixed at the stage next above the pay notionally arrived at by increasing the pay in respect of the lower post by one increment. Those who have been promoted during the period from 20.9.79 to 1.4.87 were not given this benefit on the ground that the post <sup>is</sup> treated as non-functional.

2. This alleged discrimination was challenged in OA 139/88 before the C.A.T. Ernakulam Bench and by order dated 10.7.89 it was allowed. Thereafter the applicants filed OA 183/88 and OA

by

1876/92 seeking identical reliefs which were allowed. As per this direction the applicants got their pay refixed under FR 22 ©. In the meantime the respondents filed appeal before the Hon'ble Supreme Court of India and by order dated 11.3.97 the Hon'ble Supreme Court remanded the matter to be considered by a Bench of three members of the Tribunal since there were contradictory judgments delivered by various Benches of the Tribunal. A Bench of three members heard the matter afresh and by judgment dated 29.1.98 all the Original Applications were dismissed. The second and third applicants in this OA challenged the judgment before the Hon'ble High Court in OP No.19784/98 and OP 6646/98 which were disposed of noting the observations of the Tribunal. The respondents thereafter issued orders directing that the excess pay and allowances paid to the applicants will be deducted from the DCRG and other retiral benefits. The applicants in this OA are now challenging the above order of the respondents on the ground that it is the settled principle of law that if amounts have been paid erroneously or excess amounts are drawn, the same shall not be recovered even if the pay scales are scaled down, relying on the decisions in *2002(3)KLT 803*, *2002(2)KLT 431* and *1995 Supp.(1) SCC 18*. It is further submitted that the excess payments are being recovered after a lapse of 12 years and that the applicants have various liabilities and any recovery from the retiral benefits would cause irreparable loss and hardship. It was also stated that the recoveries have already been effected in the case of

the second and third applicants and therefore an interim direction was given by this Tribunal staying recovery of any amount from the first applicant only.

3. The respondents filed reply statement confirming the facts of the case as narrated by the applicant. However, they have denied that the recoveries had to be made on account <sup>of</sup> any erroneous orders of the respondents and have submitted that huge accumulation of arrears was mainly on account of the stay orders obtained by the applicants from the Hon'ble High Court of Kerala as the applicants continued to receive the higher pay and allowances on the strength of the stay orders. The interim orders of the court are always subject to the final judgment and now that the Hon'ble High Court of Kerala has upheld the order of the Tribunal dated 29.1.98 and disposed of all the Original Petitions, the applicants cannot claim the relief asked for.

4. We heard the learned counsel on both sides and perused the material on record. As seen from the record and as admitted by the applicants themselves the main issue regarding eligibility of the applicants for fixation of pay under FR 22 © {now Rule 22(1)(a)(i)} has already been settled by the order of the Full Bench of this Tribunal which dismissed the OA 139/88 , 183/88 and 1876/92 by judgments dated 29.1.98. It was categorically held that it is the prerogative of the government to classify and reclassify posts or grade as functional and non-functional taking into account the



relevant aspects. The Hon'ble High Court of Kerala has also upheld this finding of the Tribunal in the judgment dated 30.9.03. It is seen that the first and second applicants in this OA were petitioner numbers 3 and 13 in the above OP 19784/98 filed before the Hon'ble High Court. Therefore this matter regarding admissibility of the benefit of pay fixation under FR 22(c) to the applicants for the period between 20.9.79 and 1.4.87 has attained finality and cannot be agitated again. The only further question that has been raised in this OA is regarding the recovery of overpayments made to the applicants as a result of the various judgments of this Bench and the Full Bench of this Tribunal and appeals before the Hon'ble High Court. The contention of the applicants is that the payments which have been erroneously made for no fault of the applicants could not be recovered. However, we find that the situation is quite different. As seen from the records, the implementation order issued by the respondents at Annexure.A6 stated that grant of the benefit as a consequence of the judgments of the C.A.T. Ernakulam Bench in OAs 139/88, 183/88 and 1876/92 was subject to the outcome of the SLP filed before the Hon'ble Supreme Court. The Hon'ble Supreme Court had remanded the matter to the Full Bench of this Tribunal which dismissed the Original Applications. Immediately the applicants approached the Hon'ble High Court and obtained interim stay of the operation of the order of the Full Bench and the respondents had therefore to implement this order. Now that the



stay order has been vacated and the Hon'ble High Court upheld the order dated 29.1.98 of the Full Bench, the respondents had taken action for refixing and regulating the pay of the applicants. It also necessitated refixing the pensionary benefits in the case of the applicants who had retired from service. This action of the respondents cannot be faulted on any count and it cannot be construed that there was any error committed by the respondents in fixing the pay originally given and later refixing the same. In fact both the fixation as well as the revision were necessitated by court orders to which the applicants were also parties. It has also been admitted that recoveries have already been made in respect of 2<sup>nd</sup> and 3<sup>rd</sup> applicants. Similarly recovery would have to be made from the first applicant also who has since retired. We do not find any justifiable ground to interfere with the orders of the respondents.

6. The Original Application is accordingly dismissed. There is no order as to costs.

Dated this the 7<sup>th</sup> day of July, 2005



**K.V.SACHIDANANDAN**  
**JUDICIAL MEMBER**

S.



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