

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00274/2015

Thursday, this the 7th day of June, 2018

C O R A M :

**HON'BLE Mr. U. SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER**

1. N.Surendranadhan,
S/o.T.S.Narayanan Nair,
Technical Officer 'B',
Naval Physical & Oceanographic Laboratory,
Thrikkakkara, Kochi – 682 021.
Residing at Krishna Kripa,
Ramamangalam P.O. - 686 663.
2. Velu Sudarsanan,
S/o.late M.Velu,
Technical Officer 'B',
Naval Physical & Oceanographic Laboratory,
Thrikkakkara, Kochi – 682 021.
Residing at Bhargavi Nilayam,
Mundampalam, Thrikkakkara P.O.,
Kochi – 682 021.
3. Basil James,
S/o.James,
Technical Officer 'A',
Naval Physical & Oceanographic Laboratory,
Thrikkakkara, Kochi – 682 021.
Residing at Pulparambil House,
Thrikkakkara, Kochi – 682 021.
4. Sunny Antony, (expired on 31.8.2017)
S/o.late T.M.Antony,
Technical Officer 'A',
Naval Physical & Oceanographic Laboratory,
Thrikkakkara, Kochi – 682 021.
Residing at Thottachira House,
Thalayolaprambu, Kottayam – 686 605.

5. Mohammed Rafi.A.A,
S/o.Ali.A.K.,
Technical Officer 'A',
Naval Physical & Oceanographic Laboratory,
Thrikkakkara, Kochi – 682 021.
Residing at Aliyamveetil,
Edavanakkad P.O. - 682 502.
6. David C.C.,
S/o.Ouseph Chavaro,
Technical Officer 'A',
Naval Physical & Oceanographic Laboratory,
Thrikkakkara, Kochi – 682 021.
Residing at Chettiparambil House,
Panampilly Nagar P.O., Kochi – 682 036.
7. M.G.Benna, D/o.Gopalan,
Technical Officer 'A',
Naval Physical & Oceanographic Laboratory,
Thrikkakkara, Kochi – 682 021.
Residing at Makkaparambil House,
Thrikkakkara P.O., Kochi – 682 021.
8. Thressiamma Antony,
W/o.T.M.Antony,
Residing at Thottachira House,
Thalayolaprambu, Kottayam – 686 605.
9. K.K.Suseela,
W.o.late Sunny Antony,
Residing at Thottachira House,
Thalayolaprambu, Kottayam – 686 605.
10. Anila T Sunny,
D/o.late Sunny Antony,
Residing at Thottachira House,
Thalayolaprambu, Kottayam – 686 605.
11. Jiju T Sunny (Minor),
S/o.late Sunny Antony,
Residing at Thottachira House,
Thalayolaprambu, Kottayam – 686 605.
rep. by Mother and natural Guardian K.K.Suseela.Applicants

**(By Advocate – Mr.V.B.Narayanan
Mr. C. Sivadas)**

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V e r s u s

1. Union of India represented by Secretary, Ministry of Defence, Department of Defence Research And Development, DRDO Bhavan, Rajaji Marg, New Delhi – 110 105.
2. Director General (Research and Development), Defence Research and Development Organisation, Ministry of Defence, Government of India, DRDO Bhavan, Rajaji Marg, New Delhi – 110 105.
3. Director, Directorate of Human Resources Department, Defence Research and Development Organisation, Ministry of Defence, Government of India, DRDO Bhavan, Rajaji Marg, New Delhi – 110 105.
4. Director, Naval Physical and Oceanographic Laboratory, Thrikkakkara, Kochi – 682 021.
5. Secretary, Department of Expenditure, Ministry of Finance, Government of India, North Block, New Delhi – 110 001. ...Respondents

(By Advocate – Mr.N.Anilkumar,Sr.PCGC[R])

This Original Application having been heard on 31st May 2018, the Tribunal on 7th June 2018 delivered the following :

O R D E R

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

O.A.No.180/274/2015 is filed by Shri.Surendranadhan and others against the orders issued by Respondent Nos.1-2 implementing recovery of alleged excess salary and grade pay granted to them. The reliefs sought in the O.A are as follows :

1. To call for the records pertaining to the issue of Annexure A-1, A-2, A-3 (a) and A-3 (b), A-4, A-5 and A-6 and declare that there is no anomaly or mistake in the revised pay scale granted to the applicants in the pay scale Rs.9300-34800/- with Grade Pay of Rs.4800/- in Pay Band 2.

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2. To declare that Annexure A-4 order cancelling/withdrawing/annulling Annexure A-1 and A-2 orders issued with the sanction of the President of India and with the concurrence of the Ministry of Finance/Defence is illegal, arbitrary and void ab initio and not binding on the applicants and liable to be quashed.

3. To issue appropriate direction or order directing the respondents to allow the applicants to draw pay in the Pay Band 2 with Grade Pay of Rs.4800/- in pay scale Rs.9300-34800 for applicant Nos.3 to 7 and as far as applicant Nos.1 and 2 are concerned at the pay scale of Rs.15600-39100 with Grade Pay of Rs.5400/- in Pay Band 3 based on Annexure A-1 and A-2.

4. To issue appropriate order or orders to the respondents not to recover any amount from the salary of the applicants as per Annexure A-6 recovery order.

5. To grant such other reliefs which this Hon'ble Tribunal may deem fit and proper to grant in the facts and circumstances of the case.

6. To allow the O.A with cost to the applicants.

2. Applicant Nos.1 and 2 are working as Technical Officer 'B' (TOB) and Applicant Nos.3-7 are working as Technical Officer 'A' (TOA) in the Naval Physical & Oceanographic Laboratory, Thrikkakkara, Kochi under the control and administration of Respondent No.4. The applicants were placed under Pay Band 2 Rs.9300-34800 with Grade Pay of Rs.4800/- due to revision of salary on account of the 6th Central Pay Commission vide orders at Annexure A-1 and Annexure A-2 issued on 5.6.2009 and 8.6.2009. However, Annexure A-4 order dated 10.5.2013 was issued withdrawing the pay scale of PB-2 and GP of Rs.4800/-. Subsequently recovery was ordered as per Annexure A-6 dated 13.3.2015 stating that excess payment made with effect from 1.1.2006 is liable to be recovered in 12 monthly installments from the pay and allowances of the officers.

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3. It is submitted that during the pendency of the O.A., Shri.Sunny Antony, Applicant No.4, expired on 31.8.2017. The legal representatives of Shri.Sunny Antony have been impleaded in the O.A vide order dated 13.4.2018 in M.A.No.180/485/2018.

4. It is contended on behalf of the applicants that recovery ordered after several years is causing untold misery to the employees. The increase ordered in consequence to acceptance of the Pay Commission Report was a considered one taking into account all factors. It would be wrong on the part of the respondents to construe it as over-payment on account of an error after several years of its execution. If this is on account of an error, the applicants had no role in the same and no dishonesty or misrepresentation can be attributed to their account. As salaried employees, the applicants have only their pay for carrying on with their lives and the sudden decision to recover substantial amount disbursed and utilized several years ago would cause great distress to the applicants.

5. The applicants state that the Hon'ble Supreme Court in its landmark judgment dated 18.12.2014 in C.A.No.11527/2014 in **State of Punjab & Ors. v. Rafiq Masih (White Washer) & Ors.** has disallowed recovery from the employees in the circumstances as contained in this case. The Hyderabad Bench of the C.A.T in O.A.No.1412/2014 by its order on 27.1.2015 had also quashed recovery in a similar litigation.

6. The respondents have rebutted the claim of the applicants on the ground that the fixation of the Grade Pay at Rs.4800/- had been a result of a mistake. The authorities were fully within their rights to correct the mistake. The statement also goes on to narrate the details of the error as it happened. In the communication, copy of which is produced at Annexure R-4, it has been maintained that the disbursement made by the DRDO “had been irregular and contrary to the accepted recommendations of the 6th CPC and in violation of the Allocation and Transaction of Business Rules as it has been undertaken suo moto without reference, much less concurrence, of the Ministry of Finance”. It appears that the decision had been implemented in consultation with the Integrated Finance Division of the respondent DRDO Organisation without seeking approval/concurrence of the Ministry of Finance. Upon detecting the same, DRDO was suitably advised and the impugned orders came to be issued. It is seen that a similar O.A.No.3593/2013 has been filed before the Principal Bench of this Tribunal by the Applicant's Association and it had been dismissed by order dated 21.3.2014. W.P.(C) No.4110/2014 filed against the said order also met with the same fate before the Hon'ble High Court of Delhi.

7. Shri.V.B.Narayanan, learned counsel for the applicants and Shri.N.Anilkumar,Sr.PCGC (R), learned counsel for the respondents were heard. The right of the employer to correct an error is a fundamental requirement often resorted to in administration. It is clear from the fact that

unauthorized disbursement had taken place and large amount of money was distributed among the employees who were not entitled for the same. On affirming this fact respondents have resorted to recovery. The core point at issue here is whether the landmark judgment relied upon by the applicants in C.A.No.11527/2014 would be applicable in the present case. The said judgment specifically forbids recovery by the employer under the following situations :

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

8. The very same issue had been considered by the Madras Bench of this Tribunal in O.A.No.310/1087/2015. The case was an exact replica of the present O.A., the respondent organization being DRDO and the applicants, Technical Officers in the organization. They were aggrieved by the steps taken by the respondent organization therein to recover the Grade Pay of

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Rs.4800/- minus Rs.4600/-, the latter amount being what was actually entitled for the applicants. Discussing the judgment of the Apex Court in C.A.No.11527/2013, the Madras Bench came to the conclusion that none of the five conditions mentioned on pre-page were applicable in this case of recovery. Accordingly the O.A was dismissed and the relief sought was denied.

9. Following the said judgment of the Madras Bench, we do not see the circumstances of this case as any different from those in O.A.No.310/1087/2015 decided by the Madras Bench of this Tribunal. They do not come under any of the five categories spelt out in **Rafiq Masih** (supra). We conclude that a case has not been made for halting the recovery as prayed for in the O.A. The O.A is accordingly dismissed. The interim order issued on 30.3.2015 is hereby vacated. In view of the order in the O.A, M.A.No.180/556/2018 & M.A.No.180/576/2018 are closed. No order as to costs.

(Dated this the 7th day of June 2018)

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

**(U.SARATHCHANDRAN)
JUDICIAL MEMBER**

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List of Annexures in O.A.No.180/00274/2015

1. **Annexure A-1** – A true copy of the Order No:DHRD/16342/6th CPC/DRTC/C/P/05(iv)/1633/D(R&D)/2009 Dated 5.6.2009.
2. **Annexure A-2** – A true copy of the Order No:DHRD/16342/6th CPC/DRTC/C/P/05(iv)/1794/D(R&D)/2009 Dated 8.6.2009.
3. **Annexure A-3(a)** – A true copy of the Appendix – A attached to Annexure A-2.
4. **Annexure A-3(b)** – A true copy of the Appendix – B attached to Annexure A-2.
5. **Annexure A-4** – A true copy of the Order No:DHRD/16342/6th CPC/DRDC/C/P/05(iv)/1112/D(R&D)/2013 dated 10.5.2013.
6. **Annexure A-5** – A true copy of the Order No:DHRD/16342/6th CPC/DRTC/C/P/05(iv) Dated 13.5.2013.
7. **Annexure A-6** – A true copy of the Order No:NPOL/A/FIN/301/1/TOS dated 13.3.2015.
8. **Annexure A-7** – A true copy of the representation dated 23.2.2015 submitted by Applicant No:3 to Respondent No:2.
9. **Annexure A-8** – A true copy of the representation dated 19.3.2015 submitted by Applicant No:3 to Respondent No:4.
10. **Annexure A-8A** – A true copy of the Office Memorandum F.No:18/26/2011-Estt (Pay I) dated 6.2.2014 issued by the Ministry of Personnel, PG and Pension, Department of Personnel and Training, Government of India.
11. **Annexure R-1** – A true copy of the First Schedule, Part-A, Section I of the CDS (RP) Rules, 2008.
12. **Annexure R-2** – A true copy of the First Schedule, Part-C, Section II of the CDS (RP) Rules, 2008.
13. **Annexure R-3** – A true copy of the GOI, Dept. Of DR&D letter No.DHRD/16342/6th CPC/DRTC/C/P/05(iv)/1633(R&D)/2009 dated 5.6.2009.
14. **Annexure R-4** – A true copy of the communication No.7.10/12/2009-IC dated 10.7.2012.

- 15. Annexure R-5** – A true copy of the order dated 13.3.2013 in O.A.No.571/CH/2011 of the Hon'ble Central Administrative Tribunal, Chandigarh Bench.
- 16. Annexure R-6** – A true copy of the Rule 4(2) of Transaction of Business Rules.
- 17. Annexure R-7** – A true copy of the GOI, Dept. of DR&D letter No.DHRD/16342/6th CPC/DRTC/C/P/05(iv) dated 30.5.2013.
- 18. Annexure R-8** – A true copy of the order dated 21.3.2014 in O.A.No.3593 of 2013 passed by Hon'ble C.A.T.(PB), New Delhi.
- 19. Annexure R-9** – A true copy of the judgment dated 8.7.2014 in W.P. (C) No.4110 of 2014 passed by the Hon'ble High Court of Delhi.
- 20. Annexure R-10** – A true copy of the order dated 25.2.2015 in R.A.No.30 of 2015 passed by the Hon'ble C.A.T. (PB), New Delhi.
- 21. Annexure R-11** – A true copy of the GOI, DHRD letter No.DHRD/76066/CC/OA-3593/2013/CAT/C/M/01 dated 30.5.2014.
- 22. Annexure R-12** – A true copy of the GOI DOP&T OM F.No.18/26/2011 Estt.(Pay-I) dated 6.2.2014.
- 23. Annexure R-15** – A true copy of the order dated 1.7.2016 issued by the Hon'ble CAT, Madras Bench in O.A.No.310/01087/2015.
