

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00018/2016

Thursday, this the 26th day of July, 2018

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

1. P.A. Sukumaran Nair,
S/o. Late P.G. Ayyappan Nair,
Technical Officer 'B',
Naval Physical & Oceanographic Laboratory,
Thrikkakara, Kochi - 682 021.
Residing at Palissery Numbiat Puthenveedu,
Valluvally, Koonammavu P.O., Ernakulam – 683 518. **...Expired**
2. Yesodhara A.N.,
D/o. Late A.N. Ayyappan,
Technical Officer 'B',
Naval Physical & Oceanographic Laboratory,
Thrikkakara, Kochi – 682 021.
Residing at Vayalil (MPR No. 6), Mythripuram,
Thrikkakara P.O. – 682 021.
3. Krishnan R,
S/o. Rajappan V,
Technical Officer 'B',
Naval Physical & Oceanographic Laboratory,
Thrikkakara, Kochi – 682 021.
Residing at Ambadi, House No. 13/1032B,
Karumakkadu, Thrikkakara P.O., Kochi – 21.
4. Sivasankara Marar A.C.,
S/o. Late Chandrasekhara Marar,
Technical Officer 'B',
Naval Physical & Oceanographic Laboratory,
Thrikkakara, Kochi – 682 021.
Residing at No. IX/102 Sreesailam, VMA Lane,
Kudilimukku, Thrikkakara P.O., Kochi – 682 021.

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5. Madhusudhanan S,
S/o. P.G. Sivankutty Unnithan,
Technical Officer, 'B',
Naval Physical & Oceanographic Laboratory,
Thrikkakara, Kochi – 682 021.
Residing at, Type III/1, NPO Quarters,
Thrikkakara P.O., Kochi – 682 021.
6. Suresh Babu V.R.,
S/o. Krishnankutty Panicker,
Technical Officer 'B',
Naval Physical & Oceanographic Laboratory,
Thrikkakara, Kochi – 682 021.
Residing at NPOL Hostel SH 34, SAGAR,
Thrikkakara P.O., Kochi – 682 021.
7. Suresh Kumar P.,
S/o. P.K. Parameswara Kurup,
Technical Officer 'B',
Naval Physical & Oceanographic Laboratory,
Thrikkakara, Kochi – 682 021.
Residing at Triveni, Malayidamthuruth P.O.,
Ernakulam District – 683 561.
8. Prasanna.A.K.,
W/o.late P.A.Sukumaran Nair,
Residing at Palissery Nambiat Puthenveedu,
Valluvally, Koonammavu P.O., Ernakulam – 683 518.
9. Sarath.S.,
S/o.late P.A.Sukumaran Nair,
Residing at Palissery Nambiat Puthenveedu,
Valluvally, Koonammavu P.O., Ernakulam – 683 518. **...Applicants**

(By Advocates – Mr.V.B.Narayanan)

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 Organization,
Ministry of Defence, Government of India,
DRDO Bhavan, Rajaji Marg, New Delhi – 110 105.

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3. Scientific Adviser to Rakshamantri (SA to RM),
Defence Research and Development Organisation,
Ministry of Defence, Government of India,
DRDO Bhavan, Rajaji Marg, New Delhi – 110 105.
 4. 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.
 5. Director, Naval Physical and Oceanographic Laboratory,
Thrikkakara, Kochi – 682 021.
 6. 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 20th July 2018, the Tribunal on 26th July 2018 delivered the following :

ORDER

Per : Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

Applicants are Technical Officer 'B', Naval Physical & Oceanographic Laboratory, Kochi. They are aggrieved by the rejection by the respondents of the representations and Annexure A-5 order of Ministry of Defence, Department of Defence, Research and Development, New Delhi dated 10.5.2013 withdrawing the pay scale of Pay Band 2 (Rs.9300-34800)/Grade Pay Rs.4800/- for the post of Technical Officer 'A' & Technical Officer in DRDO and place these posts in Pay Band 2 (Rs.9300-34800)/Grade Pay Rs.4600/-. They seek cancellation of the resultant deduction in salary effected from the arrears of salary and further recovery thereof from the salary of the applicants. The reliefs sought in the O.A are as follows :

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1. To call for the records pertaining to the issue of Annexures A-5, A-6, A-10, A-11, A-12, A-7, A-21, A-22, A-23, A-24, A-25, A-26, A-27 and declare that there is no anomaly or mistake or wrong 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 with effect from 1.1.2006.

2. To declare that Annexures A-5, A-6, A-10, A-11, A-12 orders cancelling/withdrawing/annulling Annexure A-1 and A-2(a) and A-2(b) 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 declare that Annexure A-21 to Annexure A-27 orders issued by the 5th respondent are highly illegal, immoral, against the principles of natural justice and derogatory to the principles laid down in White Washer's case decided by the Apex Court.

4. To issue appropriate direction/directions or order or orders to the respondents to refund the amount deducted from the arrears of salary of the applicants and also pay the consequential monetary loss suffered by the applicants by paying interest at the rate of 12% with recurring effect from 1.1.2006 to their respective date of promotion to the post of Technical Officer 'B' (TO 'B') and

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. The applicants were granted Grade Pay of Rs.4800/- and Rs.5400/- from the respective dates shown against their names :

Sl. No.	Details of the applicants	Date from which Grade Pay of Rs.4800/- is drawn	Date from which Grade Pay of Rs.5400/- is drawn
1	Applicant No.1	09/01/06	09/01/13
2	Applicant No.2	09/01/03	09/01/12
3	Applicant No.3	09/01/08	09/01/12
4	Applicant No.4	09/01/07	09/01/12
5	Applicant No.5	09/01/08	09/01/12
6	Applicant No.6	09/01/07	09/01/12
7	Applicant No.7	09/01/07	09/01/11

This was in consequence to the acceptance of the 6th CPC Report and the said revision was implemented with effect from 1.6.2006 as per notification dated 5.6.2009 marked as Annexure A-1. The said orders were issued with the concurrence of Ministry of Defence/Finance(R&D). Thus the applicants were paid salary with Grade Pay of Rs.4800/- from the date on which they were promoted to the post of Technical Officer 'A'. Further the applicants were promoted to the post of Technical Officer 'B' in the scale of pay of Rs.15600-39100/- with Grade Pay of Rs.5400/- with effect from the respective dates of promotion.

3. All on a sudden, Under Secretary to Government of India, Ministry of Defence, Department of Defence Research and Development issued the impugned order dated 10.5.2013 addressed to the 2nd respondent informing that *“consequent to the Ministry of Finance/Department of Expenditure's advice recorded in their UO No.7.10/12/2009-IC dated 11.7.2012, I am directed to convey the sanction of the President to withdraw the pay scale of Pay Band 2 (Rs.9300-34800)/Grade Pay Rs.4800/- to posts of Technical Officer 'A' & Technical Officer in DRDO and place these posts in Pay Band 2 (Rs.9300-34800)/Grade Pay Rs.4600/-, ie. the 6th CPC replacement scale of their pre-revised pay scale of Rs.7450-11500, with effect from 1st January 2006”* (Annexure A-5). This had been done with no show cause notices issued to the applicants and covered a large number of officers apart from the applicants in the O.A. The applicants represented against the

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reduction in the Grade Pay which had been effected with retrospective effect and consequent recovery instituted. The following amounts were ordered for recovery from the applicants as per the details shown against their names :

Applicant Sl.No.	Name	Arrears	Recovery	Balance of arrears credited to the bank account	Date of credit
1	Sukumaran Nair PA		119625	NIL	NA
2	Yesodhara AN		29210	NIL	NA
3	Krishnan R		48353	20830	03/20/15
4	Sivasankara Marar AC		80275	7555	03/20/15
5	Madusudhanan S		61063	9073	03/20/15
6	Suresh Babu V		74047	237	03/20/15
7	Sureshkumar P		116000	46177	03/20/15

4. It is maintained by the applicants that the decision of the Hon'ble Supreme Court of India in C.A.No.11527/2014 in **State of Punjab & Ors. v. Rafiq Masih (White Washer) & Ors.** as well as an order of the Hyderabad Bench of this Tribunal had been violated through this decision of the respondents. The respondents have not considered the several representations made by the applicants and others pointing out the illegality of the downward revision effected to their Grade Pay without notice.

5. The respondents have filed a detailed reply statement wherein the reasoning adopted by the respondents in making the recovery has been explained. The Ministry of Defence is bound to act as per the instructions

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of the Ministry of Finance in financial matters as per the Transaction of Business Rules (Rule 4(2)). The disbursement had been effected by the Ministry of Defence without due concurrence of the Ministry of Finance and was thus unauthorized. Examining the case the Department of Expenditure, Ministry of Finance, which is the authorized agency for deciding this matter, has issued the following orders :

Ministry of Finance
Department of Expenditure
E.III.B Branch

DRDO may please refer to their notes on pre-page regarding upgradation of the GP of Technical Officer(TO)/Technical Officer 'A' from the GP of Rs.4600/- to Rs.4800/-.

2. The matter has been examined in this Department. It is observed that the arrangement resorted to by AM is irregular, 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.

3. Further, AM has indicated that this was done to maintain the “relative hierarchy” of STA 'C' vis-a-vis TO 'A'. In this regard, it is stated that the 6th Pay Commission's recommendations were well thought out and meant to de-layer Government. Further, the underlying principle in pay fixation and determination is to ensure that anomalies do not arise ie. for eg., a lower post/feeder post does not draw higher pay than a promotional post and not to ensure 'relative hierarchies' as they existed prior to CPC awards. If each cadre were to seek to maintain pre-existing relativities there would be no need for rationalization/standardization of pay scales attempted by successive Pay Commissions.

4. In view of above, the proposal from DRDO is not agreed to and our earlier stand communicated vide this Department's UO No.61(196)/E.III.B/2011 dated 26.4.2012 is reiterated.

5. JS (Pers.) has seen.

Sd/-
Sunita Bansal
Under Secretary (E.III.B)

Addl. FA (R&D) & JS, M/o.Defence, DRDO Bhawan, New Delhi.
Ministry of Finance (Exp.) UO No.7.10./12/2009-IC dated 10.7.2012.

6. O.M 18/26/2011-Estt.(Pay-I) dated 6.2.2014 issued by the Department of Personnel and Training states inter-alia that :

“ In view of the law declared by Courts and recently reiterated by the Hon'ble Supreme Court in the above cited case, Chandi Prasad Uniyal & Ors. v. State of Uttarakhand & Ors. 2012 AIR SCW 4742, (2012) 8 SCC 417, the Ministries/Departments are advised to deal with the issue of wrongful/excess payments as follows :

1. In all cases where the excess payments on account of wrong pay fixation, grant of scale without due approvals, promotions without following the procedure, or in excess of entitlements etc. come to notice, immediate corrective action must be taken.

iv. Recovery should be made in all cases of overpayment barring few exceptions of extreme hardships. No waiver of recovery may be allowed without the approval of Department of Expenditure.”

Rafiq Masih's judgment (supra) sets out five categories under which recovery would be illegal and the applicants do not belong to any of these categories.

7. Shri.V.B.Narayanan, learned counsel for the applicant and Shri.N.Anilkumar, Sr.PCGC (R) were heard. It is seen that the very same question had been examined at length in O.A.No.274/2015 by this Tribunal. The respondents have maintained that the decision to cancel revision in Grade Pay had been implemented in order to rectify the earlier decision which was the result of an error. The Integrated Finance Division of the respondent DRDO Organization had revised the Grade Pay from Rs.4600/- to Rs.4800/- without seeking approval/concurrence of the Ministry of Finance. A similar O.A.No.3593/2013 filed before the Principal Bench of

this Tribunal by the Association representing the applicants had also been dismissed by order dated 21.3.2014. The Writ Petition (Civil) No.4110/2014 filed against the said order also met with the same fate before the Hon'ble High Court of Delhi. This Tribunal after referring to the decisions above had also gone on to make a reference to O.A.No.310/1087/2015 of the Madras Bench which is more or less the exact replica of the present O.A. Both these O.As challenging the downward revision effected in the Grade Pay had been dismissed by the judicial fora referred to.

8. After examining the case in detail we do not see that this case is in any way distinct from the cases referred to above. The Department of Expenditure, Ministry of Finance are the nodal ministry for sanctioning/withdrawing any revision ordered. In this case, the Internal Finance Division of DRDO authorized a revision which has not been agreed to by the nodal ministry and they have acted to cancel the same, effecting recovery from the amounts already disbursed. It is clear that Rafiq Masih (supra) does not come into play in this matter. The O.A is dismissed as devoid of merits. No costs.

(Dated this the 26th day of July 2018)

ASHISH KALIA
JUDICIAL MEMBER
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E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

List of Annexures in O.A.No.180/00018/2016

- 1. Annexure A-1** – True copy of sanction issued by the President of India to revise the salary of the applicants.
- 2. Annexure A-2(a)** – True copy of order issued by 1st respondent dated 08.06.2009 conveying sanction to issue Group classification, category, grades & pay scale.
- 3. Annexure A-2(b)** – True copy of the order fixing group classification Grades, pay scale in DRTC in DRDO dated 08.06.2009.
- 4. Annexure A-3(a)** – True copy of Appendix-A attached Annexure A2(a) dated 08.06.2009.
- 5. Annexure A-3(b)** – True copy of Appendix-B attached Annexure A-2(a) dated 29.10.2013.
- 6. Annexure A-4** – True copy of the page 4 and 5 of revising Salary of the applicants.
- 7. Annexure A-5**– True copy of the Order No. DHRD/16342/6th CPC/DRDC/C/P/05 (iv)/1112/D(R&D)/2013 dated 10.05.2013.
- 8. Annexure A-6** – True copy of the Order No. DHRD/16342/6th CPC/DRTC/C/P/05(iv) dated 13.05.2013.
- 9. Annexure A-7** – True copy of the recovery order dated 13.03.2015.
- 10. Annexure A-8** – True copy of the order in O.A. No. 180/00274/2015 of CAT, Ernakulam.
- 11. Annexure A-9** – True copy of the Office Memorandum relating to recovery of wrongful/excess payment made to Government servants dated 06.02.2014.
- 12. Annexure A-10** – True copy of Order of re-fixation of salary dated 24.06.2013.
- 13. Annexure A-11**– True copy of the order directing to recover over payment dated 30.05.2013.
- 14. Annexure A-12** – True copy of the re-fixation of salary dated 29.09.2014.
- 15. Annexure A-13** – True copy of the representation of 1st applicant dated 24.04.2015.

- 16. Annexure A-14** – True copy of the representation of 2nd applicant dated 26.05.2015.
- 17. Annexure A-15** – True copy of the representation of 3rd applicant dated 27.04.2015.
- 18. Annexure A-16** – True copy of the representation of 4th applicant dated 25.02.2015.
- 19. Annexure A-17** – True copy of representation of 5th applicant dated 08.06.2015.
- 20. Annexure A-18** – True copy of the representation of 6th applicant dated 11.02.2015.
- 21. Annexure A-19** – True copy of the representation of 7th applicant dated 24.04.2015.
- 22. Annexure A-20** – True copy of the order in .A. No. 180/00582/2015 dated 17.08.2015.
- 23. Annexure A-21** – True copy of the rejecting representation of the 1st Applicant dated 14.10.2015.
- 24. Annexure A-22** – True copy of the rejecting representation of the 2nd Applicant dated 14.10.2015.
- 25. Annexure A-23** – True copy of the rejecting representation of the 2nd Applicant dated 14.10.2015.
- 26. Annexure A-24** – True copy of the rejecting representation of the 4th Applicant dated 14.10.2015.
- 27. Annexure A-25** – True copy of the rejecting representation of the 5th Applicant dated 14.10.2015.
- 28. Annexure A-26** – True copy of the rejecting representation of the 6th Applicant dated 14.10.2015.
- 29. Annexure A-27** – True copy of the rejecting representation of the 7th Applicant dated 14.10.2015.
- 30. Annexure R-1 (a)**– True copy of the First Schedule, Part -A, Section I of the CDS (RP) Rules, 2008.

- 31. Annexure R-1 (b)-** True copy of the First Schedule, Part -C, Section II of the CDS (RP) Rules, 2008.
- 32. Annexure R-1 (c) -** True copy of the letter U.O. No. 7.10/12/2009-IC dated 10.07.2012.
- 33. Annexure R-1 (d) -** True copy of the order dated 13.03.2013 in O.A. 571/CH/2011.
- 34. Annexure R-1 (e)-** True copy of the Rule 4(2) of Transaction of Business Rules.
- 35. Annexure R-1 (f) -** Details of arrears due to the applicants and total recovery of over payment made till June 2016.
- 36. Annexure R-1 (g) -** A true copy of the judgment in O.A. No. 582/2015 dated 17.08.2015.
- 37. Annexure R-1 (h) -** True copy of the order dated 21.03.2014 in O.A. No. 3593/2013 passed by the Principal Bench of this Hon'ble Tribunal.
- 38. Annexure R-1 (i) -** True copy of the order dated 08.07.2014 in Writ Petition (C) No. 4110 of 2014 passed by the Hon'ble High Court of Delhi.
- 39. Annexure R-1 (j) -** True copy of the order dated R.A. No. 30 of 2015.
- 40. Annexure R-1 (k) -** Daily Orders Pt. II No. 38/GOs dt. 24.06.2013 on the subject of revision of payscale.
- 41. Annexure R-1 (l) -** Dept. Of D (R&D) letter No. DHRD/76066/CC/WP-31179 & 31212 of 2011/ ADE/ C/ M/ 01/ 36/ CC/ 2016/D(R&D) dt. 17.03.2016.
- 42. Annexure R-1 (m) -** Statement showing arrears already paid/ under process to be released to the applicants.
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