

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
ORIGINAL APPLICATION NOS. 180/00044/2015 & 180/00915/2017

Monday, this the 19th day of November, 2018

CORAM

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

O.A 180/00044/2015

Dr.Ajit Haridas, S/o.M.Haridas
Aged 56 years
Chief Scientist, National Institute of Inter
Disciplinary Science & Technology
Thiruvananthapuram -695 019
residing at 42, Vrindavan Colony, Pattom
Thiruvananthapuram – 695 004

... **Applicant**

[By Advocate Mr.R.V.Sreejith]

V.

1. Union of India represented by the
Secretary to Government of India,
Ministry of Finance, New Delhi
2. Director General Council of Scientific and Industrial
Research, Rafi Marg, New Delhi -110001
3. The Joint Secretary
Council of Scientific and Industrial Research
Rafi Marg, New Delhi – 110001
4. The Director
National Institute for Inter Disciplinary Science &
Technology, Rafi Marg, New Delhi -110 001
5. The Director
National Institute for Inter Disciplinary Science &
Technology, Council of Scientific and Industrial
Research, Thiruvananthapuram -695 019

... **Respondents**

(By Advocate Mr.Sunil Jacob Jose for R 2-5)

O.A 180/915/2017

1. Dr.P.Prabhakar Rao
S/o.Appa Rao
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Thiruvananthapuram – 695 018
 2. Dr.A.Sundharesan
S/o.Andikkamaran
Aged 58 years
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Residing at MRA -72, Subithasree,
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 3. Dr.K.Harikrishna Bhat
S/o.Padmanabha Bhat
Aged 58 years
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Thiruvananthapuram -695 018
- ... **Applicants**

[By Advocate Mr.R.V.Sreejith]

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Technology, Council of Scientific and Industrial
Research, Thiruvananthapuram -695 019

... **Respondents**

(By Advocate Mr.Sunil Jacob Jose)

These applications having been finally heard on 13.11.2018, the Tribunal on 19.11.2018 delivered the following in the open court.

ORDER

Per: MR.ASHISH KALIA, JUDICIAL MEMBER

The reliefs sought by the applicants in the Original Applications are as follows:

O.A 180/44/2015:

- (a) To call for the records leading to Annexure A4 and Annexure A6 and quash them to the extent it applies to the applicants herein.
- (b) To declare that the applicants are entitled for the transport allowance of Rs.7000/- plus DA.
- (c) To direct the respondents to grant transport allowance of Rs.7000/-plus DA to the applicants herein
- (d) Grant such other reliefs this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case including the costs of this Original Application.

O.A 180/915/2017

- a) To call for the records leading to Annexures A6 and A9 to A11 and quash them to the extent it applies to

the applicants herein.

- b) To declare that the applicants are entitled for the transport allowance of Rs.7000/- plus DA.
- c) To direct the respondents to consider and pass speaking orders on Annexures A12,A 13 and A14as expeditiously as possible and at any rate within a time limit to be fixed by this Tribunal.
- d) Grant such other reliefs this Tribunal deems fit and proper in the facts and circumstances of the case including the costs of this O.A.

2. Since common issues are involved in both these Original Applications, a common order is passed as under. For the sake of convenience, the documents produced by both parties in OA No. 180/00044/2015 are referred to in this common order. The brief facts of the case are as under:

Applicants are working as Chief Scientists under respondent no.5 i.e; National Institute of Inter Disciplinary Science & Technology, Thiruvananthapuram. They are aggrieved by the decision taken by the respondents to stop payment Transport Allowance at the rate of Rs.7000/- per month plus DA thereon to them. It is submitted that the applicants are in the Grade of Joint Secretary to Government of India and all officers in the grade of Joint Secretary to Government of India are entitled to use the official car in terms the Office Memorandum issued by the Department of Expenditure dated 28.1.1994(Annexure A-1). An option was given to the officers entitled as per

Annexure A-1, either to use the staff car or draw transport allowance of Rs.7000/- per month plus Dearness Allowance vide letter dated 27.1.2009. It is submitted that their grade pay is Rs.10000/- and are entitled to use of official car in terms of Annexure A-1 circular shall have the option to avail of the existing facility to draw the transport allowance of Rs.7000/- per month plus DA thereon. Vide Annexure A-4 letter dated 29.5.2014, Transport Allowance granted to the applicants were stopped. Applicants had filed representations seeking a direction not to withdraw the transport allowance granted to them. No actions were taken on them. Hence the applicants had approached this Tribunal in O.A 180/379/2014. Vide Annexure A-5 order dated 6.6.2014, this Tribunal directed the 5th respondent herein to consider and pass orders on those representations. Based on the directions of the Tribunal in O.A 180/379/2014 and pursuant to the audit objections raised while auditing CSIR Labs, 5th respondent issued Annexure A-6 order stating that the Transport Allowance of Rs.7000/- per month plus DA to the Scientists in PB-4 with a grade pay of Rs.10000/- is not in order as they are not entitled for the use of staff car. He had also referred to a judgment in O.A No.4062/2013 (Annexure A-10) wherein it was held that Annexure A-4 is not applicable to the officials just on the ground that they draw the same grade pay. Applicants submit that the O.A mentioned in Annexure A-6 is not applicable to the facts of these cases.

3. In view of the order of this Tribunal dated 9.1.2017 in O.A 180/44/2015, M.A 180/57/2015 for joining together has becomes infructuous. Hence it is closed.

4. Notices were issued to the respondents. They have entered appearance and filed reply statement. It is contended by the respondents that consequent to the implementation of the 6th CPC recommendations, employees are classified into 3 groups based on the Grade Pay indicating the rate of Transport Allowance to be paid per month against each group. It is also mentioned in this O.M that officers drawing grade pay of Rs.10000/- & Rs.12000 and those in the HAG + Scale who are entitled to the use of official car in terms of O.M No.20(5)-EII(A)/93 dated 28.1.1994 shall be given the option to avail themselves of the existing facility or to draw the Transport Allowance at the rate of Rs.7000/- per month plus dearness allowance thereon. Though CSIR issued clarifications vide Annexure R1 & Annexure R2, the Labs had erroneously granted the higher Transport Allowance of Rs.7000/- to the Scientists/officials having a grade pay of Rs.10000/-. Later, while auditing CSIR Labs, in the factual statements observed that the Transport Allowance of Rs.7000/-per month plus DA to the Scientist in PB-4 with a grade pay of Rs.10000/- is not in order as they are not entitled for the use of staff car. Subsequently, CSIR issued instructions to stop the payment of higher TA to ineligible employees in PB-4 with the grade pay of

Rs.10000/-. Further, the Department of Expenditure clarified that only such officers, who are entitled to use the official staff car and who are drawing pay in PB-4 with Grade Pay of Rs.10000/- per month shall have the option to avail the existing facility of staff car or draw TA @ Rs.7000 per month plus DA thereon. Ministry of Finance has stated that the above position has been further clarified in a Judgment of the Principal Bench of this Tribunal in O.A 4062/2013. In view of the above facts and also the Department of Expenditure, Govt of India has upheld the decision of CSIR and its Labs on withdrawal of TA @ Rs.7000/- p.m plus DA thereon, the request of the applicants for not making any reduction in TA was turned down. In the nutshell, it is submitted by the respondents that the post of the applicants are not entitled for use of staff car.

5. Rejoinder thereto has been filed by the applicants denying the submissions made in the reply statement and reiterated the averments made in the O.A.

6. Respondents have filed two additional reply statements denying the contentions of the applicants.

7. Heard Mr.R.V. Sreejith, learned counsel for the applicants and Mr.Sunil Jacob Jose, learned counsel for the respondents at length and perused the records.

8. The short question raised in these Original Applications are whether the posts of the applicants which is equivalent to the post of Joint Secretary are entitled for the Transport Allowance at the rate of Rs.7000/- plus DA thereon or not.

9. After hearing both parties, We are of the view hat this issue has already been considered by the Principal Bench of this Tribunal in O.A No.4062 of 2013 filed by **Mr.Radhacharan Shakiya and Others** v. **Union of India and Others** on 13.5.2014 and held that the applicants were not entitled to draw Transport Allowance @ Rs.7000/- per month plus DA thereon. The said order of this Tribunal had also been upheld by Hon'ble High Court of Delhi in Writ Petition (Civil) No. 3445/2014 on 3.9.2014 filed by **Shri.Radhacharan Shakiya & Others**. The Office Memorandum issued by the Ministry of Finance, Department of Expenditure dated 19th August 2016 clarified that the officers, who are not entitled for the use of official car for commuting between residence to office and back, are not eligible to opt for drawal of TA @ Rs.7000/-p.m + DA thereon, even though they are drawing Grade Pay of Rs.10,000/- in PB-4 under ACP scheme or under the scheme of Non-Functional upgrdation. In view of the above position, the averment of the applicants that they are entitled for TA @ Rs.7000/-+ DA thereon holds not much water.

10. It is further clarified in the judgment by the Principal Bench of this Tribunal in O.A 4062/2013 that:

“It is clear that there is no error committed by the respondents in not allowing Rs.7000/-per month to the applicants. The 1994 circular made a specific provision for the officers of the rank of Joint Secretaries and above, which is not applicable to other officials just on the ground that they draw the same Grade Pay. Therefore, the respondents had to issue a clarification in 2013 also. The Hon'ble Supreme Court in ***Chandi Prasad Unniyal*** has also held that recoveries can be made in such circumstances and, therefore, the order dated 24.10.2013 directing recovery of transport allowance paid in excess is valid in law.”

11. It is true that the applicants are receiving the grade pay of Rs.10,000/- but they are not in the rank of Joint Secretary. The post Chief Scientist is equivalent to it. Hence they are not entitled for the benefits attached to the post of Joint Secretary in the Ministries unless or until it is clearly stipulated that equivalent post to Joint Secretary are also entitled for the Transport Allowance. They cannot claim the same as a matter of right.

12. In view of the facts and circumstances of these cases and the legal position emerged, there is no merit on the side of the applicants. Hence, the Original Applications fail and are liable to be dismissed. We order so. There shall be no order as to costs.

13. The interim order granted by this Tribunal on 17.11.2017 in O.A 180/00915/2017 stands vacated.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures

O.A 180/44/2015

- Annexure A1 - True copy of Office Memorandum No.20(5)/EII(A)/93 dated 28.1.1994
- Annexure A2 - True copy of letter No.5-4(3)/2008-PD dated 27.1.2009
- Annexure A3 - True copy of communication No.5-1(3)/2008-PD dated 25.4.2014
- Annexure A4 - True copy of letter No.NIIST/Gen.2014 dated 29.5.2014
- Annexure A5 - True copy of the order in O.ANo.180/003/79/2014 dated 6.6.2014.
- Annexure A6 - True copy of the office memorandum no.#NIIST/Gen./2014 dated 14.8.2014 issued to the 1st applicant
- Annexure A7 - True copy of the representation dated 14.10.2014
- Annexure A8 - True copy of the reply of the Information Officer of the fifth respondent dated 7.11.2014
- Annexure A9 - True copy of the communication No.NIIST/TA/2014 dated 23.5.2014
- Annexure A10- True copy of the decision in O.A No.4062 of 2013 dated 13.5.2014 of the Central Administrative Tribunal, New Delhi
- Annexure R1 - Photocopy of the CSIR Circular letter No.5-1(3)/2008-PD dated December 2008
- Annexure R2 - Photocopy of the CSIR letter dated 27.1.2009
- Annexure R3 - Photocopy of the OM dated 14.7.2014
- Annexure R4 - Photocopy of the letter dated 10.6.2014
- Annexure R5 - Photocopy of the OM No.21(2)/2016-E.II(B) dated 19.8.2016
- Annexure R6 - Photocopy of the letter No.31(27)/81 – General dated 6th April 1985
- Annexure R7 - Photocopy of the OM dated 29.8.2008
- Annexure R8 - Photocopy of the letter dated 31.7.2017 of the 3rd respondent
- Annexure R9, R 10 & R 11 Photocopies of the OM No.F.3(16) – E.II(A)/84-(1) dated 20/2/1985, OM No.F.3(16) – E.II(A)/84-(1) dated 20/2/1985, OM No.F.3(16)-E.II(A)/84-(2) dated 20/2/1985, OM No.F.3(16)-E.II(A)/84-(3) dated 21/2/1985

O.A180/00915/2017

- Annexure A-1 - True copy of the Office Memorandum No.20(5)/EII(A)/93 dated 28.1.1994
- Annexure A-2 - True copy of letter No.5-4(3)/2008-PD dated 27.1.2009
- Annexure A-3 - True copy of the communication No.5-1(3)/2008-PD dated 25.4.2014
- Annexure A-4 - True copy of the letter No.NIIST/Gen.2014 dated 29.5.2014
- Annexure A-5 - True copy of the representation dated 23.5.2014 submitted by the 3rd applicant
- Annexure A-6 - True copy of the Office Memorandum No.5-1(3)/2008-PD dated 31.7.2017 of the 3rd respondent
- Annexure A-7 - True copy of the representation dated 22.9.2017 submitted by the 2nd applicant before the 5th respondent
- Annexure A7(a) True copy of the representation dated 22.9.2017 submitted by the 3rd applicant before the 5th respondent
- Annexure A8 - True copy of the representation dated 10.10.2017 filed by the 1st applicant before the 5th respondent
- Annexure A8(a) True copy of the representation dated 9.10.2017 filed by the 2nd applicant before the 5th respondent
- Annexure A8(b) True copy of the representation dated 9.10.2017 filed by the 3rd applicant before the 5th respondent
- Annexure A-9 - True copy of the Notice No.NIIST/6th CPC/TA-Rec./2017 dated 23.10.2017 of the 5th respondent to the 2nd applicant
- Annexure A-10 - True copy of the Notice No.NIIST/6th CPC/TA-Rec./2017 dated 23.10.2017 of the 5th respondent to the 2nd applicant
- Annexure A-11 - True copy of the Notice No.NIIST/6th CPC/TA-Rec./2017 dated 23.10.2017 of the 5th respondent to the 3rd applicant
- Annexure A-12 - True copy of the reply submitted by the 1st applicant to Annexure A-8
- Annexure A-13 - True copy of the reply submitted by the 3rd applicant to Annexure A8(b)

Annexure A-14 - True copy of the reply submitted by the 3rd applicant to Annexure A8(b)

Annexure A-15 - True copy of the communication No.NIIST/TA/2014 dated 23.5.2014 of the 5th respondent

Annexure A-16 - True copy of the decision in O.A No.4062 of 2013 dated 13.5.2014 of the Central Administrative Tribunal, New Delhi

Annexure R-5A series- Photocopies of the assessment promotion orders in regard to the respective applicants

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