

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/00442/2014

Dated the 22nd day of November Two Thousand Eighteen

PRESENT

**HON'BLE MR.P. MADHAVAN, Member (J)
&
HON'BLE MR. T. JACOB, Member (A)**

S.Krishnamohan,
Joint Manager,
National Institute of
Ocean Technology,
Chennai 600100.

....Applicant

By Advocate M/s. Ratio Legis

Vs

1.Union of India rep by,
The Secretary,
Ministry of Earth Sciences (MoES) and
Chairman, GC, NIOT,
Lodhi Road,
New Delhi 110003.

2.The Director,
National Institute of Ocean Technology,
NIOT Campus,
Narayananapuram,
Chennai 600100.

3.The Administrative Officer,
National Institute of Ocean Technology,
Narayananapuram,
Chennai 600100.

....Respondents

By Advocate Mr. V. Vijay Shankar

ORDER**(Pronounced by Hon'ble Mr. T. Jacob, Member(A))**

Heard. The applicant has filed this OA seeking the following relief:

“To call for the records related to the impugned order No. NIOT/E&P/2012/1203 dated 23.05.2012 and to quash the same and further to direct the respondents to do the assessment as per the approved scheme for the applicant being upgraded to the Grade Pay Rs. 6600/- with effect from 01.12.2011 with all the attendant benefits, both pecuniary and service and to pass such other order/orders with cost as this Hon'ble Tribunal may deem fit and proper and thus to render justice.”

2. The facts of the case as stated by the applicant are as follows:-

The applicant was appointed on direct selection basis as Office Superintendent carrying the scale of pay of Rs. 6500-10500 (equivalent to Section Officer in CSS cadre) in the year 2001. He was selected for appointment to Class I/Group A Gazetted Officer post in a Central Government Autonomous Body. Thereby the applicant has submitted his technical resignation when the applicant was assured of hassle-free career advancement and thus was persuaded to withdraw his technical resignation. On accepting the request for withdrawal of the technical resignation, the 1st respondent's approval for extending the non-functional scale of Rs. 8000-275-13500 with retrospective effect from 21.12.2005 was communicated to him. The approval for extension of non-functional scale of Rs. 8000-13500 was made with reference to the Governing Council's approval of the minutes of the Finance Committee. The non-functional scale of pay Rs. 8000-13500 extended with effect from 21.12.2005 to the applicant was replaced with the Pay Band Rs. 15600-39100 with the Grade Pay Rs. 5400/- effective from 01.01.2006. Further, the 2nd respondent issued an office order dated 04.07.2011 designating the applicant as

Joint Manager (Purchase) in accordance with the revised Recruitment Rules as he was holding the Grade Pay of Rs. 5400/- in PB-3 on account of grant of non-functional scale of pay. The Governing Council of the NIOT has approved the career progression scheme for all the Administrative and Technical staff in all autonomous institutions functioning under the Ministry of Earth Sciences. According to the scheme, the applicant was due for assessment for being upgraded to the Grade Pay Rs. 6600/- with effect from 01.12.2011. The respondents did not initiate any action for timely assessment as per the approved scheme and hence the applicant submitted a representation dated 21.05.2012. Without taking cognizance of the said representation, the 3rd respondent has made the impugned order wherein the applicant was claimed to be placed in PB2 with the Grade Pay of Rs. 5400/- w.e.f 01.07.2011 alleging that what was given effect from 21.12.2005 and revised as PB3 with Grade Pay Rs.5400/- was appertained to the Section Officers of the Central Secretariat Service and the same was erroneously extended to the applicant. The applicant has relied on the order of the Principal Bench of this Tribunal in OA 3052/2009 & MA 2118/2009 dt. 19.02.2010 in support of his case. Since there was no response from the respondents on his representations, he has filed this OA seeking the above relief.

3. The respondents would submit that the Government of India viz, DoPT in OM No. 21/36/03-CS.I dated 13.11.2003 granted Non-functional Pay scale of Rs. 8000-13500 to the Section Officer of Central Secretariat Service on completion of 4 years of approved service in that Grade. Placing reliance on the above, the

applicant who was holding the post of Office Superintendent in NIOT, requested the 2nd respondent to grant him the Non-functional Pay Scale as given to Section Officers of CSS. The matter was placed before the Finance Committee and thereafter pursuant to the recommendation of Finance Committee, the Governing Council approved the recommendation on 09.09.2006. The same could not be implemented for want of approval by the 1st respondent. The then Director without appreciating the Office Memorandum dated 13.11.2003, granted the Non-functional Pay Scale to the applicant from 2005 based on the approval granted by the Governing Council after receipt of the letter dated 03.04.2007 from the applicant. In the year 2008, by Office Memoranda dated 30.09.2008 and 07.10.2008, the Government of India stipulated revised pay structure for the Autonomous Bodies and consequently the scale of pay of Office Superintendent in autonomous institutions like NIOT got revised from 01.01.2006 to Pay Band 2 with Grade Pay of Rs. 4200/-. Subsequently, the Government of India by an OM dated 13.09.2009 revised the pay scale to PB 2 with grade pay Rs. 4600/-. Thus, the VI Pay Commission and Government of India did not consider the identical posts in Autonomous Bodies as equivalent to the post of Section Officer in CSS. This gave rise to two types of Office Superintendent in NIOT viz, (i) drawing pay under non-approved Central Secretariat service pattern and (ii) others drawing pay under the approved field offices pattern.

4. The respondents would submit that Section officer in CSS has been placed in Grade Pay of Rs. 4800/- in PB2 as per the recommendation of VI Pay Commission

whereas the Office Superintendents in NIOT are in the Grade Pay Rs. 4600/- in PB-2. Thus a comparison of post and pay scales reveals that hierarchy and structure between CSS and NIOT had no historical parity before and after 01.01.2006, though the scale of pay of both were identical prior to 01.01.2006. The wrong extension of non-functional scale granted to the applicant holding Office Superintendent in NIOT on par with Section Officer of Central Secretariat Service was objected to by the C&AG during its Audit inspection. The same, on being reported, the 1st respondent sought clarifications from the office of the 2nd respondent. Further, a Career Progression Scheme was introduced for all autonomous institutions like NIOT under it. The said scheme brought about disparity between that Office Superintendent drawing pay in non-approved Central Secretariat Service pattern like the applicant and those drawing the pay in the approved office pattern. Therefore, the 1st respondent decided to implement the Career Progression Scheme to all but the applicant. The 1st respondent thereafter sent a note to the 2nd respondent Institute conveying that the higher placement of the applicant as done earlier against the norms be rectified as one time relaxation by retaining him at his present level to be considered for next upgradation only on 01.07.2017 (ie, the normal date of eligibility) and was communicated to the applicant on 23.01.2012. The respondent would further submit that the OM relied upon by the applicant did not have applicability to all Central Government Offices and its scope was limited to CSS alone. Hence, the respondents have prayed for dismissal of the OA.

5. Learned counsel for the applicant submitted written arguments and submitted that the impugned order dt. 25.05.2012 is liable to be set aside.

6. Learned counsel for the respondents would submit that the extension of Career Progression Scheme to the applicant would amount to perpetrating the misplaced implementation of the decision of Governing Council. As per OM No., 21/36/03-CS.I dated 13.11.2003, Non-functional Scale was restricted to post of Section Officer in CSS. The respondent is an autonomous institute for which non-functional scale was not extended. Thus, extension of Non-Functional Scale was per se invalid.

7. We have carefully considered the rival contentions and perused the material on record.

8. The Government of India, Department of Personnel and Training vide its order No. : 21/36/03/CS-1 dated 13.11.2000 introduced Non Functional Scale of Rs. 8000-275-13500 to the Section Officer of Central Secretariat Service. The NIOT Finance Committee in response to the representation received from Shri. S. Krishnamohan, Office Superintendent demanding Non-functional Scale, recommended introduction of the Non-functional scale to Section Officer of NIOT also, in the meeting held in September 2006. Based on the recommendation of Finance Committee, the Governing Council also in its meeting held on 19.09.2006, approved extension of benefits which was given exclusively to Section Officers of Central Secretariat Services by the Government, to NIOT Superintendents also. The applicant had also been placed in Pay Band 3 Rs. 15600-39100 instead of Pay Band

2 Rs. 9300-34800 applicable to such posts as at Sl. No. 16 of the table in Section I of Part A to First Schedule read with Rule 8 of CCS(RP) Rules, 2008 when the scales of pay were revised with effect from 01.01.2006. The Governing Council/Governing Bodies of Autonomous, Research and Development Institutions can exercise powers up to the limit of powers enjoyed by the Administrative Ministry/Department concerned. Further, the exercise of financial powers by the Governing Council/Governing Bodies would be subject to provisions of General Finance Rules, delegation of financial powers and other instructions in force and are issued by the Central Government from time to time. Since, Administrative Ministry itself is not conferred with the power of extending the Non-functional scale, which was extended by the Government exclusively to the Central Secretariat Services, the Governing Council is not vested with the power of extending this benefit to the employees of NIOT.

9. The issue regarding erroneous grant of Non-functional Pay Scale to the applicant on par with Section Officer of CSS was pointed out to the 1st respondent by the Audit party of C&AG. The mistake committed by the NIOT was rectified by the 1st respondent by treating the erroneous pay fixation done to the applicant by granting one time relaxation that too without affecting the applicant in any manner. As per the Career Progression Scheme, the progression effective from 01.07.2011 to Office Superintendents redesignated as Asst. Managers is From Grade Pay Rs. 4600/- to Rs. 4800/- and then to Rs. 5400/- in the pay band 2 Rs. 9300-34800. The applicant nevertheless got upgradation on 21.12.2005 without having such

provision for administrative posts in NIOT. This has resulted in an anomaly of his drawing pay in a pay band higher than his second grade with effect from a date much earlier to date of eligibility of 01.07.2011 for the first Career Progression. The Government of India has approved rectification of the anomaly as a one time relaxation by placing the applicant in the present level of Rs. 9300-34800 + Grade Pay Rs. 5400/- to be considered for next upgradation on 01.07.2017. The respondents have tried to give prospective effect to such correction without causing any harm to the applicant. Therefore, the principle of 'audi alterem partem' is least attracted in the present case.

10. Further, the entire claim of the applicant is based on the introduction of non-functional scale of Rs. 8000-275-13500 to the Section Officer of Central Secretariat Service. The Section Officer of CSS and Office Superintendent of NIOT belong to different services and they are two distinct set of employees and since the functions, duties and responsibilities are not equal in two cases, the principle of equal pay for equal work has no applicability here. In the year 2008, the Government of India stipulated revised pay structure for the autonomous bodies and consequently the scale of pay of Office Superintendent in autonomous institutions like NIOT got revised from 01.01.2006 to Pay Band 2 with Grade Pay of Rs. 4200/- which was subsequently revised to PB 2 with Grade Pay Rs. 4600. Section Officer in CSS has been placed in Grade Pay of Rs. 4800/- in PB-2 as per the recommendation of VI Pay Commission whereas the Office Superintendents in NIOT are in the Grade Pay Rs. 4600/- in PB-2. A comparision of post and pay scale

reveals the hierarchy and structure between CSS and NIOT had no historical parity before and after 01.01.2006. In the judgment of the Hon'ble Supreme Court in the case of UOI – Vs. V.V.Hariharan reported in 1997 3 SCC 568; 1997 SCC (L&S) 838 have been cited in which it was held that “the courts or Tribunals ought not to interfere with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. Change of Pay Scale of a category has a cascading effect, when several other categories similarly situated, which will lead to serious problems. Unless, it can be clearly brought out that they were carrying on identical work and there is a clear case of hostile discrimination, there would be no justification for interference with the fixation of pay scales.” Further, the Court cases cited by the applicant has no relevance in the facts and circumstances of the present case.

11. In view of the above, we do not find any merit in the OA and the OA is accordingly dismissed. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

22.11.2018

SKSI