

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.111/2018 with MA No.90/2018

This the 07th day of December, 2018

**Coram : Hon'ble Ms. Archana Nigam, Administrative Member
Hon'ble Shri M.C.Verma, Judicial Member**

Pravin Harilal Prajapati
Aged about 61 years (DOB being 10.08.1956)
S/o. Late Shri Harilal Prajapati
Communication Address :
Pratapnagar Rankukteshwar Road,
Vadodara 390 004.. Applicant

(By Advocate : Shri M. S.Rao)

VERSUS

1. Indian Council of Medical Research
(Notice to be served through its Director General)
Ansari Nagar, Post Box No. 4911,
New Delhi 110 029.
2. The Dean
(Officer in charge of the ICMR's HRRC Project)
Medical College & SSG Hospital
Vadodara 390 001.
3. Union of India
(Through its Secretary to the Govt. of India

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Department of Health Research, Ministry of Health and Family
Welfare, Govt. of India,
2nd Floor, IRCS Building
No.1 Red Cross Building
New Delhi 110 001.

4. The Secretary to the Govt. of India
Department of Expenditure (DoE)
Ministry of Finance
Government of India
Room No.129/A
North Block
New Delhi 110 001.
5. The Director
National Institution for Research in Reproduction Health (NIRRH)
Indian Council of Medical Research
Jehangir Merwanji Street
Parel,
Mumbai 400 012. Respondents.

(By Advocate : Shri Ajay V. Shinde)

ORDER – ORAL

Per : Hon'ble Shri M.C.Verma, Member (J)

Heard Shri M.S.Rao counsel for the applicant and Shri
Ajay Shinde, learned counsel for respondent Nos. 1 & 5.

2. Instant OA filed by the applicant is having prayer :

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(A) Call upon the respondents herein to place before this Hon'ble Tribunal all the relevant and material original documents including the correspondence exchanged amongst the respondents herein which gave rise to the issuance of the impugned Office Memorandum bearing No.37/Legal Cell/2013 dated 19.12.2013 at Annexure A-1 hereto and also the aforementioned impugned Communication No.V-25011/391/2014-HR/FTS-113857 dated 27th February 2017 at Annexure A-2 hereto :

(B) upon a close perusal and scrutiny of the aforesaid original documents, this Hon'ble Tribunal may be graciously pleased to :

(B-1) quash and set aside the impugned (i) Office Memorandum bearing No. No.37/Legal Cell/2013 dated 19.12.2013 at Annexure A-1 hereto in so far as it seeks to impose a condition at item No.(iv) of the said Office Memorandum to the effects that applicant herein shall be governed by the new structured defined contribution pension system as per provisions contained in the Ministry of Finance, Department of Economic Affairs (ECB & PR Division)'s Notification No.5/7/2003-ECB & PR dated 22.12.2003 effective from 01.01.2004 and also (ii) the Communication No.V-25011/391/2014-HR/FTS-113857 dated 27th February 2017 at Annexure A-2 hereto in so far as it seeks to exclude the case of the applicant herein in the matter of extension of benefit of Old Pension Scheme to the petitioners before the Hon'ble High Court of Madras, even though a very senior officer Dr. Smita Mahale in her Additional Affidavit dated 09.4.2015 filed before this Hon'ble Tribunal in CP No.34/2013 had taken a categorical stand for and on behalf of the ICMR that once the petitioners before the Hon'ble Madras High Court are granted the benefits of Old Pension Scheme , the answering respondents i.e. in the aforesaid CP No.34/2013 will consider grant of Old Pension Scheme to the applicant herein as well.

(B-2) Issue appropriate directions to the respondents herein to forthwith :-

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(B-2-1) give due weightage to the expectation which the Hon'ble Central Administrative Tribunal, Ahmedabad Bench had expressed in last paragraph of its order dated 09.4.2015 which finally disposing of the applicant's Contempt Petition No. 34/2013 and instruct their officers in the ICMR to (a) forthwith extend the benefit to the applicant herein the benefits of Old Pension Scheme at par with the aforesaid 20 petitioners in the aforesaid contempt petitions Nos. 1221, 1309 & 1310 of 2011, as per the orders dated 01.8.2012 of the Hon'ble Madras High Court.

(B-2-2) issue the requisite Pension Payment Order in favour of the applicant herein and work out the pensionary benefits which the applicant herein is entitled to, as of right and pay the arrears along with interest thereon as also the arrears of Gratuity for the period of service rendered by the applicant herein in ICMR till her attaining the age of superannuation as a Central Government Servant as has been done by the ICMR in the case of the aforesaid 20 persons.

(B-2-3) release to the applicant the Gratuity as admissible to him under the present rules for his 35 years of service in ICMR.

(B-2-4) grant to the applicant herein two pay upgradations under the erstwhile Assured Career Progression Scheme of the Government of India and also the 3rd Pay upgradation under the ongoing MACP scheme inasmuch as the applicant herein had completed more than 35 years of service prior to the date of her superannuation i.e. 31.8.2016 (60 years).

(B-2-5) release to the applicant herein the differential amount in respect of the "Leave Encashment" between what he was paid at the time of his retirement and what he should get in pursuance of his aforesaid entitlement.

(C) impose exemplary costs on the respondent Nos.1, 3, 4 & 5 herein.

(D) grant such other and further relief/s as may be deemed fit and appropriate in the peculiar facts and circumstances of the present case."

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3. Notice on OA was issued to the respondents but Respondent Nos. 2, 3 & 4 did not appear and it is only Respondent Nos.1 and 5 who appeared and to contest filed their reply. Rejoinder to reply of Respondent Nos.1 & 5 has also been filed by applicant.

4. Today at the time of final hearing, learned counsel for applicant placed on Board a table having details regarding the payment of applicant, which according to the applicant is due and has also been admitted by the respondents. Learned counsel submits that presently only grievance of the applicant is that though due of applicant has been admitted by the respondents but no payment has yet been made and that applicant would have no grievance and would not press this OA if respondents be directed to make the payment of dues, as per their admission given in the table, within a schedule time frame fixed by the

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Tribunal. The Table supplied has been marked as 'X'. For sake of brevity is reproduced below :

Sl. No	Name of Employee	Received	Due	Remarks
1	----	-----	-----	-----
2	-----	-----	-----	-----
3	P.H.Prajapati Retired on 31.8.2016	(i) Pay fixation order from date of appointment i.e. 10.4.1981 (With ACP and MACP Scheme) (ii) Pension for the month of October, 2018 according to 7 th Pay Commission (iii) Gratuity	(i) Pension from September 2016 to September 2018 (ii) Arrear from 10.4.1981 to 31.8.2016 due to difference in pay after pay fixation (iii) Difference of Leave Encashment due to pay fixation	(i) In Pension Payment Order it is mentioned that pension arrears will be paid from 01.09.2016 onwards
4	-----	-----	----	-----

5. Copy of aforesaid table, placed on record today by applicant, supplied to learned counsel, Shri Ajay Shinde, who appears for the respondent Nos.1 & 5 and he endorsed that whatsoever has been stated in this table is admitted by the Department, he also informed and that this table was made available to him by the counsel for the applicant, in advance, he

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referred the table to the Department and Departmental Authority had checked its correctness and instructed him to make statement at Bar. Learned counsel also placed on record copy of revised PPO of applicant which is marked as Mark 'Y' for the purpose of nomenclature. This PPO corroborates the correctness of the details enshrined in the table.

6. In view of above said development, though respondent Nos.2, 3 & 4 have not appeared yet, the matter may be disposed of finally at this stage, with direction to the respondent Nos. 1 & 5 to make payment of the amount due to the applicant expeditiously and learned counsel for the respondents submits that amount would be paid on or before 18th January 2019.

7. Taking note of said undertaking of learned counsel for respondents, we want to dispose of this OA with direction to the Respondent Nos.1 & 5 to honour the undertaking given on their

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behalf by their counsel and to ensure that entire amount of admitted dues be paid to the applicant on or before 18th January, 2019.

8. With aforesaid direction and observation, this OA stands disposed off. In view of disposal of OA, MA No.90/2018 also stands disposed off.

(M.C.Verma)
Member (J)

(Archana Nigam)
Member (A)

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