

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 572/2013

Date of CAV: 16.11.2018

Date of Pronouncement: 27.12.2018

Between:

1. Anchery Joseph Wilson, aged 58 years,
S/o. A.C. Joseph, C. No. 2832-Y, TA (C),
Ship Building Centre, Visakhapatnam.
2. Panduri Appalachari, aged 50 years,
S/o. P. Suryanarayana, C. No. 2711-RTA (Gz),
Ship Building Centre, Visakhapatnam.
3. Kela Sethy, aged 52 years,
S/o. Udayanath Sethy, C. No. 3304, FM (Gz),
Ship Building Centre, Visakhapatnam.
4. Adari Ramana, aged 59 years,
S/o. late Adinarayana, C. No. 83820-, TA,
Naval Dockyard, Visakhapatnam.
5. Chellappan Anthony, aged 59 years,
S/o. Chellappan, C. No. 2728, TA,
Ship Building Centre, Visakhapatnam.
6. Narnindi Mahdavarao, aged 60 years,
S/o. N. Rama Rao, C. No. 81358-F, FM(G),
Naval Dockyard, Visakhapatnam.
7. Sirli Surappadu, aged 60 years,
S/o. Venkayya, C. No. 2734, TA,
Ship Building Centre, Visakhapatnam.

... Applicants

And

1. Union of India, represented by Secretary,
Govt. of India, Ministry of Defence,
North Block, New Delhi – 110 011.
2. The Chief of the Naval Staff,
Integrated Headquarters, Ministry of Defence (Navy),
New Delhi – 110 011.
3. The Flag Officer Commanding in Chief,
Headquarters Eastern Naval Command, Visakhapatnam – 530014.

4. The Admiral Superintendent,
Naval Dockyard, Visakhapatnam – 530 014.
5. The Director, Ship Building Centre, Visakhapatnam.
6. The Controller of Defence Accounts (Navy),
Area Accounts Officer, Visakhapatnam.
7. The Financial Advisor to Admiral Superintendent,
Naval Dockyard, Visakhapatnam.

... Respondents

Counsel for the Applicants ... Mr. G. Pavan Murthy

Counsel for the Respondents ... Mr. Bhim Singh, Advocate for
Mr. M. Brahma Reddy, Sr. PC for CG

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)
Hon'ble Mr. B.V. Sudhakar ... Member (Admn.)

ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

The OA is filed for not extending the benefit of the orders passed by this Tribunal in OA 1074/2010 and 1322/2010 & 886/2011 as the applicants are similarly situated and entitled for the relief prayed for.

2. Brief facts of the case as stated in the OA are that the applicants herein have worked in various capacities of skilled workers and at present working as Technical Assistant Gazetted Officers and Foreman (Gazetted) Group B at Naval Dockyard Visakhapatnam and Ship Building Centre (V) in the Eastern Naval Command Visakhapatnam. The applicants have been promoted to the posts of their respective grades as Civilian Gazetted Officers strictly in terms of SRO-08. The applicants have been entrusted with higher d] uties and responsibilities as ordered in Naval Dockyard Temporary Order No. 204/2003 dt. 16.12.2003. Consequent upon the implementation of the 6th Pay

Commission recommendation with effect from 1st January 2006, the Government of India Ministry of Defence New Delhi vide orders CP (P)/8416/VICPC TGECH/2008 1345/US/(MP)/D(N-II)/10 dt. 2.2.2010 issued for merger of the pay scale of Asst. Foreman & Foreman, Civilian Technical Supervisory Staff of the India Navy have been restructured from 4 Tier structure into 2 Tier structure as follows:

S. No	IV Grade structure as per V CPC	Scale of Pay	II Grade Structure as per VI CPC	PB+ Grade Pay on change of structure	Authority for change of structure (Govt. Letter)
1	Chargeman-II	5000- 150- 8000		PB 9300- 34800 with GP 4200	CP(P)/8416/ VI CPC/ADM/09/421/U S(MP)/D(N-II) dated 05 Apr 10
2	Chargeman-I	5000- 150- 8000	Charge man		
3	Asst. Foreman	6500- 200- 10500		PB 9300- 34800 with GP 4600	CP(P)/8416/ VI CPC/TECH/2008/134 /US(MP)/D(N-II)/10 dated 02 Feb 10
4.	Foreman	7450- 225- 11500	Foreman		

However, the Naval Dockyard Visakhapatnam vide orders PES/7300/NI-SD/GEN/TSS dated 21.04.2010 have interpreted the merger in a different way and ordered that the promotion orders issued to the applicants are to be ignored and action initiated to recover the alleged excess pay and allowances in an arbitrary manner. Hence, the OA.

3. The contention of the applicants are that there are no orders of cancellation of promotions already granted to the applicants based on clearing DQE and DPC as laid down in SRO-08. The applicants were not issued with any notice for

cancellation of their promotion with retrospective effect. To recover the pay and allowances without notice is illegal, illogical, arbitrary and violative of the principles of natural justice. The law is equally clear that when an over payment is made without any mis-statement by the individual concerned, Govt. cannot effect any recovery. Hon'ble Calcutta Bench of this Tribunal in OA 898/2005 held in its judgment dt. 23.03.2010 that no recovery of over payment made to the individuals can be recovered when there is no mistake on the part of the individual concerned.

4. The respondents resist the contention of the applicants by stating that the applicants have been promoted to the grades under the provisions of Government of India, Ministry of Defence letter 11(13)/97/D (Civ-I) dt. 26.12.2001 issued consequent on the recommendation of 6th CPC regarding introduction of four grade structure for Technical Supervisory Staff in Defence Establishments and as per SRO-08, prior to receipt of Govt. Orders on implementation of CDS (RP) Rules, 2008, as per 6th CPC recommendations. According to 6th CPC recommendations, the promotions effected from 01.01.2006 onwards till amendment of Recruitment Rules in the merged/ upgraded scales, are to be ignored as per para 1 (iv) of DOP & T Dy. No. 3505/CR/2009-Estt (RR) dt. 13.08.2009. Therefore, the pay fixations and increments granted on promotion to the posts in the merged / upgraded scales have been reviewed. It is also mentioned that the Govt. direction in implementing the 6th CPC recommendations have been implemented in true spirit and accordingly the posts held in the pay scales of merged/ upgraded where promotions granted and awarded higher pay fixations have been considered to be nullified. The post of Foreman from the pay scale of Rs.6500-200-10500 has since been upgraded to

Rs.7450-225-11500 and accordingly they have been granted upgraded grade pay of Rs.4600/-.

5. Heard the learned counsel and perused the documents on record in detail.

6. A close study of the case reveals that the VI Central Pay Commission submitted its recommendations on employees pay scales during March, 2008. The Government of India accepted the recommendations and issued a resolution for implementation during August 2008. Accordingly, MoD issued orders for implementation of VI Central Pay Commission vide notification F. No. 11(1)/2008/D(Civ-I), dated 9.9.2008 and SRO 21(E). As per VI Central Pay Commission recommendations, the posts of Assistant Foreman (Rs.6500-10500) and Foreman (7450-11500) were merged to Foreman (in the pay band of Rs.9300-34800 with Grade Pay Rs.4600) which are basically feeder posts to promotional posts. Though the Government orders for implementation were received during September 2008, the orders were effective from 1.1.2006 and accordingly the pay and allowances were claimed on the revised pay scale under Civilian Defence Service (Revised Pay) Rules, 2008 [CDS (RP) Rules]. Subsequently Ministry of Defence issued clarificatory orders in consultation with DoPT in the case of merged/ upgraded posts as per Part B, Section I & II of CDS (RP) Rules, 2008 and treatment of promotions granted on the merged scales during the period from 1st January 2006 to the date of amendment to the Recruitment Rules vide DOP&T Dy. No. 3505/CR/2009-Estt(RR), dated 13 August, 2009. The text of para 1(iv) of the order on the subject reads as under:-

“(iv) Promotions granted in the merged scale during the period 01.01.2006 to the date of amendment of recruitment rules would be ignored since both the posts have been merged/ upgraded from

01 January, 2006, and given a common scale/ grade pay/ pay scale.”

The applicants who were holding the posts in the scales of V Central Pay Commission were promoted and their pay was fixed accordingly in the existing higher pay scale. Consequent on receipt of VI Central Pay Commission, their pay was revised and fixed taking into account the admitted pay fixation increments on the pre-revised scales and they were given financial benefits. Consequent on receipt of clarificatory orders vide DOP&T letter dated 13.09.2009 (supra), the pay fixation made against the merged/ upgraded pay scales prior to implementation of VI CPC recommendations required rectification to comply with government directions.

7. The points for consideration are that once a promotion is granted, can the benefits associated be annulled without proper reasons and procedures being followed. Any action of the Pay Commission will be in the positive direction as has been seen from the recommendations of the Pay commission over the decades. The only difference is a matter of interpretation and that is where anomalies committees are formed to clarify and rectify anomalies that may arise consequent to the recommendations of the Pay Commission. In the present case the applicants got the financial benefit due to a regular promotion granted after following due procedure. A discrepancy that crept in regard to pay and allowances due to the DOPT order dt. 13.08.2009 is not the making of the applicants. The promotions were hard earned and that too after going through the rigorous drill of DQE and DPC as per SRO-08. Therefore, the benefits associated with such promotions need necessarily be granted. Denying the same without giving notice is against the tenets of principles of natural justice. In

short, the action of the respondents is akin to demoting the applicants which can be done only by following statutory norms under disciplinary rules. Hence, such action is illegal. An executive instruction cannot overrule a statutory process to be followed. In fact, law prohibits the sort of recoveries effected by the respondents.

8. The Hon'ble High Court of Kerala in Satyapalan Vs. Dy. Director of Education, 1998(1) KLT 399 has held that the amount obtained, by reason of wrong fixation of pay made by the administrative authority cannot be directed to be refunded. The Hon'ble Supreme Court of India in Babulal Jain Vs. State of M.P. 2007 (6) SCC 180 has held that recovery of excess payment made due to misconception of law and not due to any mistake, misrepresentation or fraud on the part of the applicant without issuing any show cause notice is not justified. So also in Sahib Ram Vs. State of Haryana, 1995 Supp. (1) SCC 18 Hon'ble Apex Court has restrained the recovery of excess payment already made in a case where the upgraded pay scale given due to the wrong construction of the relevant orders by the authority concerned without any misrepresentation by the employees. The Hon'ble Supreme Court in Sahib Ram Vs. State of Haryana, 1995 Supp. (1) SCC 18 and Purushotham Lal Das & Ors Vs. State of Bihar & Ors, 2006 (11) SC 492/ 2007 (1) SCC (L&S) 508, has held that "the law is equally clear that when an over payment is made by the Government not on the basis of any misstatement by the individual concerned, Government cannot effect any recovery. Hon'ble Calcutta Bench of this Tribunal in OA 898/2005 vide judgment dt. 23.03.2010 has also held that no recovery of the over payment made to the individual can be recovered when there is no mistake on the part of

the individual concerned. The Hon'ble Ernakulam Bench of this Tribunal has disposed of an identical cases in OA No. 53/2010 & batch, dt.3.3.2011 as under:

"The order dated 04th December, 2009 to the extent it directs recovery of the benefits granted on promotion to merged/ upgraded pay scale from the pay and allowances of the applicants is hereby quashed and set aside. The interim stay orders on the recovery of benefit of pay fixation granted to the applicants in OA Nos. 53/10, 213/2010, 539/2010, 544/2010 and 549/2010 on promotion to the present posts are made absolute. However, the applicants are not entitled to protection of their pay fixed allowing the benefit of pay fixation on promotion effected to the merged/ upgraded pay scale/ posts after 31st December, 2005."

Near home, this Tribunal has also disposed of identical issues in OA Nos. 1074/2010, dt.24.02.2012 and OA No. 1322/2010 and 886/2011, dt. 17.02.2012 granting relief sought by the applicants. The undertaking given by the applicants was to repay if there are any discrepancies due to incorrect fixation of pay. The pay was fixed correctly and there were no discrepancies while fixing the pay at the time of promoting the applicants. Such fixation cannot be changed by an executive order without following the statute and in accordance with law. Hence, the respondents cannot take cover quoting the undertaking given by the applicants. The respondents contention that the relief granted in similar cases filed before this Tribunal in OAs cited in paras supra can be extended only to the applicants in the said OAs does not hold ground, as the Hon'ble Supreme Court has observed that those who did not come to the court should also be granted the relief if they are similarly situated, in **Inder Pal Yadav Vs. Union of India, 1985 (2) SCC 648**, wherein Hon'ble Supreme Court has held as under:

"...those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment if not by anyone else at the hands of this Court."

The Hon'ble Supreme Court has held in **Amrit Lal Berry vs Collector Of Central Excise, (1975) 4 SCC 714 :**

"We may, however, observe that when a citizen aggrieved by the action of a Government Department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court."

In a latter case of **Uttaranchal Forest Rangers' Assn (Direct Recruit) Vs. State of UP (2006) 10 SCC 346**, the Apex Court has referred to the decision in the case of **State of Karnataka Vs. C. Lalitha, 2006 (2) SCC 747**, as under:

"29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently."

Acting on the direction of the Hon'ble Supreme Court will be beneficial to the respondent organization and to the nation as it will save costs on men, money and material by avoiding needless litigation.

9. To conclude based on merit and well settled legal principles cited above, the OA fully succeeds. As prayed by the applicants, the respondents are directed to consider the following directions:

i) Since excess payment was not made on account of any misrepresentation or fraud on the part of the applicants, no recovery of the excess payment made shall be made as per the law laid down by the Hon'ble Supreme Court in *Registrar, Cooperative Societies, Haryana & Others Vs. Israil Khan & others [2010(1) SCC (L&S) 1123]*. The amounts recovered shall be refunded within three months of receipt of this order.

ii) The applicants are not entitled to protection of their pay fixed following the benefit of pay fixation on promotion to be granted/ upgraded pay scale/ posts on or after 1.1.2006.

10. The OA is allowed above, with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated, the 27th day of December, 2018 rrrrrr

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