

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.605/2014.

Date of Decision: 02.04.2019.

CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
R.N. SINGH, MEMBER (J)

1. Shri Dilip Madhukar Gune, Age 57,
S/o Madhukar Shankar Gune, working
as Technical Officer 'B' O/o HEMRL,
Pune, Residing at-47/2, Parvati,
Jeevan Prakash Colony,
Pune 411 009.
2. Smt. C. Ranjana Gopalkrishna Naidu,
Age 55, W/o C.J. Gopalkrishna Naidu,
Working as Technical Officer 'B', O/o
HEMRL Dett. Cell, OF Bhandara, Residing at-
Plot No.50, Jairam Building, Mahesh Colony,
Chandranagar, Nagpur-440009.
3. Smt. Sabera Siddique A. Shaikh,
Age 52 years, W/o Siddique Ahmed Shaikh,
Working as Technical Officer 'B', O/o HEMRL,
Pune, Residing at- 254 Ganesh Peth, Near
Duliya Maruti Mandir, Pune-411 002.
4. Ms. Renu Gill, Age 43,
D/o Malkit Singh Gill, Working as Technical
Officer 'B', O/o HEMRL, Pune, Residing at-35,
Defence R&D Co-Op Soc. Alandi Road,
Pune 411 015.
5. Shri Vinod Nanagi Chetule,
Age 50, S/o Nanagi Ganpatrao Chetule,
Working as Technical Officer 'B', O/o HEMRL,
Dett. Cell, OF Bhandara, Residing at 95/5,
Adarsh Colony, O.F. Estate, Jawaharnagar,
Dist. Bhandara 441906.
6. Shri Raj Mahadev Lagade, Age 49,
S/o Mahadev Shripati Lagade,
Working as Technical Officer 'B',
O/o HEMRL, Pune, Residing at-Ft. No.3,
Vishalvastu Apartment, Gokulnagar,

Dhanori, Pune-411 015.

7. Shri Shailendra Narayanbhai Patel,
Age 56, S/o Narayanbhai Umedbhai Patel,
Working as Technical Officer 'B',
O/o HEMRL, Pune, Residing at-377,
Shruti Vihar Soc., handani Chowk,
Bavdhan Khurd, Pune-411 021.
8. Shri Ajay Waman Gaikwad, Age 45,
S/o Waman Nathu Gaikwad,
Working as Technical Officer 'B',
O/o HEMRL, Pune, Residing at-Sr. No.7,
Talji Pathar, Sai Datta Nagar,
Dhankawadi, Pune-411 043.
9. Shri Jayant Ramchandra Taware,
Age-55, S/o Ramchandra Maruti Taware,
Working as Technical Officer 'B',
O/o HEMRL, Pune, Residing at-P 85/14,
Armament Colony,
Ganeshkhnd Road, Pune-411 007.
10. Shri Bapu Shankar Gadade, Age 52,
S/o Shankar Maphaji Gadade,
Working as Technical Officer 'B',
O/o HEMRL, Pune, Residing at-F-28/1,
Armament Colony,
Ganeshkhind Road, Pune-411 007.
11. Shri Ravindra Gopal Bhalerao, Age 57,
S/o Gopal Savlaram Bhalerao,
Working as Technical Officer 'A',
O/o HEMRL, Pune, Residing at-Shivsagar
Residency, E2/704, Wadgaon Budruk,
Pune-411 051.
12. Shri Appasaheb Shivaji Kshirsagar,
Age 46, S/o Shivaji Krishnath Kshirsagar,
Working as Technical Officer 'B',
O/o HEMRL, Pune, R/at Ft.No.9, Sterling
Heritage, Shivalaya Co-op Hsg. Soc.
Sus Road, Pashan, Pune 411 021.
13. Shri Manoj Balaram Muppid, Age 46,
S/o Balaram Laxmal Muppid, Working as
Technical Officer 'B', O/o HEMRL, Pune,
R/at 8, Line Bazar, East Khadki, Pune 411 003.

14. Shri Ashok Kondiba Asware, Age 58,
S/o Kondiba Pandurang Asware,
Working as Technical Officer 'A',
O/o HEMRL, Pune. R/at Flat No.24,
A Bldg., Gandham Nagar, Alandi Road,
Near Sappers East Khadki, Pune 411 003.
15. Shri Rajabhau Nagnath Gaikwad,
Age 44, S/o Nagnath Santram Gaikwad,
Working as Technical Officer 'B',
O/o HEMRL, Pune. R/at F 28/2, Armament
Colony, Ganeshkhind Road, Pune 411 007.
16. Smt. Dipti Digambar Temkar, Age 57,
W/o Digambar Gajanan Temkar,
Working as Technical Officer 'B',
O/o ARDE, Pune, R/at F-27/2, Armament Colony,
Ganeshkhind Road, Pune 411 007.
17. Shri Pradeep Vasant Bhavalkar,
Age 59, S/o Vasant Pandurang Bhavalkar,
Working as Technical Officer 'A',
O/o ARDE, Pune. R/at 516 B, Narayan Peth,
Ramkrupa Apartment, Pune 411 030.
18. Shri Mathews P.D. Age 50,
S/o Daniel P.O., Working as Technical
Officer 'B', O/o ARDE, Pune.
R/at Flat No.A-4/B/202, Ginger Soc., Pimple
Saudagar, Pune 411 027.
19. Shri Nandlal Vishwakarma, Age 49,
S/o Tantiram Vishwakarma, Working as
Technical Officer 'A', O/o ARDE, Pune.
R/at P 83/5 Armament Colony, Ganeshkhind
Road, Pune 411 007.
20. Shri Raju Narayan Waghmare, Age 52,
S/o Narayan Ganpat Waghmare,
Working as Technical Officer 'B',
O/o R&DE (Engrs), Pune.
R/at RDE Colony, Type IV, Qtr. No.147,
Dighi, Pune 411 015.
21. Shri Dnyaneshwar Raut Madbal, Age 49
S/o Raut K. Madbal, working as Technical
Officer 'B', O/o R&DE (Engrs), Pune.
R/at 'RENUKA' S.No.53, Vinayak Nagar,

Pimple Gurav, Pune 411 061.

22. Shri Nand Kishore Garia, Age 45,
S/o Bahadur Ram Garia, working as Technical
Officer 'B', O/o R&DE (Engrs), Pune.
R/at S.No.2, Gaikwad Nagar, Dighi,
Pune 411 015.
23. Smt. Clara Jacob, Age 51, W/o Antony Jacob,
Working as Technical Officer 'B', O/o R&DE (Engrs),
Pune, R/at P86/2 Armament Colony, Ganeshkind
Road, Pune 411 007.
24. Smt. Seema Milind Bhawe, Age 48,
W/o Milind Bhawe, Working as Technical Officer
'B', O/o R&DE (Engrs), Pune. R/at 2, Shankar
Anand Park, Pune-Satara Road, Pune 411 009.
25. Smt. Sudina Nitin Dube, Age 49,
W/o Nitin C. Dube, Working as Technical
Officer 'B', O/o R&DE (Engrs), Pune,
R/at 'SHALOM' Krinshna Nagar,
New Sangvi, Pune 411 061.
26. Shri Chintamani Trimbak Kawitkar,
Age 57, S/o Trimbak V. Kawitkar,
Working as Technical Officer 'B',
O/o R&DE (Engrs), Pune. R/at La Vida
Loca, Pimple Saudagar, Pune 411 027.
27. Shri Raju Vasudev Shiledar, Age 47,
S/o Vasudev Balkrishna Shiledar,
Working as Technical Officer 'B',
O/o R&DE (Engrs.), Pune. R/at 175/3
RDE Colony, Dighi, Pune 411 015.
28. Shri Abhay Arvind Thakar, Age 46,
S/o Arvind Narayan Thakar Working
as Technical Officer 'A', O/o R&DE (Engrs),
Pune, R/at Flat No.3, Bldg. No.2, Ganesh
Park Co-op Hsg. Society, Kothrud,
Pune 411 029.
29. Shri Shaukat Yusuf Inamdar, Age 48,
S/o Yusuf Mia Inamdar, Working as Technical
Officer 'A', O/o R&DE (Engrs.), Pune.
R/at RDE Colony Type III, Qtr. No.472,
Dighi, Pune 411 015.

... Applicants.

(By Advocate Shri S.V. Marne)

VERSUS

1. Union of India,
Through the Secretary,
Ministry of Defence,
South Block, New Delhi- 10 001.
 2. The Director General Research &
Development,
Government of India,
Ministry of Defence,
DRDO Bhavan, Rajaji Marg,
New Delhi, 110 105.
 3. The Director,
High Energy Materials Research
Laboratory (HEMRL),
Sutarwadi, Pune 411 021.
 4. The Director,
Armament Research & Development,
Establishment, Dr. Homi Babha Road,
Pashan, Pune 411 021.
 5. The Director,
Research & Development Establishment,
(Engineers), Dighi, Pune 411 015. ... **Respondents**
- (By Advocate Shri R.R. Shetty)

ORDER (Oral)

Per : R.N. Singh, Member (J)

Heard the learned counsels for the parties.

2. The Applicants 29 in numbers have approached this Tribunal by filing the aforesaid OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"8.a) This Hon'ble Tribunal may graciously be

pleased to call for the records of the case from the respondents and after examining the same hold and declare that the applicants are entitled to retain promotional increments earned by them under FR 22 (I) (a) (1) on account of their promotions from the post of STA 'C' to the post of TO 'A' and direct the respondents to restore the said increment and pay to them the arrears of salary and allowances on account of such restoration.

8.b) *This Hon'ble Tribunal may further be pleased to restrain the respondents from effecting any recoveries from the pay of the applicants on account of withdrawal promotional increments earned by them under FR 22 (I) (a) (1) on account of their promotions from the post of STA 'C' to TO 'A'.*

8.c) *Costs of the application be provided for.*

8.d) *Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."*

3. During the pendency of the OA, the applicants have filed MA No.838/2016 to bring on record subsequent developments in the matter. The relevant contents of the MA read as under:

"1. The Applicants state that they have filed the present Original Application for declaration that they are entitled to retain promotional increments earned by them under FR 22 (I) (a)(1) on account of their promotions from the post of STA 'C' to the post of TO 'A' with a further directions to restrain the respondents from effecting any recovery on account of withdrawal of promotional increments.

2. During pendency of the present Original Application, Ministry of Defence have issued letter dated 17.03.2016 directing that all the employees holding lower posts amongst the post merged and who had got promotion to the higher posts between

01.01.2006 to 09.09.2008, which was nullified on account of merger w.e.f. 01.01.2006, would be entitled to one increment. A copy of the said letter dated 17.03.2016 is annexed hereto and marked as Annex. A-1. By further letter dated 01.04.2016 directions are issued for payment of arrears to the eligible employees, a copy of the said letter dated 01.04.2016 is annexed hereto and marked as Annex. A-2.

3. The Applicants further state that applicant nos.1 to 10 working at HEMRL, Applicant No.16 working at ARDE and Applicant Nos.22 to 28 working at R&DE having promoted to the post of STA 'C' to the post of TO 'A' during the period from 01.01.2006 to 09.09.2008 and whose cases are fully covered by the letters dated 17.03.2016 to 01.04.2016. Therefore, prayers sought for retention of promotional increments and protection from recovery on account of withdrawal of promotional increment in respect of applicant nos.1 to 10, Applicant No.22 to 28 stand granted by the respondents by issuance of letters dated 17.03.2016 and 01.04.2016.

4. However letters dated 17.03.2016 and 01.04.2016 do not cover the cases of applicant nos.10 to 15, applicants nos.17 to 19 and applicant no.29 who were promoted from the post of STA 'C' to TO 'A' from September 2009 to September 2012.

5. The Applicants submit that the promotional increment of the said applicant 10 to 15, applicant nos.17 to 19 and applicant no.29 are also required to be protected in that they were physically promoted from the post of STA 'C' to the post of TO 'A', as the department not only continued functional difference between 2 posts despite merger of grade pays but went ahead and granted higher Grade Pay of Rs.4800/- to the promotional post of TO 'A' by orders dated 05.06.2009 and 08.06.2009. The said higher Grade Pay for the post of TO 'A' came to be withdrawn only on 10.05.2013. Thus the department itself continued functional as well as grade pay distinction between the posts of STA 'C' and TO 'A' up to 10.05.2013 and in such circumstances applicant nos.24, 25, 28, 30, 31 and 43 cannot be made to suffer in the form of

withdrawal of promotional increment as the promotions were granted to them after they were recommended for promotion by the DPC/Board.

6. *The Applicant therefore submit that the present Original Application therefore survives only in respect 10 to 15, Applicant Nos.17 to 19 and Applicant No.29 of prayer for promotional increments earned by them on account of their promotion from the post of STA 'C' to TO 'A' and for protection against recovery.*

7. *The Applicants therefore pray that:-*

a) *This Hon'ble Tribunal may graciously be pleased to take on record the documents produced along with Misc. Petition.*

b) *Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."*

4. At the outset, the learned counsels for the parties submit that the prayer made in prayer 8(b) of the OA does not survive in view of the fact that identical issue has already been decided and rejected by the Ernakulam Bench of this Tribunal vide order/judgment dated **07.06.2018** in **OA No.1802/00274/2015 in N. Surendranadhan & Ors. Vs. Union of India & Ors.** wherein the Ernakulam Bench has followed the judgment/order dated **04.07.2016** of Madras Bench of this Tribunal in **OA No.310/01087/2015 in Ch. P. Varadan Vs. Union of India & Ors.** However, Mr. Marne, learned counsel for the applicants submits that the

order/judgment 07.06.2018 of the Ernakulam Bench of this Tribunal is pending adjudication before the Hon'ble High Court of Kerala in OP(CAT)No.177/2018, though the same has not been stayed by the Hon'ble High Court.

5. From the aforesaid, it is evident that nothing survives in the present OA except the claim of the applicants nos.10 to 15, 17 to 19 and applicant no.29. However, Mr. Shetty, learned Senior Central Government Counsel appearing for the respondents under instructions submits that the said benefit is not applicable to these remaining applicants nos.10 to 15, 17 to 19 and 29 in view of the judgment dated 10.07.2013 of the Hon'ble High Court of Karnataka in WP No.31179-31212/2011. However, it is admitted fact that the respondents have not passed any order on the claim of such applicants i.e. applicant nos. 10 to 15, 17 to 19 and 29 in the present OA, keeping in view the subsequent order dated 17.03.2016 of the respondents referred to in para 2 of the above MA No.838/2016.

6. In view of the aforesaid, the OA is disposed of with direction to the respondents to consider the claim of the applicants nos.10 to 15, 17 to 19 and 29 and pass a reasoned and speaking order in accordance with relevant rules and instructions and also keeping in view their aforesaid order/letter dated 17.03.2016, within eight weeks of receipt of a certified copy of this order.

7. In the aforesaid terms, the OA is disposed of. MAs, if any, also stand disposed. No order as to costs.

(R.N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

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