

**Central Administrative Tribunal
Madras Bench**

OA/310/00724/2015

Dated the 31st day of July Two Thousand Nineteen

P R E S E N T

Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)

1. N.K.S.Brahaspathy
2. A.Murugarasan
3. P.Kamaraj
4. K.Boopathi .. Applicants

By Advocate **M/s.C.Vigneswaran**

Vs.

1. Union of India, rep by
Secretary to Government,
M/o Health & Family Welfare,
Nirman Bhawan,
New Delhi 110001.
2. The Indian Council of Medical Research,
rep. by its Director General,
Ansari Nagar, New Delhi 110029.
3. The Director,
National Institute of Epidemiology,
Indian Council of Medical Research,
Ayapakkam, Chennai 600077. .. Respondents

By Advocate **Mr.S.Nagarajan (R1), Mr.M.T.Arunan (R2&3)**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

This is an OA filed seeking the following relief:-

“To quash the order of the 3rd respondent in proceedings No.NIE/ESTT/PAYFIX/2015-16/72 dated 06/12.5.2015 and

Consequently direct the respondents to continue to fix the pay of the applicants based on the Fitment table for the pre-revised pay scale of Rs.7450-11500, and

Consequently pass such further or other orders as deemed fit in the facts and circumstances of the case.”

2. The brief facts of the case are as follows:-

The applicants were appointed as Stenographers, Personal Assistants and Statistical Assistants in the Institute for Research in Medical Statistics (IRMS) and in CJIL Field Unit which were merged into National Institute of Epidemiology (NIE) w.e.f. 02.7.1999. The applicants were working in the said Institute for the last 20 years and they are now holding the posts of Private Secretary and Technical Assistant(R). The pay scale of the applicants as on 31.12.05 was Rs.6500-10500 as per 5th Central Pay Commission (CPC) recommendation. As per the 6th Pay Commission report, recommendations were made for upgradation of pay scales and pay fixation was done as per CCS (Revised Pay Rules) 2008. As per the 6th CPC report the pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 were merged together and was replaced by the pay band of Rs.9300-34800 with Grade Pay (GP) of Rs.4200. Further the commission had also upgraded the pay scales for the

posts having pre-revised pay scale of Rs.6500-10500 in the PB-2 with a GP Rs.4600 corresponding to the pre-revised scale of Rs.7450-11500. At first the same was not implemented in the Institutions of the 2nd respondent. Later, the 3rd respondent, as per order dated 17.2.2010 granted the GP Rs.4600 to some of the applicants who were in the pre-revised pay scale of Rs.6500-10500 using the fitment table. Thereafter, the 2nd respondent sent a clarification letter dated 19.10.12 to place in the scale of Rs.7450-11500 as per fitment table for Rs.7450-11500 w.e.f. 01.1.2006.

3. On 09.2.15, the 3rd respondent had issued a letter dated 09.2.15 stating an audit objection regarding the fixation of pay. To the shock and surprise of all the applicants, the 3rd respondent issued an order dated 06/12.5.2015 stating that the upgraded scale of pay of Rs.7450-11500 is an inadvertent error. Therefore, the payment made w.e.f. 01.1.2006 is going to be recovered. According to the applicants, the above order of recovery was issued without giving a reasonable opportunity to the applicants to be heard and this is violative of the principles of natural justice and is highly arbitrary. So, the applicants pray for setting aside the above order and direct the respondents to fix the pay in the scale of Rs.7450-11500.

4. The respondents entered appearance and filed a detailed reply statement admitting the substantial portions of the facts stated by the applicants. According to the respondents, they had upgraded the pay scale to Rs.7450-11500 erroneously as per letter dated 21.4.15. This scale was not available in ICMR structure during the 5th CPC pay scales. Only the 6th CPC had upgraded the pay scales of Rs.6500-10500 to Rs.7450-11500 only for placing the pay scale in GP of Rs.4600. Therefore, the pay

scale of Rs.6500-10500 cannot be treated as upgraded to the level of Rs.7450-11500. According to the respondents, on a inspection of Institute's account for the period from 2010-11 to 2012-13 by the local Audit, they had mentioned that under Section-B-Part-IIIB-Para-1, that the pay in respect of some officials who were drawing pay in the pre-revised scale of Rs.6500-10500 has been irregularly re-fixed by using the fitment table of Rs.7450-11500. Accordingly the respondents had proceeded for recovery of the amount.

5. We have heard the counsel for the applicants and the counsel for the respondents. Counsel for the applicants submitted that at present the applicants 3 and 4 are not interested in getting any relief and they are not pressing for the relief. Only applicants 1 and 2 are seeking the claim. When the matter was heard, counsel for the applicants would submit that the respondents had initiated recovery of arrears of pay w.e.f. 01.1.06 without giving any notice and without giving any opportunity to the applicant to place their grievance before the authority. This is highly illegal and it violates the principles of natural justice. The counsel for the respondents would submit that the situation arose only because of the inadvertent error in fixing the scale on the basis of a letter received from ICMR and the audit party had objected to the same and the respondents are liable to recover the amount from the applicants. But the respondents has no case that they had issued any show cause notice before recovering the amount from the applicants. So, it is clear that the recovery proceedings were initiated even without giving notice to the applicants who are affected by the action of the respondents. This clearly violates the principles of

natural justice and it is highly arbitrary also. This court is of the view that the respondents before making such reduction in pay ought to have issued a notice to the applicants and given an opportunity to the applicants to be heard. In such view of the matter, we feel it appropriate to give directions to the respondents to give an opportunity to the applicants to express their views on such re-fixation of pay. From the above facts revealed in this application, we find that the order of recovery dated 06/12.5.15 is liable to be quashed.

6. Accordingly, the impugned recovery order dated 06/12.5.15 is hereby quashed. The respondents are directed to give an opportunity to the applicants 1 and 2 to express their views by issuing a notice to the applicants 1 and 2 within a period of one week from the date of receipt of a copy of this order, before effecting any recovery from the applicants 1 and 2. No recovery shall be made from the applicants in the meantime.

7. With the above direction, the OA is disposed off. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

31.07.2019

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