

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Applicaton No.180/00749/2015

Tuesday this the 2nd day of July 2019

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

V.Venugopal,
S/o.V.Vasudeva Kurup,
Technical Officer B,
Naval Physical and Oceanographic Laboratory,
Thrikkakkara, Kochi – 682 021.
Residing at House No.295E,
Kenettisala Road, Thrikkakkara P.O.,
Kochi – 682 021.

...Applicant

(By Advocate Mr.V.B.Narayanan)

v e r s u s

1. Union of India represented by Secretary,
Ministry of Defence,
Department of Defence Research and Development,
DRDO Bhavan, Rajaji Marg, New Delhi – 110 105.
2. Director General (Research and Development),
Defence Research and Development Organisation,
Ministry of Defence, Government of India,
DRDO Bhavan, Rajaji Marg, New Delhi – 110 105.
3. Scientific Adivser to Rakshamantri (SA to RM),
Defence Research and Development Organisation,
Ministry of Defence, Government of India,
DRDO Bhavan, Rajaji Marg, New Delhi – 110 105.
4. Director, Directorate of Human Resources Department,
Defence Research and Development Organisation,
Ministry of Defence, Government of India,
DRDO Bhavan, Rajaji Marg, New Delhi – 110 105.
5. Naval Physical and Oceanographic Laboratory,
Thrikkakkara, Kochi – 682 021 rep. by Director.

6. Secretary, Department of Expenditure,
Ministry of Finance, Government of India,
North Block, New Delhi – 110 001. ...Respondents

(By Advocate Mr.N.Anilkumar, SCGSC)

This application having been heard on 26th June 2019, this Tribunal on 2nd July 2019 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

The O.A is filed by Shri.V.Venugopal aggrieved by **Annexure A-3** order dated 30.5.2013 regarding modalities of revision of pay scale of T.O.A by which Grade pay of Rs.4800/- in PB-2 in his case was withdrawn and T.O.A/T.O.B were placed in the lower Grade Pay of Rs.4600/-, **Annexure A-10** order dated 10.5.2013 withdrawing the pay scale of PB-2 (Rs.9300-34800/-) with Grade Pay Rs.4800/- to posts of T.O.A/T.O.B., **Annexure A-11** order dated 13.5.2013 directing all the laboratories/establishments coming under the Ministry of Defence to refix the pay of all such DRTC personnel to PB-2/Grade Pay at Rs.4600/- instead of Grade Pay of Rs.4800/- from 1.1.2006, **Annexure A-16** order dated 3.9.2015 intimating recovery on account of over payment consequent on refixation of pay with effect from 1.1.2006 and **Annexure A-17** order dated 24.6.2013 re-designating the erstwhile posts of Senior Technical Assistant 'C' (PB-2/GP Rs.4600/-)/Technical Officer 'A' (PB-2/GP Rs.4800/-) as Technical Officer 'A' (Group B, Gazetted) in PB-2 Rs.9300-34800/- and Grade Pay of Rs.4600/-. The reliefs sought by the applicant reads as follows :

1. To call for the records pertaining to the issue of Annexure A-3, A-4, A-5, A-6, A-7, A-9, A-10 and declare that there is no anomaly or mistake or wrong in the revised pay scale granted to the applicant in the pay scale Rs.9300-34800/- with Grade Pay of Rs.4800/- in Pay Band 2 with effect from 1.1.2006.
2. To declare that Annexure A-3, A-10, A-11, A-16 and A-17 orders cancelling/withdrawing the Grade Pay of Rs.4800/- and fixing at Rs.4600/- to Technical Officer A and Technical Officers issued with the sanction of the President of India and with the concurrence of the Ministry of Finance/Defence is illegal, arbitrary and void ab initio and not binding on the applicant and liable to be quashed.
3. To issue appropriate order not to recover any amount from the salary of the applicant as per Annexure A-16.
4. To grant such other reliefs which this Hon'ble Tribunal may deem fit and proper to grant in the facts and circumstances of the case.
5. To allow the O.A with cost to the applicant.

2. The applicant submitted that the orders at Annexure A-1 to Annexure A-5 were issued by the competent authorities and there was no misrepresentation on his part in obtaining enhancement of the Grade Pay of Rs.4600/- to Rs.4800/-. Further, the respondents have refixed his Grade Pay at Rs.4600/- from Rs.4800/- ignoring the judgment of the Hon'ble Supreme Court in Civil Appeal No.11527/2014 (**State of Punjab & Ors. v. Rafiq Masih (White Washer)**) dated 18.12.2014 and the order of the Hyderabad Bench of this Tribunal in **O.A.No.1412/2014** dated 27.1.2015.

3. The respondents have filed their reply statement wherein they have stated that to maintain cadre hierarchy and avoid promotion within the same Grade Pay, the posts of TOA/TO were granted higher Grade Pay of Rs.4800/-. However during the audit the Director of Audit Defence Services, Southern Command, Pune observed that the upgradation of Grade

Pay from Rs.4600/- to Rs.4800/- approved by the Ministry of Defence was not agreed to by Ministry of Finance. Since the Department of Expenditure, Ministry of Finance was not satisfied with the justification submitted by Department of Defence for grant of higher Grade Pay, they advised to rectify the irregular grant of higher Grade Pay. The respondents further submitted that Annexure A-4 was issued only with the approval of its Integrated Finance and not with the approval of Ministry of Finance, hence it was held irregular by the Ministry of Finance. In support of this argument, they have relied on Rule 4(2) of Transaction of Business Rules which reads as under :

" Unless the case is fully covered by powers to sanction expenditure or to appropriate or re-appropriate funds, conferred by any general or special orders made by the Ministry of Finance, no department shall, without the previous concurrence of the Ministry of Finance, issue any orders which may -

Relate to the number or grade of posts, or to the strength of a service, or to the pay or allowance of Government servants or to any other conditions of their service having financial implications."

4. The respondents submitted that various Benches of this Tribunal had already considered this issue based on the order of the Principal Bench of this Tribunal in O.A.No.3593/2013 – **DRDO Technical Officers Association v. Union of India** – which was dismissed by the Principal Bench vide order dated 21.3.2014. The Writ Petition (C) filed before the Hon'ble High Court of Delhi against the aforesaid order dated 21.3.2014 was also dismissed as withdrawn vide order dated 8.7.2014. The respondents further submitted that all orders relating

to grievance of the applicant is consequential in nature to Annexure A-10, which is of final nature. But due to facts such as pending litigation and stay on recovery obtained by the DRDO Technical Officers' Association (supra) on the matter, the instructions for recovery of overpayment on this account could not be carried out and after the finalisation of the case orders were again issued for recovery of excess payment in 12 EMIs.

5. When the matter was taken up for hearing, none appeared on the side of the applicant. But since the matter is squarely covered by the decision of this Tribunal in O.A.No.180/274/2015 dated 7.6.2018, we have decided to proceed with the case. Heard learned counsel for the respondents. O.A.No.180/274/2015 is filed by colleagues of the applicant aggrieved by reduction of pay on account of withdrawal of Grade Pay of Rs.4800/- and consequential recovery of alleged excess salary and Grade Pay granted to them. The Tribunal in its order held as follows :

"8. The very same issue had been considered by the Madras Bench of this Tribunal in O.A.No.310/1087/2015. The case was an exact replica of the present O.A., the respondent organization being DRDO and the applicants, Technical Officers in the organization. They were aggrieved by the steps taken by the respondent organization therein to recover the Grade Pay of Rs.4800/- minus Rs.4600/-, the latter amount being what was actually entitled for the applicants. Discussing the judgment of the Apex Court in C.A.No.11527/2013, the Madras Bench came to the conclusion that none of the five conditions mentioned on pre-page were applicable in this case of recovery. Accordingly the O.A was dismissed and the relief sought was denied.

9. Following the said judgment of the Madras Bench, we do not see the circumstances of this case as any different from those in O.A.No.310/1087/2015 decided by the Madras Bench of this Tribunal.

They do not come under any of the five categories spelt out in **Rafiq Masih** (supra). We conclude that a case has not been made for halting the recovery as prayed for in the O.A. The O.A is accordingly dismissed. The interim order issued on 30.3.2015 is hereby vacated. In view of the order in the O.A, M.A.No.180/556/2018 & M.A.No.180/576/2018 are closed. No order as to costs."

6. We find no reason to differ with the findings this Tribunal has reached in the aforesaid order. Accordingly, the O.A is dismissed. The interim order dated 25.9.2015 is hereby vacated. No order as to costs.

(Dated this the 2nd day of July 2019)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00749/2015

1. **Annexure A-1** – A copy of the Order No.NPOL/A/Est/142/1/2 dated 12.9.2012.
2. **Annexure A-2** – A copy of the Order No.NPOL/A/Est/142/1/2 dated 4.9.2015.
3. **Annexure A-3** – A copy of the Order No.DHRD.16342/6th CPC/DRDC/C/P/05(iv) dated 30.5.2013.
4. **Annexure A-4** – A copy of the Order No.DHRD/16342/6th CPC/DRTC/C/P/05(iv)/1633/D(R&D)/2009 dated 5.6.2009.
5. **Annexure A-5** – A copy of the Order No.DHRD/16342/6th CPC/DRTC/C/P/05(iv)/1794/D(R&D)/2009 dated 8.6.2009.
6. **Annexure A-6** – A copy of the Order No.DHRD/16342/Vith CPC/DRTC/C/M/01 dated 8.6.2009.
7. **Annexure A-7** – A copy of the Appendix A dated 8.6.2009.
8. **Annexure A-8** – A copy of the Appendix B dated 29.10.2013.
9. **Annexure A-9** – A copy of the refixation of pay dated 20.10.2009.
10. **Annexure A-10** – A copy of the Order DHRD/16342/6th CPC/DRTC/C/P/05(iv)/1112/D(R&D)/2013 dated 10.5.2013.
11. **Annexure A-11** – A copy of the Order No.DHRD/16342/6th CPC/DRTC/C/P/05 dated 13.5.2013.
12. **Annexure A-12** – A copy of the recovery order No.NPOL/A/FIN/301/1/TOS dated 13.3.2015.
13. **Annexure A-13** – A copy of the Interim Order dated 30.3.2015 in O.A.No.180/274/2015.
14. **Annexure A-14** – A copy of the Office Memorandum dated 6.2.2014.
15. **Annexure A-15** – A copy of the representation dated 26.2.2015 submitted by the applicant.
16. **Annexure A-16** – A copy of the recovery order No.NPOL/A/FIN/301/1/TOS dated 3.9.2015.
17. **Annexure A-17** – A copy of the daily order Part ii dated 24.6.2013.

- 18. Annexure R-1(a)** – A copy of the First Schedule, Part-A, Section I of the CDS (RP) Rules, 2008.
 - 19. Annexure R-1(b)** – A copy of the First Schedule, Part-C, Section II of the CDS (RP) Rules, 2008.
 - 20. Annexure R-1(c)** – A copy of the letter U.O.No.7.10/12/2009-IC dated 10.7.2012.
 - 21. Annexure R-1(d)** – A copy of the order dated 13.3.2013 in O.A.No.571/CH/2011.
 - 22. Annexure R-1(e)** – A copy of the Rule 4(2) of Transaction of Business Rules.
 - 23. Annexure R-1(f)** – A copy of the order dated 21.3.2014 in O.A.No.3593/2013 passed by the Principal Bench of this Hon'ble Tribunal.
 - 24. Annexure R-1(g)** – A copy of the order dated 8.7.2014 in Writ Petition (C) No.4110 of 2014 passed by the Hon'ble High Court of Delhi.
 - 25. Annexure R-1(h)** – A copy of the order dated 25.2.2015 in R.A.No.30 of 2015.
 - 26. Annexure R-1(i)** – A copy of the speaking order dated 14.10.2015 issued to one such employee.
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