

**O.A No. 180/01110/2017**

**CORAM:**

P.V. Leela, 66 years,  
W/o. M. Krishnan (late),  
Residing at Sandram, House No. 23/512 (1),  
Tirunellayi (P.O), Palakkad – 678 020. - Applicant

## Versus

1. Union of India represented by  
The Secretary, Ministry of Home Affairs,  
New Delhi – 110 001.
2. Registrar General of India,  
Government of India,  
Ministry of Home Affairs, 2-A,  
Man Singh Road, New Delhi – 110 011.
3. The Pay & Accounts Officer (Census),  
Ministry of Home Affairs, New Delhi – 110 001.
4. Director of Census Operations, Kerala,  
CGO Complex, Ponkulam, Vellayani (P.O.),  
Thiruvananthapuram – 695 522.

The application having been heard on 01.08.2019, the Tribunal on 09.08.2019 delivered the following:

## ORDER

**Per: Ashish Kalia, Judicial Member**

The applicant has filed an M.A for condonation of delay. M.A is allowed. Delay is condoned.

2. The O.A is filed by Mrs. P.V. Leela, widow Mr. M. Krishnan, who had retired in the year 2007 while holding the post of Office Superintendent with the Registrar General of India. He expired on 23.07.2003. Vide Annexure A-2 dated 22.01.2003, the pay of Mr. Krishnan was re-fixed under the provisions of FR 22(1) (a) (1) with effect from 15.03.2000 following the merging of the post of Head Assistant and Office Superintendent at Rs. 7250/- in the scale of pay of Rs. 5500-175-9000. One Mr. Sasi, Superintendent, similar to the applicant got the same benefit, which was cancelled. Mr. Sasi approached this Tribunal by filing O.A No. 340/2006. The O.A was allowed and this Tribunal ordered to restore the order re-fixing the pay of Mr. Sasi at Rs. 7250/- in the scale of pay of Rs. 5500-175-9000 with effect from 15.03.2000, which was challenged before the Hon'ble High Court of Kerala. By Annexure A-7 judgment dated 11.03.2016, Hon'ble High Court confirmed the order of this Tribunal. Though, the same notice for recovery from the pay was ordered as per Annexure A-2 dated 22.01.2003 as in case of Mr. Sasi, the benefit of the judgment has not been extended to the applicant. Feeling aggrieved by this, he approached this Tribunal and sought the following reliefs:-

*“(i) Call for the records leading to the issuance of Annexure A-5 and set aside the same.*

*(ii) Direct the respondents to restore Annexure A-2 order and grant the applicant all consequential benefits, in her capacity as the legal heir of her husband, Sri M. Krishnan, following his entitlement, consequent on the refixation of his pay at Rs. 7250/- with effect from 15.03.2000 in the scale of pay of Rs. 5500-175-9000, with 12% interest from the date of Annexure A-2 order.*

*(iii) Declare that Sri. M. Krishnan is entitled to get his pay fixed in the post of Office Superintendent with effect from 15.03.2000, already granted to him by Annexure A-2 order.*

*(iv) Such other reliefs as this Hon'ble Tribunal deems fit and proper in the circumstances of this case.”*

3. Notices were issued and reply statement was filed through Mr. Brijesh A.S, ACGSC and detailed reply submitted therein affirming the merger of post of Head Assistant (Group 'C') to Office Superintendent (Group 'B') with effect from 15.03.2000 vide Office Order of Registrar General of India. Consequent on merger, the designation of Mr. Krishnan was changed to Office Superintendent with effect from 15.03.2000. Though the scale of pay of the post of Head Assistant and Office Superintendent carried the same scale of pay of Rs. 5500-9000, the pay of Mr. Krishnan was erroneously fixed in the post of Office Superintendent from 7250/- to 7600/- with effect from 15.03.2000 in the designated post of Office Superintendent vide order dated 22.01.2003 under the provisions of FR 22(1)(a)(i).

4. Mr. Sasi, Office Superintendent (Retired), DCO, Anadaman & Nicobar Islands was also granted the aforesaid benefits of pay fixation due to the merger of the post of Head Assistant and Office Superintendent at DCO, Andaman & Nicobar Islands vide order dated 27.03.2003. However, the fixation of his pay dated 27.03.2003 was objected by the Auditors dated 21.09.2005. Accordingly, DCO, Andaman & Nicobar annulled holding that he is not entitled to the next stage of pay fixed in the designated post of Office Superintendent with effect from 15.03.2000. Subsequently, his pay was revised down vide order dated 06.09.2005. Similarly, the pay of Mr. Krishnan was also cancelled and re-fixed with effect from 06.09.2005.

5. Vide O.A 340/2006, Mr. Sasi's pay fixation was restored back by Rs. 7250/- by this judgment. It is further submitted that Mr. Krishnan had approached after retirement to the concerned authority for redressal of his grievances, but kept silent and no cogent reason is shown with this Tribunal for delay in filing this O.A.

6. Heard Mr. Pirappancode V.S. Sudheer, learned counsel for the applicant and Mr. Brijesh, A.S, learned ACGSC for the respondents at length.

7. The short question raised by the applicant is whether the benefit given to colleague of Mr. Krishnan can be extended to the applicant or not particularly when recovery is ordered by the same or not? The respondents have categorically admitted that post of Head Assistant and Office Superintendent were allowed and designated as Office Superintendent and the pay scale allowed was Rs. 5500-9000. The status of the post was changed from Group 'C' to Group 'D'. Due to audit objection, recovery was made from the applicant and Mr. Sasi. Mr. Sasi had approached this Tribunal by filing O.A 340/2006. This Tribunal held :-

*“6. The undisputed fact in this case is that the applicant was working as an Assistant in the scale of pay of Rs.5000-150-80000 up to 8/2/2000 and he has been promoted as Head Assistant Group 'C' in the scale of pay of Rs.5500-175-9000 on the same date and his pay had to be fixed under FR 22(i)(a)(1). Accordingly, his pay was fixed vide Annexure A-I letter dated 30/3/2000 taking into consideration his option to fix his pay from 1/10/2000. However, after the merger of the post immediately thereafter on 15/3/2000 and the merged post has been designated as OS in Group B , obviously he had to carry higher responsibilities in the merged post. Accordingly, his pay has been rightly fixed afresh vide Mnexure A-4 order dated 27/3/2003. By this order, the respondents have taken into consideration the pay of Rs.6650/- drawn by him in the lower post of Assistant in the scale of Rs.5000-150-8000 as on 8/2/2000 by giving one notional increment in the same scale, his pay has been*

*raised to Rs.6800/- and fixed at the next higher stage in the scale of Rs.5500-175-9000 and fixed at Rs.6900/- as on 8/2/2000. This fixation cannot be faulted in any manner. However, as per the merger of the post of Head Assistant and OS from 15/3/2000 in the identical scales of pay of Rs.5500-175-9000 another fixation has become necessary. As admitted by the respondents themselves, the merged post of OS was a Group 'B' post compared to the Group 'C' post of Head Assistant and it carries higher responsibilities. It is for these reasons that the applicant's pay as on 15/3/2000 was taken as the pay already fixed in the scale of pay of Head Assistant at Rs.6900/- and then he was given a notional increment and fixed at the next higher stage. In my considered opinion, the aforesaid fixation of pay was absolutely in accordance with the rules and objections raised by Pay & Accounts Office that the applicant had already given the option and the same was final and it could not have been changed cannot be sustained because with the merger of the post of Head Assistant with that of OS was not a promotion and, therefore, it was not an anticipated one. It is in these circumstances that the applicant had changed his option and I do not find anything wrong in the revised option. The option is always with regard to a particular situation and it cannot be sustained when the situations change. The further contention of the Pay & Accounts Office that both the posts of Head Assistant and OS are identical and, therefore, further fixation of pay under FR 22(1)(a)(i) is not permissible is also to be rejected outright because the cadre authorities themselves have admitted in their Annexure A-4 order dated 27/3/2003, the status of the post of Head Assistant has been changed from Group 'C' to that of OS Group 'B' and carries higher responsibilities than that of the post of Head Assistant. It is not for the Pay & Accounts Office to decide whether a particular post carries higher responsibilities or not. Therefore, their objection in this regard is unwarranted and, therefore, rejected.*

*7. In the above facts and circumstances of the case, I allow this OA and quash and set aside the Annexure A-6 order dated 6/9/2005 and Annexure A-7 order dated 21/9/2005. In the result, the Annexure A-4 order dated 27/3/2003 refixing the pay of the applicant at Rs.6900/- as on 8/2/2000 against the post of Head Assistant in the scale of Rs.5500-175- 9000 and further fixation of pay against the post of OS from 15/3/2000 at Rs.7250/- shall be sustained and should be revived. The respondents are therefore directed to restore the Annexure A-4 order and grant the applicant all the consequential benefits as if the Annexures A-6 and A-7 orders were not issued. Since the applicant has already retired from service, the respondents shall comply with the aforesaid orders within a period of two months from the date of receipt of copy of this order. There shall be no orders as to costs."*

8. The order passed by this Tribunal was challenged by the respondents before the Hon'ble High Court of Kerala, and Hon'ble High Court was confirmed the order passed by this Tribunal vide its order dated 11.03.2016. Para 6 & 7 of the judgment in WP(C) No.

16338/2008 is extracted below:-

*“ We have heard the respective counsel at length. We notice that the representation submitted by the petitioner Annexure A-3, had been considered by the authorities and Annexure A-4 order refixing his pay was issued accepting his claim. Accordingly, he was granted higher pay w.e.f. 15.03.2000, which he continued to draw without any objection upto the date of his voluntary retirement on 31.3.2005. It was only long after his retirement, on 21.09.2005 that Annexure A-7 proceedings had been issued. Obviously Annexure A-7 has been issued after receiving the request of the respondent for settling his pensionary claims. The above being the factual situation, any attempt to set aside Annexure A-4 order would cause needless prejudice to the employee who has drawn his salary on the basis of the earlier proceedings upto the date of retirement, without any objection from any corner. The proceedings for recovery of the salary would also lead to unpleasant consequences.*

*7. On the question as to whether FR 22(1)(a)(1) would be applicable to the case of the respondent, the authorities had considered his representation and had decided that, the said rule would apply and that the respondent was entitled to have his salary refixed in accordance with the said rule. It was accordingly that, Annexure A-4 refixation was effected. Annexure A-4 which was passed in the year 2003 had continued to remain in force upto 21.9.2005. We notice that the difference in pay is only that of one increment. The respondent in any way would have become entitled to receive his pay fixed as Rs. 7425/- with effect from 01.03.2001. It is not in dispute that, the post of Office Superintendent was a Group B post, whereas the post of Head Assistant was a Group C post. Upon merger, the post of Head Assistant has become a Group B post, with a commensurate increase in the responsibilities of the holder of the post. The above aspect was also accepted by the authorities while issuing Annexure A-4 order. The impugned refixation order as per Annexure A-7 was issued without giving any notice to or hearing the respondent herein. Since the said proceedings is one that causes detriment to the rights of the respondent herein, it was necessary that the same was issued in compliance with the principles of Natural Justice. Accordingly, we find that, Annexure A-7 was unsustainable and liable to be set aside.*

*For the above reasons, we find no grounds to interfere with the impugned order or to grant any reliefs sought for.*

*The Writ Petition is accordingly dismissed.”*

9. Further, as regards the objections raised by the respondents on limitation that the applicant has approached this Tribunal after a gap of more than one and half decade and shall not be allowed to get the benefit of the judgment of the Tribunal confirmed by the Hon'ble High Court, we find that in numerous judgment of the Hon'ble Apex Court it has

been stated that where functioning benefits are in question, the cause of action is recurring every day. Thus, we hereby brush aside the objection raised by the respondents regarding the delay in filing the present O.A., though, particularly, this matter had been finalised and confirmed by the Hon'ble High Court of Kerala on 11.03.2016 and applicant has approached this Tribunal in the year 2017. We see no reason for not extending the benefit of the judgment passed by this Tribunal in O.A 340/2006. We, therefore, direct the respondents to restore the benefits of pay of Office Superintendent to the applicant in the pay at Rs. 7250/- with effect from 15.03.2000 in the pay scale of Rs. 5500-9000 and the same shall be done within 90 days from the date of receipt of a copy of this order. Interest so claimed is declined by this Tribunal. O.A is allowed. No order as to costs.

(Dated, 9<sup>th</sup> August, 2019.)

**(ASHISH KALIA)**  
**JUDICIAL MEMBER**

**(E.K. BHARAT BHUSHAN)**  
**ADMINISTRATIVE MEMBER**

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Applicant's Annexures

- Annexure A1 - True copy of the letter No. A-26019/2/98-Ad.II dated 26.5.2000 of the Under Secretary, attached to the office of the 2<sup>nd</sup> respondent.
- Annexure A2 - True copy of the order No. Estt. IV/8093/2002 dated 22.1.2003 of the 4<sup>th</sup> respondent.
- Annexure A3 - True copy of the revised pay fixation order dated 6.9.2005 of the Ministry of Home Affairs.
- Annexure A4 - A true copy of the letter No. PAO/Cencus/Pension/2005-2006/2180 dated 21.9.2005 of the 3<sup>rd</sup> respondent
- Annexure A5 - True copy of the Order No. Estt.1/8093/02 dated 06.02.2007 of the 4<sup>th</sup> respondent.
- Annexure A6 - True copy of the Order dated 9.11.2007 of this Hon'ble Tribunal in O.A No. 340/2006.
- Annexure A7 - True copy of the judgment dated 11.3.2016 of the Hon'ble High Court of Kerala in W.P. © No. 16338/2008.
- Annexure A8 - True copy of the letter No. 13014/15/2006-Ad. IV dated 9.12.2016 of the Under Secretary, Government of India, Ministry of Home Affairs addressed to the Deputy Director, Office of the Directorate of Census Operations, A & N Islands, Port Blair.
- Annexure A9 - True copy of the notice dated 11.1.2017 issued by the counsel for the applicant to the 2<sup>nd</sup> respondent.
- Annexure A10 - True copy of the order dated 20.10.2017 of this Hon'ble Tribunal in Contempt Petition (Civil) No. 32/2017.

Annexures of Respondents

- Annexure MR-1 - Order No. Estt.IV/8093/2002 dated 22.01.2003 of DCO, Kerala.
- Annexure MR-2 - Order No. Estt.I/8093/02 dated 06.02.2007 of DCO, Kerala.
- Annexure MR 3 - Order dated 09.11.2007 of the Hon'ble CAT, Ernakulam Bench in O.A No. 340/2006.
- Annexure MR-4 - Judgment dated 11.03.2016 of the Hon'ble High Court of Kerala in WP (c) No. 16338 in 2008.
- Annexure MR-5 - Decision of the Hon'ble Supreme Court of India in CA No. 9849/2014.
- Annexure R-1 - True copy of the Order No. A-26019/2/98-Ad.II dated 15.3.2000.



- Annexure R-2 - True copy of the Office Order No. Estt. IV/ 8093/ 2002 dated 22.01.2003.
- Annexure R-3 - True copy of the Order dated 9.11.2007 of the Hon'ble CAT, Ernakulam Bench in O.A 340/2006.
- Annexure R-4 - True copy of the judgment dated 11.3.2016 of the Hon'ble High Court of Kerala in WP(c) 16338 of 2008.
- Annexure R-5 - True copy of the Office Order No. Estt. I/8093/02 dated 6.2.2007.
- Annexure R-6 - True copy of letter No. 13014/15/2006-Ad.IV dated 21.12.2006.

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