

**CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI**

**ORIGINAL APPLICATION NO.210/00421/2018**

Dated this *Monday*, the 09<sup>th</sup> day of December, 2019

**CORAM: R.VIJAYKUMAR, MEMBER (A)**

1. Dr. Sanjeev Afzulpurkar, Age 59 years,  
presently working as Chief Scientist,  
CSIR - National Institute of Oceanography,  
Raj Bhavan Road Dona Paula, Goa 403 004 and  
residing at 11F3, Kamat Classic IV Kerant, Caranzalem,  
Goa 403 002.
2. Dr. Arga Chandrashekar Anil, Aged 59 years,  
presently working as Chief Scientist,  
CSIR – National Institute of Oceanography, Dona Paula,  
403 004, Goa, India and residing at 38 Janaki Smruti,  
Nova Cidade Enclave, Opp. Riviera Residency,  
Alto Porvorim, 403 521, Goa, India.
3. Dr. Anilkumar Chaubey, Aged 59 years,  
Working as Chief Scientist in the CSIR,  
National Institute of Oceanography Regional Centre,  
Four Bungalow, Lokhandwala Road, Andheri West,  
Mumbai 400 053 and residing at CSIR,  
National Institute of Oceanography, Regional Centre,  
Four Bungalows, Lokhandwala Road, Andheri West,  
Mumbai 400 053.
4. Dr. Sridhar D. Iyer, Age 59 years,  
presently working as Chief Scientist,  
CSIR – National Institute of Oceanography, Dona Paula,  
Goa 403 004 and residing at Chamunda Residency,  
Building -F, 4<sup>th</sup> Floor, Flat #3(F-3/4) Caranzalem,  
Goa 403 002.
5. Dr. Abhay Vaman Mudholkar, Aged 59 years,  
presently working as Chief Scientist,  
CSIR – National Institute of Oceanography, Dona Paula,  
Goa 403 004 and residing at 205/C Brindavan,  
Nandanvan Complex Opp. Mech. Cultivation Office Tonca,  
Caranzalem, Panaji, Goa 403 002.
6. Dr. T.Pankajakshan, Aged 58 years,  
working as Chief Scientist,  
CSIR - National Institute of Oceanography, Regional Centre,  
Dr. Salim Ali Road, Kochi 682 018 and residing at F-66,  
Platinum Pride Apartment, Perandoor Temple Road,  
Perandor, Elamakkara, Kochi 682 026.

7. Dr. M.R.Ramesh, Aged: 58 years,  
presently working as Chief Scientist,  
CSIR – National Institute of Oceanography, Dona Paula,  
Goa 403 004 and residing at A/S-2, T.R.Mansion  
Building A, Above Expert Chemists & Druggists,  
ST. INEZ, Caranzalem, P.O. Goa 403 002.
  8. T.Suresh, Aged 59 years,  
presently working as Chief Scientist,  
Marine Instrumentation Division,  
CSIR – National Institute of Oceanography, Dona Paula,  
Goa 403 004 and residing at S1, Mandovi Elite,  
Caranzalem, Goa 403 004. - Applicants
- (By Advocate Ms. Jayasree Pillai proxy counsel for  
Shri Ramesh Ramamurthy)

### Versus

1. Union of India, Through The Secretary,  
Ministry of Science & Technology, Room No.14-B,  
S&T Block I, Technology Bhawan, New Mehrauli Road,  
New Delhi 110 016.
  2. Director General,  
Council of Scientific & Industrial Research (CSIR),  
2, Rafi Marg, New Delhi 110 001.
  3. Director, CSIR-National Institute of Oceanography,  
Dona Paula, Goa 403 004.
  4. The Secretary, Department of Personnel and Training,  
Ministry of Personnel, Government of India, North Block,  
New Delhi Pin 110 001. - Respondents
- (By Advocate Shri K.P.Anilkumar)

### ORAL ORDER

This application has been filed on  
12.06.2018 under Section 19 of the  
Administrative Tribunals Act, 1985 seeking  
the following reliefs:

“8(a). That this Hon'ble Court be pleased to declare that there has been no excess payment of transport allowance to any of the Applicants in their post of Chief Scientist under the Respondent No.2 and further declare that the action of the Respondents to recover the said transport allowance paid to the Applicants by

the impugned order dated 18<sup>th</sup> April, 2018 (Annexure A-1) is bad in law and liable to be quashed and set aside;

8(b). That this Hon'ble Tribunal be pleased to quash and set aside the impugned order dated 18<sup>th</sup> April, 2018 (Annexure A-10 passed by the Respondents seeking to recover alleged excess payment of transport allowance to the Applicants;

8(c). That this Hon'ble Tribunal be pleased to direct the Respondents to pay the Applicants the correct amount of transport allowance of Rs.7,000/- (+) D.A. thereon every month to the Applicants till their superannuation and direct that any arrears arising out of such payment shall be also paid to the Applicants along with interest at the rate of 18% per annum on the same;

8(d). That the respondents be directed to refund the amount of Transport Allowance deducted from the salary of April, 2018 and May, 2018 to each of the Applicants, with interest on the said amounts @ 18% per annum from the dates till payments.

8(e). such other and further order or orders be passed as the facts and circumstances of the case may require;

8(f). That costs of this Original Application be provided for."

2. The applicants have challenged the orders of recovery dated 18.04.2018 issued by the Respondent No.3 based on instructions of the Respondent No.2 for recovery of Transport Allowance paid in excess for a period below five years in respect of eight applicants who were retiring more than one year after the date of show cause notice issued to them on

11.08.2017. Under the Staff Car rules issued by the respondents and clarification dated 06.04.1995, only Directors being the Head of Department were entitled to use of staff car for travel from home to office and back. The present applicants were Chief Scientists and were not entitled for use of the office staff car. The Respondent No.2 had issued directions on 21.11.2008 (Annexure A-2 colly) directing implementation of the VI Central Pay Commission recommendations by which it was ordered as follows:

“All Scientists with Grade Pay of Rs.10,000/- and above who are entitled to the use official vehicle in terms of Ministry of Finance, Department of Expenditure OM No.20(5)/E.II(A)/93 dated 24.1.1994 (endorsed vide CSIR No.31/4/93-Gen. dated 14.2.94), shall be given the option to avail themselves of the existing facility or to draw T.A. @ Rs.7000 + DA thereon per month as per the Ministry of Finance, Department of Expenditure OM dated 29.08.2008 already endorsed vide CSIR letter of even number dated 4.10.2008 as per the recommendation of Sixth Central Pay Commission. However, Director's designated as Head of Department shall continue to use staff car as per rules.”

3. Based on these orders, further letter dated 30.12.2008 was issued in

continuation (Annexure A-2 colly, p.31)

which read as below:

"No.5-1(3)/2008-PD

December 30, 2008

The Directors/Acting Directors of All National Labs/Instts.

Sub: Implementation of Sixth Central Pay Commission recommendations in respect of Scientists Gr.IV in CSIR.

Sir,

In continuation of this office letter of even number dated 21<sup>st</sup> November 2008 communicating the decision of the Competent Authority for implementation of the Sixth CPC recommendations in CSIR in the case of Scientists Gr.IV, DG, CSIR has been pleased to decide that Acting Directors, who are Scientist Gr.IV (6) and in the pay scale of Rs.37400-67000 (PB-4) with Grade Pay of Rs.10,000 per month, shall be given the option to avail themselves of the existing facility to use official vehicle in terms of Ministry of Finance, Deptt. of Expenditure OM No.20(5)E.II(A)/93 dated 24-1-1994 to draw TA @Rs.7,000 plus DA thereon per month, as per Ministry of Finance, DoE OM dated 29-8-2008 endorsed vide CSIR letter of even number dated 4-10-2008. However, regular Directors in the pay scale of Rs.37400-67000 in PB-4 with Grade Pay of Rs.12,000 shall continue to use staff car as per rule.

Yours faithfully,

sd/-

(Sushil Kumar)

Sr. Deputy Secretary"

4. This letter referred to Acting Directors with Grade Pay of Rs.10,000/- per month who were given option of availing the existing facility to use the

official vehicle or to drop travel allowance 7% DA every month. The option was clearly available only for those availing an existing facility but the staff car rules barred this to applicants. However, the present applicants commenced drawing this enhanced TA from March 2009, April 2009 and August, 2009 in three cases and then in 2010/2012/2013 in the other cases. However, following an audit inspection and audit remarks, the Respondent No.2 issued orders dated 25.04.2014 (Annexure A-4) directing stoppage of monthly Transport Allowance on the basis that the persons in these categories including applicants were never entitled for use of the office vehicle or staff car for such purposes and therefore, the option communicated earlier was not available to them since they were not holding the post of Director or Head of Department who were alone entitled for use of staff car. Accordingly, payment already made in March 2014 and disbursed

on first week of April 2014 was stopped thereafter with effect from the monthly salary for April 2014 paid at the end of April. The respondents then clarified the matter again with the Ministry of Finance vide notings obtained and included in Annexure A-16 by letter dated 10.06.2014 and received a response on the above lines. The Ministry of Finance also advised that the Principal Bench of this Tribunal in its order dated 25.05.2014 in OA No.4062/2013 of **Shri Radhacharan Shakiya & Ors. Vs. Union of India** has held that recovery of Transport Allowance paid in excess is invalid in law and advised accordingly in its OM dated 23.09.2014. When legal advice was sought in this matter by the Respondent No.2, the Legal Advisor advised that necessary action may be taken keeping in view the observations of the Hon'ble Apex Court in **State of Punjab and others Vs. Rafiq Masih (White Washer)** dated 18.12.2014 reported in 201 AIR SCW 501, which held that :

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class III and Class IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

5. Accordingly, approval was taken and instructions issued directing recovery. Thereafter, based on Respondent No.2 letter dated 14.09.2017 (Annexure A-15) seeking an analysis of all the affected Scientists and to regulate entitlement for

waiver for recovery in terms of the judgment of the Hon'ble Apex Court in **Rafiq Masih** supra, an analysis was done. Of these 47 Scientists had already superannuated, six were superannuating within one year and for one Scientist, excess payment had been made for a period in excess of five years while eight Scientists were superannuating after 30.06.2017 beyond the period of one year. These Scientists were the applicants for whom show cause notices were issued by the respondents and they are before us in this application. As noted therein, all of them has raised their protest to the show cause notice by way of replies.

6. The applicants have contended that they have been promoted to the Joint Secretary grade with grade pay of Rs.10,000/- after a proper selection procedure and they were entitled to the Transport Allowance of Rs.7,000/- per month including DA. They state that the

facts in the case of **Radhacharan Sakhiya** supra are different as they belong to different Group A services. They further state that in this case the persons had received Grade Pay of Rs.10,000/- on non-functional basis whereas the present applicants had been given the higher grade by a selection process. They further state that the post of Chief Scientist is equivalent to Chief Executive of statutory bodies and they are equivalent to Joint Secretary. On this basis, they claim that since they have been selected by the Assessment Board, the post carries the facility of staff car. For this purpose they rely on the decision of the Principal Bench in **OA No.363/2012 in J.S.Sharma & Ors. Vs. Union of India** decided on **05.02.2013**. They also plead that the respondents have discriminated by allowing several employees to retire after the date of audit observation and stoppage in 2014 whereas the applicants have six to nine months to retire from service and

therefore, the provisions of the judgment in **Rafiq Masih** supra will exclude any recoveries from the applicants. They also state that recovery now proposed was very large and caused considerable hardship.

7. The respondents have opposed the OA and have affirmed that OM No.5-1(3)/2008-PD dated 21.11.2008 of Respondent No.2, extracted supra, provides that only Scientists with Grade Pay of Rs.10,000/- who were **entitled** to the use of official vehicle will have the option but which was wrongly given to the applicants. Based on the audit observations in their letter dated 25.04.2014, payment was stopped from April, 2014 onwards. Thereafter, Respondent No.2 issued instructions on 31.07.2017 directing adherence to the judgment of the Hon'ble Apex Court in **Rafiq Masih** supra and necessary action was taken after issue of show cause notice dated 11.08.2017. Even at that time, the eight applicants were retiring more than

one year after the said date. Moreover, the recoveries involved were for a period of five years or less in all the cases for the period ending March 2014. Rejoinder and further affidavits have been filed by both the parties. In particular, respondents have made an additional submission with reference to the decision of the Ernakulam Bench of this Tribunal in OA No.180/00044/2015 & Ors. of **Dr. Ajit Haridas Vs. Union of India and others dated 19.11.2018** which relates to a Chief Scientist in a lab under the control of Respondent No.2 and in which the relief sought were as below:

“(a) To call for the records leading to Annexure A4 and Annexure A6 and quash them to the extent it applies to the applicants herein.

(b) To declare that the applicants are entitled for the transport allowance of Rs.7000/- plus DA.

(c) To direct the respondents to grant transport allowance of Rs.7000/- plus DA to the applicants herein.

(d) Grant such other reliefs this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case including the costs of this Original Application.”

The Tribunal held as follows:

“9. After hearing both parties, we are of the view that this issue has already been considered by the Principal Bench of this Tribunal in OA No.4062 of 2013 filed by **Mr. Radhacharan Shakiya and Others V. Union of India and Others** on 13.5.2014 and held that the applicants were not entitled to draw Transport Allowance @ Rs.7000/- per month plus DA thereon. The said order of this Tribunal had also been upheld by Hon'ble High Court of Delhi in Writ Petition (Civil) No.3445/2014 on 3.9.2014 filed by **Shri Radhacharan Shakiya and others**. The Office Memorandum issued by the Ministry of Finance, Department of Expenditure dated 19<sup>th</sup> August 2016 clarified that the officers, who are not entitled for the use of official car for commuting between residence to office and back, are not eligible to opt for drawal of TA @ Rs.7000/-p.m. + DA thereon, even though they are drawing Grade Pay of Rs.10,000/- in PB-4 under ACP Scheme or under the scheme of Non-Functional upgradation. In view of the above position, the averment of the applicants that they are entitled for TA @ Rs.7000/- + DA thereon holds not much water.

10. It is further clarified in the judgment by the Principal Bench of this Tribunal in OA No.4062/2013 that:

“It is clear that there is no error committed by the respondents in not allowing Rs.7000/- per month to the applicants. The 1994 circular made a specific provision for the officers of the rank of Joint Secretaries and above, which is not applicable to other officials just on the ground that they draw the same Grade Pay. Therefore, the respondents had to issue a clarification in 2013 also. The Hon'ble Supreme Court in **Chandi Prasad Unniyal** has also held that recoveries can be made in such circumstances and, therefore, the order dated 24.10.2013 directing recovery of transport allowance paid in excess is valid in law.”

11. It is true that the applicants are receiving the grade pay of Rs.10,000/- but they are not in the rank of Joint Secretary. The post Chief Scientist is equivalent to it. Hence they are not entitled for the benefits attached to the post of Joint Secretary in the Ministries unless or until it is clearly stipulated that equivalent post to Joint Secretary are also entitled for the Transport Allowance. They cannot claim the same as a matter of right.

12. In view of the facts and circumstances of these cases and the legal position emerged, there is no merit on the side of the applicants. Hence, the Original Applications fail are liable to be dismissed. We order so. There shall be no order as to costs."

8. We have gone through the OA and rejoinder along with Annexures filed on behalf of the applicant. We have also gone through the reply along with Annexures filed on behalf of the respondents and have examined the files and cognized all relevant facts of the case.

9. We have heard the learned counsel for the applicant and the learned counsel for the respondents and carefully considered the facts and circumstances, pleadings, law points, case law and rival contentions in the case.

10. The main issue raised by the applicants with regard to their entitlement to Transport Allowance is on the basis that they had been granted the Grade Pay of Rs.10,000/- after a rigorous selection process. This aspect has been previously considered and answered by the Coordinate Bench of this Tribunal in a Ernakulam in batch of cases led by **Dr. Ajit Haridas** supra. When the position of rules and staff car rules of the respondents are explicit and unambiguous, it is clear that there was no entitlement of the applicants for the use of staff car. Therefore, the question of grating option to them to receive Transport Allowance also does not arise. This Bench is bound by the orders of the Ernakulam Bench of this Tribunal in this identical case.

11. On the aspect of their claim that their recoveries were actually ordered only in 2018 and by that time, they had

only less than one year for superannuation, the fact remains that they were aware of the denial of such a request to them as early as in April 2014. Further, the respondents had issued show cause notice to them in August 2017 and based on their reply and after consultation, orders of recovery were issued. The respondents have also gone through an elaborate and extremely generous exercise in respect of all their labs and have extended the benefit of **Rafiq Masih** supra in respect of cases retiring within one year, superannuated cases and cases where recoveries were involved for a period in excess of five years. The eight applicants in this case fell outside all these categories. Therefore, direct application of the five conditions specified in **Rafiq Masih** supra will not apply. Further, a statement has been provided during arguments on the applicants' emoluments prior to their retirement and their pension plus DA which

is available to them subsequent to their retirement. The statement of recovery planned, retirement date and number of installments, salary prior to superannuation and pension is as below:

Applicant No.	Recovery ₹	Retirement date	Number of installments	Salary ₹	Pension ₹
1	2,43,648	30/11/2018	12 installments @ Rs.20,304/-	2,60,924/-	112052/-
2	4,52,304	31/01/2019	20 installments @ Rs.30,154/-	2,53,454/-	108782/-
3	4,86,594	31/12/2018	17 installments @ Rs.28,623/-	2,25,412/-	108782/-
4	10,26,432	31/01/2019	18 installments @ Rs.57,024/-	2,64,848/-	112052/-
5	1,98,720	31/01/2019	12 installments @ Rs.16,560/-	2,60,924/-	112052/-
6	2,52,558	31/05/2019	11 installments @ Rs.21,047/- and 1 installment @ Rs.21,041/-	2,63,552/-	111776/-
7	5,20,884	31/05/2019	20 installments @ Rs.26,044/-	2,67,200/-	115136/-
8	1,52,280	31/03/2019	12 installments @ Rs.12,690/-	2,68,674/-	118608/-

12. From the above table, it is apparent that the total amount of recovery in comparison to their salaries prior to

retirement cannot be considered a serious cause of hardship provided the number of installments have been suitably determined and no objections have been raised on its nature. The OA, therefore, lacks merits.

13. However, interim orders were granted by this Bench during the hearing on 06.08.2018 and only a few installments appear to have been deducted up to date. The remaining recovery will now required to be made up from the pension and pensionary benefits due from the applicants. The respondents are accordingly directed to pass suitable orders for recovery of the balance amount from each of the applicants from their pensionary benefit and their pension in a manner that will cause the least amount of hardship to the applicants and for which, suitable administrative discretion shall be exercised by the Respondent No.3 in consultation with Respondent No.2. Such orders shall issue within a period of four

13. With the above observations and directions, this OA is dismissed as lacking merits but without any order as to costs.

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10/12/19

