

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 21.08.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

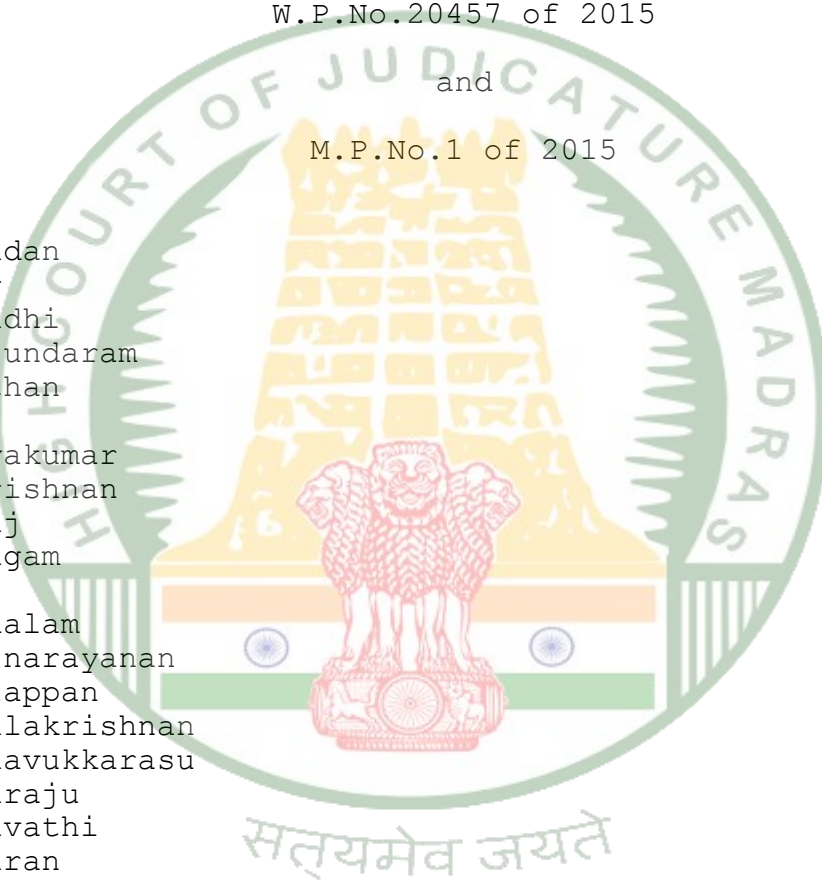
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

W.P.No.20457 of 2015

and

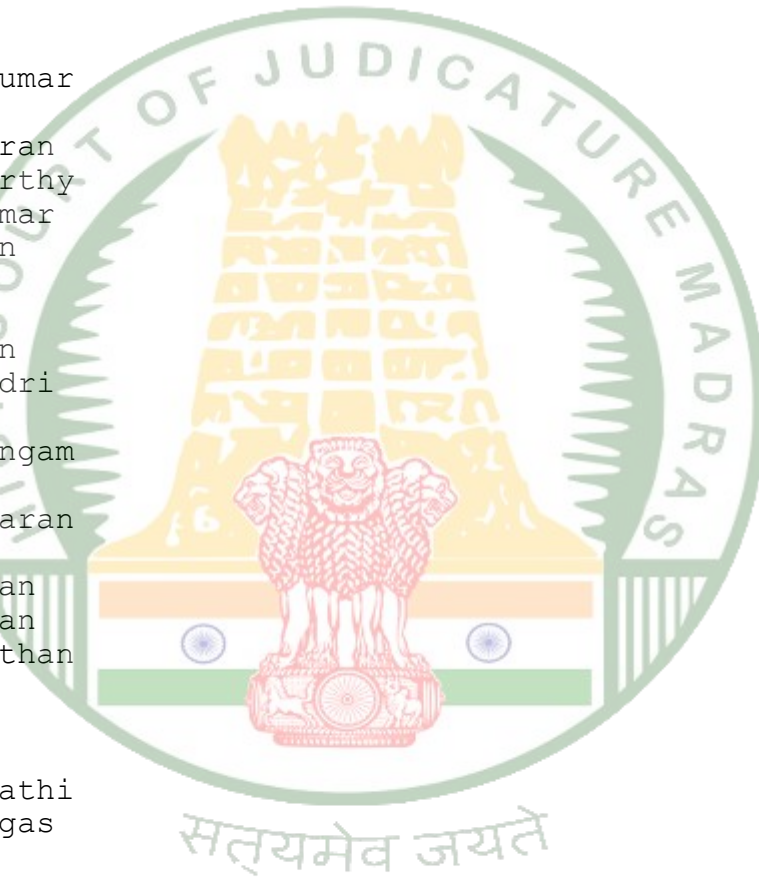
M.P.No.1 of 2015

- 1.Ch.P.Varadan
- 2.S.Soundar
- 3.J.Pugalendhi
- 4.T.S.Somasundaram
- 5.B.Ramanathan
- 6.E.Rajavel
- 7.B.K.Vijayakumar
- 8.M.Muthukrishnan
- 9.P.Selvaraj
- 10.P.Shanmugam
- 11.S.Mohan
- 12.S.Sonachalam
- 13.M.Bathrinarayanan
- 14.V.Palaniappan
- 15.T.A.Gopalakrishnan
- 16.M.Thirunavukkarasu
- 17.P.Thangaraju
- 18.P.Prabhavathi
- 19.D.Manoharan
- 20.S.Murugesan
- 21.P.Balakrishnan
- 22.Saroja Nagarajan
- 23.A.Arulmozhi
- 24.D.Thanikaivel
- 25.M.Munuswamy
- 26.V.Sethuraman
- 27.M.R.Mohan
- 28.P.Sekar
- 29.R.Ramalingam
- 30.S.Giridharan
- 31.A.D.Kannagi
- 32.N.Ramu



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33.V.Pitchaiya
34.H.Sivakumar
35.M.Ramesh Kumar
36.A.Muthu
37.K.N.Raman
38.D.Ramachandran
39.R.Chellapandian
40.V.Deekkappan
41.K.Shanmugasundaram
42.M.Someswaran
43.K.Muthu Manickam
44.B.Sugumaran
45.N.Ravikumar
46.K.Gautaman
47.M.A.Vijajakumar
48.D.Shanmugam
49.M.Gnanaseharan
50.P.Santhamoorthy
51.S.Krishnakumar
52.M.Pachiappan
53.N.Santharam
54.R.Samuel
55.V.Murugaiyan
56.B.S.M.Simhadri
57.K.Chandran
58.C.Mohana Rengam
59.K.Perumal
60.P.K.Gunasekaran
61.S.Damodar
62.G.Senguttuvan
63.R.Arivazhagan
64.S.Vaithyanathan
65.R.Palani
66.M.Pandian
67.G.Amaresan
68.D.Parthasarathi
69.A.Maria Dulgas
70.K.Mohandas
71.J.E.Cyrcil
72.S.Palani
73.K.Sathyamoorthy
74.A.R.Palaniappan
75.T.Prakash Kumar
76.P.Gunasekaran
77.M.Mariappa
78.N.Sivanandan
79.S.A.Vijayan
80.G.Balakrishnan
81.S.Muraridharan
82.K.Sadasivam
83.G.Rajasekar



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84.G.Ekambaram
85.Rathikesavan
86.B.Pandurangan
87.Pa leo Kennady
88.J.Sam Davidson
89.R.Dhanasekaran
90.Smt.B.Jayakumari
91.C.Natarajan
92.Smt Parimala Rajasekar
93.R.Sengaraju
94.SM Dominic

.. Petitioners

Vs.

- 1.The Presiding Officer,
Central Administrative Tribunal,
Madras Bench.
- 2.The Secretary to the Government of India,
Ministry of Defence,
Department of Defence Research,
DRDO Hqrs. DRDO Bhawan,
Rajaji Marg,
New Delhi - 110 011.
- 3.The Director General,
Ministry of Defence,
Defence Research and Development Organisation,
DRDO Hqrs., B-Block, DRDO Bhavan,
Rajaji Marg, New Delhi - 110 011.
- 4.The Director,
Combat Vehicles Research & Development
Establishment,
Defence Research and Development Organisation,
Avadi, Chennai - 600 054.
- 5.The Secretary to the Government of India,
Ministry of Personnel,
Public Grievances and Pensions,
Department of Personnel and Training,
North Block, New Delhi.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the Order passed by the 1st respondent against the petitioner in Miscellaneous Application No.310/00377/2015 dated 05.06.2015 and quash the same and consequently direct the 2nd, 3rd, and 4th respondents to refund the differential amount in grade pay and Pay Band recovered and reduced so far in pursuance to the departmental order dated 15.04.2015 issued by the 4th respondent.

For Petitioner : No Appearance
For Respondents : Mr.N.Siva Bharathi,
Central Government Standing Counsel

ORDER

P.Varadan and 93 others have joined together and filed Miscellaneous Application No.310/00377/2015 seeking permission to file a single application challenging the correctness of the orders dated 10.05.2013, 13.05.2013 and 30.05.2013 respectively, issued by the Secretary to the Government of India, Ministry of Defence, Department of Defence Research, DRDO Hqrs., New Dehli- 110 011, respondent No.2 and the Director General, Ministry of Defence, Defence Research and Development Organization, DRDO Hqrs., New Delhi-110 011, respondent No.3, and the further order dated 15.04.2015 issued by the Director, Combat Vehicles Research & Development Establishment, Defence Research and Development Organisation, Avadi, Chennai, respondent No.4.

2. Order impugned in the present writ petition, shows that the order dated 15.04.2015, the Director Combat Vehicles Research & Development Establishment, Defence Research and Development Organisation, Avadi, Chennai is the outcome of a judgment passed by the Principal Bench of the Central Administrative Tribunal in O.A.No.3593 of 2013. The said O.A. has been disposed of, directing the Department to recover the excess payment made to the applicants, in twelve equal monthly instalments.

3. The Central Administrative Tribunal, Madras Bench has observed that O.A.No.3593/2013, has been filed by M/s.DRDO Technical Officers Association and the present M.A.No.310/00377/2015 has been filed by Mr.P.Varathan and 93 others. Taking note of the time prescribed in Section 21 of the Administrative Tribunals Act, 1985, the Tribunal, has observed that the Original Application/Miscellaneous Application has been filed beyond the period of one year and therefore, the applicants have to necessarily move an application to condone the delay in filing O.A. Accordingly, the Central administrative Tribunal, Madras Bench has directed the applicants to file MA to condone delay in filing the O.A. Being aggrieved, Mr.P.Varathan and 93 others have filed the present writ petition challenging the said order made in M.A.No.310/00377/2015, dated 05.06.2015.

4. Record of proceedings shows that when the matter came up on 10.07.2015, while ordering notice of motion, this Court has granted interim stay of recovery i.e. the order dated 15.04.2015, which has been passed pursuant to the dismissal of O.A.No.3593/2015 dated 21.03.2014 by the Principal Bench of Central Administrative Tribunal,

New Delhi.

5. Before the Central Administrative Tribunal, Madras Bench, based on the counter affidavit dated 17.08.2015 filed by the Senior Administrative Officer of the Combat Vehicles Research & Development Establishment, Avadi, Chennai Mr.N.Siva Bharathi, learned Central Government Standing Counsel submitted that orders for cancellation of higher grade pay were issued on 10.05.2013, and circulated by DHRD to all Labs/offices vide letter dated 13.05.2013. Orders for consequential review of promotions were issued vide order dated 30.05.2013. It was stayed by the Hon'ble Central administrative Tribunal, Chandigarh and Hyderabad respectively. Hence, reduction of grade pay and recovery, was not commenced. Stay was vacated by the Central administrative Tribunal, Principal Bench vide order dated 21.03.2014, with directions to recover the excess payment in 12 instalments. Accordingly, department has issued orders for recovery of excess payments in 12 instalments vide letter dated 30.05.2014. Averments have been made justifying the correctness of the orders dated 10.05.2013 and the last order dated 15.04.2015 for recovery.

6. At this juncture, we are concerned as to whether Mr.P.Varathan and 93 others have filed the original application, well within the period provided under Section 21 of the Administrative Tribunals Act 1985. Question as to whether the Department is empowered to refix the scale of pay with grade pay of 4,600/-, to the officers, is a matter to be adjudicated by the Central Administrative Tribunal, Chennai Bench. Therefore, we are not inclined to delve into the said aspect.

7. On 18.08.2015, when the matter came up for hearing, Mr.G.Venkatesh, Senior Administrative Officer, Combat Vehicles Research & Development Establishment, Avadi, Chennai, who appeared in Court, submitted that only after the receipt of the communication in DHRD/76066/CC/OA-3593/2013/CAT/C/M/01, dated 30.05.2014, Government of India, Ministry of Defence, a letter addressed to the Director, All Labs, steps were taken to refix the scale of pay of the applicants/writ petitioners. He further submitted that after receipt of the letter dated 30.05.2014, steps were taken to refix the scale of pay, to all the applicants/writ petitioners, with grade pay of Rs.4,600/-. After 30.05.2014, modality for taking steps took 7 to 8 months. Recovery started only after the said proceedings. Thus from the candid admission of the Senior Administrative Officer, Combat Vehicles Research & Development Establishment, Avadi, Chennai before this Court, it is abundantly clear that the re-fixation of pay of Mr.P.Varathan and 93 others with grade pay of Rs.4,600/-, has been done only 31.05.2014. Senior Administrative Officer further submitted that in so far as the refixation of pay of Mr.P.Varathan is concerned, he had already moved onto the next grade pay, and therefore it was not done immediately. Section 21 of the Central Administrative Tribunals Act, 1985 prescribes the period of limitation. Section 21 reads as follows:

"21.Limitation.- (1) A Tribunal shall not admit an application,-

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within in one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

8. Letter dated 30.05.2014 of the Government of India, Ministry of Defence, Directorate of Human Resource Development, New Delhi-110 011 is extracted:

"Tele: 23007815

Fax : 23014903

DHRD/76066/CC/OA-
3593/2013/CAT/C/M/01
Government of India,
Ministry of Defence,
Directorate of Human Resource Development
'B' Block, 2nd Floor, DRDO Bhawan,
New Delhi - 110 011.

30 May 2014

To

The Director,
All Labs.

SUB: OA.No.3593/2013, filed by DRDO Technical Officers
Association & Ors V. Union of India & Ors in the
Hon'ble CAT, Principal Bench, New Delhi.

Reference this HQ letter No.DHRd/16342/6th
CPC/DRTC/C/P/05(iv)/1112/D (R&D)/2013 dated 10th May
2013, DHRD/16342/6th CPC/DRTC/C/P/05(iv) dated 13th May
2013, 30th May 2013 and letter No.DHRD/76066/OA-
846/2013/TBRL/C/M/01 dated 05th Sep 2013 on the
aforesaid subject.

2. The DRDO Technical Officers Association and
some Technical Officers had filed OA No.3593/2013 at CAT
(PB), New Delhi. The applicants in OA.No.3593/2013 had
challenged and prayed for setting aside the impugned
orders dated 10 May 2013, 13 May 2013, 30 May 2013 and
09 Sep 2013 related to reduction of Grade Pay of
Technical Officer/Technical Officer 'A' and consequent
recovery and re-assessment. The Hon'ble Tribunal CAT
(PB) vide its order dated 21st March 2013 has dismissed
the OA with the directions that the excess payment made
to the applicants be recovered from their salary in
twelve equal monthly instalments.

3. Similar matters are presently pending with
Chandigarh, Hyderabad and Cuttack Benches of the Hon'ble
CAT wherein the Hon'ble Tribunals have granted stay on
reduction/recovery in respect of the applicants in those
cases. Hon'ble CAT Hyderabad vide their interim order
dated 21.06.2013 in OA No.727/2013 has stayed the
impugned order dated 10 May 2013, 13 May 2013, and 30
May 2013 to the extent of recovery only.

4. A copy of the order of CAT (PB) in OA
No.3593/2013 has already been forwarded to the concerned
labs at Chandigarh, Hyderabad and Cuttack for bringing
the same to the notice of the Hon'ble CAT there and
request for vacation of stay and also disposing of the

OAs pending before them in the light of the orders of the Hon'ble CAT (PB). In the meanwhile, the issue of reduction/recovery on account of grant of revised grade pay to TO/TO'A' and the directions of Hon'ble CAT (PB) in OA No.3593/2013 have been examined in consultation with the Ministry of Law & Justice. Based on the advice received from Ministry of Law & Justice it has been decided that the reduction/recovery in terms of Ministry of Defence letter dated 10 May 2013 would be carried out as under:-

(a) Pay in Pay Band and Grade Pay of Technical Officers/Technical Officers 'A' not be reduced and no recovery be carried out in respect of those cases where there has been specific interim orders of stay by courts on reduction of Grade Pay or recovery, as the case may be, till such time the stay is vacated or the cases are disposed of.

(b) Pay in Pay Band and Grade Pay of all remaining Technical Officers/Technical Officers 'A' be re-fixed in PB-2 with Grade Pay Rs.4,600 w.e.f 01.01.2006 or from the date of their appointment in the grade, whichever is later, in case already not re-fixed as per letter dated 10.05.2013.

(c) Recovery of excess payments made on account of grant of higher grade pay of Rs.4,800 to TO/TO'A' be started immediately in respect of all employees excluding cases mentioned at (a) above, in twelve equal monthly instalments, as per the directions of Hon'ble CAT (PB) in OA No.3593/2015.

5. This issues with the approval of DS&CC R&D (HR).
"

9. Material on record discloses that the original application, seeking to quash the orders dated 10.05.2013, 13.05.2013 and 30.05.2013 issued by the the Secretary to the Government of India, Ministry of Defence, Department of Defence Research, DRDO Hqrs., New Dehli- 110 011 and the Director General, Ministry of Defence, Defence Research and Development Organization, DRDO Hqrs., New Delhi-110 011 has been filed in the month of June 2015.

10. Though orders have been issued in the year 2013 on different dates, they were not given effect to, as there was stay, in other Tribunals. Only after the stay is vacated, they were implemented. Thus the time starts from the date, when it was actually implemented by communication to the individuals, or when their respective pay is rectified. A person is said to be aggrieved only when an order passed by the competent authority is implemented. In the case on

hand, the impugned orders of the authorities, have not been given effect till the stay is vacated and the actual effect of refixation and recovery, are done, after 7 to 8 months, from 31.05.2014. It is a fundamental principle of law of limitation that where the cause of action has not arisen, limitation cannot begin to run. Provisions of the Administrative Tribunals Act 1985, should be construed in conformity with this principle. Even though the orders impugned were issued in the year 2013, cause of action has arisen only when the department started refixing the scale of pay and recovery after 31.05.2014. Starting point of limitation from the date of passing of the impugned orders, issued in the year 2013, must be held to have been postponed till the accrual of cause of action for the petitioners, to challenge the orders, when refixation has been done after 31.05.2014. Right to institute proceedings arises only when an order affecting the rights are infringed. It is not the case of the respondents that the impugned orders of the year 2013, have been communicated to the petitioners even in the year 2013, in which event, it would be appropriate to contend that the period of limitation has to be computed from the date of their knowledge. It is also well settled under the law of limitation, when two or more persons are entitled to institute proceedings in a Court of law, in regard to the same subject matter, each has a distinct cause of action, and thus a distinct period of limitation will apply. Thus, limitation always implies the date of cause of action, for accrual of right to institute proceedings in a Court of law or the forum. In the case on hand, though orders were passed in 2013, they were put on hold, till May 2014. In the absence of proof of notice or communication of the impugned orders or knowledge of the respondents in the year 2013 itself, it cannot be said, their right to challenge had accrued in the year 2013 and that the petitioners have failed to challenge the same, within the prescribed period in the Administrative Tribunals Act 1985.

11. In view of the candid admission of Mr.G.Venkatesh, Senior Administrative Officer, Combat Vehicles Research & Development Establishment, Avadi, Chennai that refixation of pay to all the officers with grade pay of Rs.4,600/- was done only after 7 to 8 months from 31.05.2014, there is no difficulty in holding that the miscellaneous application along with original application has been filed well within the period provided under Section 21 of the Administrative Tribunals Act, 1985.

12. For the reasons stated supra, the impugned order deserves to be interfered with. Accordingly, this Writ Petition is allowed and the order dated 05.06.2015 is set aside. The Tribunal is directed to consider the M.A.No.310/00377/2015 filed by the applicants on merits and to proceed in accordance with law. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar (CO)

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Sub-Assistant Registrar

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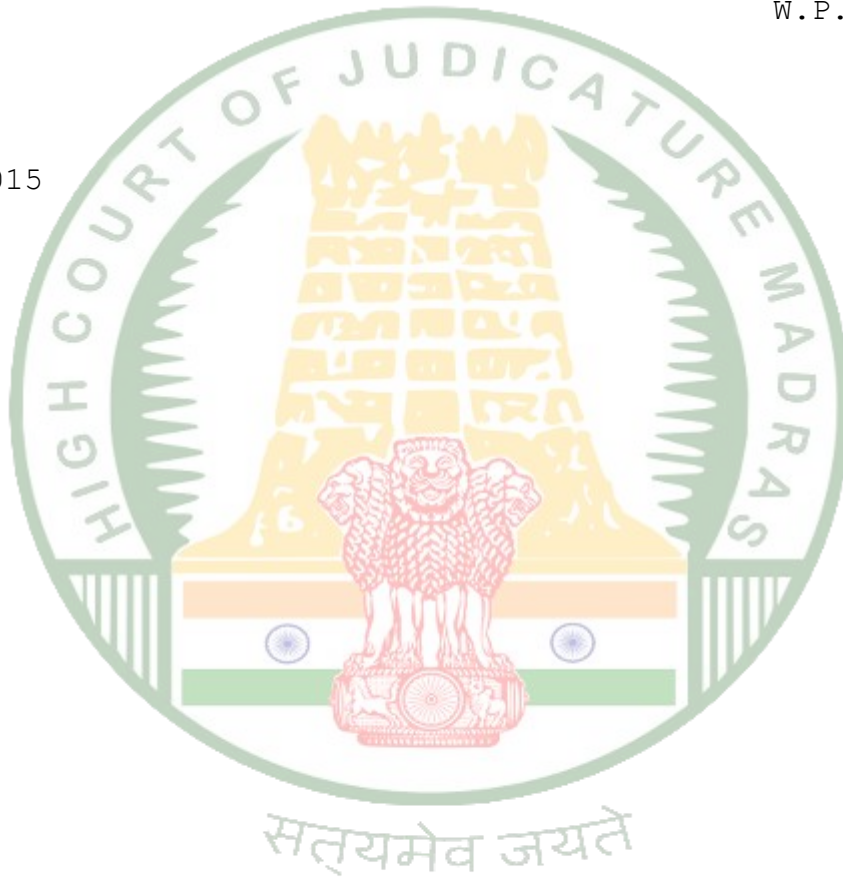
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5.The Secretary to the Government of India,
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Public Grievances and Pensions,
Department of Personnel and Training,
North Block, New Delhi.

+1 cc to Mr.R.Prabhakaran, Advocate sr.44789
+1 cc to Mr.N.SivaBharathi, Advocate sr.44812

W.P.No.20457 of 2015

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