

File No. MoES/29/50/2014-RTI
Government of India
Ministry of Earth Sciences

Prithvi Bhawan, IMD Campus,
Lodhi Road, New Delhi.
Dated 4th June, 2014.

To

Dr. S. Kathirolu, Sc 'G'
Room No. 310, MoES,
New Delhi

Subject:-Supply for Information sought by Dr. S. Kathirolu, Sc 'G' Room No. 310, MoES, New Delhi under RTI Act.

Sir,

Kindly refer to your RTI application dated 29/04/2014 (received on 30/4/2014) on the above mentioned subject.

2. The reply provided by the concerned officer vide MoES ID No. MoES/29/03/2014-Estt. dated 03/06/2014 of Ministry Earths Sciences, New Delhi is enclosed for necessary action.

3. An appeal, if any, against this reply may be made to the Appellate Authority of the Ministry, at the following address within 30 days of the receipt of the letter i.e. Shri M. K. Bansal, Director, (ICC), Ministry of Earth Sciences, Prithvi Bhawan, IMD Campus, Lodhi Road, New Delhi-110003.

Encl. As above.

Yours faithfully,



((B. K. Thakur)

Central Public Information Officer & Scientist 'C'
Tel. No. 24669535.

Copy for information to:-

1. Director, (ICC), MoES, New Delhi.
2. Dr. M. Sudhakar, Transparency Officer, MoES, New Delhi.
3. PPS to JS, MoES, New Delhi.
4. In Charge IT Section (Sh. Krishnan is requested to upload this reply on website www.moes.gov.in).

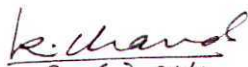
Ministry of Earth Sciences

Estt. Section

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Subject:- Request for providing requisitioned documents to Dr. S. Kathirolu under RTI Act, 2005.

In continuation of this section's ID Note of even No. dated 23.5.2014 on the subject cited above, eight requisitioned documents to be provided to Dr. S. Kathirolu under RTI are enclosed. CPIO is requested to provide the same to the applicant.


3.6.2014
(Kailash Chand)

Under Secretary to the Govt. of India.

Encl: Eight pages.

Shri B.K. Thakur, Scientist 'B and CPIO

MoES ID No. MoES/29/03/2014-Estt.dated 3.06.2014.

MBS/ Immediate
(346) X5

No.38/12/2013-P&PW (A)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Pension and Pensioners Welfare
Lok Nayak Bhavan, Khan Market,
New Delhi-110003,

Dated the 23rd August, 2013

OFFICE MEMORANDUM

Sub: Pay fixation of Dr. Shailesh Nayak, Secretary, Ministry of Earth Sciences.

Please refer to Ministry of Earth Sciences (Establishment Section) OM No. MoES/11/15/2008-Estt. dated 18.7.2003, this Department's OM of even number 38/12/2013-P&PW(A) dated 21st August, 2013 and the discussions in the meeting held in Cabinet Secretariat on 23.8.2013.

2. It is observed that Dr. Shailesh Nayak took voluntary retirement from Department of Space w.e.f. 3.5.2006 and was sanctioned pensionary benefits for the service rendered in the Government prior to that date. Dr. Nayak joined as Director in the Indian National Centre for Ocean Information Services (INCOIS), an autonomous institute under Ministry of Earth Sciences and was contributing to Contributory Provident Fund (CPF) Scheme in that Institute. Thereafter, Dr. Nayak was appointed as Secretary, Ministry of Earth Sciences w.e.f. 27.8.2008 and has been enrolled for the New Pension Scheme (NPS).

3. In the meeting held in the Cabinet Secretariat on 23.8.2013, it was confirmed by Ministry of Earth Sciences that there is no issue relating to payment of pension to Dr. Nayak. It was also mentioned that matter relating to fixation of pay of Dr. Nayak on appointment as Secretary, Ministry of Earth Sciences was taken up with Department of Personnel & Training and that Department has given certain advice in this respect. Ministry of Earth Sciences is requested to take further necessary action in accordance with the advice given by the DoPT.

4. In case there is any other issue relating to fixation of pay of Dr. Nayak, the matter may please be taken up with the DOPT.

(S. K. Makkar)
Under Secretary to Government of India
24644636

Ministry of Earth Sciences
(Sh. Vivek Mishra, Director (Estt.) Fax. 24644636)
Prithvi Bhawan
Lodhi Road
New Delhi

Copy to:

1. Sh. J.P. Sharma, Establishment Officer & Addl. Secretary, DOPT, North Block, New Delhi.
2. Ms. Nivedita Shukla Verma, Joint Secretary, Cabinet Secretariat, Rashtrapati Bhawan, New Delhi.
3. Sh. Mukesh Chaturvedi, Deputy Secretary (Estt. Pay), DOPT, New Delhi.

(S. K. Makkar)
Under Secretary to Government of India

US/C

Vivek
23/8/13

K. Khosla
23/8/13
SO(E)

Ref. preceding notes.

It may please be recalled that the pay of Dr. Shailesh Nayak, Secretary has been re-fixed in terms of DOPT's advice and instructions contained in CCS(Fixation of Pay of Re-employed Pensioners) Orders, 1986 issued vide DOPT's OM No.3/1/85-Estt.(Pay.II) dated 31.7.1986(as amended from time to time) and subsequent OM No.3/19/2009-Estt.(Pay-II) dated 5.4.2010 [para 4(d)(ii)].

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2. As per DOPT's aforementioned OMs, pay for the drawal of various allowance shall be the pay fixed before deducting the non-ignorable part of the pension. Therefore, in the case of Dr. Shailesh Naya., the pay for the purpose of allowance shall be Rs.80,000(fixed). The basic pension sanctioned to Dr. Nayak from D/Space is Rs.28,720 and the non-ignorable part of pension to be reduced from pay is Rs.24,720 (Rs.28,720-Rs.4000) [para 4(d)(ii) of DOPT's No.3/19/2009-Estt.(Pay-II)].

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3. However, it is found that Cash Section had erred in determining the overdrawn pay amounting to Rs.22,76,099 by calculating the allowance on the pay of Rs.55,280(Rs.80,000-24720) instead of Rs.80,000 as provided in DOPT's Orders. To recover an amount of Rs.22,76,099/- Establishment Div., ordered a recovery of Rs.85,000/- per month from the pay & allowances of Dr. Nayak from September, 2013. From Sept., 2013 to January, 2014 (5 months) an amount of Rs.4,25,000/-(85000 x 5) has so far been recovered.

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4. The actual overdrawn pay has been re-calculated and the same is Rs.14,83,200 only i.e., (Rs.24720/- x 60)(Sept., 2008 to August, 2013). As per Pay Bill Register(PBR), Dr. Nayak appointed with effect from 27.8.2008(FN) has been paid pay & allowances with effect from 1.9.2008 and onwards from MoES.

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5. The last pay drawn, pension sanctioned, pension being disbursed after deducting 40% commuted portion, non-ignorable part of pension to be reduced from pay & allowances and overdrawn pay on re-fixation to be recovered is briefed for kind perusal:

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- (a) Last pay drawn: Rs.20,400/-(pre-revised)(Rs.18,400-500-22,400);
- (b) Revised pay:Rs.57440/-(PB-4, Rs.37400-67,000 +GP Rs.10,000) (as per fitment table);
- (c) Basic Pension sanctioned by D/Space Rs.28720/-(Rs. ~~55770~~ 57440/2);
- (d) Basic Pension being disbursed by bank:Rs.17,232 [Rs.28720-11488 (40%) commuted value](State Bank of India, Jodhpur, Tekra-ISRO Branch);
- (e) The non-ignorable part of pension to be deducted from the pay & allowances of Dr. Nayak is Rs.24720(Rs.28,720-4,000); and
- (f) The overdrawn pay to be recovered for the month of Sept., 2008 to August, 2013(60 months) Rs.14,83,200 (Rs.24,720 x 60).

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x pg 214/c

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6. The details of total recovery to be made, recoveries made so far and the amount to be refunded to Dr. Nayak on account of wrong deductions under GPF and payment of saving fund under CGEGIS, 1980 which may be adjusted against the recovery is as under:

(i)	Total recovery to be made	:	Rs.14,83,200(24720x60)
(ii)	Recovery made so far	:	Rs.4,25,000(85,000x5)
(iii)	Deductions made under GPF (to be refunded)	:	Rs.1,00,800
(iv)	Saving Fund under CGEGIS, 1980	:	Rs.5,736

7. Thus, the balance amount to be recovered from the pay & allowances of Dr. Nayak is Rs.9,51,664/- (Rs.14,83,200 - 4,25,000 - 1,00,800 - 5,736).

8. Taking into account the other deductions on account of Income Tax, Licence fee for Govt. accommodation, CGHS contribution etc., and also to avoid hardship to Dr. Nayak, it is proposed to recover the balance amount of Rs.9,51,664/- in 19 monthly installments with effect from February, 2014 to August, 2015 (19 months) as under:

(i)	Rs.50,088 x 18 (Feb., 14 to July, 15)	:	Rs.9,01,584
(ii)	Rs.50,080 x 1 (August, 2015)	:	Rs. 50,080
	Total	:	Rs.9,51,664

Submitted for kind consideration and approval please.

Qntara
10/2/14

US(E)

K. Arora
10/2/14

Dir. (E) *Vinod*
10/2/14

~~HOD~~
HOD *U. K.*
19/2/14

JS(E)

Aswat
19/2/14

U. K.
19/2/14

US(E)

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Extract of Note taken
from G.O. No. MoES/11/15/2008 Estt.

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The Ministry of Earth Sciences may please refer to their notes ending on page 20/ante, regarding the pay fixation of Dr Shailish Nayak, Secretary, Ministry of Earth Sciences. The question raised is as to whether Dr Nayak is to be treated as a Direct Recruit or appointed on reemployment.

2. As per the facts available on file, Dr Nayak, then Scientist/Engineer 'G' in the Space Application Centre (SAC), Ahmedabad, under the Department of Space, took voluntary retirement and was relieved on 03.5.2006. He joined Indian National Centre for Ocean Development (INCOIS)-an autonomous body under the Department of Ocean Development, as its Director, on the same date. He was appointed as Secretary, Ministry of Earth Sciences vide the No.22/8/2008-EO (SM-II) dated the 26th August, 2008. Dr Nayak's salary has been fixed in the apex scale at ₹ 80000 admissible to Secretaries to the Government of India.

3. The pay fixation of Dr Nayak was objected to by the Internal Audit on the ground that as a reemployed pensioner his pension should have been reduced from his salary. They specifically referred to Department of Personnel's Pay Fixation of Reemployed Pensioners Order of 1986. On the other hand the stand of the administrative side of the Ministry of Earth Sciences (MoES) is that the officer cannot be treated as reemployed pensioner. The main contentions are as follows:

- i. The appointment of Dr Nayak was made as per the DoPT communication No.22/8/2008-EO (SM-II) dated the 26th August, 2008. This did not mention anything about reemployment.
- ii. Dr Nayak is covered under the New defined Contribution Pension Scheme in the terms of the MoES notification dated 18.6.2010. This is applicable to only fresh appointments therefore Dr Nayak's is a fresh appointment.
- iii. In terms of orders on permanent absorption of Central Government servants in Autonomous bodies or their employees in the Central Government, the employee has the option of retaining the retirement benefits or to count the previous service. In such a condition the two distinct periods of service are treated as separate, and would not be covered under the instructions relating to reemployment.
- iv. In cases of reemployment, the allowances and increments are to be calculated on the basis of pay fixed on reemployment. In the present case, as the officer is drawing a fixed pay, it will cause him double the disadvantage—reducing his pay and disallowing increments and allowances.
- v. The reference has also been made to the words "where the pension is fully ignored" in our orders relating to pay fixation of reemployed pensioners and attempt has been made to cover the case of Dr Nayak under them.
- vi. Most importantly, a reference has been made to the Delhi High Court decision in *E. Sreedharan vs Union Of India*.

4. It is necessary to have a look at the relevant portion of the CCS (Fixation of Pay of Reemployed Pensioners), Orders, 1986.

2. APPLICATION

(1) Save as others wise provided in these orders these orders shall apply to all persons who are reemployed in Civil Services and posts in connection with the affairs of the Union Government after retirement on pension gratuity and / or Contributory Provident Fund benefits from the service of—

(a) Union Government including Railways, Defence and Posts and Telecommunications;

(b) State Governments and Union Territory Administrations; and

(c) Public Sectors Undertaking Local Bodies, Autonomous Bodies like Universities or Semi Government organizations like Port Trusts.

(2) These orders shall also apply to persons reemployed in regular work charged capacity.

(3) Unless others wise provided these orders shall also apply to persons reemployed on contract basis.

(4) These orders shall not however apply to:

(a) Persons reemployed after resignation removal or dismissal provided they have not received any retirement terminal benefits for the pre-employed service;

(b) Persons reemployed in posts, the expenditure of which is not debitable to the Civil Estimates of the Union Government;

(c) Persons paid from contingencies;

(d) Persons on casual or daily rated or part time employment;

(e) Persons appointed as Consultants on payment of Consolidated fees; and

(f) Retired Judges of Supreme / High Courts appointed on Commissions / Committees who are government by separate orders on the subject issued from time to time.

5. Sh Nayak took voluntary retirement from a department of Government of India. Thereafter he joined an autonomous body. Apparently his pension on his so joining was not reduced from his salary. The fact however is that he has rejoined government. As Sh Nayak had taken voluntary retirement from Government, and has not withdrawn it, his reappointment in Government can only be as a reemployed pensioner. The 1986 Order quoted above therefore clearly applies to his case. His pay would therefore be fixed under the orders applicable to the reemployed pensioners. Thus even if the advertisement for the post, the offer or the order of appointment does not mention that it is on reemployment basis, this does not preclude a direct recruit being treated as a reemployed pensioner if he comes within the categories mentioned in the Rule 2 of the 1986 Order. He therefore cannot continue to draw pension from his previous department and in addition draw the full salary of the new appointment.

6. As for the New Pension Scheme, the MoES have to see as to whether Dr Nayak has been *correctly enrolled in the scheme*. It cannot be said that he is a fresh recruit *because* he has been enrolled. They may check the scheme, and if they do not find a clear answer there, then a reference may be made to the nodal department, that is, Department of Pension and PW.

7. As for 3(iii) above, the question here is whether Dr Nayak is reemployed pensioner in view of his earlier retirement from Government. That the period in INCOIS is to be treated as a separate unit is not material here. In case he has received any retirement dues from INCOIS, they also have to be considered in the light of the 1986 orders.

8. The argument at 3(iv) is also not germane to the issue. The pay scales have been determined by the Government in its wisdom. That there are no allowances at the apex scale has nothing to do with the present issue.

from their salary.

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64. The contention that even if the petitioners had not accepted the appointment of Vice Chairman or member, they will be drawing the same emoluments as and by way of pension and therefore the payment of a paltry sum of Rs.36 or a two figure sum is not a salary at all and it would not amount to equal pay or equal salary, is just requires to be mentioned for being rejected.

65. It is pointed out by Mr.V.T.Gopalan, learned Additional Solicitor General the petitioners were aware of the Rules when they accepted the appointments and in particular proviso to Rule 8 and therefore when the petitioners are drawing the scales of pay as per the provisions of the Administrative Tribunals Rules read with the Act, it is not open to them to contend that their pension should not be set off or deducted.

10. As for the reference to the words where "pension is fully ignored", this is also misplaced because pension is not fully ignored in the case of Group 'A' officers.

11. Now we come to the *E. Sreedharan vs Union Of India* case. It may be stated at the outset that Sh Sreedharan had been appointed in a Public Sector Undertaking. Therefore his case is not covered under the 1986 orders, and his pension could be deducted only if the rules/instructions of the PSU or the DPE instructions so provided. The decision of the High Court is correct on this account. However, the Hon'ble High Court has not questioned the legality of the 1986 orders, therefore, the judgment does not apply to appointment of Sh Nayak in Government.

12. In this case ACC has approved the appointment. That the appointee is a pensioner is a matter of record and would be relevant to his pay fixation. That the ACC did not specifically mention 'reemployment' in the approval is not material. It approved the appointment and that it is on reemployment basis flows from the facts of the case.

13. In any case, the Order of 1986 clearly provides for fixation of pay of persons reemployed after retirement from:

- (b) State Governments and Union Territory Administrations; and
- (c) Public Sectors Undertaking Local Bodies, Autonomous Bodies like Universities or Semi Government organizations like Port Trusts.

14. Thus even persons retired from PSU etc joining government, covered under para 13 above are to be treated as reemployed. In view of the above discussion, it is clear that the salary of Dr Nayak is required to be fixed in terms of Order of 1986. This may be done in terms of OM dated 5.4.10.

15. This has the approval of JS (E).

[Handwritten signature]
13.10.12

(Mukesh Chaturvedi)
Deputy Secretary (Pay)

Ministry of Earth Sciences [Special Secretary & FA]
DoP&T ID No. 2603/Secy (P) dated 13.10.2012

Pl transmit to AD for n.a.
JS(ESH) - on tour
29/10
39/10

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22/10/2012
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JS(ESH)
11/11

No. MoES/11/15/2008-Estt.
Government of India
Ministry of Earth Sciences

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'Prithvi Bhavan', Lodhi Road,
New Delhi, Dated 21/02/2014

ORDER

Consequent upon re-fixation of pay of Dr. Shailesh Nayak, Secretary, MoES vide Order No. MoES/11/15/2008(ii) – Estt. dated 7th October, 2013, the overdrawn pay amounting to **Rs. 14,83,200/-** (Rupees Fourteen Lakh Eighty Three Thousand Two Hundred Only) during the period from September, 2008 to August, 2013 is to be recovered. Out of Rs.14,83,200/- an amount of Rs.5,31,536/- has been recovered/adjusted as under:

i)	Amount recovered from Pay so far (Sept., 2013 to Jan., 2014) (85,000 x 5)	: Rs. 4,25,000/-
ii)	Deduction made under GPF by oversight (Accumulation to be refunded)	: Rs. 1,00,800/-
iii)	Saving Fund under CGEGIS, 1980	: Rs. 5,736/-

Total : Rs. 5,31,536/-

2. After recovery/adjustment of above amount of Rs.5,31,536/- the balance amount to be recovered is **Rs.9,51,664/-** (Rs. 14,83,200 – 5,31,536). The balance amount of Rs.9,51,664/- shall be recovered in 19 monthly installments with effect from February, 2014 to August, 2015 (19 months) as under:

i)	Rs. 50,088 x 18 (Feb., 2014 to July, 2015)	: Rs. 9,01,584/-
ii)	Rs. 50,080 x 01 (August, 2015)	: Rs. 50,080/-

Total : Rs. 9,51,664/-

3. This issues with the approval of Competent Authority.

K. Chand
21/2/2014
(Kailash Chand)

Under Secretary to the Govt. of India

To:

1. The Pay & Accounts Officer, Pay & Accounts Office, MoES, New Delhi.

2. DDO/Cashier, Cash Section, MoES – for necessary recovery.

3. Dr. Shailesh Nayak, Secretary, MoES (through PPS) for kind information please.

4. Service Book/Guard file.

R
21/2/14

O/c
21/4/14