CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH AT BANGALORE

ORIGINAL APPLICATION NO.170/01260/2019

DATED THIS THE 05TH DAY OF MARCH, 2020

HON'BLE DR K B SURESH….MEMBER (J)
HON'BLE SHRI C V SANKAR …..MEMBER (A)

Sri P S Subramanian,
S/o Late A V Sankara Iyer,
Age 80 years,
Retd. Scientist-G,
GTRE, Bangalore
R/o No.B1, 203, White House,
15th Cross, 6th Main, RT Nagar,
Bangalore-560032.

…Applicant

(By Advocate Shri.K Govindaraj)

Vs.

1. Union of India,
Represented by its Secretary,
Ministry of Defence,
South Block,
New Delhi-110011.

2. Secretary,
Department of Research and Development,
And Chairman,
Defence Research and Development Organisation,
DRDO Bhavan, New Delhi-110011.

3. Director,
Gas Turbine Research Establishment,
DRDO, Ministry of Defence,
C.V.Raman Nagar,
Bangalore-560093.

…Respondents

(By Shri.M.V.Rao, Senior Panel Counsel)

ORDER (ORAL)

HON'BLE DR K B SURESH, MEMBER (J)

Heard. The matter seems to be covered by the orders of the Hon'ble Supreme Court in Civil Appeal No.12040/2018, Annexure A8 which we quote:

"JUDGEMENT

Ashok Bhushan, J.

This bunch of appeals raising common questions of law and facts have been heard together and are being decided by this common judgment. All the appeals have been filed by the Union of India through Ministry of Defence and others questioning the judgment of High Court and judgments of Central Administrative Tribunal, Principal Bench, Delhi and different other benches of Central Administrative Tribunals. The Central Administrative Tribunal, Principal Bench as well as different other benches of Central Administrative Tribunals have allowed the original applications filed by respondents herein, who have been working as Scientists in Department of Defence Research and Development Organisation, Department of Atomic Energy and Department of Space, all under Ministry of Defence. The Union of India has sanctioned special pay of Rs.2,000/- w.e.f. 01.01.1996 and Rs.4,000/- w.e.f. 01.01.2006 to the Scientists working in the above mentioned three departments.

2. Original applications were filed by the respondents herein claiming direction to the Union of India and others for reckoning the special pay for pension and pensionary purpose. The respondents in this batch of appeals had been working in the Department of Defence Research and Development Organisation, Department of Atomic Energy and Department of Space. The issues raised before the Central Administrative Tribunals by the respondents/ Scientists working in the above mentioned three departments and the reliefs claimed therein were similar in nature and Principal Bench of Central Administrative Tribunal and other benches had allowed the claim for treating the above special pay for pensionary benefits. The High Courts have also dismissed the writ petitions where the orders of Central Administrative Tribunals were challenged. Union of India being aggrieved by the said judgments have come up in these appeals.

3. Issues raised by Scientists of above mentioned three departments being the same, it shall be sufficient to notice the pleadings in Civil Appeal No. 12040 of 2018 – Union of India & Ors. Vs. Dr. O.P. Nijhawan & Ors. for deciding this bunch of appeals, which is being treated as leading appeal.

4. We now proceed to notice the facts in Civil Appeal No.12040 of 2018 – Union of India & Ors. Vs. Dr. O.P. Nijhawan & Ors.

5. The respondents Dr. O.P. Nijhawan and others were serving as Scientists 'G' in the Defence Research & Development Organisation (hereinafter referred to as "DRDO"), Ministry of Defence from where they retired from service. Scientist 'G' of DRDO were working in the scale of Rs.5900-7300 along with Scientist/Engineers-H working in the Department of Atomic Energy (hereinafter referred to as "DAE") as also Department of Space (hereinafter referred to as "DOS"). The Fifth Central Pay Commission recommended a common revised pay scale of Rs.18400-22400 for the pay scales of Rs.5900-7300 and Rs.5900-6700. The scale given to Scientific Officer H and Scientists 'G' were merged in common scale by Fifth Central Pay Commission Scales and under Sixth Central Pay Commission scale of Rs. 18400-22400 was revised as Rs.37400-67000. The Scientists of the aforementioned three Scientific Departments, i.e. DRDO, DOS and DAE made a case for suitably compensating the Scientists/Engineers in the pay scale of Rs. 5900-7300 (pre-revised). Consequent to Peer Review, the Government of India, Ministry of Defence decided to sanction special pay of Rs. 2,000/- per month to the Scientists in the pay-scale of Rs. 18,400-22400 in lieu of a separate higher pay scale. An Order dated 03.02.1999 was issued by all the three above Departments. The Order dated 03.02.1999 sanctioned the above pay scales from 01.01.1996.

6. An order dated 14.05.1999 was issued by Ministry of Defence, DRDO intimating that a proposal to pay special pay as part of pay as defined under Fundamental Rule 9(21) for all purposes is being taken up separately with Ministry of Defence, further instructions in this regard will be issued after obtaining the approval of the Ministry. Government of India, DOS issued an order dated 12.08.1999, where it was mentioned that special pay will not be treated as part of pay for the purposes like DA, HRA, pension etc. The Original Application No. 1135 of 2002 was filed by Scientists working in the Department of Space questioning the clarificatory order issued by O.M. dated 12.08.1999 regarding non-inclusion of special pay as part of the pension. The Principal Bench of Central Administrative Tribunal, Delhi allowed the OA by order dated 14.05.2003 holding that special pay of Rs.2,000/- per month w.e.f. 01.01.1996 shall be treated as part of pay for the purposes of pensionary benefit. The Department of Space has also issued a consequential order dated 11.07.2003 modifying its earlier order dated 12.08.1999 to the effect that special pay will not be treated as part of pay for the purposes of D.A. but the same may be treated as part of pay for the pensionary benefits w.e.f. 01.01.1996. On 13.07.2004, DAE relying on the order of the Central Administrative Tribunal under O.A. No. 1153 of 2002 extended the benefit of special pay of Rs.2,000/- for pensionary benefit. The Scientists working in the DRDO had also filed O.A. No. 184 of 2006 praying that special pay of Rs.2,000/- be treated for the purposes of pension, which O.A. was allowed by order dated 29.03.2007 holding that special pay shall also be treated for pensionary benefit. The Union of India filed a Writ Petition No. 267 of 2008 against the judgment of Central Administrative Tribunal, Hyderabad dated 29.03.2007, which

writ petition was dismissed by the High Court of Andhra Pradesh by its judgment dated 25.09.2008. A SLP (C) No. 4842 of 2009 was filed against the judgment of High Court of Andhra Pradesh at Hyderabad, which was dismissed by this Court on 29.04.2009 by following order:-

> *" Heard.*
>
> *Delay condoned.*
>
> *On the facts of the present case, we are not inclined to interfere with the impugned judgment and order. The special leave petition is dismissed. However, the question of law is left open."*

7. The Ministry of Defence, DRDO issued an order dated 13.05.2009, which provided that special pay of Rs.2,000/- per month granted to Scientist in the pay scale of Rs.18400-22400 w.e.f. 01.01.1996 and special pay of Rs.4,000/- per month to Scientist in pay band-4 (Rs.37400-67000) with Grade Pay of Rs.10,000/- per month w.e.f. 01.01.2006 is to be counted for pension and pensionary benefits. It is to be noted that special pay of Rs.2,000/- was increased as Rs.4,000/- w.e.f. 01.01.2006. The respondent Dr. O.P. Nijhawan and others filed an O.A. No. 1750 of 2012 before Central Administrative Tribunal, Principal Bench, New Delhi complaining that although by order dated 13.05.2009 sanction of the President to count special pay of Rs.2,000/- per month granted to Scientists in the pay scale of Rs.18400-22400 w.e.f. 01.01.1996 and special pay of Rs.4,000/- per month to Scientist in pay band-4 (Rs.37400-67000) with Grade Pay of Rs.10,000/- per month w.e.f. 01.01.2006 for pension and pensionary benefits, the said order has not been implemented. It was further pleaded that several Scientists who have filed cases before Hyderabad Bench, Bangalore Bench and Principal Bench, New Delhi, where orders were issued, consequently with regard to certain Scientists of that grade, the order was implemented but still with regard to the applicants, the benefit has not been extended. It was pleaded that grant of similar benefit to some colleagues of applicants and not extending the said benefit to them is arbitrary and discriminatory. The respondents herein prayed for direction to the respondents in O.A. to revise the pension and pensionary benefits of the Scientists 'G' of DRDO in terms of their own order dated 13.05.2009. It was also prayed that respondents be directed to pay arrears of pension and pensionary benefits to the applicants taking into account Rs.2,000/- or Rs.4,000/- as special pay and also interest, if revision of pension and pensionary benefits taken unduly long period. The Central Administrative Tribunal, Principal Bench, New Delhi allowed the O.A. No. 1750 of 2012 vide its judgment dated 22.01.2013 and issued following directions:-

> *"(1) The claim of the applicants are allowed for reckoning the special pay of Rs.2,000/- admissible from 01.01.1996 and Rs.4,000/- admissible from 01.01.2006 in the respective grade pays as enumerated in the OM dated 13.05.2009 for pension and pensionary purposes.*

(2) It is further directed that those who fall within the eligible categories as cited above are to be allowed this benefit without their being required to approach this Tribunal.

(3) This, of course, is a measure of exception and leaves the question of law undetermined."

8. Against the judgment and order of the Tribunal dated 22.01.2013, Union of India filed a Writ Petition No. 3095 of 2014 in the Delhi High Court, which writ petition has also been dismissed by the Division Bench vide its judgment dated 18.07.2014. Civil Appeal No. 12040 of 2018 – Union of India & Ors. Vs. Dr. O.P. Nijhawan & Ors. has been filed against the judgment of Delhi High Court dated 18.07.2014.

9. As noted above, most of other appeals in this bunch has been filed against the judgment of the Central Administrative Tribunal, Principal Bench, New Delhi and other Benches, wherein, the Central Administrative Tribunal has granted same relief to the Scientists working in the Departments of DRDO, DAE and DOS.

10. We have heard Ms. Pinky Anand, learned Additional Solicitor General for India and Colonel Mr. Balasubramanian for the appellants. Shri Nidhesh Gupta, learned senior counsel as well as several other learned advocates appearing for respondents in different appeals have also been heard.

11. Learned counsel for the appellants submits that judgments and orders passed by the Central Administrative Tribunals and the High Court are in teeth of Rule 9(21)(a)(i) of the Fundamental Rules and Rule 33 of the Central Civil Services Pension Rules, 1972 (hereinafter referred to as "1972 Rules). The definition of pay as contained in Fundamental Rule 9(21)(a)(i) clearly excludes "special pay" from the definition of pay, hence the "special pay" of Rs.2,000/- w.e.f. 01.01.1996 and Rs.4,000/- w.e.f. 01.01.2006 cannot be included in pay, hence has to be excluded from the definition of emoluments as defined in Rule 33 of 1972 Rules. The judgment of Central Administrative Tribunals as well as the High Court holding that special pay is to be included for computation of pension cannot alter the legal position, the language of a Statute, i.e. Rule 9(21)(a)(i), which is clear and unambiguous. Further the fact that against the earlier order passed by Central Administrative Tribunals and the High Court, writ petitions and SLPs filed by Union of India were dismissed, shall not alter the legal position. The Special Leave Petitions were dismissed in limine and this Court in one of the Special Leave Petitions has expressly left the question of law open. Further the fact that in number of other similarly situated Scientists, the order passed by the Central Administrative Tribunals/High Courts have attained finality and have also been implemented by the Union of India, cannot preclude this Court from deciding the question of law left open. Reliance was placed on the judgment of this Court in ***Col. B.J. Akkara (Retd.) Vs. Government of India and Others, (2006) 11 SCC 709****. It is submitted that there is huge*

financial implication on the Union of India due to the orders passed by the Central Administrative Tribunals and High Courts. It is lastly submitted that Seventh Central Pay Commission has discontinued the special pay to the Scientists, which Resolution has been notified by Notification dated 01.07.2017.

12. Learned counsel for the respondents refuting the submission of appellants contends that the special pay of Rs.2,000/- w.e.f. 01.01.1996 was granted in lieu of a separate high pay scale, which is clear from the order dated 03.02.1999 sanctioning the special pay, hence, it was not in the nature of special pay as defined in Fundamental Rule 9(25), thus, was not eligible for exclusion from the definition of pay as contained in Rule 9(21)(a)(i). Only special pay, which is covered within the definition of Fundamental Rule 9(25) deserves to be excluded from the definition of pay. Thus, the special pay of Rs.2,000/- granted to the respondents in lieu of a separate higher pay scale is eligible for computation of pensionary benefits and the Central Administrative Tribunals and the High Courts have not committed any error in allowing the claim of the respondents. Further, the relief to the respondents have been granted since similarly situated respondents have already been granted the benefit by the Union of India itself. Non-inclusion of special pay of Rs.2,000/- or Rs.4,000/- for computation of pension shall be depriving the respondents of the right of pension, which they have earned by rendering valuable services to Union.

13. We have considered the submissions of the learned counsel for the parties and have perused the records.

14. From the pleadings on the record and the submissions made by the learned counsel for the parties, following issues arise for consideration in this batch of appeals:-

(i) Whether the appellants are precluded to question the impugned judgment of Central Administrative Tribunals/High Courts directing for inclusion of special pay of Rs.2,000/- or Rs. 4,000/- for computation of pension, since at earlier stages, similar orders passed by Central Administrative Tribunals/High Courts have attained finality due to dismissal of Special Leave Petitions filed by the Union of India?

(ii) Whether the Orders issued by the Union of India implementing the orders by giving effect to the decisions of the Central Administrative Tribunals and High Court directing for inclusion of special pay of Rs.2,000/- or Rs.4,000/- in computation of pension, the Union of India is precluded/estopped from questioning the earlier decisions?

(iii) Whether special pay of Rs.2,000/- or Rs.4,000/- sanctioned to the Scientists in Departments of DRDO, DAE and DOS w.e.f. 01.01.1996/01.01.2006 respectively has to be included in the definition of pay as contained in Rule 9(21)(a)(i) for the purposes of computation of pensionary benefit under 1972 Rules?

15. Before we enter into the respective submissions of the learned counsel for the parties on the above issues, it is necessary to look into the statutory provisions pertaining to computation of pension and some of the orders issued by the Union of India.

16. Rule 9(21)(a)(i) of the Fundamental Rules defines "Pay", which is as follows:-

> ***(21) (a)*** *"Pay" means the amount drawn monthly by Government servant as-*
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> *(i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity or to which he is entitled by reason of his position in a cadre, and*
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> *(ii) overseas pay, special pay and personal pay, and*
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> *(iii) any other emoluments which may be specially classed as pay by the President.*

17. The special pay has been defined in Fundamental Rule 9(25), which is to the following effect:-

> ***(25) "Special Pay"*** *means an addition, of the nature of pay, to the emoluments of a post or of a Government servant, granted in consideration of-*
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> *(a) the specially arduous nature of the duties;*
>
> *Or*
>
> *(b) a specific addition to the work or responsibility.*
>
> *For orders regarding grant of Special Pay to various categories of Government servants and treatment thereof for the purpose of fixation of pay on promotion, see Appendix-8 in this Compilation.*
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> *For orders regarding grant of Special Pay in the name of Deputation (Duty) Allowance on the transfer of Central Government servants to other Government Departments, Companies, Corporations, etc., see Appendix- 5 in this Compilation.*

18. The payment of pension to the Central Government employees is regulated by Central Civil Services Pension Rules, 1972. Rule 33 of the 1972 Rules defines emoluments, which is to the following effect:-

> ***33. Emoluments***
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> *[The expression `emoluments' means basic pay as defined in Rule 9 (21) (a) (i) of the Fundamental Rules which a Government servant was receiving immediately before his retirement or on the date of his death; and will also include non-practising allowance granted to medical officer in lieu of private practice.]*

[EXPLANATION. - Stagnation increment shall be treated as emoluments for calculation of retirement benefits.]

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19. As noted above, under Fourth Central Pay Commission, Scientists 'G' were receiving pay scale of Rs.5900-6700 and Scientists 'H' were getting pay scale of Rs. 5900-7300. On implementation of Fifth Central Pay Commission, both the above pay scales were merged into a single pay scale of Rs.18400-22400 and were designated as Scientific Officer 'H'. On peer review, recommendation was made to sanction of special pay of Rs.2,000/- w.e.f. 01.01.1996. An order dated 03.02.1999 was issued in this regard, relevant portion of the order is as follows:-

"NO. DRDO/US101-A/V CPC/MPD/D (R&D)
GOVERNMENT OF INDIA
DEPARTMENT OF DEFENCE RESEARCH &
DEVELOPMENT NEW DELHI

03 Feb 1999

To,
The Director General Research &
Development, Defence Research &
Development Organization, Ministry of
Defence, New Delhi.

Subject:- ***<u>INCENTIVES FOR SCIENTISTS</u>***

The undersigned is directed to state that the question of providing incentives to scientists in the Department has been examined by the Govt. keeping in view the role played by them in the development of high technology and systems for strategic applications. Taking all relevant factors into account and in order to attract, retain, inspire and motivate scientists to give their best contributions. The President is pleased to sanction following:-

2. <u>With effect from Jan 01, 1996</u>

(1) Special pay of Rs.2,000/- p.m. to scientists in the pay scale of Rs.18,400- 22,400, in lieu of a separate higher pay scale, after peer review.

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20. As noticed above, there were certain clarifications issued by different office memorandum for example, office memorandum dated 12.08.1999 issued by Government of India, Department of Space that special pay will not be treated as part of pay for the purposes like, DA, HRA etc., which led filing of original applications in the Central Administrative Tribunal questioning the clarificatory order issued by the Government of India and

Central Administrative Tribunal had allowed the claim of Scientists to reckon the special pay for the purpose of pension. The Government of India, Ministry of Defence, DRDO has specifically issued an order dated 13.05.2009, where the Government decided to count the aforesaid special pay for pension and pensionary benefits. Office memorandum dated 13.05.1999 is to the following effect:-

"Tele: 23007252 No. CHRD83101/Incentives-6th CPC/C/P/01

Ministry of Defence,
Defence Research & Development Org
Dte of Human Resource Development
'B' Block, DRDO Bhawan
New Delhi – 110 105.

13th May 2009

The Director
(All Labs/Estts)

Subject: INCENTIVES FOR SCIENTISTS – COUNTING OF SPECIAL PAY FOR PNEIONSARY PURPOSES.

A copy of GOI, Ministry of Defence letter No. DHRD/85101/INCENTIVES/VI-PC/C/P/01/1376/2009/DoPT R&D) dated 13 May, 2009 on the above subject is forwarded herewith.

2. As per the above Govt, letter the special pay of Rs.2,000/- p.m. granted to Scientist in the pay scale of Rs.18400-22400 w.e.f. 01 Jan 1996 and special pay of Rs.4,000/- p.m. to Scientist in Pay Band-4 (Rs.37400-67000) with Grade Pay of Rs.10,000/- p.m. w.e.f. 01 Jan 2006 is to be counted for pension and pensionary benefits.

3. It is requested that the necessary action may be initiated to revise the PPO of all the Scientists 'G' who have retired / superannuated accordingly.

Sd/-
(T. Chandra Banu)
Additional Director, HRD
For DGR&DoPT

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21. As noted above, relying on the said memorandum, the respondents have filed original applications claiming that with regard to them, the orders have not been implemented and they have been denied computation of special pay for purposes of pension, which claim was ultimately allowed by the Central Administrative Tribunal vide its order dated 22.01.2003 against which order, Delhi High Court has dismissed

the writ petition, which led in filing the Civil Appeal in the leading case by the Union of India.

22. We now take up first and second issue together. There are two aspects, which need to be noticed in respect of above issues. Firstly, original applications filed by Scientists similarly situated was allowed by Central Administrative Tribunal against which few of the writ petitions were also dismissed by the High Court and against the judgment of the High Court or the Central Administrative Tribunals, matter was carried by Union of India in this Court where SLPs were dismissed. One of the orders passed by this Court in SLP (C) No. 4842 of 2009 has been brought as Annexure P1 in leading Civil Appeal. In order dated 20.04.2009, this Court held "On the facts of the present case, we are not inclined to interfere with the impugned judgment and order. The special leave petition is dismissed. However, the question of law is left open." There were few other SLPs filed by the Union of India, which were dismissed in limine. SLPs having been dismissed in limine, the appellants are not precluded from raising the issues, which have been sought to be raised in these appeals in this Court. This was also the consequences of the question of law being left open by this Court as noticed above. We, thus, are not persuaded to accept the submission of learned counsel for the respondents that Union of India is precluded from raising the issues on question of law, which was earlier left open by this Court. Thus, we have to proceed to decide the question of law as raised by the appellants. Coming to the second aspect of the matter, i.e. the appellants itself having decided to extend the benefit of special pay for computation of pension, whether it is still open for the appellants to raise the issue? We have already noticed the order dated 13.05.2009 of Government of India, which had directed for counting of special pay for pensionary purposes. We have already noticed that in the year 1999 itself, a clarificatory order was issued by the Union of India that special pay shall not be treated as a part of pay for the purposes of pension. The above stand, it appears, was taken by the Government relying on the definition of pay as given under Fundamental Rule 9(21)(a)(i), thereafter came various orders of the Central Administrative Tribunals as noticed above, where direction was issued to compute by adding the special pay in the pay for computation of pension, details of which, we have already noticed above. The Government of India having already implemented the aforesaid orders can it still question its own decision, where the benefit has been extended.

23. Learned counsel for the appellants has relied on judgment of this Court in in ***Col. B.J. Akkara (Retd.) Vs. Government of India and Others (supra).*** *One of the issues in the aforesaid case was Issue No.(iii) as noticed in Paragraph No.10, which is to the following effect:-*

> *"10. On the contentions urged, the following questions arise for consideration:*
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(iii) Whether the respondents having accepted and implemented the decision of the Delhi High Court [in K.C. Garg (Dr.) v. Union of India2] on a similar issue, are required to extend a similar treatment to Defence Service Medical Officers also, by cancelling the circular dated 11-9-2001.

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24. By answering Issue No. (iii), following was laid down in Paragraph Nos. 24, 25 and 26:-

"24. The respondents have filed an affidavit dated 1-8-2006 admitting that in pursuance of the decision of the Delhi High Court, the circular dated 29-10-1999 had been withdrawn but clarified that it was withdrawn only in regard to the Civilian Medical Officers who were petitioners in the said writ petitions and not in regard to all Civilian Medical Officers. It is contended that the fact that a decision of the High Court had been accepted or implemented in the case of some persons, will not come in the way of the Union of India resisting similar petitions filed by others in public interest.

25. A similar contention was considered by this Court in State of Maharashtra v. Digambar, (1995) 4 SCC 683. This Court held: (SCC p. 691, para 16)

"Sometimes, as it was stated on behalf of the State, the State Government may not choose to file appeals against certain judgments of the High Court rendered in writ petitions when they are considered as stray cases and not worthwhile invoking the discretionary jurisdiction of this Court under Article 136 of the Constitution, for seeking redressal therefor. At other times, it is also possible for the State, not to file appeals before this Court in some matters on account of improper advice or negligence or improper conduct of officers concerned. It is further possible, that even where SLPs are filed by the State against judgments of the High Court, such SLPs may not be entertained by this Court in exercise of its discretionary jurisdiction under Article 136 of the Constitution either because they are considered as individual cases or because they are considered as cases not involving stakes which may adversely affect the interest of the State. Therefore, the circumstance of the non-filing of the appeals by the State in some similar matters or the rejection of some SLPs in limine by this Court in some other similar matters by itself, in our view, cannot be held as a bar against the State in filing an SLP or SLPs in other similar matter(s) where it is considered on behalf of the State that non-filing of such SLP

or SLPs and pursuing them is likely to seriously jeopardise the interest of the State or public interest."

26. The said observations apply to this case. A particular judgment of the High Court may not be challenged by the State where the financial repercussions are negligible or where the appeal is barred by limitation. It may also not be challenged due to negligence or oversight of the dealing officers or on account of wrong legal advice, or on account of the non-comprehension of the seriousness or magnitude of the issue involved. However, when similar matters subsequently crop up and the magnitude of the financial implications is realised, the State is not prevented or barred from challenging the subsequent decisions or resisting subsequent writ petitions, even though judgment in a case involving similar issue was allowed to reach finality in the case of others. Of course, the position would be viewed differently, if petitioners plead and prove that the State had adopted a "pick-and-choose" method only to exclude petitioners on account of mala fides or ulterior motives. Be that as it may. On the facts and circumstances, neither the principle of res judicata nor the principle of estoppel is attracted. The administrative law principles of legitimate expectation or fairness in action are also not attracted. Therefore, the fact that in some cases the validity of the circular dated 29-10-1999 (corresponding to the Defence Ministry circular dated 11-9-2001) has been upheld and that decision has attained finality will not come in the way of the State defending or enforcing its circular dated 11-9-2001."

25. The ratio as laid down by this Court in above case is fully attracted in the facts of the present case, thus, we conclude that the fact that appellant has implemented the earlier orders passed by the Central Administrative Tribunals and the High Courts and issued order for including special pay in the pay for the purpose of computation of pension, the Union of India is not precluded to raise the issues again, the principle of res judicata or estoppel are not attracted.

26. Now, we come to the main issue, i.e. Issue No. (iii). The submission which has been pressed by the learned counsel for the respondent is that the special pay of Rs.2,000/-, which was sanctioned by the office memorandum dated 03.02.1999, although describes the said amount of Rs.2,000/- as special pay but the real nature of the aforesaid payment was not the special pay as defined in Fundamental Rule 9(25). The said payment was <u>in lieu of a separate higher pay scale.</u>

27. We revert back to meaning of special pay underlined in Fundamental Rule 9(25) and as per the above rule, special pay means "an addition, of the nature of pay, to the emoluments of a post or of a Government servant". A special pay is one granted in consideration of (a) the special arduous nature of the duties; or (b) a specific addition to the work or responsibility.

28. Whether the amount of Rs. 2,000/- sanctioned as special pay to the respondents were covered within the definition of Rule 9(25) is a question to be answered. When we look into the memorandum dated 03.02.1999, there is categorical statement that the special pay of Rs.2,000/- per month is sanctioned to scientists only in the pay scale of Rs.18,400-22,400, in lieu of a separate higher pay scale, after peer review. The order does not indicate that it has been granted to the Scientists due to specially arduous nature of the duties; or specific nature/ work of the respondents. The genesis for amount of Rs.2,000/- as special pay was on account of the grievances raised by the Scientists when two pay scales under Fourth Central Pay Commission were merged into one pay scale by Fifth Central pay Commission, i.e. Rs.18400-22400. Scientists, who were in the pay-scale of Rs.6700-7300 had raised grievances and it was on account of peer review that Government sanctioned the special pay in lieu of a separate higher pay scale. The memorandum dated 13.02.1999 was obtained by preparing and submitting a Combined Cabinet Paper to Cabinet Secretariat by all the three mentioned departments to remove anomaly that belonged to all scientists, who were in the (pre-revised) scale of Rs.5900-7300 prior to Fifth Central Pay Commission and were entitled to higher pay scale but were intermittently merged with a lower pay scale at the time of Fifth Central Pay Commission. If the genesis of sanction dated 13.02.1999 is taken to its true import, it is clear that the said sanction or extension of benefit does not fit in the definition of special pay as contained in Fundamental Rule 9(25), rather it was to redeem the pay structure anomaly. Subsequent interpretation and decision taken by the Union of India for not giving the benefit of amount of special pay of Rs.2,000/- in definition of pay was by picking up the word "special pay" as occurring in office memorandum dated 03.02.1999.

29. The definition of Fundamental Rule 9(21)(a)(i) clearly excludes following two from the definition of pay, i.e., (i) the special pay or, (ii) pay granted in view of his personal qualifications. The special pay as occurring in Fundamental Rule 9(21)(a)(i) has to take colour from the definition of special pay as contained in Rule 9(25). The special pay as defined in Rule 9(25) is sanctioned to a Government servant or to a post looking to the special arduous nature of the duties or a specific addition to the work or responsibility, which is related to essentially performance of duties and specific addition to the work. The second exclusion, i.e., it is granted in view of professional qualifications also indicate that the special pay is only taking into consideration the personal qualifications of a person. Thus, special pay is in recognition of aforesaid factors and for compensating in the above circumstances. Special pay is granted for specific purposes and in response to specific situation and circumstances. Thus, there is a rational for excluding special pay from the pay as defined in Rule 9(21)(a)(i) but the special pay granted by office memorandum dated 03.02.1999 to the respondents was not in any of the circumstances as mentioned in Rule 9(25). Rather the said benefit of Rs.2,000/- was in lieu of a separate higher pay scale. It is, thus, clear that grant of special

pay of Rs.2,000/- was in lieu of a separate higher pay scale, which does not fit in the nature of special pay as contemplated by Rule 9(25). Thus, the addition as granted by office memorandum dated 03.02.1999 also does not fit in the special pay, which is excluded from the definition of pay given under Rule 9(21)(a)(i). Thus, addition of benefit of Rs.2,000/- w.e.f. 01.01.1996 styled as special pay has to be included in the definition of pay given under Rule 9(21)(a)(i) looking to the true nature and character of the benefit, which was extended to Scientists on the basis of peer review. We, thus, do not find any infirmity in the decisions of the Central Administrative Tribunals or High Courts holding that the amount of special pay of Rs.2,000/- w.e.f. 01.01.1996 and Rs.4,000/- w.e.f. 01.01.2006 to be treated as part of pay for the basis of computation of pension. For the reasons as mentioned above, we, thus, do not find any merit in these appeals, which are accordingly dismissed.

2. The defence of the respondents is that the Hon'ble Supreme Court order can only be considered as an expression of right in personam and not in rem.

3. Quite obviously it cannot be, if the Hon'ble Supreme Court says so, that is the law of land. Therefore, this matrix is available to the applicant also with equal felicity. Therefore, OA is allowed to the extent the Hon'ble Apex Court has granted the benefits to the persons concerned. Benefits to be extended within next two months time. No cost.

(C V SANKAR)
MEMBER (A)

(DR K B SURESH)
MEMBER (J)

/rsh/

Annexures referred to by the applicant in OA No.170/01260/2019

Annexure A1-A2	Copies of the Pension papers of Applicant
Annexure A3	Copy of the Communication dated Nil, January, 2019
Annexure A4	Copy of the Communication dated 27.05.2019
Annexure A5	Copy of the communication dated 24.05.2019
Annexure A6	Copy of the Pension revision order of CGS Sharma
Annexure A7	Copy of the order of Hon'ble Supreme Court in CA 12040/2018 dated 03/01/2019
Annexure A8	Copy of the representation dated 11.7.2019