

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/00394/2015

HYDERABAD, this the 30th day of March, 2021

**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**



1. The Defence Scientists Pensioners Association,
Represented by its Vice-President,
Mr.K.S.R.Murthy, S/o K.Veerraju,
Aged about 65 years, R/o 47, Flat No.102,
Srinivasa Apartments, Laxmi nagar-1,
P.O.Saidabad, Hyderabad-500 059.

Dr.No.17-1-383/37, 1st Floor,
Prabhava Apartments, Vinaya Nagar,
P.O. Saidabad, Hyderabad-500 059,
Retired Scientist G in DRDL.

2. T.Sri Ram S/o T. Krishna Rao (late),
Aged about 72 years,
R/o 305, Surabhi Nest, 3-6-361/15 & 16,
Street No.20, Himayat Nagar,
Hyderabad – 500029.

...Applicants

(By Advocate : Mrs. Anita Swain)

Vs.

1. The Director General,
Research and Development,
Defence Research & Development Organization,
Ministry of Defence, DRDO Bhavan,
New Delhi 110 105.

2. Principal Controller of Defence Accounts (Pensions),
Office of the PCDA (Pensions),
Draupadighat, Allahabad-211014.

3. Union of India,
Represented by its Secretary to Government,
Department of Pension & Pensioners Welfare,
Ministry of Personnel, Public Grievance & Pensions,
Lok Nayak Bhavan, 3rd Floor, Khan Market,
New Delhi – 110 003.

4. The Government of India,
Represented by its Secretary,
Department of Expenditure,
Ministry of Finance, North Block,
New Delhi.

5. The Director (PP),
Department of Pension & Pensioners Welfare,
Ministry of Personnel, Public Grievance & Pensions,
Lok Nayak Bhavan, 3rd Floor, Khan Market,
New Delhi – 110 003.Respondents

(By Advocate : Mr. T. Hanumantha Reddy, Sr PC for CG)



ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed challenging the action of the respondents in not considering the revised Special Pay of Rs.4000/- sanctioned w.e.f. 01.01.2006 to the Scientists 'G' vide letter dt. 13.05.2009 for the purpose of computing the pension and pensionary benefits.

3. Brief facts of the case are that the applicants have retired from the respondents organisation in the pay scale of Rs.18,400 – 22400 and the Defence Scientists Association is one of the applicants in a representative capacity to pursue the cause of its members. Respondents granted the special pay of Rs 2000 to scientist G in the pay scale of Rs.18,400 -22400 in lieu of higher pay scale vide letter dated 3.2.1999. When the special pay was not considered for drawing pension, similarly placed employees approached the Tribunal in OA 184 of 2006 which was allowed on 29.3.2007 and attained finality with the dismissal of WP 267/2008 by the Hon'ble High Court of A.P and SLP 4842/2009 by the Hon'ble Apex court. Consequently Presidential sanction was issued to include the special pay of Rs.2000 for pension and pensionary benefits on 13.5.2009 and the special pay was enhanced to Rs.4000 to pre 2006 retirees' w.e.f 1.1.2006 as per 6th CPC. Respondents gave relief based on letter dated 13.5.2009 only to post 2006 retirees and on filing cases in the Tribunal the relief sought was extended by the respondents vide their orders dated 20.3.2012 & 7.9.2012 but not to the applicants. Aggrieved the OA is filed.



4. The contentions of the applicants are that the increase of special pay to Rs.4000 was notified in the official Gazette on 29.8.2008. The pension was fixed by taking the enhanced special pay of Rs.4000 for post 2006 retirees and not to pre 2006 retirees. G.O.I order dated 28.1.2013 was not circulated to the disbursing authority along with the Presidential sanction dated 13.5.2009. Sri R.C.Garg from the ISRO was granted similar relief by the Hon'ble Principal Bench of this Tribunal in OA 2461 of 2012 on 30.7.2013. Representations were submitted to R-1 enclosing the Hon'ble Principal Bench judgment but they were rejected stating that special pay will not be considered and that pension will be enhanced to 50% of sum of the minimum pay in pay band plus Grade pay corresponding to pre- revised pay scale. Respondents have granted the benefit to those who filed OA 184 cited supra and have discriminated the pre – 2006 retirees. The applicants most of them have crossed the age of 70 years and that article 14 was violated by not granting the relief sought. The judgment of D.S Nakara to not to discriminate similarly placed pensioners was violated. OA 1608 of 2013 filed in regard to a similar dispute is pending. Representations filed were not replied. Instructions contained in letter dated 13.5.2009 were violated. The orders of the judicial fora were not implemented. The applicants have been discriminated in granting the relief sought and have violated article 14 of the constitution.

5. Respondents in the reply statement state that the applicants are not eligible for the relief sought as per Rule 33 of CCS (Pension) Rules 1972. Sanction issued is only in respect of those who were party to OA 184/2006. Principal Controller of Defence Accounts (PCDA), Allahabad is issuing

PPOs only in respect of claims where Govt. sanction was accorded. Pension of the pre – 2006 retirees was revised as per para 4.1. & 4.2 of the DOP & PW OM dated 1.9.2008. PCDA corrected the pension of some pensioners vide letter dated 6.11.2013. Special pay can be considered only for certain special purposes.



Applicant filed a rejoinder claiming that the special pay has to be granted as per letter dated 13.5.2009 read with letter dated 28.1.2013. Special pay was considered by Dept. of Space (DOS), Dept. of Atomic Energy (DAE) & Defense Research Development organisation (DRDO) vide letter dtd. 3.2.1999. OA 1608 of 2013 was allowed in favour of pre 2006 retirees and was also confirmed by the Hon'ble High Court in W.P 36425/2017. SLPs numbering 51 of the 3 departments cited were dismissed by orders in SLP No.12040/2018 on 3.1.2019. Order in OA No.1608 of 2013 was implemented by the respondents on 24.5.2019. Consequently, other departments implemented the judgment in lis. Applicants are similarly situated. The other contentions in the rejoinder are more or less the same as those in the OA.

6. Heard both the counsel and perused the pleadings on record.
7. I. The dispute is in regard to not considering the special pay of Rs.4000 sanctioned to the applicants for the purpose of pension despite favourable orders by the judicial fora. The applicants have retired from the respondents organisation and there cause is espoused by the Defence Scientists association in representative capacity as an applicant. The special pay of Rs 2000 was granted in lieu of higher pay scale on 3.2.1999. When the special pay was not considered for drawing pension, similarly placed

employees approached the Tribunal in OA 184 of 2006 which was allowed on 29.3.2007 and the WP 267/2008 challenging the order of the Tribunal was dismissed by the Hon'ble High Court of A.P. The SLP 48462 of 2009 met the same fate. Consequently Presidential sanction was issued to include the special pay of Rs.2000 for pension and pensionary benefits on 13.5.2009. The relevant portion of the letter reads as under:



“to convey the sanction of President to count the Special Pay of Rs.2,000/- per month granted to Scientist in the pay scale of Rs.18,400-22,400 with effect from 01 Jan 996 and special pay of Rs.4,000/- to Scientist in Pay band -4 (Rs.37,400-67,000) with Grade Pay of Rs.10,000/- with effect from 01 Jan 2006 for pension and pensionary benefits.”

II. Later the special pay was enhanced to Rs.4000 to pre 2006 retirees w.e.f 1.1.2006 as per 6th CPC. Respondents gave relief based on letter dated 13.5.2009 only to post 2006 retirees and on filing cases in the Tribunal the relief sought was extended by the respondents vide their orders dated 20.3.2012 & 7.9.2012 to pre 2006 retirees. In the context of providing the relief sought vide their orders referred to, we are not persuaded by the pleadings of the respondents that the pension of the applicants was fixed as per Dept. of Pension and Pension Welfare letter dated 1.9.2008 since the said letter has no relevance to the dispute in question of including the special pay as a part of basic pay for the purpose of pension. The letter 1.9.2008 deals with fixing the pension as a sum of the 50% of the minimum of the pay band plus the grade pay corresponding to the pre-revised scale.

III. Sri R.C. Garg from the ISRO facing a similar issue approached the Hon'ble Principal Bench in OA 2461 of 2012 and it was allowed on 30.7.2013 directing to consider special pay of Rs.4000 w.e.f 1.1.2006 as per 6th CPC for pension and pensionary benefits for pre-2006 retirees on par

with the post-2006 retirees. The operative portion of the judgment is reproduced below:



“23. Having once accepted the position in the case in D.S. Nakara (supra), there is no reason that this Liberalization Pension Scheme should not be extended to the present applicants who are eminent Scientists of the country. Hence, the present Original Application is allowed with the following directives:

1. *Revision Pension Pay Orders in respect of the applicants impugned in this OA are quashed and set aside;*
2. *Respondents are directed to extend the benefits of enhanced Special Pay of Rs.4000/- (50% for pensionary purpose) to the applicants as have been recommended as per the CCS (Pay) Rules, 2008 w.e.f. 01.01.2006 and consequently revise their pension by taking full pension (50%) which is granted upon 20 years of completed service for post 2006 retirees and bring them at par with the post 2006 retirees with prospective effect of 01.01.2006.*
3. *The exercise ordained above be completed within a period of three months from the date of receipt of certified copy of this order.*
4. *There shall be no order as to costs.”*

Review application numbered as RA 186 of 2014 filed claiming that the special pay of Rs.4000 cannot be considered as part of the basic pay as per Rule 33 of the CCS (Pension) Rules 1972 and FR 9(21)(a)(i) was dismissed on 7.1.2015. The Hon'ble Principal Bench in the Review application considered the above contentions and rejected them and therefore, the respondents cannot plead the same grounds once again in the reply statement.

IV. In addition, special pay increase was notified in the official Gazette on 29.8.2008 based on 6th CPC recommendations which were accepted by the G.O.I which is extracted here under:

“11. The government has also decided to continue the existing system of grant of Rs.2000/- special pay to scientist ‘G’ on promotion and doubling the amount to Rs.4,000/- p.m. in Department of Space and Atomic Energy and DRDO and continuation of existing practice of grant of two additional increments to scientists from Level C to F in the Departments”.

V. It is important to note that the special pay was granted in lieu of higher pay scale and therefore it is on a different footing unlike the special pay granted by the G.O.I under different provisions. In this regard the observations of the Hon'ble Supreme Court, while dismissing the Civil Appeal No. 12040 of 2018 (Arising out of SLP (C) No.24745 of 2015) in ***Union of India & Ors v. Dr. O.P. Nijhawan & Ors***, along with batch of Civil Appeals, vide judgment dated 3.1.2019 are pertinent and hence extracted here under:

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?*

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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.

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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.

VI. Moreover, differentiating a homogeneous group of pensioners for reasons not justifiable is not permitted by the lucid principles laid down by the Hon'ble Apex Court in **D.K. Nakara** case as under:

By our approach, are we making the scheme retroactive ? The answer is emphatically in the negative. Take a government servant who retired on April 1, 1979. He would be governed by the liberalised pension scheme. By that time he had put in qualifying service of 35 years. His length of service is a relevant factor for computation of pension. Has the Government made it retroactive, 35 years backward compared to the case of a Government servant who retired on 30th March, 1979 ? Concept of qualifying service takes note of length of service, and pension quantum is correlated to qualifying service. Is it retroactive for 35 years for one and not retroactive for a person who retired two days earlier ? It must be remembered that pension is relatable to qualifying service. It has



correlation to the average emoluments and the length of service. Any liberalisation would pro tanto be retroactive in the narrow sense of the term. Otherwise it is always prospective. A statute is not properly called a retroactive statute because a part of the requisites for its action is drawn from a time antecedent to its passing. Assuming the Government had not prescribed the specified date and thereby provided that those retiring pre and post the specified date would all be governed by the liberalised pension scheme, undoubtedly, it would be both prospective and retroactive. Only the pension will have to be recomputed in the light of the formula enacted in the liberalised pension scheme and effective from the date the revised scheme comes into force. And beware that it is not a new scheme, it is only a revision of existing scheme. It is not a new retiral benefit. It is an upward revision of an existing benefit. If it was a wholly new concept, a new retiral benefit, one could have appreciated an argument that those who had already retired could not expect it. It could have been urged that it is an incentive to attract the fresh recruits. Pension is a reward for past service. It is undoubtedly a condition of service but not an incentive to attract new entrants because if it was to be available to new entrants only, it would be prospective at such distance of thirty-five years since its introduction. But it covers all those in service who entered thirty-five years back. Pension is thus not an incentive but a reward for past service. And a revision of an existing benefit stands on a different footing than a new retiral benefit. And even in case of new retiral benefit of gratuity under the Payment of Gratuity Act, 1972 past service was taken into consideration. Recall at this stage the method adopted when pay-scales are revised. Revised pay-scales are introduced from a certain date. All existing employees are brought on to the revised scales by adopting a theory of fitments and increments for past service. In other words, benefit of revised scale is not limited to those who enter service subsequent to the date fixed for introducing revised scales but the benefit is extended to all those in service prior to that date. This is just and fair. Now if pension as we view it, is some kind of retirement wages for past service, can it be denied to those who retired earlier, revised retirement benefits being available to future retirees only ? Therefore, there is no substance in the contention that the court by its approach would be making the scheme retroactive, because it is implicit in theory of wages.

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That is the end of the journey. With the expanding horizons of socio-economic justice, the socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criteria: 'being in service and retiring subsequent to the specified date' for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects



sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of being in service on the specified date and retiring subsequent to that date' in impugned memoranda, Exhibits P-I and P-2, violates Art. 14 and is unconstitutional and is struck down. Both the memoranda shall be enforced and implemented as read down as under: In other words, in Exhibit P-1, the words: "that in respect of the Government servants who were in service on the 31st March, 1979 and retiring from service on or after that date" and in Exhibit P-2, the words: "the new rates of pension are effective from 1st April 1979 and will be applicable to all service officers who became/become non-effective on or after that date." are unconstitutional and are struck down with this specification that the date mentioned therein will be relevant as being one from which the liberalised pension scheme becomes operative to all pensioners governed by 1972 Rules irrespective of the date of retirement. Omitting the unconstitutional part it is declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalised pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation is not admissible. Let a writ to that effect be issued. But in the circumstances of the case, there will be no order as to costs.

Hence, the rejection of the relief sought by the applicant by the respondents is in violation of the above judgment.

VII. Moreover, the order of the Tribunal in OA 1608/2013 dt. 17.11.2015 granting similar relief to pre-2006 retirees was upheld by the Hon'ble High Court in WP No.36425/2017 dated 26.6.2018 and by the Hon'ble Supreme Court while dismissing 51 SLPs filed by DOS, DOAE & DRDO in Civil Appeal No. 12040/2018 & batch vide judgment dated 3.1.2019. The respondents have implemented the order of the Tribunal on 24.5.2019. Other departments referred to have granted similar relief consequent to the dismissal of the 51 SLPs cited. Hence the matter has attained finality. Even in other cases where the aggrieved employees have approached the Tribunal, respondents have granted the relief vide their orders dated 13.5.2009, 20.3.2012 & 7.9.2012 cited supra.

VIII. Applicants are similarly situated like those who were granted the relief sought vide orders of the respondents in the above paras and as per the Hon'ble Apex Court judgment mentioned below, similarly situated employees should be granted the similar relief without forcing them to go over to the courts:



Amrit Lal Berry vs Collector Of Central Excise, (1975) 4 SCC 714:

“We may, however, observe that when a citizen aggrieved by the action of a Government Department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court.”

Inder Pal Yadav Vs. Union of India, 1985 (2) SCC 648:

“...those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment if not by anyone else at the hands of this Court.”

V CPC report, para 126.5 – Extending judicial decision in matters of a general nature to all similarly placed employees:

We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of Central Administrative Tribunal, Bangalore in the case of C.S. Elias Ahmed & Ors Vs. UOI & Ors, (OA 451 and 541 of 1991), wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like G.C. Ghosh V. UOI [(1992) 19 ATC 94 (SC)], dt. 20.07.1998; K.I. Shepherd V. UOI [(JT 1987 (3) SC 600)]; Abid Hussain V. UOI [(JT 1987 (1) SC 147], etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of Government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee.”

*In a latter case of **Uttaranchal Forest Rangers' Assn (Direct Recruit) Vs. State of UP (2006) 10 SCC 346**, the Apex Court has referred to the decision in the case of **State of Karnataka Vs. C. Lalitha, 2006 (2) SCC 747**, as under:*

“29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently.”



IX. Hence in view of the above, respondents are directed to extend the similar benefits to the applicants as were extended to those vide respondents order dated 24.5.2019 in pursuance of the Tribunal order in OA 1608/2013. However, arrears of pension to be paid while providing the relief sought shall be restricted to a period of 3 years prior to the date of filing the OA as per the Hon'ble Apex Court observation in **Union of India & Anr vs Tarsem Singh** in CA No.5151-5152 of 2008. We also direct the respondents to treat the judgment as *in rem*, so as to not force other similarly placed pensioners to the Tribunal for similar relief. It would be advisable for the respondents to make a *suo motu* review and grant the relief to all those similarly placed eligible pensioners, who could not approach the Tribunal for various reasons.

With the above direction, the OA is disposed of with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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