

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCHOriginal Application No. 420 of 2013THURSDAY, this the 09th day of October, 2014**CORAM:**

Hon'ble Mr. U. Sarathchandran, Judicial Member
Hon'ble Ms. B. Bhamathi, Administrative Member

1. R. Kanakarajan, aged 62, S/o. V. Ramakrishna Nadar, Scientist 'G' (Retired), Naval Physical and Oceanographic Laboratory (NPOL), Defence Research and Development Organization, Thrikkakkara, Residing at Vijayas 3/373, Kurians Road, Chembumukku, Thrikkakkara PO.
2. A. Dhurkadas, aged 61, S/o. S. Annamalai, Scientist "G", Naval Physical and Oceanographic Laboratory (NPOL), Defence Research and Development Organization, Thrikkakkara, Residing at 3/374, Kurians Road, Chembumukku, PO Thrikkakara.
3. M. Mathurakani, aged 64 years, D/o. A. Manicken, Scientist 'G' (Retired), Naval Physical and Oceanographic Laboratory (NPOL), Defence Research and Development Organization, Thrikkakkara, Residing at Dhanam, 3/372, Chembumukku, Parakkattu Temple Road, Thrikkakara PO.
4. V. Manoharan, aged 61 years, S/o. A. Veeramoni, Scientist 'G' (Retired), Naval Physical and Oceanographic Laboratory (NPOL), Defence Research and Development Organization, Thrikkakkara, Residing at Aishwaraya, 11/71, Vazhakkala South, Kakkanad West (PO), Kochi-682 030.
5. Dr. O. Vijayakumar, aged 61 years, S/o. V. Raman Menon (Late), Scientist 'G' (Retired), Naval Physical and Oceanographic Laboratory (NPOL), Defence Research and Development Organization, Thrikkakkara, Residing at 35/248A, Odampilly, Automobile Road, Mamangalam, Kochi 682 025.
6. Shyam Kishore Srivastava, Aged 64 years, S/o (late) Sri Banke Behari Lal Srivastava, Scientist 'G' (Retired), Naval Physical and Oceanographic Laboratory (NPOL), Defence Research and Development Organization, Thrikkakkara, residing at BRONX N-102, Concorde Manhattans, Neeladri Road, Electronics City Phase-I (PO), Bangalore – 560 100 (Karnataka). **Applicants**

(By Advocate – Mr. P.V. Mohanan)



V e r s u s

1. Union of India, represented by its Secretary, Department of Pension & Pensioners Welfare, Ministry of Personnel, Public Grievances & Pensions, Lok Nayak Bhavan, 3rd Floor, Khan Market, New Delhi – 110 003.
2. The Senior Accounts Officer, Office of the Principal Controller of Defence Accounts (Pensions) Allahabad – 211 001.
3. Director General, Research and Development, Defence Research and Development Organization (DRDO), Ministry of Defence, New Delhi 110 003. **Respondents**

(By Advocate – Mr. Thomas Mathew Nellimoottil)

This Original Application having been heard on 05.09.2014, the Tribunal on 09-10-2014 delivered the following:

O R D E R

By Hon'ble Mr. U. Sarathchandran, Judicial Member-

Miscellaneous Application No. 484 of 2013 for joining together of the applicants is allowed.

2. Applicants were working in the grade of Scientist S and Scientist G retired from Naval Physical and Oceanographic Laboratory (NPOL) under the 3rd respondent Defence Research and Development Organization (DRDO). They were granted Rs. 4,000/- as special pay as per Annexure A7. According to them the special pay of Rs. 4,000/- was included in the pay drawn at the time of their superannuation. But while fixing their pensionary benefits the said special pay was not reckoned. One of the Scientist/Engineer in the Department of Space who was granted the aforementioned special pay challenged the denial of the special pay to be treated as part of pay for the



purpose of pensionary benefits in OA No. 1153 of 2002 in the Principal Bench of this Tribunal. In that case the Department of Space extended the benefits of counting special pay for pensionary purpose. Shri Mallikarjuna Rao, Scientist G (retired) and 11 others of the DRDO filed OA No. 184 of 2006 in the Co-ordinate Bench of this Tribunal at Hyderabad for similar relief. In that case the respondents were directed by the Tribunal to consider the case of the applicants. It was further directed that if it is found that they are similarly placed to that of the applicants in the aforesaid OA No. 1153 of 2002 of the Principal Bench, to extend the benefits in the same manner as has been done by the Department of Space, Department of Atomic Energy. The Writ Petition filed by the respondents challenging the order of the Hyderabad Bench was dismissed by the High Court of Andhra Pradesh. The SLP filed against that judgment was also dismissed by the Apex Court on 20.4.2009. Accordingly, the respondents vide Annexures A8 and A9 ordered for counting special pay for purpose of pension and pensionary benefits in respect of Scientists 'G'. However, no fixation was done by respondent No. 2 in respect of the applicants in this case. Representation submitted by one of the Scientists 'G' in NPOL was informed vide Annexure A10 that the matter is under active consideration by the Ministry of Defence. According to the applicants similar orders have been passed by the different benches of this Tribunal at Bangalore, Bombay and Hyderabad and also by this Bench vide Annexure A13 order dated 25.2.2013. Applicants seek parity with the benefit granted in the order in Annexure A13.

3. Respondents submitted that the special pay granted to applicants was Rs. 2,000/- with effect from 1.1.1996 and that the same was increased to Rs. 4,000/- with effect from 1.1.2006 as a sequel to the recommendations of the VIth Central Pay Commission. Respondents admit the litigations mentioned in this OA including the rejection of the SLP. However, respondents point out that in the SLP filed against the order of Hon'ble Andhra Pradesh High Court in respect of OA 184 of 2006 of Hyderabad Bench of this Tribunal Hon'ble Apex Court on 20.4.2009 held as under:-

“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”.

4. According to respondents since the question of law was left open by the Hon'ble Apex Court the Government decided to implement the judgment of the Co-ordinate Bench of this Tribunal in Hyderabad in OA No. 184 of 2006 without prejudice to the further legal recourse in the matter. Accordingly, after discussions with the Controller General of Defence Accounts, the Government decided that the relief granted by the Hyderabad Bench of this Tribunal in OA No. 184 of 2006 cannot be granted to other similarly placed Scientists. Respondents further contend that as per Rule 33 of CCS (Pension) Rules, 1972 the “emoluments” for the purpose of pension is the basic pay as defined in Rule 9(21)(a)(i) of Fundamental Rules as per which “special pay” of any kind does not form part of “emoluments” and hence cannot be reckoned for the purpose of pensionary benefits under CCS (Pension) Rules, 1972. It is further submitted by respondents that the decision of the Co-ordinate Bench of this Tribunal at Bangalore in OA Nos.



219-221 of 2011 and OA No. 287 of 2011 is pending before the High Court of Karnataka in WP No. 41011-41014 of 2014. Respondents pray for dismissing the OA.

5. We have heard Mr. P.V. Mohanan, learned counsel for the applicants and the learned counsel for respondents.

6. Referring to Annexure A13 order of this Tribunal in OA No. 156 of 2012 dated 25.2.2013, Shri P.V. Mohanan, learned counsel for the applicants submitted that applicants in this case are similarly situated Scientists 'G', retired from NPOL. In Annexure A13 order this Tribunal relied on the decisions in OA No. 1153 of 2002 of the Principal Bench of this Tribunal and OA No. 184 of 2006 of the coordinate Bench at Hyderabad. As pointed out above, the decision of the coordinate Bench at Hyderabad was not interfered with by the High Court of Andhra Pradesh. The judgment of the High Court was challenged in the Supreme Court of India in SLP No. 4842 of 2008 without success and thereafter DRDO accorded sanction to count Annexure A1 special pay and to revise the pension of all Scientists 'G' who had retired. In Annexure A13, this Tribunal had again relied on another decision of this Tribunal in OA No. 843 of 2010 the applicants wherein were similarly placed.

7. Learned counsel for the respondents contend that since Hon'ble Apex Court in the SLP filed against the aforesaid decision of the Hyderabad Bench had left open the question of law, the decision of the Hyderabad Bench are not to be made applicable to other similarly situated persons. Nevertheless, we

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are of the view that since the decision of the Hyderbad Bench of this Tribunal had been relied on by this Bench in Annexure A13 OA No. 156 of 2012, we hold that the issue for adjudication in this OA is squarely covered by the dictum in the aforementioned OAs. [We therefore, respectfully follow the decisions in above OAs and] direct the respondents to consider the case of the applicants and to extend the same benefits as granted to the applicants in OA No. 156 of 2012 (decided on 25.2.2013) of this Bench by issuing revised pension payment order within two months from the date of receipt of a copy of this order. No costs.



(B. BHAMATHI)
ADMINISTRATIVE MEMBER



(U. SARATHCHANDRAN)
JUDICIAL MEMBER

“SA”