IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO.180/00867/2016

Monday this the 28th day of May, 2018

CORAM

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member

1. Simon. K.V,
Scientist/Engineer G (Retd.), Group Director, CASG,
AVIONICS, VSSC, ISRO P.O.,
Thiruvananthapuram-695022, Residing at Konikkara House,
T.C. 54/238, Pappanamcode, Thiruvananthapuram – 695 018.

2. Ratnakara Rao. P,
Deputy Director, Engineer G,(Retd), MSA, VSSC,
ISRO P.O. , Thiruvananthapuram 695022,
Residing at A11- Bhageeratha East Gate Apartments,
Kanjirampara P.O., Thiruvananthapuram – 695 030.

3. George. P.V.,
Engineer G, Group Director (Retd.), LVIG, MVIT VSSC,
ISRO P.O., Thiruvananthapuram – 695 022, Residing at
T.C. 76-1299 (BSRA-B5), Bhagath Singh Road, Pettah P.O.,
Thiruvananthapuram – 695 024.

4. Sarveson. D,
Engineer G, Project Director (Retd.), C 25 Project, LPSC,
Valiamala P.O., Thiruvananthapuram – 695 547,
Residing at T.C. 16/4, EVRA 250, Krishna Vilasam Road,
Jagathy, Thiruvananthapuram – 695 014.

5. Narendranath. M.K.,
Associate Project Director (Retd), Engineer G,
CUSP, LPSC, Valiamala P.O., Thiruvananthapuram – 695 547,
Residing atT.C. 9/739, RNP Lane, Sasthamangalam P.O.,
Thiruvananthapuram – 695 010.

...Applicants

(By Advocate Mr. Vishunu S. Chempazhanthiyil)

Vs.

1. The Secretary & Chairman,
   Department of Space, Indian Space Research Organisation,
   Antariksh Bhavan, New BEL Road, Bangalore – 560 094.

2. Union of India, represented by its Cabinet Secretary,
   Government of India, New Delhi – 110 001.

...Respondents

(By Advocate Mr. N. Anil Kumar, Sr.PCGC)

This OA having been heard on 16th May, 2018, the Tribunal delivered the following order on 28.05.2018.

O R D E R

MA/180/504/2017 is filed by the Ist respondent in the OA – Vikram Sarabhai Space Centre - praying for deleting the 2nd respondent from the party array. For the reason stated in the M.A., the MA is allowed and the 2nd respondent (Union of India represented by its Cabinet Secretary) is allowed to be deleted.

2. The applicants are retired Scientists/Engineers in Grade-G under the Department of Space (DoS for short). They are aggrieved by the inaction on the part of the DoS to rectify the anomaly which has resulted in pensioners of lower grade drawing higher pension than them. The reliefs sought in the OA are as follows:

> *(i) Declare that the refusal on the part of the respondents to rectify the anomaly with regard to pensioners in Grade of Scientists/Engineers-G drawing lesser pension than Scientists/Engineers-SG, is illegal and arbitrary.*
>
> *(ii) Direct the respondents to implement the Cabinet decision with regard to removal of anomaly of senior in Scientists/Engineers G Grade drawing less emoluments as compared to juniors in feeder grade of Scientists/Engineers SG*

and grant all consequential benefits to the applicants from the due date.

(iii) Direct the respondents to rectify the pay/pension anomaly by remedial steps of grant of two increments to Scientists/Engineers in G Grade w.e.f. 1.1.1996 with all consequential benefits to the applicants.

(iv) Call for the records leading to the issue of Clarification No.5 in Annexure A5 and set aside Clarification No.5 in Annexure A5.

3. The facts of the case are as below:

DOS sanctioned two additional increments to Scientists/Engineers in the Grade SD, SE, SF and SG with effect from 1.1.1996 with the stipulation that the additional increments shall not be considered as pay for benefits like DA, HRA, pension and pensionary benefits etc. A copy of the O.M. dated 3.2.1999 issued by the 2nd respondent is at Annexure A1. This O.M. excluded the next higher Grade of Scientists/Engineers-G from the grant of the two additional increments. This brought about a situation of Scientists-G Grade in the pay scale of 18400-22400 drawing less emoluments as compared to their juniors in the feeder Grade of SG who were on Rs.16400/-20000/-. The Council of Ministers at its meeting held in October, 2007 considered this issue and resolved to rectify this anomaly; it was decided that two additional increments will be granted to Scientists-G Grade at the time of promotion. However, it is stated in the OA that this decision was never implemented. The fact of this decision not being implemented was informed to the Scientists in question through the RTI route, a copy of the communication being marked as Annexure A2. The matter was taken up before the Hon'ble High Court of Kerala, in Writ Petition (C) No.29710/2004, which, in its order dated 18.1.2007, held as under:

"Thus, the additional increments granted as per Exhibit P1 fall within the

> *definition of pay. Necessarily, all attributes that may be added to emoluments reckoning pay shall have to be paid to them, whether it be DA, HRA. Equally so is the pension to the retired employees, because pension is also reckoned based on the pay drawn".*

Thus, it came to be accepted that all subsequent benefits including pension would take into account the additional increments sanctioned to various categories. This order was challenged before the Hon'be Supreme Court but the same met with no success and the SLPs were dismissed by order dated 4.4.2011.

4. DOS, however, implemented the judgment at Annexure A3 only in respect of the applicants therein, and similarly placed employees and pensioners filed OAs in various forums in the country. This Tribunal allowed the OAs bearing number 632/2012, 790/2012, 791/2012, 792/2012 and 847/2012. It was made clear that all the applicants similarly placed are entitled to the benefits of judgment of the Hon'ble High Court of Kerala at Annexure A3. The appeal against this order was also dismissed.

5. In accordance with the above, DOS issued a clarificatory O.M. Dated 22.5.2014, copy of which is marked as Annexure A5. In the said O.M., under Query No.5, while referring to the disparity in pay, pension and pensionary benefits relating to Scientists/Engineers in the Grade of G & H, when compared to their junior Scientists/Engineers-SF/SG, the following answer was provided:

> *"The disparity in total emoluments exists even otherwise now. The consequential impact cannot be rectified".*

6. Thus, the admitted anomaly involves the disparity in pension between senior Scientists/Engineers Grade G and H when compared to junior Scientists/Engineers in

Grade SF/SG. While admitting this, the respondent Department did not propose to do anything in the matter despite the fact that the anomaly persisted directly in conflict with the Cabinet decision of October 2007. Further, in a judgment of the Hon'ble High Court of Patna in Civil Writ Jurisdiction Case No.10757/2010 (Annexure A6), it was ordered that the basic pay of the senior ought to be stepped up in such contingencies to avoid disparity and discrimination. A person in the higher grade cannot draw less remuneration or less pension than a person who was in the junior grade. The Court put it poignantly thus:

> *"The principle of law, as decided by the Hon'ble Apex Court is plain and simple; that a senior officer cannot get pension less than his junior. If that be, the effect of pay fixation then the pension would have to be stepped up to avoid such hostile discrimination".*

7. The applicants in the OA state that the anomaly referred to above is being continued with and DoS has ignored its obligation to implement the Cabinet decision.

8. As grounds, the applicants submit that the inaction on the part of the official respondents is unjust, illegal, arbitrary and violates Articles 14 & 16 of the Constitution of India. There is no justification whatsoever in continuing to deny the benefit of two additional increments to those who are promoted to Scientists-G Grade in the pay scale of 18400-22400 at the time of promotion. It is impermissible that a situation, where the official respondents openly admit that there exists an anomaly, should co-exist in a scenario where there is no remedy on offer.

9. Reply has been filed by the respondents. It goes on to mention that the Department of Space is an umbrella organization under which several units such as

VSSC, LPSC, SDSC-SHAR are functioning. The Scientists who are employed in these units are rendering great service to the nation. It was on account of this fact that special incentives such as additional increments have been contemplated and granted to them from time to time. The statement goes on to admit the sequence of events in the case narrated in the OA. It further submits that the applicants were excluded as having belonged to a category which was not eligible for grant of additional increments. Consequently their pension has also not been revised providing for the two additional increments which they never got. As per extant orders, on sanction of pension, no provision exists for stepping up of pension of seniors on par with juniors. In so far as the Cabinet decision is concerned, it is stated that the matter was taken up with the Ministry of Finance, Department of Expenditure and, that Department had examined the same giving the following advice:

> *"Since the additional increments were not available to Scientists 'G' and 'H' there was a possibility in the drop of their emoluments at the time of their promotion to Scientists-G level. However, in order to protect any drop in emoluments at the time of their promotion from Scientists-F to Scientists-G level, Rs.2000/- special pay was granted to them. Therefore, even under the pre-revised dispensation, there was no justification for demanding two additional increments at the time of promotion to Scientists-G level, particularly when a special pay of Rs.2000/- p.m., had been granted for these levels precisely to protect any drop in emoluments. Also, since the span of the pre-revised scale of Rs.18400-22400 was merely 8 years, grant of additional increments at the time of promotion to this scale would have led to early stagnation. In view of the foregoing, neither in the pre-01.01.2006 dispensation, nor under the revised pay structure implemented after 6th CPC, there is any justification to grant two additional increments to Scientists on their promotion to Scientists -G level in DAE & DOS".*

10. As DOS had taken up the issue with the Cabinet Secretariat and had further exerted themselves to pursue the decision taken by the Council of Ministers, they

contend that they have no further role in the matter.

11. As annexures the following documents have been appended to the statement:

Annexure R1(a) proposal for removal of anomaly in the case of scientists/engineers-G&H - request for approval.

Annexure R1(b): Reference made by Cabinet Secretariat to Secretary, Expenditure.

Annexure R1(c): Communication of Department of Expenditure, Ministry of Finance, Implementation Cell giving their views on the issue;

Annexure R1(d): Internal notings of the Cabinet Secretariat:

Annexure R1(e): O.M. incentives for Scientists/Engineers in DOS/ISRO granted to scientists/engineers SB/SE/SF and SG.

12. Shri Vishnu S.chempazhanthiyil, learned counsel appeared on behalf of the applicants and Shri N.Anilkumar appeared on behalf of the respondents. They have been heard and all records perused. The case involves disparity in pensions of a section of employees who retired as Scientist/Engineers-G grade from various institutions under the Department of Space. As an incentive for the meritorious service to the country at large, two increments were ordered to be given to various categories in the scientific establishments. However, these incentives stopped at the level of Grade-F, and Scientists/Engineers of Grade G&H were excluded. Subsequently, in compliance with various court orders on the subject, DOS had taken up the matter for rectification of the said anomaly. This was also necessitated on account of the Council of Ministers decision of 2007. From the documents and pleadings, this Tribunal sees that a certain amount of misunderstanding has occurred

in the subsequent steps that were taken. The authorities were under the mistaken notion that a special pay of Rs.2000 was granted to G & H categories. this was not correct as the special pay had been allowed only for H category. Thus, while Scientists/Engineers belonging to H category were assuaged the grievance of G Grade personnel continued to fester.

13. It is a matter of concern that despite categoric orders of even the Hon'ble Apex Court on the inherent principle thereof, personnel who retired from a higher grade are being paid less pension than those who were their juniors and exited from a junior grade. The reply provided in the Office Memorandum at Annexure A5 that the disparity "exists even otherwise now. The consequent impact cannot be rectified", brings no credit to the respondent organization. This Tribunal concludes that the anomaly has to be urgently rectified. The prayer in the OA is allowed in full. All consequential benefits are to be allowed to the applicants and related orders passed within three months of the receipt of the order. No costs.

(E.K.Bharat Bhushan)
Administrative Member

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List of Annexures of the Applicants

Annexure A-1 - True copy of the Office Memorandum No. 2/10(8)/98-I dated 03.02.99 issued by the 1st respondent.

Annexure A-2 - True copy of the information supplied under RTI Act.

Annexure A-3 - True copy of the judgment dated 18.01.2007 in W.P. (C) No.

31525/2004 of the Hon'ble High Court of Kerala.

Annexure A-4 - True copy of the judgment in O.A. No. 632/2012 of the Hon'ble Central Administrative Tribunal, Ernakulam Bench.

Annexure A-5 - True copy of the O.M. No. A.2/10(8)/98-I(Vol.IV) dated 22.05.2014 issued by the 1st respondent.

Annexure A-6 - True copy of the judgment in Civil Writ Jurisdiction Case No. 10757/2010 of the Hon'ble High Court of Patna.

List of Annexures of the Respondents

Annexure R1(a) - A copy of Department of Space Note No. 1/6/7/2002-V(IV) dated 17.11.2007.

Annexure R1(b) - A copy of the communication No. 601/1/3/2009-TS dated 24.06.2009 sent from Cabinet Secretariat to Department of Expenditure.

Annexure R1(c) - A copy of the communication dated 30.06.2009 from Department of Expenditure to Cabinet Secretariat.

Annexure R1(d) - A copy of the communication No. 601/1/3/2009-TS dated 08.07.2009 of the Cabinet Secretariat to the Department of Space.

Annexure R1(e) - A copy of the Department of Space OM No. A.2/10(8)/98-I (Vol.III) dated 20.01.2014.

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