

**Central Administrative Tribunal
Principal Bench**

OA No. 3944/2015

**Reserved on: 16.05.2019
Pronounced on: 22.08.2019**

Hon'ble Mr. Mohd. Jamshed, Member (A)

1. Sh. Hari Shanker Sharma, (Aged about 60 years),
(Retired Scientist 'G' of DRDO)
S/o Sh. Chhote Lal Sharma,
r/o: D-10, DRDO Residential Complex,
Lucknow Road, Timarpur,
Delhi – 110054.
2. Ashok Kumar, (Aged about 61 years)
(Retired Scientist 'G' of DRDO,
S/o Late Sh. B. S. Yadav,
R/o: G-1/45, Sector XI,
Rohini, Delhi – 110085.
3. Amita Gupta, (Aged about 60 years)
(Retired Scientist 'G' of DRDO,
W/o Sh. Rajiv Kumar Gupta
R/o: D-59, Anand Niketan,
Moti Bagh- 2,
New Delhi – 110021.
4. Dr. Vikram Dhar, (Aged about 62 years)
(Retired Scientist 'G' of DRDO,
S/o Late. Sh. Somnath Dhar,
R/o: C-1, Papmosh Enclave,
New Delhi – 110048.
5. Dr. Devendra Singh, (Aged about 61 years)
(Retired Scientist 'G' of DRDO,
S/o Sh. Giriraj Singh,
R/o B-29, Subhash Enclave,
Air Force Area,
Jodhpur – 342011.
6. Ravi Kumar Gupta, (Aged about 60 years),
(Retired Scientist 'G' of DRDO,
S/o Late Sh. Ramesh Chandra Gupta,
R/o: D-I/E26, Bapu Dham,

Central Govt. Officers' Aptts,
San martin Marg, new Delhi – 110021.

7. Pushkar Raj, (Aged about 60 years)
(Retired Scientist 'G' of DRDO,
S/o Sh. Holkar Singh Rajkumar,
R/o C-5, MS Flats, Tilak Lane, New Delhi – 110001.
8. Dr. Shri Ram Shukla, (Aged about 62 years)
(Retired Scientist 'G' of DRDO)
S/o late Sh. Durga Prasad Shukla,
R/o S-10, Module-9, Mangalam Residency,
Abhay Khand – III< Indirapuram, Ghaziabad
201010.
9. Sudhish Kumar Rastogi, (Aged about 60 years)
(Retired Scientist 'G' of DRDO,
S/o Sh. Shiv Kumar Rastogi,
R/o D-II/6, Subramaniya Bharti Marg,
Pandara park, New Delhi – 110003.

...Applicants

(By Advocate: Mr. Rajan Rai for Mr. Gyan Prakash)

Vs.

1. Union of India through,
The Secretary,
Ministry of Defence, South Block, New Delhi.
2. The Secretary,
Department of Defence Research and Development,
M/o Defence, Govt. of India,
DRDO Bhawan, Rajaji Marg, New Delhi – 110005.
3. Director General,
Defence Research & Dev. Organization (DRDO),
Department of Defence Research & Development,
M/o Defence, Govt. of India, DRDO Bhawan,
Rajaji Marg, New Delhi – 110005.

...Respondents

(By Advocate: Mr. Piyush Gaur)

ORDER

Mohd. Jamshed, Member (A):-

The applicants are retired Scientists 'G' of Defence Research and Development Organisation (DRDO), Ministry of Defence, Government of India. As stated in the OA, DRDO issued orders on 13.05.2009 after obtaining sanction of the President to count Special Pay of Rs. 2000/- per month granted to Scientist in the pay scale of Rs. 18400-22400 w.e.f. 01.01.1996 and Special pay of Rs. 4000 per month to Scientists in Pay Band 4 (Rs. 37400-67000) with Grade pay of Rs. 10000 Pm w.e.f. 01.01.2006 for pension and pensionary benefits. It is stated that the respondents did not implement the orders dated 13.05.2009 for all similarly placed Scientists. Some Scientist 'G' filed OA No. 2509/2010 before the Principal Bench of this Tribunal and a few others filed OA No. 306/2010 before the Hyderabad Bench of this Tribunal. This bench of the Tribunal vide its order dated 06.01.2011 in OA No. 2509/2010 directed as follows:-

"To extend the same benefit to the applicants in the matter of their pension/pensionary benefits which have been extended to similarly placed Scientist 'G' in DRDO. This will be done within a period of two months from the date of receipt of a copy of this order. The arrears payable on revision of pension/pensionary benefits may be paid within one months thereafter alongwith interest of 9% per annum for delay beyond this period in payment of arrear."

The Hyderabad Bench of this Tribunal vide its order dated 07.01.2011 in OA No. 306/2010 directed as follows:-

"to make completed payment by 31 January, 2011 of the pension and pensionary benefits to all the Scientist 'G' (including the applicants) who have retired/superannuated, in terms of the aforesaid letters dated 13 May 2009. Any further delay thereafter would entitle the applicants 9% compound rate of interest per month on the dues. Cost of Rs. 1,000/- is imposed on the respondents which would be paid to the applicants by 31st March 2011. Any further delay would entitle the applicants 9% simple rate of interest per month on the amount of cost. Respondents No. 1 is free to recover the amount of cost from the official(s) responsible for this unnecessary litigation/harassment to the retired scientists 'G' (including the applicants) and, the precious loss of money and time."

2. On the basis of the orders passed by the Tribunal, the DRDO issued order dated 29.03.2011 and 30.03.2011. Various Scientist 'G' of DRDO were accordingly given the pensionary benefit. Some applicants approached the respondents through representation dated 26.05.2015 to grant similar revised pension and pensionary benefits as has been granted to their colleagues. The respondents rejected the representation of the applicants on the ground that the special pay

cannot be counted for pensionary benefits in view of the provisions of CCS (Pension) Rules, 1972 read with FR (21)

(a) (i). Aggrieved by this action of the respondents, the applicants have sought the following relief through this OA:-

"8.1 Allow the present application.

8.2 Direct the respondents to revise pension and pensionary benefits of the retired applicants in the present OA in terms of their own order dated 13.05.2009 under which the President has sanctioned that Special Pay of Rs. 4000/- w.e.f. 01.01.1996 will count to pension and Pensionary Benefit to Scientistis 'G' in DRDO. As known to the applicants, this order has been fully implemented in the case of several Scientists 'G' who have retired from Defence Research & Development Organization and some of them have not approached any Hon'ble Tribunal or Hon'ble Court. Further, respondents have issued order on 29th march, 2011 for about 66 Scientists 'G' of DRDO for necessary revision of the PPO as Annexure A-3. The applicants in the present OA are fully covered by ratio of order of Hon'ble Tribunal dt. 6.1.2011 and 7.1.2011 as given in Annexure A-21 and A-22. They are similarly placed Scientists 'G' of DRDO ;as mentioned in order dated 29.03.2011 (Annexure A-3). They are therefore entitled for the same revision of their pension and Pensionary benefit in terms of respondents own order dated 13.05.2009. Any denial of retiral benefits to the applicants in present OA which has been granted to their several colleagues will be arbitrary and discriminatory and violative of article 1 & 16 of the Constitution of India and will be against law laid down by Hon'ble Tribunal.

8.3 Direct the respondents to pay arrears of pension and Pensionary Benefits to the applicants takin into account Rs. 4000/- as Special Pay and also interest if revision of Pension & Pensionary benfits takes unduly long period.

8.4. Any other relief which Hon'ble Tribunal may deem proper and just in the interests of justice."

3. The primary relief sought by the applicant is in terms of implementation of respondents own order dated

13.05.2009, which was implemented initially for few similarly placed Scientist 'G' and that the similar relief should be provided to the applicants. Vide impugned order dated 13.05.2009, the respondents have granted relief in terms of counting the special pay of Rs. 2000/- and Rs. 4000/- to be counted towards pension and pensionary benefits. It was also indicated that it is in compliance of the Judgment dated 29.03.2007 of Hyderabad Bench of this Tribunal in OA No. 184/2006 which has been upheld by Hon'ble Andhra Pradesh High court in WP No. 267/2008. Government of India's appeal has also been dismissed by Hon'ble Supreme Court in SLP No. 4842/2009 leaving the question of law open.

4. The respondents in their counter reply have opposed the OA and submitted that the issue raised by the applicant in the present OA relates to counting of special pay of Rs. 2,000/- with effect from 01.01.1996, which was increased to Rs. 4,000/- with effect from 01.01.2006, for computing pensionary benefits of Scientist 'G' in DRDO. It is submitted that the Hyderabad Bench of this Tribunal vide its order dated 29.03.2007 extended this benefit and the same was challenged in

Hon'ble Andhra Pradesh High Court which dismissed the same.

5. Thereafter, an SLP (CC) No. 4642/2009 was filed against the order dated 26.09.2008 of Hon'ble High Court of Andhra Pradesh before the Hon'ble Supreme Court. After hearing, Hon'ble Supreme Court dismissed the SLP vide order dated 20.04.2009, the operative portion of which reads as under:-

*"on the facts of the present case, we are not inclined to interfere with the impugned judgement and order. The Special Leave Petition is dismissed. **However, the question of Law is left Open.**"*

6. After dismissal of the SLP by the Hon'ble Supreme Court, and based on the legal advice, it was decided to implement the judgment of Hon'ble CAT, Hyderabad in OA No. 184/2006. Accordingly, a Government letter dated 13.05.2009 (Annexure- A-1) for counting of special pay for the purpose of pension and pensionary benefits in respect of Scientist 'G' was issued. The respondents stated that in a recent SLP (CC) No. 12706/2015 filed against the order of this Hon'ble Tribunal and Hon'ble High Court, on the same issue by the respondents, the Hon'ble Supreme Court has been pleased to issue notice vide order dated 21.08.2015. While issuing notice, the Hon'ble Court was conscious of the fact of dismissal of

SLP (CC) No. 1605/2015 on 02.02.2015 on the same issue (but in a different matter/case). Since Hon'ble Apex Court is seized of the issue, it is prayed by the respondents that the Tribunal may kindly keep the matter pending till the issue is finally decided by the Hon'ble Apex Court in SLP (CC) No. 12706/2015- Union of India Vs. Dr. OP Nijhawan & Ors.

7. During a earlier date of hearing, it was stated by both the learned counsel that in view of a similar matter presently lying adjudication of Hon'ble Apex Court in SLP Nos. 024745/2015 & 012706/2015 with a batch of (total about 50 SIPs), the present OA, may kindly be adjourned.

8. During the hearing it was submitted that the Hon'ble Apex Court vide judgment dated 03.01.2019 has provided relief for similarly placed person which is also applicable to the applicants in this OA.

9. Heard Mr. Rajan Rai for Gyan Prakash, learned counsel for the applicant and Mr. Piyush Gaur, learned counsel for the respondents, perused the records and relied upon judgments.

10. The relief sought by the applicant is primarily for counting of special pay of Rs. 2000/- sanctioned to them w.e.f. 01.01.1996 to be counted towards pension and pensionary benefits of Scientist 'G' of DRDO and Rs. 4000/- w.e.f. 1st January, 2006. Applicants have quoted the impugned order dated 13.05.2009 in connection with counting of special pay for pensionary purposes. However, as this has not been done by the respondents in favour of the applicants they have filed the present OA.

11. Respondents in their counter reply have stated that since the Hon'ble Apex Court is seized of the issue, it is prayed that the Tribunal may kindly keep the matter pending till the issue is finally decided by the Hon'ble Apex Court in SLP (CC) No. 12706/2015- Union of India Vs. Dr. OP Nijhawan & Ors. The respondents today provided a copy of the Hon'ble Apex Court Judgment in SLP Nos. 024745/2015 & 012706/2015 with a batch of (total about 50 SLPs) in **Union of Indias & Ors. Vs. O.P. Nijhawan & Ors** decided on 03.01.2019. Vide this order, the Hon'ble Apex Court has ruled as under:-

"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."

12. The present OA is fully covered by this judgment.

Vide additional affidavit filed by the respondents, it is also submitted that the Hon'ble Apex Court's Judgment dated 03.01.2019 fully covers the present matter and that the respondents department is in the process of taking necessary action towards compliance of the same.

13. In view of the Hon'ble Apex Court ruling in SLP Nos. 024745/2015 & 012706/2015 with a batch of (total about 50 SIPs) in **Union of Indias & Ors. Vs. O.P. Nijhawan & Ors** decided on 03.01.2019, the present OA is fully covered. The OA is accordingly allowed with directions to respondents to take necessary action in accordance with the Hon'ble Apex Court Judgment within a period of three months, failing which interest on the arrears at the prevalent GPF rate will also be paid to the applicants. There shall be no order as to costs.

**(Mohd. Jamshed)
Member(A)**

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