

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO.180/729/2014

DATED THIS THE 5th DAY OF August, 2019

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

HON'BLE SHRI E.K. BHARAT BHUSHAN, MEMBER (A)

K.S. Sunil Kumar ,

S/o KK Sugumaran,

Aged about 51 years,

Retired Scientist/Engineer SE,

CMG, VSSC, ISRO,

Thiruvananthapuram-695 022,

Residing at TC 7/739(2), Sindhooram,

Koura-23, Kochulloor,

Medical College PO,

Thiruvananthapuram-695 011

...Applicant

(By Shri R. Sreeraj, Advocate)

Vs.

1.The Chairman, ISRO and Secretary,
Department of Space,
Indian Space Research Organisation,
Antarish Bhavan,
New BEL Road,
Bangalore-560 231.

2.The Director,
Vikram Sarabhai Space Research Centre,
Indian Space Research Organisation,
Thiruvananthapuram-695 022.Respondents

(By Shri N.Anil Kumar, Counsel for Respondents)

O R D E RDR.K.B.SURESH, MEMBER (J):

This matter was reserved for judgment some time back. But before order could be pronounced a stipulation was made that a similar matter is engaging the attention of the Hon'ble Apex Court. Therefore, it was decided to wait for some time as the matter has an all India implication and the author of this judgment had sat in many a Bench in the interregnum and had disposed of many a similar matter.

At first we had taken a view that since Presidential sanction was attributed to this special pay, a special significance must be attached to it. We had allowed those applications. The Hon'ble High Court of Karnataka having upheld it the matter went to Hon'ble Apex Court and the Hon'ble Apex Court having dismissed the S.L.P the matter became final.

In the next round, the Ministry of Finance through the Department of Expenditure had raised an objection that their juncture in granting a special pay is significantly absent and therefore a relook is necessary. But then we took a view at that point of time that since it has already been implemented for some, denial to these set of people will militate against the theory of universal consideration and had passed a considered conditional order to the effect that all these Scientists would

now be called upon to file an affidavit with the concerned official about the contribution they have made to enable the respondents to make a study and take prospective decision.

But now, it is pointed out that hardly anyone has bothered to file an affidavit describing their contributions. The issue of contributions attain importance as the objection of the Ministry was based upon treating the Scientists on the basis of their supposedly proven merit as to form a superior classification of employees. But having refused to justify their superior position vis-a-vis other bureaucrats, this justification of a separate classification does not seem to be very germane. But then, we have passed orders earlier allowing these stipulations.

Several connected matters seems to be engaging the attention of the Hon'ble Apex Court, even though on earlier occasions, the Hon'ble Apex Court had dismissed the SLPs and findings made by the Tribunal had become final. In fact, at Bangalore in OA.No.1456/2014 vide order dated 28.9.2015, we had passed an order which relates to similar circumstances and similar matrix. This we now quote:

"O R D E R

DR.K.B.SURESH, MEMBER (J):

The word “Satyameva Jeyathe” epitomises our Constitutional Philosophy. It is much more than a mere reflection of truth in human relation or fair governance. It postulates that every endeavour of State (which includes all the people – as a greater term) shall be to promote it.

*This matter in a nutshell is about encouraging Scientific inventiveness and creative logic. The Presidential Order which brought about a significant interregnum change in the pay levels of Scientists and Engineers of research organisation have not brought about any discrimination in its wake opposing Article 14, as they form a separate classification and the intentions behind such a move is generally the progress of the nation. It has bestowed, not on whims or fancies, but after much deliberation by the Cabinet of India. It seems to be a conscious decision taken after the Hon'ble Apex Court in **MUMBAI KAMGAR SABHA VS. ABDULBHAN** reported in AIR 1976 SC 1455 and in **MOHAN VS. UNION OF INDIA** reported in 1992 (supplement) (1) SCC 594 stipulate on Article 51-A of the Constitution of India to say that it shall be a guiding star to make equivocal unequivocals. Article 51-A (J) even though is now not capable enforcement is of particular interest. Thus the fear of the Government that it may open a Pandora's box as everyone even remotely similar may seek similar benefit is unfounded. The Hon'ble Apex Court judgments in **RURAL LITIGATION AND ENTITLEMENT KENDRA VS. STATE OF UTTAR PRADESH** reported in AIR 1987 SC 2426 and **BANVASI SEVA ASHRAM VS. STATE OF UTTAR PRADESH** reported in AIR 1987 SC 374 is of some significance in understanding the nuances of the situation.*

2. *The crux of the issue is only that whether a special pay will become part of the pay. The respondents submits before us that in view of the Hon'ble Apex Court order, which the learned Counsel for respondents Shri M.V.Rao place before us, i.e. one judgment of Hon'ble Apex Court which according to him is relevant had not been considered in any of the connected judgment whether it be of Hon'ble Apex Court or any High Court at any point of time. It is the case of **GOVERNMENT OF INDIA Vs. A .SYED** reported in 1997 (7) SCC 24. The crux of the para-5 and 8 of the judgment, it is pointed out that in normal parlance that special pay cannot be held to have the attributes of pay. The*

said Rule 9 Sub-clause (21)(a)(1) clearly includes the special pay and personal pay granted to the Government servants. In view of the special clarification issued therefore the question was whether incentive served as special pay or personal pay. But then apparently in this case following the Cabinet discussion which followed a note from Ministry of Defence certain proposals were accepted. It seems this pay was granted in lieu of a higher pay scale which was in contemplation for Scientists. That being so even though it is called as special pay or special incentives to the pay, there is a clear distinction between what is stated in this judgment and other Hon'ble Apex Court and High Court judgments, as well as judgments in Tribunals which is followed Apex Court dicta all over India. It is submitted by both sides that in all other cases the same view had been followed since it is an often treaded path. **The Kerala High Court has affirmed this view and the SLP was dismissed by the Hon'ble Apex Court. Therefore this is final.**

3. The Scientists 'C' to 'F' in the Defence Research & Development Organisation (DRDO, in short) were granted vide reference dated 03.02.1999 of the Department of Defence Research & Development, Ministry of Defence, Government of India (Annexure A2 = Annexure R1) the following incentives:

With effect from Jan 01, 1996

(i) Special Pay of Rs.2,000 p.m to Scientists in the pay scale of Rs.10,400 – 22,400, **in lieu of a separate higher pay scale** and that too **after peer review**.

(ii) Two additional increments to Scientists (Recruitees/Promotees) in the pay -scale of Rs.10,000 – 15,200, Rs.12,000 – 16,500, Rs.14,300 – 18,300m Rs.16,400 – 20,000 after their normal pay fixation.

From financial year 1998-99 onwards

Professional Update Allowance of Rs.5000 per annum to all Scientists.

Subsequently it was clarified by the Chief Controller of research & Development (M) addressed to the Jt.CGDA (Systems), Office of CGDA vide his letter dated 14/15.05.1999 (Annexure A3 = Annexure R2) as follows:

(i) The additional increments for Scientists 'C' to 'F' are to be treated separately and not to be merged with the basic pay fixed under the normal rules.

(ii) On recruitment/each promotion, the pay will be fixed under normal rules without taking into account the additional increments. After each normal promotion, two additional

increments will be granted each time in the respective pay scale.

(iii) Since the additional increments are not to be merged with basic pay and will have to be treated separately and distinctly, there is no need to revise the pay fixed already fixed on or after 01.01.1996.

The letter further said:

A proposal to treat the additional increments as part of 'Pay' as defined under FR 9(21) for all purposes like DA, HRA, Pension etc. except for pay fixation, is being taken up with Ministry of Finance. Further instructions in this regard will be issued after obtaining the approval of the Ministry of Finance.

In regard to Special Pay, the letter said as follows:

(i).....

(ii) The pay is in lieu of a separate higher pay scale. Therefore, it will be counted as pay for the purpose of pay fixation on promotion, to the next higher grade, if drawn for three years in terms of the Ministry of Finance OM No.6(1) E-III/B(65) dt.25.2.65.

A proposal to treat the special pay as part of "Pay" as defined under FR 9(21) for all purposes is being taken up separately with the Ministry of Finance.

Further instructions in this regard will be issued after obtaining the approval of Ministry of Finance.

The Department of Expenditure, Ministry of Finance, GOI vide Note dated 15/19.09.2000 (Annexure R5) gave its views as follows:

"(i) The two additional increments to Scientists/Engineers up to the level of Rs.16400 – 20400 are to be termed as a separate element as done by the DRDO and therefore it may not be possible to agree to these increments being counted as pay for all purposes.

(ii) As the special pay of Rs.2000 was given as an incentive personal to all Scientists/Engineers in the scale of Rs.18,400 – 22,400 as on 01.01.1996, it would be difficult for this Department to treat this as pay for all purposes because based on the 5th CPC recommendations, all Special Pay have been converted to Special Allowance and any deviation would generate demand from all other categories where special Allowance has been granted. However, this Special Pay could be granted not only to those who are in position as on 01.01.1996 but also subsequently based on selection through peer review.

Incidentally, DOP&T made certain alternative suggestions but the same were not found suitable for dealing with the specific

proposals made by the Ministry of Defence and would have needed fresh proposals, its examination and also Cabinet's approval".

4. *As seen from the copy of OM dated July 11, 2003, it was clarified vide OM dated 22.08.1999 of the Department of Space that the special pay will not be treated as a part of pay for purposes like DA, HRA, Pension etc. This was challenged in OA No.1153 of 2002, wherein the Principal Bench , New Delhi while partly allowing the application quashed para 1 © of the clarificatory OM dated 12.08.2009 regarding non-inclusion of the special pay as part of pay for purposes of pension, and directed that the special pay of Rs.2000 per month to Scientists/Engineers H in DOS/ISRO w.e.f 01.01.1996 be treated as part of pay for the purpose of pensionary benefits.*

5. *Accordingly, Para 1(1) © of the OM of DOS dated 12.08.1999 was modified as follows:*

The Special pay will not be treated as part of pay for the purposes of DA and HRA, but the same may be treated as part of pay for the purpose of pensionary benefits w.e.f.01.01.1996.

6. *The Applicant in the instant OAs have submitted that they were all Scientists in categories 'C', 'D', 'E' and 'F' in the DRDO and retired on reaching the age of superannuation or took voluntary retirement. They were extended the benefit of two additional increments as is evident from the communication dated 03.02.1999 of the Under Secretary, GOI to the Director General, DRDO, whereby apart from the two additional increments, the benefit of special pay in lieu of separate higher pay-scale has been extended. This was done after the Government examined the subject regarding providing incentives to Scientists in the DRDO, keeping in view the role played by them in the development of high technology systems for strategic applications and after taking into consideration all the relevant factors and to retain, attract, inspire and motivate Scientists to give their best contribution, the President was pleased to sanction the two additional increments to Scientists (recruitees/promotees) in the pay scale of Rs.10,000 – 15,200, Rs.12,000 – 16,500 Rs.14,300 – 18300 & Rs.16400 to Rs.20,000/- after their normal pay fixation. The above benefits was extended w.e.f. January , 01 1996. Subsequently, vide communication dated 14.05.1999, it was indicated that additional increments were to be treated separately and not to be merged with basic pay fixed under*

normal rules. While all the Applicants were given the benefit of two additional increments w.e.f. 01.01.1996 till retirement, however, the two additional increments were not taken into consideration in finalizing their pension. The clarification dated 14.05.1999 issued by the Ministry has been assailed by the Applicant as being without authority of law. The Ministry of Finance could not alter/modify the order/sanction issued by the President of India. The additional increments ought to be treated as part of 'Pay' as defined under rule 9(21)(a) of the Fundamental Rules (General Rules) and accordingly, DA, HRA, CCA and other benefits have to be revised with effect from 01.01.1996 and so also Pension re-fixed. Similarly, the benefit of professional update allowance (vide letters dated 03.02.1999 and 14.05.1999) which was given to all the Applicants with effect from 01.04.2000 has to be extended with effect from 01.04.1999, itself. Similar reliefs had been granted by the Hon'ble High Court of Kerala which was upheld by the Hon'ble Supreme Court. Following the orders of the various Benches of this Tribunal, Respondents had issued an Official Memorandum on 11.07.2003 (Annexure-A/5 to the effect that the "Special Pay" may be treated as part of pay for the purpose of pensionary benefits with effect from 01.01.1996 itself. Also vide letter dated 09.02.2010 (Annexure-A/6), it was directed that the benefit of additional increments for the purpose of pensionary benefits for which some of them submitted representations (Annexures-A/7 & A/8). **The object and purpose of extending the benefit of Special Pay and Additional Increments being one and the same, the Applicants were entitled for the benefit of counting the two additional increments for the purpose of their pensionary benefits also, like those extended to the grantees of "Special Pay", such as Scientists-'G' and above.**

7. The Applicants have stated that when earlier the Scientists of ISRO, who were in the similar grades as that of the Applicants moved this Tribunal praying for inclusion of the additional increments for the purpose of pensionary benefits, the Ernakulam Bench of the Central Administrative Tribunal declined to grant the relief sought for by the Applicants, but the Hon'ble High Court of Kerala at Ernakulam in WP No.293538 of 2004, etc. allowed on 18.01.2007 the writ petitions, holding that additional increments sanctioned shall be counted as "Pay" to attract all further payments including pension. When the said order of the Hon'ble High Court of Kerala was challenged by ISRO in SLP No.555-560 of 2008, the Hon'ble Supreme Court as per order

dated 04.04.2011 dismissed the Special Leave Petitions. Various Benches of the Tribunal and High Courts have passed orders (upheld by the Hon'ble Apex Court) to the effect that pension has to be fixed on the basis of pay including Special Pay/Additional increments. The said matter has already been settled as per the order of the Hon'ble High Court of Kerala and upheld by the Hon'ble Apex Court.

8. *The Applicant has stated that the word “Pay” has been defined under FR 9(21)(a) as follows:*

“9(21)(a) – Pay means the amount drawn monthly by a Government Servant as –

(i) The pay, other than special pay or pay granted in view of the 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

(ii) Overseas pay, special pay and personal pay; and

(iii) Any other emoluments which may be specially classed as pay by the President”

The word “emoluments” has been defined in Rule 33 of the Central Civil Services Pension Rules, as follows:

33. Emoluments – The expression ‘emoluments’ means basic pay as defined in Rule 9(21)(a) 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-practicing allowance granted to Medical Officer in lieu of private practice”

9. *In their reply, the Respondents have submitted that the reliefs sought by the Applicants were highly belated and barred by limitation and on this ground alone, the OAs are liable to be dismissed. While the Scientists ‘C’ to ‘F’ were granted two additional increments over and above their normal pay, vide Government of India’s letter dated 03.02.1999 of the DRDO, Ministry of Defence in consultation with Integrated Finance (R&D) regarding treatment of the two additional increments granted to Scientists ‘C’ to ‘F’ as follows:*

(I) Two additional Increments for Scientist 'C' to Scientist 'F' (Recruitees/Promotees)

- i) *The additional increments are to be treated separately and not to be merged with the basic pay fixed under normal rules.*
- ii) *On recruitment/ each promotion, the pay shall be fixed will be fixed under normal rules without taking into account the additional increments. After such normal pay fixation, two additional increments will be granted each time in the respective pay scale.*
- iii) *Since the additional increments are not to be merged with basic pay and will have to be treated separately and distinctly, there is no need to revise the pay already fixed on or after 1.1.96.*

A proposal to treat the additional increments as part of "Pay" as defined under FR 9(21) for all purposes like DA, HRA, Pension etc. except for pay fixation, is being taken-up with Ministry of Finance. Further instructions in this regard will be issued after obtaining the approval of Ministry of Finance.

As per Rule 33 of CCS (Pension Rules) 1972, the expression 'emoluments' means basic pay as defined in Rule 9(21)(a)(i) of Fundamental Rules, which a government servant was receiving immediately before his retirement and will also include non-practicing allowance granted to medical officer in lieu of private practice and stagnation increment. Therefore, it is evident from the definition of emoluments that the two increments granted to Scientists 'C' to 'F' do not form part of emoluments for pensionary benefits . The extract of FR 9 (21) (a)(a)(i) has been marked as Annexure-R/4. Notwithstanding the above position, a proposal was sent to Department of Expenditure, Ministry of Finance for inclusion of these two increments as part of pay for purpose of DA, HRA, pension etc. The Government did not agree to the proposal. Even the merger of special pay granted to Scientists 'G' in lieu of higher pay scale has not been concurred (by the Department of Expenditure, Ministry of Finance . The Rule position is that allowances, incentives and special pay which are granted for specific reasons to a particular individual, class or group are not to be treated as part of pay. The matters of policy governing the service

conditions of employees lie in the exclusive domain of the Government and the Courts do not interfere with such policy matters unless these are arbitrary or discriminatory – this position has been upheld by the Apex Court in its various judgments. But it appears in this case that the Presidential order had an objective in mind, i.e. a special benefit to be granted to a group of people in lieu of a special scale of pay. The Presidential order must be understood in this open perspective. It is to be noted that Scientists forum adherent classification and therefore it was found suitable to have a structure of pay slightly better for the purpose of attracting better minds to its fold. The correspondence, except at the last stage seems to be indicative that a separate pay structure was in the thought process and this was only an interregnum arrangement. The applicant thus claims an estoppel against this denial and is illuminative of the various views and hues of discussion in this regard.

10. *The Respondents have submitted that the judgment cited by the Applicants regarding counting of special pay for pension has no bearing on the relief claimed regarding counting of additional increments for pensionary benefits, as the special pay and two additional increments granted to Scientists were two distinct elements. Whereas the Tribunal had allowed counting of special pay for pensionary benefits on the ground that the special pay was granted in lieu of a separate higher pay scale, the same does not hold good in respect of additional increments. Government had not agreed for merger of additional increments as part of 'Pay' under FR 9(21)(a)(i) for the purpose of DA, HRA, pension etc. (Annexure-R/3 = Annexure A/2). As such, the additional increments granted to Scientist 'C' to 'F' as an incentive vide GOI letter dated 03.02.1999 continue to be treated separately and are not merged with basic pay and hence, the same does not count for the purpose of DA, HRA, Pension, etc. The judgment date 18.01.2007 of the Hon'ble High Court of Kerala at Ernakulam in WP No.29358, 29710 and 31525 of 2004 cited by the Applicants in support of their case, was not applicable to the instant case as the same pertained to the Department of Space. The said judgment was contrary to the provisions of Rule 33 of CCS (pension) Rules. The additional increments sanctioned to Scientists 'C' to 'F' as an 'Incentive' cannot be said to be the part of 'pay' as defined in Rule 9(21)(a)(i) of Fundamental Rules. But at the same time an issue arises an employment was apparently canvassed on the basis of special*

benefits and therefore, the claim of the Government are hit by 2009 of promissory estoppel and also the legitimate expectation of the Scientists.

11 *Heard the learned counsels for the Applicant and the Respondents and perused the entire record. During the hearing of the case, the learned counsel for the Respondents cited the judgment of the Hon'ble Supreme Court in **Govt.of A.P. &Ors vs. Syed Yousuddin Ahmed** reported in (1997) 7 SCC 24 and asserted that this judgment had not been taken cognizance of by the Courts – Kerala High Court as well as the different Benches of the Central Administrative Tribunal as well as the Hon'ble Apex Court in allowing the reliefs sought by the petitioners in the cases which came up before them. But on going through this judgment, it appears that it may not be applicable in the present case in as much as an incentives given as personal pay would tantamount to emoluments and be calculated for pension and the affect of power under Article 309 to create rules to the contrary. But in the instant case a Presidential order once made cannot set aside by an executive notification is the prime issue. The sanctity of the Presidential order and the level of discussion and the intent of such proposal cannot be defeated by pointing out that others may also demand similar exercises and therefore laws of parity will come in the way. But as pointed out earlier, Scientists and Research Engineers form a separate classification.*

12. *It is seen that vide letter dated 03.02.1999 of the Department of Defence Research & Development, Ministry of Defence, Government of India, the Scientists 'C' to 'F' in the DRDO were granted with effect from Jan 01, 1996 (i) Special Pay of Rs.2,000 p.m in the pay scale of Rs.10,400 – 22,400, in lieu of a separate higher pay scale, after peer review, (ii) 2 additional increments to Scientists (Recruitees/Promotees) in the pay-scales of Rs.10,000 – 15,200, Rs.12,000 – 16,500, Rs.14,300 – 18,300, Rs.16,400 – 20,000] after their normal pay fixation, and (iii) from financial year 1998-99 onwards, (iii) Professional Update Allowance of Rs.5000 per annum to all Scientists. This OM /letter had the concurrence of integrated Finance. It was clarified vide letter dated 14/15.05.2009 that while the additional increments for Scientists 'C' to 'F' were to be treated separately and not to be merged with the basic pay fixed under the normal rules and that a proposal to treat the additional increments as part of 'Pay' as*

defined under FR 9(21) for all purposes like DA, HRA, Pension etc. except for pay fixation, was being taken up with Ministry of Finance, in regard to Special Pay, the letter said that in as much as the special pay granted was in lieu of a separate higher pay scale, it would be counted as pay for the purpose of pay fixation on promotion, to the next higher grade, if drawn for three years in terms of the Ministry of Finance OM No.6(1) E-III/B(65) dt.25.2.65 and that a proposal to treat the special pay as part of "Pay" as defined under FR 9(21) for all purposes was being taken up separately with the Ministry of Finance, GOI vide Note dated 15/18.09.2000 was that the two additional increments to Scientists/Engineers up to the level of Rs.16400 – 20400 were to be termed as a separate element as done by the DRDO and therefore it might not be possible to agree to these increments being counted as pay for Rs.2000 was given as an incentive personal to the Scientists/Engineers in the scale of Rs.18,400 – 22,400 as on 01.01.1996, it would be difficult for the Department of Expenditure, Ministry of Finance to treat this as pay for all purposes because based on the 5th CPC recommendations, all Special Pay have been converted to Special Allowance and any deviation would generate demand from all other categories where Special Allowance has been granted. Incidentally, DOP&T made certain alternative suggestions but the same were not found suitable for dealing with the specific proposals made by the Ministry of Defence and would have needed fresh proposals, its examination and also Cabinet's approval"

13. *It is necessary to refer to the Rules position. Rule 33 of the CCS (Pension) Rules, 1972 defines 'emoluments' as follows:*

33. Emoluments

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-practicing allowance granted to medical officer in lieu of private practice.

'Pay' has been defined in FR 9(21)(a)(i) as follows:

9(21)(a) – Pay means the amount drawn monthly by a Government Servant as –

- (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
- (ii) overseas pay, special pay and personal pay; and
- (iii) any other emoluments which may be specially classed as pay by the President.

In the case of Scientists of ISRO, the clarification issued by the Under Secretary in Department of Space to the effect that the additional increments will not be taken into account for fixation of pay on promotion in respect of grades of Scientists/Engineers SD, SE, SF and SG was challenged in OAs Nos.808,843,1080 of 2001 which were dismissed by the Ernakulam Bench of the Tribunal. However, Writ Petitions Nos.29358., 29710 & 31525 of 2004 challenging this order were allowed by the Hon'ble High Court of Kerala on 18.01.2007 and accordingly, the additional increments sanctioned in terms of clause (ii) in para 2 of the O.M./letter dated 03.02.1999 shall be counted as pay for the purpose of pension and that Professional Update Allowance payable in terms of order dated 03.02.1999 shall be payable from 1998-99 falling due on 01.04.1999 onwards (copy of order of Hon'ble High Court in Annexure-A/9 of the OAs). The SLP (Civil) Nos.555-560/2008 filed in the Hon'ble Supreme Court were dismissed vide order dated 04.04.2011 (Annexure-A/10). However, as seen from the order of this Tribunal (Bangalore Bench) in OA No.86 of 2013, K.B.Venkataram vs. Union of India etc., decided recently in regard to Special Pay that when the Department approached the Hon'ble Supreme Court in SLP No.4842 of 2009 against the order of the Hyderabad Bench of this Tribunal dated 29.03.2007 in OA No.184 of 2006 which was upheld by the Hon'ble High Court of Andhra Pradesh in WP No.267 of 2008, the Hon'ble Supreme Court while dismissing the SLP left the question of law open. Some other OAs filed in the Bangalore Bench of the Central Administrative Tribunal on the issue of extending the benefit of adding special pay/additional increments to pay for the purpose of determining pension have been allowed on the basis of the aforesaid judgment of the Hon'ble Kerala High Court whereas the matter was agitated before the Hon'ble Apex Court which confirmed it.

14. *It appears that when the matter was adjudicated by the Hon'ble Kerala High Court and the various Benches of this Tribunal, the judgment of the Hon'ble Supreme Court in Govt. of A.P. & Ors vs. Syed Yousuddin Ahmed was not brought to the notice of the Courts. In that case, the Hon'ble Supreme Court had held in (1997) 7 SCC 24 as follows (in para 8):*

"It may be stated here that for the purpose of Rule 31 of the Pension Rules "emoluments" of government servant would mean the pay which he is drawing as defined in Rule 9(21)(a)(i) of the Fundamental Rules. The said Rule 9(21)(a)(i) clearly excludes the "special pay" or "personal pay" granted to a government servant in view of his personal qualifications or otherwise from the purview of the expression "pay" and, therefore, whether the "incentive award" is held either a "special pay" or "personal pay" the same would not form part of "pay" under Rule 9(1)(a)(i) of the Fundamental Rules for being taken into account for computation of pension of the respondent"

15. *But the respondents pointed out the intentions of the Government of India, as explained by the respondents is that to provide "A package of incentives for attracting and retaining Scientists and Engineers in DAE, DRDO and DOS". Therefore the notion of a pay package in lieu of a special pay scale is important. The Government cannot offer some thing, get work done on the basis of this offer and later to say that the offer is to be understood differently. A pay package, in whatever name it is mentioned has implications up to and even after retirement. The State cannot approbate and reprobate at the same time..., although in the case of special pay, the original OM/letter dated 03.02.1999 itself provided that the Special Pay would be in lieu of a separate higher pay scale, there was no such mention in regard to additional increments and in fact it was made very clear in a separate communication of 14 May 1999 that the additional increments for Scientists 'C' to 'F' are to be treated separately and not to be merged with the basic pay fixed under the normal rules, that on recruitments/ each promotion, the pay will be fixed under normal rules without taking into account the additional increments, that after each normal promotion, two additional increments will be granted each time in the respective pay scale and that since the additional increments are not to be merged with basic pay and will have to be treated separately and*

*distinctly, there was no need to revise the pay fixed already fixed on or after 01.01.1996. The communication further said that a proposal to treat the additional increments as part of 'Pay' as defined under FR 9(21) for all purposes like DA, HRA, Pension etc. except for pay fixation, was being taken up with Ministry of Finance and that further instructions in this regard would be issued after obtaining the approval of the Ministry of Finance. The contention of the Applicants ;that the object and purpose of extending the benefit of Special Pay and Additional Increments being one and the same, the Applicants were entitled for the benefit of counting the two additional increments for the purpose of their pensionary benefits also, like those extended to the grantees of "Special Pay". The Ministry of Finance did not agree to the above proposal as already indicated in the earlier part of this order. **But then the Ministry of Finance cannot over ride the spirit and soul of a Cabinet decision.***

- a) *It may be noted in **ASSOCIATION OF INDUSTRIAL ELECTRICITY USERS vs. STATE OF AP** reported in AIR 2002 SC 1361 the Hon'ble Apex Court held that benefits granted through a policy decision can be counter manned by another policy decision only if the earlier decision is arbitrary and ex facie bad in law and considering greater public interest. The Finance Ministry has not conducted any study on the viability of the encouragement to be given to the Scientists and the greater public interest involved in it.*
- b) *In **COOPER vs. UNION OF INDIA** reported in AIR 1970 SC 564 the Hon'ble Apex Court has held that **President's order can be set aside only on grounds of malafide**. The case **STATE OF RAJASTHAN VS. UNION OF INDIA** reported in AIR SC 1361 is also significant in this regard. The Presidential order was issued after due study even though the consequences and effects of it is yet to be analysed.*
- c) *As is pointed out in **SITARAM SUGAR VS. UNION OF INDIA** reported in AIR 1990 SC 1277 any act done by an authority became ultra vires only when he abuses his power. Since the provision for encouragement is made after due reasons no abuse can be attributed to the order of the President. Therefore the Apex Court judgment in Syed's case being of a different nature is not applicable to the present case, even though a process of continuing examination may be held to be available*

to the respondents. In **ASHOK KUMAR YADAV vs. STATE OF HARYANA** reported in 1985 (4) SCC 417, the Hon'ble Apex Court held that, as a rule against bias, which will vitiate any proceeding, justice must not only be done but also must appear to be done. **Even though the State is bound by the promise it made through the Presidential order, it has a duty to examine prospectively whether the elements of motivation were successful in greater national interest by conducting a sort of a post-mortem on their working.** As a methodology of prevention against bias, as is stated in the Hon'ble Apex Court ruling in **L & T LIMITED VS FERTILIZER AND CHEMICALS** reported in AIR 2008 SC 465 reasonable apprehension in the mind of a reasonable man must be the yard stick of measurement. Thus Bureaucratic Straight Jackets, Accounting cost benefit ratios, and San analysis by an outsider group seem to be Scientists own internal analysis will be faulty and opposed to principle against bias. An analysis by an outsider group seem to be an only solution.

d) In **CHAIRMAN-CUM-MANAGING DIRECTOR VS MULSUL KUMAR** reported in AIR 2010 SC 75 , the Hon'ble Apex Court examined the question of proportionality in administrative discretion. The principles of Wednesbury reasonableness is, it was felt the key. The Presidential order is thus a reasonable order with a reasonable objective and issued after proper deliberations. The later negation therefore suffers from lack of application of mind as unequals are sought to be brought into an arena of equivalence. **But the right of re examination on proper grounds still survives to the Government.**

e) As held by the Hon'ble Apex Court in **FOOD CORPORATION OF INDIA VS. KAMADHENU CATTLE FEED INDUSTRIES** reported in 1993 (1) SCC 71, legitimate expectations has been assimilated in the rule of law. When the Presidential order was concluded, it would have prevailed on many a Scientists and prevented them from seeking greener pastures. Thereafter the State can not turn back and negative such expectation.

Even policy decision are barred by promissory estoppel in case such promise has given rise to specific benefits for the promisor, in this case the Government.

In PUNJAB COMMUNICATIONS LIMITED VS. UNION OF INDIA reported in 1999 (4) SCC 727, the Hon'ble Apex Court had held that for a Policy decision to break a legitimate expectation, it should be able to be tested at Wednesbury reasonableness. But in this case, it is not available. In addition, the benefits to the promisor has become concretized. The only available nexus could be only a re assessment of the situation in greater public interest.

The Hon'ble Apex Court in **STATE OF MAHARASHTRA VS. PRABHU** reported in 1994 (2) SCC 481 and **ANDHRA PRADESH STATE FINANCIAL CORPORATION VS. MSGAR RE-ROLLING MILLS** reported in AIR 1994 SC 2151 has emphasised that **All adjudicatory bodies must promote good faith and prevent law from crafty invasion. Courts must maintain social balance in favour of social interest and public good. Therefore a dynamic approach is needed.**

Therefore while upholding the creative encouragement benefits, we must also direct reexaminations of the parametres, which will be necessary to free them from the taint of arbitrary conferment and irrational continuance of largesse which will be against public interest.

g) The Hon'ble Apex Court had held that even though public interest litigation is not available in service jurisprudence normally, when a writ of quo warranto is sought, it is available, as stated in **HARILAL VS. SABODAR** reported in AIR 2010 SC 3515. **Therefore the issue of right person getting the right benefit is in greater public interest. Since the Government had not studied it till now, at least now an assessment and analysis is called for.**

h) Since all these matters are primarily in the realm of administrative executive alone, as rightly held by Hon'ble Apex Court in **HARVINDER SINGH VS. STATE OF PUNJAB** reported in AIR 1979 SC 321

“The Parliamentary control over delegated legislation should be a living continuity as a Constitutional necessity”. So it therefore couples with the necessity of excluding Bureaucratic tangles from the field of creative inventiveness and cost/benefit accounting processes from permeating and

destroying Scientific initiatives and of course excluding self interest participation of Scientists themselves. A common man's reassessment by a specific assessment process would be required before the Government can decide on a policy of discontinuance. **But then, even if the Government decides to continue the present terra firma, for any reasons, still it will incumbent for it to re analyse the matrix as State largesse cannot be doled out indiscriminately unless, studies indicate enhancement of quantum and quality by such special bestowment.** This is particularly so as the Hon'ble Apex Court has held in **HARJINDER SINGH VS PUNJAB STATE WARE HOUSING CONFEDERATION** reported in AIR 2010 SC 1116 that Courts must interpret issues in the light of philosophy reflected in the Directive Principles of State Policy and especially Article 39 (b), 39 (c) of the Constitution of India. Therefore, a reexamination on the basis of achieved consequences is eminently called for.

16. *But before parting with the issue we will be guilty of undermining social perspectives of adjudication unless we try to understand the objection of the Finance Ministry in its correct perspective. The equivalence to be given to all similarly placed is one way of expressing reservation. But the root cause appears to be more involved,*

*The Scientists and Engineers of research organisation, form a separate classification. There is ample justification for Cabinet approval for this encouragement. But taking in the objection made by the Finance Ministry in all its implication, it appears to us that the Scientists must themselves hold an introspection other than ISRO, (which is marked by controversies – Antrix deals) the other Scientific Units, whether under Ministry of Defence, Agriculture or Medicine does not seem to have lived up to their expectation. After Swaminathan, there seem to be a long gap. The Cryogenic Engine, Avionics, MTB and even the low flying Radars are examples of case failures. **With nothing much to advance their glory (as they may be viewed by others) can the Scientists, in a moral sense be entitled to such encouragements?** It is to be noted that these are the units which are most heavily funded and the cost of welfare in projects is really high. The respondents cannot speak of any secret work which may have been extracted from applicants. But we will assume that the Nation has, at least to an extent benefitted from that.*

Therefore in larger public interest, the Scientists themselves, must decide for themselves whether the quantum and quality of their work was of sufficient significance to earn themselves their extra pensionary benefit. It would be appropriate if such person submits note on the scientific advancement to which he or she has been a party, to an officer designated by the Government of India. Such documents would make them eligible to be considered for benefits awarded by the Government. These materials would enable Government to assess whether measures to encourage scientists have achieved their purpose or not . the study shall be conducted not in a bureaucratic straight jacket formula or accounting cost/benefit ratio but by the yardstick of common man's understanding. Perhaps the study could be conducted by a committee comprising Parliamentarians, experts, Social Scientists, Social activists and so on. The study may be conducted and concluded within the next six months and thereafter, if the Government so wishes, it can have a relook into the situation prospectively, in larger public interest but till then the finance Ministry's objections are not valid.

Since the Hon'ble Apex Court also had upheld this view of encouragement by dismissing the SLP judicial discipline and propriety also enjoins us to follow the judgment of the Hon'ble High Court of Kerala (supra) and the Coordinate Benches of this Tribunal. Accordingly, the Respondents are directed to treat the two additional increments granted to the Applicants as Pay for computing the Pension to be re-fixed on this basis within a period of 2 months from the date of receipt/communication of a copy of this order and the affidavit as aforesaid. As regards Profession Update Allowance, as in prayer C the Applicant has not produced necessary material in support of their case and accordingly we are unable to provide that portion of the relief but the other relief is allowed with the above reservation and rider of prospective examination and consequences dating from the date of filing the OA..

The OA is allowed to the above extent as common orders in all cases. No orders as to costs."

2. The matter also seems to be covered by an order of the Division Bench of the Hon'ble High Court of Kerala in Writ Petition (c) No.29358 and other connected cases of 2004 and vide order dated 18.01.2007, which we quote.

“JUDGMENT

The writ petitioners contended before the Central Administrative Tribunal that the additional increments, that they are entitled in terms of paragraph 2 of Ext.P1 office memorandum issued with the sanction of the President, should be treated as pay for all purposes including D.A., HRA, pension etc. They relied on the definition of pay, as contained in FR 9 (21)(a)(1). They also contended that the professional update allowance in terms of paragraph 3 of Ext.P1 should have been granted from 1998-1999 payable on 1st April 1999 rather than being postponed to the next year as ordered in the Ext.P2. Ext.P2 is thus in violation of Ext.P1 order issued with sanction of the President. On the other hand Ext.P2 is not an order issued with the sanction of the President. It is submitted that these aspects were not duly adverted to in the order of Tribunal impugned in these writ petitions. Therefore, those impugned orders are liable to be set aside, the petitioners submit.

2. It is submitted by the counsel for the respondents that the Exts.P2 and P3 are the clarifications issued by the Government of India for the implementation of the orders contained in Ext.P1. The government has got the power to issue such clarifications even to restrict its application. None of the benefits granted as per Ext.P1 is taken away. There was only a restriction that the amount payable under paragraph 3 of Ext.P1 was postponed to the next year, taking into account the financial burden. Therefore, there is no reason for interference with the impugned orders passed by the Tribunal.

3. Paragraph 2 of Ext.P1 reads as follows:

Additional increments for Scientists/Engineers in the scale of pay of Rs. 10000-15200; 12000-16500; 14300-18300 & 16400-20000:

Grant of two additional increments to all the Scientists/Engineers, both recruits and promotees, in the scales of pay of Rs. 10000-325-15200; 12000-375-16500; 14300-400-18300 & 16400-450-20000 w.e.f 01.01.1996 after their normal fixation.

4. The writ petitioners belong to engineers grade SD-SG. Admittedly they are covered by paragraph 2 of Ext.P1, extracted above. Ext.P1 is an order issued by the Government of India with the sanction of the President in exercise of powers under Article 77 of the Constitution of India. It does not restrict payment of dearness allowance in any way. Nor does it say that dearness allowance will not be paid against the additional increments so granted to the engineers in grade SD, SE, SF and SG, like the writ petitioners. It also does not say that additional increments so granted will not be considered as pay.

5. It is an admitted position before us that dearness allowance, house rent allowance and even pension on retirement of the incumbents concerned shall have to be reckoned on the basis of pay drawn by them. Pay is defined in FR 9(21)(a) as under:

Pay means the amount drawn monthly by a Government servant as-

(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

(ii) overseas pay, special pay and personal pay; and

(iii) any other emoluments which may be specially classed as pay by the President.

If the additional increments granted as per Ext.P1 comes within the pay; necessarily all attributes and additions to the pay shall be granted even counting the said additional increments. Therefore, our exercise is to find out whether additional increments so granted comes within the definition of pay.

6. Going by the definition extracted above, pay is the monthly

amount drawn by a government servant as pay 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 position in the cadre. The special pay or pay granted in lieu of his personal qualification is excluded from its purview.

7. The engineers working in grade SD, SE, SF, SG etc. may have the required minimum qualification or might have acquired higher qualification. The additional increments granted to them as per paragraph 2 of Ext.P1 are not for the qualification that they possess but “to attract, retain, inspire and motivate the scientists/engineers to give their best contributions.” As discernible from that order. Paragraph 1 of Ext.P1 specifically deals with special pay. Necessarily, the additional increments so granted will not come within the excepted payments like special pay or pay granted in lieu of his personal qualifications. It is on the other hand a payment sanctioned for the post held by the writ petitioners substantively and it is a payment to which they are entitled by reason of their position in the cadre as engineers in the grades SD, SE, SF, or SG. Thus, the additional increments granted as per Ext.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 pension to the retired employees, because pension is also reckoned based on the pay drawn. The view taken by the Tribunal, in that regard, is therefore not justified.

8. The further issue involved is from which date the professional/update allowance sanctioned in Ext.P1 shall be payable. The President has sanctioned, as per Ext.P1, payment of the said allowance from 1998-1999 onwards. The modus operandi of payment is for the concerned department to work out. While working out it has been ordered in Ext.P3 that it would be paid from the year 1999-2000 onwards payable on 1st April, 2000. Necessarily, this is a modification issued by the department to Ext.P1, residential order which sanctioned the said allowance specifically from 1998-1999, which was payable from 01.04.1999 onwards. Ext.P3 to the extent it curtails the payment of said allowance is also wrong. Presidential order cannot be varied without the specific sanction of the President. This aspect has not been properly conceived and considered by the Tribunal below.

9. More over financial burden is also not a ground to be heard

from the respondent. It cannot be expected, when President sanctions a payment in consultation with Cabinet financial aspects would not be taken into account.

10. Consequently, the orders of the Tribunal impugned in this batch of writ petitions are quashed making it clear that the additional increments sanctioned in terms of paragraph 2 of Ext.P1 shall be counted as pay to attract all further payments including pension depending on pay of an incumbent and that the professional update allowance payable in terms of paragraph 3 of Ext.P1 shall be payable from 1998-1999, falling due on 01.04.1999 onwards.

The writ petitions are disposed of accordingly.”

3. But following the dismissal of the case by the Hon'ble Apex Court and based on several Judgements of the Hon'ble High Courts, the Government had issued OM. No.E.29011/6/2008-Sec.V dated 06.02.2009, which we quote here.

“No. E.29011/6/2008-Sec.V
 Government of India
 Department of Space

Antariksh Bhavan
 New BEL Road
 Bangalore 560 231
 February 6, 2009

OFFICE MEMORANDUM

Subject:- Introduction of Performance Related Incentive Scheme (PRIS) in the Department of Space.

...

The undersigned is directed to state that the sixth Central Pay Commission has recommended introduction of Performance Related Incentive Scheme (PRIS) in the Department of Space/Indian Space Research Organization (DOS/ISRO) keeping

in view the need to reward the performance of the Organisation and personnel in realizing its objectives.

2.1 Performance Related Incentive (PRI) is a variable component of the pay, which is awarded after the performance of individual/group/organization, measured against goals set for a given period of assessment, which is non-additive and non-cumulative. PRI is also not an automatic default pay, which is given for the nature of duties and responsibilities, or levels of difficult working conditions for a certain rank or post. The form of PRI should be organization and design specific and payable as a cash incentive either when it becomes due or on a monthly/quarterly/annual framework will allow flexibility and directness of reward linked to improved performance and effective responsive service delivery.

2.2 DOS/ISRO has always been categorized as Mission-mode R&D organization based on its track record, performance, innovations and realization of strategic programmes.

3. The Department has examined the above recommendations of the Sixth Central Pay Commission and after taking all the relevant factors into account, the President is pleased to introduce PRIS in DOS/ISRO as under

(a) Organisational Incentive

Organisational Incentive is to be awarded to all personnel of DOS/ISRO, payable on monthly basis with effect from 1st September 2008, based on achievement of set mission goals and review of overall performance of the Organisation once in five years by the Space Commission.

(b) Group Incentive:

Group incentive to be awarded to specific groups on an annual basis based on their achieving set targets in the high end R&D areas or innovative technologies or programmatic goals in a particular year. The Expert Committee(s) to be constituted by the Department for this purpose, will set the targets as well as review the achievements.

(c) Individual Incentive:

Grant of variable additional increments to deserving Scientific and Technical personnel at the time of promotion in recognition of individual meritorious performance with effect from 1st Jan 2009. Individual achievements will be considered and assessed by the Departmental Promotional Committees (DPCs) at the time of review for merit promotion which will evaluate the performance of the candidate including innovativeness,

accomplishment of assignments, creativity, etc., exhibited by the candidate during the aggregated period of review. Based on the assessment, variable additional increments will be recommended by DPC.

4. The expenditure involved in implementation of the above Scheme would be met from within the budget of the Department.
5. Detailed orders in respect of each of the above incentive will follow.
6. Hindi version is enclosed.

(KS Ramachandra)
Deputy Secretary to the Govt. of India."

We had undertaken a deep journey through the pleadings. The applicants support and promote a scheme as follows :

"In order to attract, retain, inspire and motivate the Scientists/Engineers to render substantial contribution to the Department, Department of Space vide OM dated 03.02.1999 (Annexure-A1) inter alia granted the following incentives to its Scientists/Engineers:

(a) Special pay of Rs. 2000/- to Scientists/Engineers-H (Rs. 18,400-22,400) w.e.f. 01.01.1996, which is in lieu of separate higher pay scale.

(b) Incentives equivalent to a quantum of two increments for Scientists/Engineers-SD (Rs. 10,000-325-15200), Scientists/Engineers-SE (Rs. 12,000-375-16500), Scientists/Engineers-SF (Rs. 14,000-400-18,300) and Scientists/Engineers-SG (Rs. 16,400-450-20,000) w.e.f. 01.01.1996 after their normal fixation.

Subsequently, Department of Space, vide OM dated 12.08.1999 (Annexure A-2) clarified that Special Pay of Rs. 2000/- admissible is in lieu of higher pay scale would count as pay for the purpose of fixation of pay on promotion to higher grade. In the case of two additional increments admissible to Scientists/Engineers 'SD', 'SE',

'SF' and 'SG' it was clarified that the additional increments will be treated separately and not to be merged with the Basic Pay fixed under normal rules and that the same will not be treated as pay for the purposes like DA, HRA, Pension, etc. It was also clarified that on recruitment/promotion, the pay will be fixed under normal rules without taking into account the additional increments, and after such normal pay fixation two additional increments will be granted each time in the pay scale of the post held from time to time."

- Aggrieved by the OM dated 12.08.1999 (Annexure A-2) issued by the Department, some employees/pensioners of the Centre approached the Hon'ble CAT, Ernakulam Bench by filing O.A Nos. 808, 843 and 1080 of 2001 *inter alia* praying to reckon the additional increments for the purpose of DA, HRA, Pension, etc. It was contended therein that the Department of space has no competence to issue said clarificatory OM.
- Department has raised contentions that as per the amendment made to Government of India (Allocation of Business) Rules, 1961 vide Notification dated 01.06.1971 Department of Space is fully empowered to make its own personnel policies and practices to be followed in all matters with regard to the service personnel thereunder. Realizing the fact that the area of Space Technology is a highly complex and sophisticate one and therefore requires special attention for making available unaffected, uninterrupted and continued space services to the nation, the Government of India considered that Department of Space should have non-essential and inelastic restrictions in the activities carried out by it. It is with this intention that the Government of India made the said amendment to the Government of India (Allocation of Business) Rules, 1961 based upon which, ISRO/Department of Space have all along been issuing orders applicable to its personnel policies by itself. Such an extraordinary delegation/powers exercised by the Department of Space, was not challenged in any Courts in India including the Hon'ble Supreme Court, the Highest Court in India, at any time earlier when issues concerning personnel policies and regulations were heard and disposed by the Courts in the past.
- After having heard both the sides, the Hon'ble Tribunal dismissed

the O.As upholding the stance of Department.

- Aggrieved by the CAT order, the applicants in the O.As approached the Hon'ble High Court of Kerala by filing Writ Petitions (Civil) Nos. 29358, 29710 and 31525 of 2004 challenging the maintainability of clarificatory OM dated 12.08.1999 (Annexure A-2) issued by the Department, which clarifies that the two additional increments granted vide O.M dated 03.02.1999 (Annexure A-5) will not be treated as part of Basic Pay, and also sought relief for counting additional increments for the purpose of DA, HRA and retirement benefits including pension.
- The Hon'ble High Court of Kerala allowed the Writ Petitions vide common judgment dated 18.01.2007 (Annexure A-3).
- Through the judgement, the Hon'ble High Court has raised doubt against the maintainability of clarificatory OM dated 12.08.1999 (Annexure A-2) issued by the Department restricting the benefits of two additional increments. The Hon'ble High Court observed therein that the OM dated 03.02.1999 (Annexure-A1) was issued in the name of President and the subsequent clarification issued vide dated OM dated 12.08.1999 restricting the benefits was not issued in the name of the President and the Presidential Order cannot be varied without the specific sanction of the President.
- The said decision of the Hon'ble High Court was subsequently upheld by the Hon'ble Supreme Court.
- On culmination of the litigation, the Department issued OM dated 20.01.2014 (Annexure-A5) according to which the two additional increments sanctioned as incentive to Scientists/Engineers-SD, SE, SF, & SG with effect from 01.01.1996 shall be treated as pay for payment of Dearness Allowance, House Rent Allowance and Pension & Pensionary benefits.
- The O.A No. 729/2014 was filed by Shri K.S. Sunil Kumar, Ex-Scientist/Engineer-SE before the Hon'ble CAT, Ernakulam Bench praying to direct the Department to extend him the full benefits of the Judgment dated 18.01.2007 of the Hon'ble High Court of Kerala in WP(C) Nos. 29358, 29710 & 31525 of 2014 by reckoning the two additional increments granted to Scientists/Engineers for the purpose of pay fixation, PRIS, EL encashment, etc.
- In the Presidential Order (Annexure-A1 O.M dated 03.02.1999) itself, it was made clear that during promotion, the two additional increments will be granted after normal pay fixation.
- The Hon'ble High Court observed vide Judgment dated 18.01.2007

(Annexure-A3) that the Annexure-A1 OM dated 03.02.1999 was issued in the name of President and the subsequent clarification issued vide Annexure A-2 OM dated 12.08.1999 restricting the benefits was not issued in the name of the President and the Presidential Order cannot be varied without the specific sanction of the President.

- The Hon'ble High Court's above observation itself substantiate the Department's decision that the two additional increments are to be granted after normal pay fixation and not to be reckoned for pay fixation.
- Further, in Contempt Case [CC(Civil) No. 1507/2012] filed before the Hon'ble High Court of Kerala by some retired Scientists/Engineers of the Department alleging non-implementation of the Judgment dated 18.01.2007 (Annexure-A3) by the Department, the Division Bench of the Hon'ble High Court headed by the Hon'ble Chief Justice, after having appreciated the issuance of OM dated 20.01.2014 (the Annexure-A5) by the Department, was pleased to close the proceedings vide judgment dated 28.01.2014 with the following observation:

“Learned Assistant Solicitor General placed on record office memorandum dated 20.01.20104 by which Department of Space/Indian Space Research Organization has taken decision to extend the benefits of orders dated 18.01.2007 and 03.08.2012 of Hon'ble High Court of Kerala and Uttarkhand respectively to all similarly placed Scientists/Engineers in the Department of Space/Indian Space Research Organization.

In the light of said Office Memorandum nothing survives for consideration. Accordingly, proceedings are dropped.”

- The clarifications contained in the OM dated 20.01.2014 (Annexure-A5) are in consonance with the observations of the Hon'ble High Court of Kerala. Therefore, the arguments of the applicant in this regard are devoid of any merit and are liable to be rejected.
- Right from the introduction of the incentive in the form of two additional increments to the Scientists/Engineers in the DOS/ISRO i.e., with effect from 1.1.1996, the value of two additional increments is fixed for each grade.
- The increment granted was not related to the individual's basic pay at any point of time.
- The two additional increments admissible in each grade between

1.1.1996 and 31.12.2005, was as under:-

Sl. No.	Grade	Value of two additional increments
1	Scientists/Engineers 'SD'	Rs. 650/-(Rs. 325 x 2)
2	Scientists/Engineers 'SE'	Rs. 750/-(Rs. 375 x 2)
3	Scientists/Engineers 'SF'	Rs. 800/-(Rs. 400 x 2)
4	Scientists/Engineers 'SG'	Rs. 900/-(Rs. 450 x 2)

- The applicant was drawing two additional increments of Rs. 650/- per month in the Scientist/Engineer-SD grade with effect from 1.1.1996 (date of introduction of the scheme). Subsequently, upon promotion to the grade of Scientist/Engineer-SE with effect from 1.7.2003, he was granted two additional increments of 750/- per month from 01.07.2003.
- The 6th Central Pay Commission, implemented from 1.1.2006, had replaced the then existing running pay scales with Pay Band and Grade Pay. Subsequent to the implementation of the 6th Central Pay Commission, the Department had revised the incentives in the form of two additional increments with effect from 1.1.2006, for each grade, as under:-

Sl. No.	Grade	Value of two additional increments
1	Scientists/Engineers 'SD'	Rs. 1520/-
2	Scientists/Engineers 'SE'	Rs. 1800/-
3	Scientists/Engineers 'SF'	Rs. 2770/-
4	Scientists/Engineers 'SG'	Rs. 2920/-

- The incentive in the form of two additional increments was fixed based on 6% (3% x 2) of the minimum of the pay in Pay Band plus Grade Pay, as per the fitment table, annexed to Ministry of Finance, OM No. 1/1/2008-IC dated 30.09.2008. As per the fitment table, the minimum pay in the Pay Band plus Grade Pay applicable for Scientists/Engineer 'SE' grade is Rs. 22,320 + Rs. 7,600 totalling to Rs. 29,920/-. The 3% of 29,920/- is worked out to Rs. 897.60, rounded off to next multiple of Rs. 10/- and fixed at Rs. 900/-. Thus, the incentive in the form of two additional increments in the grade of Scientist/Engineer 'SE' was revised to Rs. 1800/-

(900x 2) vide DOS OM No. E-29011/4/2008-Sec.V dated 12.9.2008.

- As stated above, the incentive in the form of two additional increment is always fixed and not varying with the basic pay of an individual. Thus, there is no merit in the contention of the applicant that, the incentives in the form of two additional increments in his case ought to have been fixed at Rs. 2,220 (Rs. 1110 x 2) taking into account his basic pay.
- There is no conflict between the DOS OM dated 12.9.2008 and the CCS (RP) Rules, 2008, as alleged by the applicant is the stand of the department.
- Department of Space has issued OM No. E 29011//6/2008-Sec.V dated 06.02.2009 intimating that the President is pleased to introduce Performance Related Incentive Scheme (PRIS) in the Department of Space.
- Performance Related Incentive (PRI) is a variable component of pay, which is awarded after the performance of individual/ group/ organisation, measured against goals set for a given period of assessment, which is non-additive and non-cumulative. Performance Related Incentive is also not an automatic default pay, which is given for the nature of duties and responsibilities, or levels of difficult work conditions for a certain rank or post.
- PRIS covers the following incentives.

(1) Organisational incentive

(2) Group Incentive

(3) Individual Incentive.

- Through another OM No. E.29011/1/2009-Sec. V dated 06.02.2009, it was communicated that the President is pleased to grant the Organizational incentive in the form of special allowance at the rate of 20% of Basic Pay, i.e., pay in the Pay Band plus Grade Pay to all personnel of the Department **based on the accomplishment of various objectives so far.**
- The President has ordered to reckon only the pay in the Pay Band plus Grade Pay as Basic Pay for the purpose of grant of Organizational Incentive.
- Therefore, the applicant cannot bring any other payment or incentive to add with the Basic Pay to reckon the 20% Organisational Incentive.
- The two additional increments were reckoned only for the

purposes of

- (1) Dearness Allowance
- (2) House Rent Allowance
- (3) Pension/Pensionary Benefits

- Leave encashment is not a pensionary benefit as per CCS (Pension) Rules, but is governed by CCS (Leave) Rules.
- As the leave encashment is not a pensionary benefit, the two additional increments in the form of incentive has not been reckoned for such benefit as per OM dated 22.05.2014 (Annexure-A7) issued by the Department.
- Therefore, the contention raised by the applicant in this regard is not tenable.

The two additional increments are granted to Scientists/Engineers after their normal pay fixation on promotion/appointment. The two additional increments in the form of incentive are obviously could not be reckoned for pay fixation on appointment/promotion. Further, the incentive granted to Scientists/Engineers does not come under Special Pay, overseas pay or personal pay and therefore, the same cannot be treated as 'pay'. From the definition of 'pay' as extracted from Fundamental Rules, it is obvious that the President has not specially classified the additional increments for the purpose of 'pay'. Nowhere in the O.M dated 03.02.1999 (Annexure-A1), it is specified that the additional increments to Scientists/Engineers are to be considered as 'pay'. Unless there is a specific mention in the Order that the incentives would be reckoned for the purpose of 'pay', it cannot be taken as granted. However, duly honouring the Court directive, Department has reckoned the two additional increments for the purpose of DA, HRA and Pension/Pensionary benefits for all eligible retired/serving Scientists/Engineers of the Department, including the applicant herein.

4. When the matter was heard in subsequent cases, Union of India raised a contention which after having heard both the parties, at that point of time, we admitted its value, i.e., the performance ratio in comparison with the incentive granted to the Scientists are rather low. They cite various failures of DRDO and the other scientific

accomplishments in the matter of cryogenic Engine, Main Battle Tank, Submarine refit, etc,. Whereas the applicants in this case point out Chandrayan and other various formula of ISRO, But the respondents point out that the performance lacunae abound much more than the limited success.

5. Since no justification of their alleged superior prowess is available from the Scientists, but since we had allowed similar cases and which was upheld by the Hon'ble High Courts and later by dismissal of S.L.Ps, the Hon'ble Apex Court had concretized the matter, we were faced to look into the factual issue as the Presidential sanction was issued to promote superiority.

6. It is stipulated that the nuclear advances must be taken as a guideline. But then nuclear implosion or explosion within a controlled space depends on the adequacy of Plutonium 238 which will contribute the critical mass. This seems to be available in open scientific foras. So, may be, even though we may discount some contributions, we cannot deny some work by our Scientists.

7. It is stipulated that the “**Chandrayaan**” programme must be held as related to the issue. But then, this is decades old and discarded

technology by NASA. It is stated that delivery vehicles are our own. But this technology of P.S.L.V is also shared to us by Russia and France. Screw driver technology need not necessarily elate us.

8. Take the case of cryogenic engine. 35000 crores and decades of work has not brought us anything worthwhile. This technology is available for purchase or otherwise at a mere fraction of this amount. The main battle tanks, Arjun and Vaijayantha have not delivered. Even our own gun spare parts including firing pins have to be imported. The 4 aircrafts built by NAL crashed at the first attempt .

9. But a mere school boy at Bangalore created history by making an aircraft using a scooter engine and which flew for about 200 feet. He was later given a job as a worker by the H.A.L which he was forced to accept because of his poverty. Had he been sent for an Engineering course, we could have created an original mind.

10. It must be noted that even H.A.L is importing all technologies. To think that we could not even make a bullet proof jacket whereas even small countries have it is significant when we consider scientific contributions.

11. Same is the story of our troops battle dress. We are unable to make a snow boot which is effective even now and have to import. Same is the story of preservation of food. In spite of institutes galore, after the green and white revolutions of the 1960's, nothing worthwhile had came about. Agricultural engineering is an unknown science in India. The land of Israel is drier and less fertile than our deserts. We only need to refer to their success to find the abysmal depths of our failures.

12. So the justification process required for the creation of a separate classification seems to be singularly absent.

13. Therefore, the objection of the Department of Expenditure in Ministry of Finance seem to be correct.

14. Therefore, the O.A is held to be without merit and the same is dismissed. No costs.

(DR.K.B.SURESH)
MEMBER (J)

The applicant in the Original Application has not succeeded in making out a case that he belongs to a category which is unique and separate from the application of O.M Nos.2/10(8)/98-1 dated 3.2.1999 & A.2/10(8)/98-1(Vol.III) dated 20.1.2014. Thus, the Original Application fails and to this extent, I agree with the judgment drafted by my brother.

However, I would like to add that I do not subscribe to the views expressed as part of general observations in the judgment relating to shortfalls in the working of DRDO, Cryogenic engine, Main Battle Tank, submarine re-fit, NAL etc. And, I have no knowledge to conclude that 'Chandrayaan' programme is based on "decades old and discarded technology of NASA". I would like to modestly add that these observations are clearly beyond the scope of the issue raised in the Original Application.

**(E.K.BHARAT BHUSHAN)
MEMBER(A)**

In view of the above circumstances, the Original Application is held to be without merit and the same is dismissed. No costs.

(E.K.BHARAT BHUSHAN)
MEMBER (A)

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(DR.K.B.SURESH)
MEMBER (J)

List of Annexures in OA No.180/00729/2014

1. Annexure A1 - True copy of the Office Memorandum No.2/10(8)/98-I dated 3.2.1999 issued by the 1st respondent.
2. Annexure A2 - True copy of the Office Memorandum No.2/10(8)/98-I dated 12.8.1999 issued by the 1st respondent.
3. Annexure A3 - True copy of the judgment dated 18.1.2007 in WPC 29358/2004, WPC 29710/2004 & WPC 31525/2004 on the file of the Hon'ble High Court.
4. Annexure A4 - True copy of the final order dated 2.8.2013 in OA 847/2012 on the file of this Hon'ble Tribunal.
5. Annexure A5 - True copy of the Office Memorandum A.2/10(8)/98-I(Vol.III) dated 20.1.2014 issued by the 1st respondent.
6. Annexure A6A - True copy of comparative statement prepared by the applicant (based on incremental value Rs.1800) and enclosed with representation.
7. Annexure A6B - True copy of the comparative statement prepared by the applicant (based on incremental value Rs.2220) and enclosed with Annexure A-6 representation.
8. Annexure A7 - True copy of the Office Memorandum No.2/10(8)/98-I (Vol.IV) dated 22.5.2014 issued by the 1st respondent.
9. Annexure R1 - Copy of the judgment dated 28/1/14 of the Hon'ble High Court of Kerala in Contempt Case (Civil) No.1507/12.
10. Annexure R2 - Copy of the OM No.E.29011/6/2008-Sec.V dated 6/2/2009.
11. Annexure R3 - Copy of the OM No.E.29011/1/2009-Sec. V dated 6/2/2009.

