

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 915 of 2013

Friday this the 31st day of July, 2015

CORAM

Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member

Hon'ble Mrs. P. Gopinath, Administrative Member

1. N.Sankaranarayanan, Lavanya, 331, Chandra Nagar Extn, Palakkad-678007.
2. Dr.JK.N.G.Kaimal, Cherukaramuriyil, Thuruthikadu PO, Kalloopara, Thiruvalla, Pathanamthitta-689597.
3. Thomas Kurian, Kovoov House, Opp.Traco Cable Factory, Chumathra PO, Thiruvalla, Pathanamthitta-689103.
4. Jacob John, Mullenkuzhiyil House, Anjilitham PO, Kaviyur, Pathanamthitta-689582.
5. Dr.Rema Rajagopalan, Shanti, Mukkattukara, Nettissery PO, Thrissur-680657.
6. Dr. K.V.Rajagopalan, Shanthi, Mukkattukara, Nettisery PO, Thirussur.680657.
7. Dr.K.V.Aravindan, Forms Park, Neelikunnu, PO. East Fort, Thrissur.
8. Dr.Cherupally Krishnan Krishnan Nair, Kollal, Near IPC Prayer Hall & Pushpagiri Rail Gate, Thymala Road, Thiruvalla, Pathanamthitta.
9. Dr.Vijaya R.Pullat, 19/166, Moothedath House, Poothole, Thrissur.4.
- 10.Vasudevakurup Raveendran Nair, Dyuthi, Thonnallur, Pandalam Po, Pathanamthitta.1.
- 11.Dr. N.K.Ramaswamy, Kalyani, Kapprassery Kuruppath House, Kechery, Thrissur-1.
- 12.K.Vijayachandran Nair, Nandanam, Near Ayyappa Temple, Thonnallor, Pandalam, Pathanamthitta.1.
- 13.K.Nandakumar, Manappattu House, Mulampuzha, PO. Pandalam, Pathanamthitta.1.
- 14.M.S.Madanmohan, Sree Goury, Manayil House, PO, Guruvayur, Thrissur.12.
- 15.K.N.Neelakandhan, Kalady Pushapakam, Gandhi Nagar, Chettupuzha PO, Thrissur.12.
- 16.D.Reghuram, Devaretna, West Park Villas, Pullazhy Po, Thrissur.12
- 17.C.J.Kurien, Chirakuzhiyil, Shaji Hospital Junction, Kazhakuttam, Thiruvananthapuram.
- 18.S.Rajan, Puthen Madam, 189,Sri Krishna Nagar, Asramam PO, Kollam.2.
- 19.M.Aravindakshan, 50/934F, Harisree, Park Lane, Bank Junction, Edappally, Kochi.24.
- 20.Dr.K.C.George, Flat No.3-D, Olive Woodstock, Block-A, Behind International Stadium, Kaloor, Ernakulam, Kochi.17
- 21.M.V.Thampi, DG-2, Shashree, Sterling Sarovar, Koseri Lane, Ponekkara, Edapally-682024.

- 22.P.Madhusoodanan, Suparna, Sankaralayam Compound, PO Nilambur RS, Malappuram.
- 23.Parapilly Gopinathan, Rugmini, 6/612/1, Gandhinagar, Peringavu, Cherur PO, Thrissur.8.
- 24.K.Vasudeva Kurup, Devikripa (Mathumala), Opp.Pallipurathu Kavu, Kottayam.1.
- 25.Dr.U.K.Viswanathan, Mahamaya, Lokamaleswaram, Kodungallur, Thrissur.
- 26.Dr.K.K.Surendranathan, Kalyani, Kapprssery Kurupath House, Kechery, Thrissur.1.
- 27.K.K.Viswambharan Nair, 4/B, Ram Nikethan, Pushpagiri Agraharam, Poonkunnam, Thrissur.2.
- 28.N.G.Nair, Kolelil House, Omalloor PO, Pathanamthitta.
- 29.Dr.I.K.Gopalakrishnan, Iyyani House, Edathuruthy, Thrissur.3.
- 30.K.V.Das, 12-B, SFA VASantham, Survey School Road, Ambalamukku, Thiruvananthapuram.5.
- 31.P.G.Mohandas, Aiswarya, Thuravoor South, Thuravoor PO, Cherthala, Alappuzha.
- 32.K.R.Viswambharan, Raghavanm, Thuvayoor South PO, Kadampanad (Via), Adoor, Kollam.
- 33.Dr.A.P.Jayaraman, Shreyas, Jyothinagar, Chandranagar, Palakkad.7.
- 34.Dr.P.Harikumar, Panoorethu House, Anary, Cheruthana PO Via. Haripad, Alapuzha.
- 35.K.A.Mathew, 7B, Kunnil Heights, Kuzhivila, Karimanal PO, Thiruvananthapuram.

...Applicants

(By Advocate Mr. Vishunu S. Chempazhanthiyil)

Versus

1. The Director,
Bhaba Atomic Research Center, Trombay, Mumbai.400 085.
2. The Secretary, department of Atomic Energy, Anusakthi Bhawan, Chathrapathi Shivaji Maharj Marg, Mumbai.400 001.
3. The Secretary, department of Personnel & Training, Ministry of Personnel, Public Grievances and Pension, New Delhi-1
4. Union of India, represented by its Cabinet Secretary, Central Secretariat, New Delhi-110 001.

.....Respondents

(By Advocate Mr. Sreenath S, ACGSC)

This application having been finally heard on 23.7.2015, the Tribunal
on 31.7.2015 delivered the following:

ORDER

Per: Justice N.K.Balakrishnan, Judicial Member

This application is filed seeking direction to the respondents to extend the benefit of Annexure A4 judgment to the applicants and also for a declaration that persons similarly situated like the applicants in Annexure.A4 judgment are also entitled to the benefits of Annexure.A.4 judgment.

2 Shorn of the details the case of the applicants is stated as follows

3 The applicants are retired Scientists/Engineers of Department of Atomic Energy Working in Baba Atomic Research Center (BARC for short). Government of India had issued presidential order granting incentives to Scientists/Engineers in Department of Space as well as Department of Atomic Energy keeping in view the role played by them in the development of high technology and systems for strategic applications in order to attract, retain, inspire and motivate the Scientists/Engineers to give their best contributions. As per Annexure.A4 judgment 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 the professional update allowance payable in terms of paragraph 3 of Ext.P1 shall be payable from 1998-99 falling due on 1.4.1999 onwards. Ext.P1 is the Office Memorandum issued with the sanction of the President. Based on that notification additional increments were sanctioned to Scientists in the pay scales of Rs. 10000-15200, Rs. 12000-16500, Rs. 14300-18300 and Rs. 16400-20000 with effect from 1.1.1996 after their normal pay fixation. Subsequently a clarification was issued stating that the aforesaid two additional increments will not be merged with the basic pay and will be treated separately and distinctly. Challenging that clarificatory notification the Scientists/Engineers of ISRO approached this Tribunal filing OA Nos 808 , 843 and 1080 of 2001. Those

applications were dismissed by this Tribunal. It was challenged by filing Writ Petitions WP © Nos. 29358, 29710 and 31525 of 2004. The Hon'ble High Court of Kerala allowed the Writ Petitions holding that additional increments sanctioned as per the Office Memorandum mentioned earlier, shall be counted as pay to attract all further payments including pension. Annexure..A4 is the judgment of the Hon'ble High Court in the Writ Petitions mentioned above. Annexure.A.4 judgment was challenged before the Hon'ble Supreme Court. The Special Leave Petition was dismissed. Review Petition was also dismissed by the Hon'ble Supreme Court. The directions issued as per Annexure.A.4 judgment was complied with by the department. But benefits were restricted only to the applicants in those cases. Hence similarly situated persons approached various foras which resulted in Annexure. A.10, A.11 and other judgments as per which the benefits allowed to the applicants in Annexure.A.4 judgment were extended to similarly situated persons. The Office Memorandum produced as Annexure.A1 in this case is the same as Ext.P1 produced in Annexure.A4 judgment. The clarificatory order produced as Annexure.R.2 in this case is the same which was considered in Annexure.A.4 judgment. Hence there is a declaration of law made by the Hon'ble High Court in the Writ Petitions mentioned above confirmed by the Hon'ble Supreme Court and as such the benefits given to the petitioners in those cases are to be extended to the applicants herein who are also similarly situated. The Hyderabad Bench of Central Administrative Tribunal considered a similar case in OA 288/2014 and as per order dated 20.11.2014 considered the claim of similarly situated persons and it was found that Scientists/Engineers of the Department of Atomic Energy are to be extended the same benefit as mentioned in Annexure A.4 judgment of the Hon'ble High Court of Kerala. In view of that judgment the applicants contend that the benefits granted to the applicants in Annexure. A.4 judgment

may be extended to the applicants herein. Though the Petitioners in the Writ Petitions (vide Annexure.A.4 judgment) were Scientists/Engineers of ISRO the petitioners are Engineers/Scientists of BARC. The inaction to extend the benefit of Annexure.A.4 judgment to the applicants would be violation of the law declared by the Hon'ble Apex Court. The benefits should be extended to similarly situated persons as otherwise it would amount to discrimination, violative of Article 14 and 16 of the Constitution of India. Hence the applicants contend that they are entitled to get the benefit of Annexure.A.4 judgment extended to them as well and also for consequential benefits.

4 The respondents refuted the averments raised in the application and contended as follows:

4.1 Though the applicants have indicated their residential addresses, they did not furnish their employment particulars viz., employee number, computer code number, the unit in which they have worked/working. BARC is a constituent unit of Department of Atomic Energy being a mega organization, it is very difficult to identify the applicants. Department of Atomic Energy is engaged in the design, construction and operation of nuclear power/research reactors and the supporting nuclear fuel cycle technologies covering exploration, mining and processing of nuclear minerals, production of heavy water, nuclear fuel fabrication, fuel reprocessing and nuclear waste management. The department needs talented scientific graduates in various fields to achieve energy security, food security and national security. Most of the applicants were/are scientific officers in the grades of D/E/F/G in BARC, Department of Atomic Energy, The applicants were granted two additional increments vide DAE office Memorandum dated 3.2. 1999 in the respective pay scales w.e.f. 1.1.1996. Since doubts were raised by various DAE constituent units, a clarification was issued by the Department of Atomic Energy vide OM dated 4.6.1999 that the additional

increments are to be treated separately and not to be merged with the basic pay fixed under normal rules. Since the department has amply clarified the matter vide Office Memorandum dated 4.6.1999, the respondents are bound by the decision of the department. The decision referred to by the applicants relates to the Department of Space. It is not applicable to the Department of Atomic Energy since the mission and nature of functioning of both Department of Space and Department of Atomic energy are different. Hence a comparison cannot be made between the two entities.

5 The points for consideration are: (a) whether the applicants are entitled to get the benefit of Annexure. A.4 judgment and whether the respondents are to be given direction to extend the said benefit to the applicants? and (b) whether persons similarly situated to the petitioners in Annexure .A.4 judgment are also entitled tot he benefits of Annexure A.4 judgment?

6 We have heard the learned counsel appearing for both parties and have also gone through the pleadings and documents produced by the parties.

7 The applicants' claim is founded on Annexure. R.1 dated 3.2.1999 issued by the Government of India -Department of Atomic Energy with regard to incentives for Scientists/Engineers which reads as under:-

“The undersigned is directed to state that the question of providing incentives to the Scientists/Engineers in the departments has been examined by the Government keeping in view the role played by them in the development of high technology and systems for strategic applications. Taking all the relevant factors into account and in order to attract, retain, inspire and motivate the Scientists/Engineers to give their best contributions, the President is pleased to sanction the following:

With effect from 1.1.1996.

(i) Special pay of Rs. 2000/- p.m to Scientists/Engineers in the Department of Atomic Energy in the pay scale of Rs. 18,400-500-

22400 with effect from 1.1.1996 in lieu of a separate higher pay scale, after Peer Review.

(ii) Two additional increments to Scientists (recruitees/promotees) in the pay scale of Rs. 10000-15200, Rs. 12000-16500, Rs. 14300-18300 and Rs. 16400-20000 with effect from 1.1.1996 after their normal pay fixation.

From the financial year 1998-99 onwards:

Professional Up-date Allowance of Rs. 5000/- per annum for Scientists/Engineers in the grade of SC/C (Rs.8000-275-13500) and above in the Department of Atomic Energy to enable them to keep themselves up-date in the field of Nuclear Science and Technology and related fields and widen their horizon. This allowance would be admissible from the financial year 1998-99 onwards.

2. The expenditure on account of the above would be met from within the Budget of DAE and debitable to the respective Salary Heads.”

But it was clarified as per Annexure. R.2 dated 4.6.1999 issued by Government of India/Department of Atomic Energy where it was stated:

“The undersigned is directed to refer to this Department's Office Memorandum of even number dated February 3, 1999 and to state that a large number of doubts have been raised by the Constituent Units in regard to the actual implementation of the orders contained therein. These have been examined in necessary consultation with other similarly placed Scientific Departments and are clarified as under:

1 Special Pay of Rs. 2000/- to Scientist/Engineers 'H'

1.1 The special pay @ Rs. 2000/- per month is admissible with effect from 1.1.1996 in respect of Scientists/Engineers whose names have been approved after peer review, already carried out through the Senior Selection Committee or through a similar procedure which shall be carried out annually in the future.

1.2 The special 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(I)E-III/B(65) dated

25.2.1965 (GOI order 28, Appendix 8, Swamy's Compilation of FR&SR Part I 1995 Edn).

1.3 If however, at a later date, it is decided to treat the special pay as part of Pay as defined under FR 9(21) for all purposes like DA, HRA, Pension etc. further instructions in this regard will be issued.

2. Additional increments for Scientist/Engineers D, E, F and G

2.1 The Additional increments are to be treated separately and not to be merged with the basic pay fixed under normal rules.

2.2 On recruitment/each promotion, the pay will be fixed under normal rules without taking into the account the additional increments. After such normal pay fixation, two additional increments will be granted each time in the respective pay scale.

2.3 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 1.1.1996.

2.4 If however, at a later date, it is decided to treat the additional increments as part of Pay as defined under FR 9(21) for all purposes like DA, HRA, Pension etc further instructions in this regard will be issued."

A further office memorandum dated 13.7.2004 was issued with regard to the doubt whether the special pay granted as per the earlier office memorandum should be counted for the purpose of pensionary benefits. The relevant portion of Annexure.R.3 reads:

"The undersigned is directed to refer to this Department's O.M.No.1/2/99-SCS/113 dated 3.2.99 and subsequent clarification vide DAE O.M.No.1/2/99/SCS/436 dated 4.6.99 on the above subject and to state that vide Item No.(i) of the said O. Ms it was decided that Scientists/Engineers in the pay scale of Rs. 18400-500-22400 in the Department of Atomic Energy will be granted a special pay of Rs. 2000 per month w.e.f. 1.1.1996 in lieu of a separate higher pay scale only after a peer/review. It was further clarified vide the Department's O.M No.1/2/99-SCS/903 dated 29.10.2001 and subsequent clarification dated 20.11.2002 that it would be difficult to treat the special pay of Rs. 2000/- as pay for the all purposes because based on the Vth CPC recommendation all special pay have been converted into, Special allowance and directed all Heads of Units to recover the overpayment made to the

employees.”

In that Memorandum the decision rendered by the Principal Bench of this Tribunal has also been referred to. Non-inclusion of special pay as part of pay for the purpose of pension as clarified by the Office Memorandum was quashed by the Principal Bench of this Tribunal as per order dated 14.5.2003. The Department of Space had implemented treating the Special Pay granted to the eligible employees for the purpose of pensionary benefits. It was clarified that the special pay will not be treated as part of pay for the purpose of DA and HRA but the same may be treated as part of pay for the purpose of pensionary benefits with effect from 1.1.1996.

8 The respondents have relied upon the decision of the Hon'ble Supreme Court in ***Balaraman Vs. Chairman Railway Board and others, 2013(1) SCC (L&S) 558: 2010(15) SCC 198.*** The Central Administrative Tribunal, Madras Bench in OA 776/1996 held that the additional increment will form part of the basic pay of the individual and so the appellant *before the Tribunal would be entitled to the consequential benefits.* That was challenged before the Madras High Court where it was held that increments cannot be treated part of basic pay and only as separate element which will not count for the purpose of calculating the DA. It was confirmed by the Supreme Court and SLP was dismissed (vide Annexure.A.5). According to the learned counsel for the respondents the decision aforesaid squarely applies to the facts of this case.

9 The learned counsel for the applicants would vehemently contend that what was granted in Annexure.R..1 was two additional increments and it was granted with the sole object of providing incentives to Scientists/Engineers in the departments. That was done by the Government keeping in view the role played by the Scientists/Engineers in the Development of High Technology of Systems for Strategic Applications. Therefore, it cannot be contended that the

facts dealt with by the Supreme Court which confirmed the decision of the Madras High Court are identical. 10 Annexure.A.1 is the order issued in respect of the Department of Space and that OM is exactly identical to Annexure. R.1. The clarification of the Department of Atomic Energy vide OM dated 4.6.1999 is also identical to the clarification referred to in Annexure. R.2. It is argued by the learned counsel for the applicants that this clarification was the subject matter for consideration before this Tribunal earlier. Though this Tribunal dismissed the claim made by the applicants the High Court set aside the same and held that the applicants are entitled to the benefits. Annexure.A.4 is the judgment of the High court in Writ Petition No.31525/2004 where it was held that the additional increments granted as per Ext.P1 (Annexure.A1 here) would fall within the definition of pay and necessarily all attributes that may be added to reckoning pay shall have to be paid to them, whether it be DA or HRA. It was also held that the pension is also to be reckoned based on the pay drawn. It was held as under:

“....Paragraph 1 of Ext.P1 specifically deals with the 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 qualification. 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 W.(C) Nos. 29358, 29710 and 31525 of 2004 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 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.

It was also held :

”.....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.”

and finally it was held:

“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 allowances payable in terms of paragraph 3 of Ext.P1 shall be payable from 1998-1999, falling due on 1.4.1999 onwards.”

Annexure. A4 judgment passed by the High Court has attained finality since the Special Leave Petition challenging the same was dismissed by the Hon'ble Supreme court as per Annexure.A.5 dated 4.4.2011.

11 It is vehemently contended by the respondents that Annexure,.A.4 judgment cannot be made applicable to the facts of this case since the notification referred to therein was the one issued by the Department of Space and the petitioners therein were of the officers of the ISRO/VSSC. The petitioners before the High Court were the Engineers/Scientists of ISRO coming under the Department of Space and not coming under the Atomic Energy. It is pertinent to note that Annexure. A.1 notification issued by the Department of Space dated 3.2.1999 is exactly identical to Annexure. R.1 notification issued by the Department of Atomic Energy which was also issued on the same day namely 3.2.1999. There can be no doubt that Annexure.R.1 is identical to Annexure.A.1. Though there is difference in the pay scale mentioned in Annexure.R1 vis-a-vis Annexure.A.1 the first paragraph which was the object behind in granting incentive to the Scientists/Engineers is the same. The first paragraph of Annexure.R.1 which is similar to Annexure.A,1 is again quoted here:

“The undersigned is directed to state that the question of providing incentives to the Scientists/Engineers in the departments has been examined by the Government keeping in view the role played by them in the development of high technology and systems for strategic applications. Taking all the relevant factors into account and in order to attract, retain, inspire and motivate the

Scientists/Engineers to give their best contributions, the President is pleased to sanction the following:

With effect from 1.1.1996.

(iii) Special pay of Rs. 2000/- p.m to Scientists/Engineers in the Department of Atomic Energy in the pay scale of Rs. 18,400-500-22400 with effect from 1.1.1996 in lieu of a separate higher pay scale, after Peer Review.

(iv) Two additional increments to Scientists (recruitees/rpomotees) in the pay scale of Rs. 10000-15200, Rs. 12000-16500, Rs. 14300-18300 and Rs. 16400-20000 with effect from 1.1.1996 after their normal pay fixation.”

12 Similarly the grant of *two additional increments to Scientists (recruitees/rpomotees) in the pay scale of Rs. 10000-15200, Rs. 12000-16500, Rs. 14300-18300 and Rs. 16400-20000 with effect from 1.1.1996 after their normal pay fixation* is also exactly the same. Therefore, it is argued by the learned counsel for the applicants that Annexure.A1 pressed into service before this Tribunal in OA 808/2001 and other cases which was the subject matter of Annexure.A4 judgment is exactly the same as Annexure.R.1 which is the notification relied upon by the applicants in this case. Therefore, the respondents cannot simply wriggle out of the situation saying that the earlier case in which the High Court passed the judgment in favour of the applicants therein was the notification issued by the Department of Space whereas the one which is pressed into service by the applicants in this case is the notification issued by the Department of Atomic Energy. It is clear that the notification was issued as incentive for Scientists/Engineers in order to attract, retain, inspire and motivate the scientists/engineers to give their best contributions. The order was passed by the President as can be seen from Annexure.R.1 exactly as noted in Annexure.A.1. It is further pointed out by the learned counsel for the applicants that the Office Memorandum dated 4.6.99 referred to in the earlier case was exactly similar to Annexure.R2 and so the cases dealt with earlier by this

Tribunal and in Annexure.A4 judgments are exactly identical to the issue involved in this case. Therefore, the fact that the earlier case was pertaining to the Scientists/Engineers of the Department of Space and the present applicants are Scientist/Engineers of the Department of Atomic Energy will not alter the position, In other words the Scientists/Engineers in the Department of Atomic Energy are to be treated alike the Scientists/Engineers of the Department of Space. To be more precise, when benefit of Annexure.A.1 was extended to the Engineers/Scientists of the Department of Space, the benefit of the same or identical notification (Annexure.R 1) issued by the Department of Atomic Energy cannot be denied to the Scientists/Engineers of BARC.

13 It can be seen from Annexures.A2 to A4 that when clarificatory orders were issued taking away the benefit of Annexure.A.1 a few employees and retirees of ISRO centers filed OA No.808, 843, 1080 of 2001 before this Tribunal challenging the clarificatory orders. It is also borne out from records that the issue relating to Scientists/Engineers in relation to the denial of DA, HRA and pensionary benefits taking into account the special pay of Rs. 2000 vide OM dated 12.8.99 was challenged in the Principal Bench of this Tribunal in OA 1153/2002. The Tribunal quashed and set aside Annexure.A4 to the extent of non-inclusion of the Special Pay as part of pay for the purpose of pension having regard to Annexure.A3 OM dated 3.2.1999. Accordingly the Department of Space issued OM dated 11.7.2003 and implemented the orders passed by the Principal Bench of this Tribunal. In other words they did not challenge that order by filing writ petition or by filing appeal. It is also beyond dispute that Department of Space did not restrict the benefits to the petitioners in those O.As alone but paid it to all Scientist/Engineers in ISRO. Annexure.A2 is the order passed by the Principal Bench of CAT and Annexure.A3 is the OM issued by the Department of Space. As stated earlier though the O.As 808, 843 and 1080 of

2001 filed before this Tribunal were dismissed those orders were challenged in WP (C) 29358 and other writ petitions those writ petitions were allowed by the High Court of Kerala as per Annexure.A.4 making it clear that the additional increments sanctioned in terms of para 2 of Annexure.A1 OM shall be counted as pay to attract all further payments including pension depending on pay of an incumbent and that the professional update allowance in terms of Para 3 of Annexure.1 shall be payable from 1998-99 falling due on 1.4.1999 onwards. The review petition filed against the same was also dismissed subsequently. It is also not in dispute that pursuant to the dismissal of the SLP and the review petition the Department of Space passed orders to implement the directions issued by the High Court in Annexure.A4 judgment.

14 The applicants would now rely upon the judgment of the High court evidenced by Annexure.A4 which was confirmed by the Supreme Court and also order passed by the Principal Bench of this Tribunal to sustain the claims made by them in this application. But the respondents would vehemently oppose the claim made by the applicants contending that all the cases referred to above were in respect of Annexure.A1 which was issued by the Department of Space whereas the applicants are Scientists/Engineers of BARC under the Department of Atomic Energy. As stated earlier Annexure.R.1 is exactly identical to Annexure.A1. Similarly clarifications were issued by the Departments clarifying Annexure.R.1. That clarification is exactly identical to the clarification which was challenged by the applicants in OA 808/2001 and others cases, which were the subject matter of Annexure,.A4 judgment rendered by the High Court.

15 Annexure.A4 was followed by Annexure.A6, office order issued by the Department of Space. Annexure.A11 is the copy of the order passed in OA 632/2012 as per which eleven applicants therein were granted similar reliefs but

they were also officers of the ISRO and not of Department of Atomic Energy. Annexure.A9 is the order passed by the Principal Bench of this Tribunal in OA 2509/2010 where also orders similar to Annexure.A4 was passed. It is true there the applicants were Scientists/Engineers of DRDO. Annexure.A8 is a letter sent to the Secretary, Department of Atomic Energy whereunder request was made to extend the benefit of Annexure.A4 judgment and the judgment of High Court of Uttarakhand, which followed judgment of the Hon'ble High Court of Kerala, to persons similarly situated.

16 Now the crucial question for consideration is whether the benefit of Annexure. A4 judgment which was upheld by the Supreme Court is available to the applicants who are Scientist/Engineers of BARC. The respondents would vehemently contend that the judgment rendered by the High Court and the order passed by the Principal Bench of the Tribunal cannot be extended to the applicants herein since they are not borne on the record of the Department of Space but they are from BARC which is a totally different organization. There is no dispute regarding the fact that BARC and ISRO are different organizations. But Annexure.A1 OM is exactly identical to Annexure.R.1. The clarification issued in respect of Annexure.A1 is also exactly identical to the clarification issued in respect of Annexure R.1. The object behind in issuing such an official memorandum would make it clear that the Engineers/Scientists of BARC and ISRO are treated alike in the matter of pay and also the special pay or additional increment granted to the Engineers/Scientists as per Annexures A1 and R.1. It is important to note that the Scientist/Engineers who were serving in the Department of Space were granted the benefit by the departments concerned without any objection and therefore, it would not be legitimate on the part of the Department of Space and Department of Atomic Energy, to take a different yardstick.

17 It is submitted by the learned counsel for the applicants that it was repeatedly held by the Hon'ble Supreme Court that those who could not come to court need not be at a comparative disadvantageous position to those who rushed to the court, if they are otherwise similarly situated. Those who could not come to the court are also entitled to similar treatment. When a citizen aggrieved by the action of a government department has approached the court and obtained a declaration of law in his favour, persons in like circumstances should be able to rely on the sense of responsibility of the Department concerned and expect that they will be given the benefit of such declaration without the need to take their grievance to court. It is also not in dispute that the endeavour of such departments or governmental organizations should be to minimize litigations by accepting the verdict given by the Hon'ble Supreme Court and to extend the benefit to all similarly situated persons and to treat them alike and not to compel those persons to approach the court again which would in a way be disadvantageous to the departments as they may have to spend huge amount for conducting litigations besides waste of time and energy. National Litigation Policy is also in that line. (See the decisions of Hon'ble Supreme Court in ***Inderpal Yadav Vs. Union of India and others, 1985(2) SCC 648*** and ***Amritlal Berry Vs. CCE (1975)4 SCC 714***).

18 As the Hon'ble Supreme Court dismissed the SLP confirming the Annexure.A4 judgment, it has to be held that Annexure.A4 has attained finality and that has become the law and if so the benefit which is to be granted to the applicants therein should be extended to all similarly situated officers/engineers without compelling those persons to approach the court again. The policy of the Government should be to minimize the litigation. It was held in ***A.K.Khanna and others Vs. Union of India and others, ATR 1988 (2) CAT 518*** that not extending similar benefits to similarly situated employees itself would be

discrimination violative of Articles 14 and 16 of the Constitution. As has been said earlier the Scientists/Engineers of the Department of Space were identically placed as the Scientists/Engineers of BARC/DAE. Therefore, when a benefit is extended to the Scientists/Engineers of Department of Space there is no rhyme or reason in denying the same benefit to the Scientists/Engineers of BARC/DAE. The very object and rationale behind in issuing Annexures.A1 and R1 Office Memoranda would make it abundantly clear that the Scientists/Engineers of BARC were treated alike the Scientists/Engineers of the Department of Space. Since the decision in Annexure.A4 was confirmed by the Hon'ble Supreme Court the applicants are entitled to get the same benefit as extended to the petitioners in Annexure. A4 judgment.

19 In the result this O.A is allowed. Respondents are directed to extend the benefit of Annexure.A4 judgment to the applicants and all Scientists/Engineers similarly situated. No order as to costs.

(P.Gopinath)
Administrative Member

(N.K.Balakrishnan)
Judicial Member

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