

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO. 2733/2003

New Delhi, this the 17th day of November, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

K. Sridharan,
Retired Scientist 'E' (DIPAS),
F-549, Sarita Vihar,
New Delhi – 110 044
(Applicant in person) ... Applicant

Versus

Union of India through Secretary to
The Department of Research & Development,
Ministry of Defence,
Room No.137/5, South Block,
New Delhi – 110 011
(By Advocate : Shri N.S. Mehta) ... Respondent

ORDER

By Sarweshwar Jha, A.M. :

The applicant has approached this Tribunal the second time seeking two additional increments being treated as basic pay and the same being counted for pensionary benefits w.e.f. 1.1.1996 when these two additional increments had been granted. Earlier, he had filed OA No.2591/2001 seeking the same relief and which was disposed of by the Tribunal on the 10th January, 2002 directing that 'the applicant shall forward a detailed representation to the respondents, enclosing a copy each of this OA and this order. The respondents shall within 45 days from the date of such receipt examine and pass appropriate orders in accordance with law. The applicant is granted liberty to agitate the matter, if he is still aggrieved before this Tribunal' (Annexure-A). In compliance with the said order, the respondents considered the representation of the applicant dated 25.1.2002 addressed to the Secretary, Department of Defence Research & Development and disposed it of by issuing an order dated 11.3.2002 (Annexure-B). The applicant is, however, not satisfied with the disposal of his representation vide the said order and hence this OA.

2. The applicant has argued that the respondents had disposed of the matter in a mechanical way taking the same view that the Ministry of Finance have not agreed for considering the additional increments for the purposes of pensionary as well as DA and

HRA benefits. He has prayed for quashing of the said order and for giving effect to the letter dated 26.4.1999 as referred to at Annexure-C on the grounds as submitted in sub-paragraphs 5.1 and 5.2 of his present OA. On perusal of the said two sub-paragraphs, it is observed that the applicant has considered the said order as being arbitrary and unreasonable stemming from mis-interpretation of the Govt. sanction vide letter No.DRDO/85101/A/V/CPC/MPD/DR&D dated 3.2.1999. No fresh light or fact has been thrown/furnished on the subject by the applicant in the present OA in support of his prayer.

3. On perusal of the order as passed by the respondents dated 11.3.2002 in compliance with the decision of the Tribunal in OA No.2591/2001, it is observed that the respondents also have referred to the letter dated 3.2.1999 whereby two additional increments were sanctioned, among other things, to Scientists (recruitees/promotees) in the pay scale of Rs.10,000-15,200, Rs.12,000-16,500, Rs.14,300-18,300 and Rs.16,400-20,000/-, after the normal pay fixation. The respondents have also referred to a clarification as issued by the Controller General of Defence Accounts (CGDA) vide their letter dated 14.5.1999 in which it was confirmed that 'the two additional increments are to be treated separately and distinctly and are not to be merged with the basic pay'. The matter was also taken up with the Ministry of Finance. Pending their clarification, the Office of the Deputy Controller of Defence Accounts (R&D) issued a letter dated 27.2.1999 regarding the two increments being merged with the pay fixed as on 1.1.1996. This was an interim decision and was subject to clarification to be received from the Ministry of Finance in due course. On receipt of the said clarification dated 14.5.1999 this interim order was modified and it was confirmed that these two additional increments were not to be merged with the basic pay.

4. The applicant is also reported to have submitted an appeal for consideration of the two additional increments as granted to him for pensionary and DA benefits as on 4.11.2003, as is observed from the list of events prefixed to the OA, but it does not appear to be available on record. It is possible that the applicant is making a reference to the present OA itself, which was filed on 4.11.2003. Be that as it may, the applicant has also referred to the decision of this Tribunal in another case, namely, C. No.1153/2002 decided on 14.5.2003 in which the special pay of Rs.2,000/- granted to the Scientists/Engineers 'H' in the Department of Space/ISRO in lieu of a separate

higher pay scale has been treated as part of pay for purposes of pension and retiral benefits w.e.f. 1.1.1996 keeping in view the observations as made by the Tribunal in the said order. It is further observed that in the said order also the same scheme of the Ministry of Defence, Department of Defence Research & Development as issued vide letter No.DRDO/85101-A/V/CPC/MPD/D(R&D) dated 3.2.1999 has been referred to, a copy of which is placed at Annexure-I to the OA. It is observed that the said order of the Ministry of Defence had envisaged both the benefits, namely, special pay of rs.2,000/- per month to Scientists in the pay scale of Rs.18,400-22,400/- in lieu of a separate scale after pee review and also two additional increments to Scientists (recruitees/promotees) in the pay scale of Rs.10,000-15,200, Rs.12,000-16,500, Rs.14,300-18,300 and Rs.16,400-20,000/-, after the normal pay fixation. While in the said case, the Tribunal, vide order dated 14.5.2003 in C.No.1153/2003, dealt with only special pay w.e.f. 1.1.1996 in respect of the Scientists/ Engineers 'H' in the Department of Space/ISRO, being treated as part of pay for purposes of pension and retiral benefits, the subject matter of the present OA relates to the two additional increments being treated as pay for the same purposes. It is further observed that the Tribunal had made an extensive reference to the history of the case and had also, in the following words, referred to the contents of the Office Memorandum issued by the respondents on 3.2.1999:

“7. It is seen that the Office Memorandum issued by the respondents dated 3.2.1999 has been issued with the President’s approval sanctioning special pay to Scientists/Engineers ‘H’ of an amount of Rs.2000/- per month w.e.f. 1.1.1996. One condition that is mentioned in paragraph (i) of the O.M. is that the grant of Special Pay of Rs2000/- will be after ‘Peer Review’. This has been clarified in the subsequent O.M. issued by the respondents dated 12.8.1999 to mean that the special pay will be admissible to all the existing Scientists/Engineers ‘H’ like applicant without any fresh ‘Peer Review’. It is relevant to note that it is only in the later O.M., that it has been clarified in paragraph 1 © that the special pay will not be treated as a part of pay for the purposes like Dearness Allowance, HRA, Pension, etc. Under FR 9 (21) (a) (iii) it is open to the President to grant any other emoluments, including special pay, which may be classed as pay of a government servant. It is further relevant to note that while issuing the O.M. dated 3.2.1999, it has been taken into account in order to attract, retain, inspire and motivate the Scientists/Engineers to give their best contributions for which the special pay was sanctioned to them by the President. In the circumstances, we see merit in the submissions made by the learned counsel for the applicant that the Presidential order cannot be materially altered or modified by any other subordinate authority by way of the clarification issued in the subsequent O.M. dated 12.8.1999. The provisions of FR 9 (21) (a) (ii) does not also exclude the special pay; and personal pay as part of pay. In the present case Rs.2000/- was paid to the Scientists/Engineers ‘H’ in the Department of Space/ISRO in the

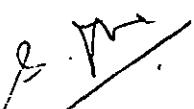
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scale of Rs.18400-22400 w.e.f. 1.1.1996 in lieu of a separate higher pay scale for them, taking into account all the relevant factors mentioned in the O.M. by the President. The purpose why the President had granted the special pay to those Scientists/Engineers is unexceptionable. This has also taken into account the fact that the grades of Scientists/Engineers 'G' had got merged with the earlier higher posts of Scientists/Engineers 'H' as a result of the acceptance of the recommendation of the 5th Central Pay Commission by the government and in lieu of a separate higher pay scale. That being the case, we see no reason why the special pay of Rs.2000/- granted to such scientists, like the applicant, should not be taken as part of his pay/emoluments for purposes of pension and retiral benefits also.

8. In the facts and circumstances of the case the O.A. partly succeeds and is allowed as follows:

- (1) Para 1 (c) of the clarificatory O.M. dated 12.8.1999 issued by the respondents is quashed and set aside with regard to non-inclusion of the special pay as part of pay for purposes of pension, having regard to the provisions of the earlier O.M. issued by the respondents dated 3.2.1999.
- (2) The respondents are accordingly directed to reconsider the matter and take an appropriate decision in the matter of including the grant of special pay of Rs.2000/- p.m. to scientists/Engineers 'H' in the Department of Space/ISRO w.e.f. 1.1.1996 as part of pay, keeping in view the aforesaid observation.
- (3) The above action shall be taken within three months from the date of receipt of a copy of this order with intimation to the applicant.
- (4) The applicant shall be entitled to the revision of pension, retiral benefits as a result of the above decision, which shall be paid to him expeditiously and in any case within one month thereafter."

5. The respondents have taken me through their counter reply in which a background to the revision in the scales of pay of the Scientists of different grades and grant of additional increments has been given. Briefly, the Scientists were given a better package to attract them to Govt. departments. This included grant of special pay of Rs.2,000/- per month to the Scientists in the scale of pay of Rs.18,400-22,400/- in lieu of a separate higher pay scale, after peer review and also grant of two additional increments to Scientists in the other scales of pay, as referred to hereinabove. From the year 1998-1999 the Scientists have been allowed Rs.5,000/- per annum as a professional up-date allowance. The clarification which has been referred to above is also mentioned in the counter and it has been affirmed that the same was to be regulated vide letter dated 14.5.1999.



6. In the detailed Para-wise reply also, it has been emphasized by the respondents that the above view as conveyed by them to the applicant vide the impugned order has been taken on the basis of a rational examination of the matter and logical interpretation of the rules. These instructions are quite reasonable and, therefore, need to be up-held, as submitted. They have suspected confusion on the part of the applicant in the matter and have argued that it might have arisen due to the issue of a clarification vide letter at Annexure R/4, as issued by the Office of the DCDA (R&D) dated 26.4.1999. But the same has since been cancelled, as it had been issued by an authority not competent to do so.

7. On perusal of the order as passed by the Tribunal while disposing of OA No.2591/2001 on 10.1.2002, it is observed that all the aspects of the matter had been given due consideration by the Tribunal and that the confusion that has been referred to in the matter as having been created at some stage needed to be looked into. Accordingly, a re-examination of the matter was considered necessary and hence directions were given to the applicant to file a detailed representation to the respondents to examine the same and pass appropriate orders. It is further observed that the matter whether the two additional increments were to be considered for pensionary and other benefits has been given due consideration in the Ministry of Defence and the Ministry of Finance; and going through the scheme of providing incentives to the Scientists, it is observed that while the said increments/package were offered to the Scientists (recruitees/promotees) to attract them to the Govt. departments, it was never intended that these incentives would count towards pensionary and other benefits.

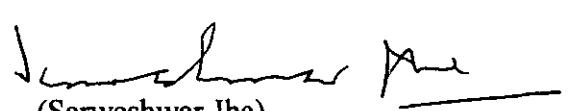
8. On careful examination of the facts as submitted by both the parties, it is observed that while the subject matter of the application as represented to the authorities concerned vide the representation of the applicant, as referred to hereinabove, has been examined by the respondents with reference to the clarification as received by them from the Ministry of Defence and the Ministry of Finance to whom the matter had been referred, the facts of the matter are that the package/incentive, as given to the Scientists vide their Office Memorandum, as referred to hereinabove, and the spirit thereof is the same in the case of both the categories of Scientists. The Tribunal, therefore, allowed them the benefit of special pay of Rs.2,000/- per month for



purposes of pension, etc., and to deny the same in the case of the Scientists who had been given two advance increments is not quite proper. The objective of the scheme of incentive in respect of the Scientists so as to attract them to the Govt. Departments being the same and identical, the question of the benefit of the same allowed to the Scientists/Engineers 'H' being extended to the applicant, therefore, need to be given due and serious consideration. At this stage, it is also noted that the respondents have made a reference to some further clarification having been sought by them from the respective Ministries. I do not, however, find any mention of the out-come of such a reference in their counter. I also do not find any significant application of mind having been exercised by them to the representation of the applicant as submitted to them in compliance with the orders of the Tribunal in OA No.2591/2001. Here, I find a genuine grievance on the part of the applicant when he has submitted that the respondents have merely taken shelter under the clarification as given by the Ministry of Finance in the matter.

9. It is quite obvious that the decision of this Tribunal has become available only later in the case of the Scientists/Engineers 'H' and, therefore, the respondents did not have the benefit of the decision of the Tribunal while deciding the case of the applicant. I, therefore, consider it appropriate that one more opportunity be afforded to the respondents to consider the case of the applicant with reference to the decision of this Tribunal as given in C.No.1151/2002 in the case of **R.C. Garg v. Union of India & Ors.**

10. Under these circumstances, I am of the considered view that the ends of justice shall be met if this OA is disposed of with a direction to the respondents to re-consider the matter in the light of the decision as given by the Tribunal in C.No.1153 of 2002 decided on 14.5.2003, which, to my mind, appears to be similar and identical to this case and, therefore, deserves to be given the same consideration as given to the applicant in the said case. The respondents are further directed to complete this exercise within a period of three months from the date of receipt of a copy of this order.


(Sarweshwar Jha)
Member (A)