

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application Nos. 180/00123/2015
&
180/00243/2015

Monday, this the 11th day of November, 2019

CORAM:

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

O.A No.180/00123/2015

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- **Respondents**

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These applications having been heard on 7th November, 2019,
the Tribunal on 11th November, 2019 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

OA No.123/2015 and OA No.243/2015 have common points of facts and law involved and hence are being disposed of through this common order. The reliefs sought in the OA are as follows:

1. Declare that the refusal on the part of the respondents to revise the minimum pension of the applicants from 1.1.2006 reckoning the component of the additional increments as pay is illegal, arbitrary, unjust, unreasonable and irrational and that the same violates Articles 14 & 16 of the Constitution of India.
2. Direct the respondents to reckon and include the component of additional increment for revising their pension from 1.1.2006 by applying the formula of 50% of the sum of the minimum of the pay in the Pay Band corresponding Grade Pay and the revised Additional Increments and to grant them all consequential benefits including arrears of pension with

interest at the rate of 12% per annum.

3. Call for the records leading to the issue of Clarification No.3 in Annexure 13 and set aside Clarification No.3 in Annexure A13.

4. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.

5. Award the cost of these proceedings.

2. The applicants in the above OAs are retired Scientists/Engineers in the Grade SF and SG of Vikram Sarabhai Space and LPSC, Department of Space. All are pre-2006 retirees. The grievance of the applicants is that the respondents have not given effect to the relief granted by the Hon'ble High Court of Kerala in W.P(c) No.29358/2004 and connected cases (Annexure A3). The applicants submit that as per Presidential order dated 03.02.1999, two additional increments w.e.f. 01.01.1996 were granted as incentive. Subsequently by clarification dated 12.08.1999 it was ordered that the two additional increments granted will not be considered as basic pay for the purpose of DA, HRA, Pension etc. This was challenged and ultimately the Hon'ble High Court of Kerala declared that the additional increments granted fall within the definition of pay. Necessary attributes that may be added to emoluments reckoning pay shall have to be paid and pension is also reckoned based on last pay drawn. The SLP and RP filed before the Hon'ble Apex Court against the order of Hon'ble High Court were dismissed (Annexure A4).

3. When the Department of Space did not extend the benefit of

Annexure A3, the applicant approached this Tribunal for a direction to extend the benefit of Annexure A3 judgment. In the meanwhile, Hon'ble High Court of Uttarkhand also decided the question in the same lines and the said judgment was also confirmed by the Hon'ble Supreme Court (Annexure A5 and A6). In the OA filed before this Tribunal for a direction to extend the benefit of Annexure A3 was allowed (Annexure A7). Consequently the Department of Space issued order dated 20.01.2014 implementing the directions in Annexure A5 and A7 (Annexure A9).

4. However, the respondents while implementing the recommendations of 6th Pay Commission revising the pension of the applicants did not take into account the two additional increments for working out the minimum of the pay in the pay band. This action was challenged before this Tribunal in OA No.760/2012 and this Tribunal held that the two additional increments granted to Scientists/Engineers from Grade SD to SG would be a permanent appendix to be added to the pay every time whenever revision takes place in their pay (Annexure A10). All the applicants submitted representations seeking to extend the benefit of the judgment of Hon'ble High court to them as well.

5. The Department of Space issued a clarificatory OM dated 22.05.2014 (Annexure A13) explaining how Annexure A9 should be implemented. The OM clarified that the incentives granted in the form of two additional

increments to the pre-2006 pensioners cannot be added to the minimum of the pay in the pay band to work out the minimum pension payable from 01.01.2006. This is in violation of Annexure A3 and A7 orders of Hon'ble High Courts and the clarificatory order at Annexure A13 is not sustainable.

6. As per the recommendations of 6th CPC, while revising the pension of pre-2006 pensioners, 50% of the minimum of pay in the revised pay band and the grade pay thereon has to be taken into consideration and while considering the revised pay in the pay band, the two increments also have to be added to the minimum of pay in the revised pay band, since the two additional increments contribute to pension. As per the orders in the Hon'ble High Courts of Kerala and Uttarkhand, the amount of two increments should also be added to work out the minimum pension to pre-2006 pensioners w.e.f. 01.01.2006.

7. As grounds, the applicants reiterate the contention that Annexure A13 is in complete violation of the orders of Hon'ble High Courts at Annexure A3 as well as Annexure A7 and further is also in conflict with the Annexure A10 judgment. The applicants call to their assistance various judgments of the Hon'ble Supreme Court where it was held that similarly situated persons ought to be extended the benefits granted. In **Inder Pal Yadav v. Union of India – (1985) 2 SCC 648**, it was held that:

“..... those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly

situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court.

8. The respondents have filed their reply statement denying all the averments and allegations made by the applicants in the OAs. They submit that at the time of implementation of 6th CPC recommendations, the litigation relating to the two additional increments case had not attained finality and therefore the pension in respect of all applicants had been revised as per 6th CPC. As per Annexure A13 clarification, the respondents submit that the two additional increments granted cannot be added to the minimum of the pay in the pay band to work out minimum pension payable. The two increments cannot be added with the pension, but can only be reckoned for calculating pension, which has been done by the department.

9. The respondents submit that the clarification was issued based on the principle laid down by the Government while implementing the 6th CPC that the contention in respect of pre 2006 pensioners shall not be less than 50% of the minimum of the pay in the pay band and Grade pay. Therefore reckoning the two additional increments for revising the pension will be in violation of the Government orders.

10. Heard Shri Vishnu S. Chempazhanthiyil on behalf of the applicants and Shri N.Anilkumar, SCGSC on behalf of the respondents. All pleadings and

documents were examined. The applicants contend that the benefit of Annexure A3 judgment was never given to them so far and this is reflected in their pension. They contend that as per the 6th CPC recommendations while re-fixing their pension 50% of the minimum in the revised pay scale and the Grade pay thereon has to be taken into consideration and that while considering their revised pay the additional increments as per Annexure A1 also has to be added to such minimum in the revised pay band. The argument of the respondents on the other hand appears to be that the additional increment as per Annexure A1 was already reckoned, further addition of such additional increments to the minimum in the revised pay scale as per VI Pay Commission is not justifiable.

11. While examining the reasoning adopted by the Hon'ble High Court in Annexure A3 judgment based on the explicitly stated objects and reasons in Annexure A1 office memorandum, this Tribunal is of the view that the additional two increments granted to Scientists/Engineers in the Grade of SF and SG is an additional pay coming within the definition of pay as defined in FR 9(21)(a) over and above their pay fixed. This Tribunal holds that Annexure A1 additional increments is a permanent appendix to be added to the pay of Scientists/Engineers of SF category, every time "after their normal pay fixation". It, therefore, necessarily follows that whenever revision takes place in their pay the two additional increments will have to be added.

12. Therefore, the respondents are directed to refix the pensionary benefits of all the applicants in OA No.123/2015 and 243/2015, after adding the two additional increments granted as per Annexure A1 to the minimum of their corresponding revised pay band as per the 6th CPC recommendations. This process shall be done within 60 days from the date of receipt of a copy of this order. OA is disposed of with above directions. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures

O.A 243/2015

Annexure A1 - True copy of the O.M No.2/10(8)/98-1 dated 3.2.99 issued by the 2nd respondent

Annexure A2 - True copy of the O.M No.2/10(8)/98-1 dated 12.8.1999 issued by the 2nd respondent

Annexure A3 - True copy of the judgment dated 18.1.2007 in W.P(C) No.31525/2004 of the Hon'ble High Court of Kerala

Annexure A4 - True copy of the judgment dated 4.4.2011 in Special Leave to Appeal (Civil) No.555-560/2008 of the Hon'ble Supreme Court of India

Annexure A5 - True copy of the judgment in W.P(C) No.207/2012 of the Hon'ble High Court of Uttarakhand

Annexure A6 - True copy of the judgment in Appeal No.18942/2013 of the Hon'ble Supreme Court in Special Leave to Civil

Annexure A7 - True copy of the judgment in O.A No.632/2012 of the Hon'ble Central Administrative Tribunal, Ernakulam Bench

Annexure A8 - True copy of the O.M No.E.29011/4/2008/Sec.V dated 12.9.2008 issued by the 2nd respondent

Annexure A9 - True copy of the O.M No.A.2/10(8)/98-1 (Vol.III) dated 20.1.2014 issued by the 2nd respondent

Annexure A10 - True copy of the judgment dated 26.9.2014 in O.A No.760/2012 of the Hon'ble CAT, Ernakulam Bench

Annexure A11 - True copy of the representation submitted by the 1st applicant

Annexure A11(a) - True copy of the representation submitted by the 5th applicant

Annexure A12 - True copy of the advice letter of IFA, VSSC for the revised pension calculation of 1st applicant

Annexure A13 - True copy of the O.M No.A.II/10(8)/98-I(Vol.IV) dated 22.5.2014 issued by the 2nd respondent

Annexure A14 - True copy of the order dated 30.7.2013 in O.A No.2461/2012 of the Hon'ble CAT, Principal Bench, New Delhi

Annexure A15 - True copy of order dated 22.12.2014 in O.A No.1003 of 2014 of the Hon'ble CAT, Principal Bench, New Delhi

Annexure R1(a) - True copy of the pension fixation statements in respect of the 1st applicant without reckoning the two additional increments

Annexure R1(b) - True copy of the revised pension fixation statement as on 1.1.2006 in respect of a Scientist/Engineer-H (viz. Shri.Ashok Kumar Verma) who retired from service on 30.9.2005

O.A 180/123/2015

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