

**Central Administrative Tribunal  
Principal Bench**

**OA No.2461/2012**

**Reserved on: 08.05.2013  
Pronounced on:30.07.2013**

**Honble Dr. Birendra Kumar Sinha, Member (A)**

1. **Shri R.C. Garg**  
S/o late Sh. Deen Dayal Garg,  
R/o 51/23, First Floor,  
Old Rajinder Nagar,  
New Delhi.

2. **Shri Pranav S. Desai**  
S/o Suresh Desai  
A-46, Shree Rang Villa  
Near RJT College, Vastrapur,  
Ahmedabad, Gujarat.

3. **Shri V.S. Iyengar**  
S/o G.S. Chari,  
49, Neelam Park, Gurukul Road,  
Ahmedabad, Gujarat.

4. **N.S. Pillai**  
S/o Sh. E.Neelakanta Pillai  
A-1, Ashoknagar, Jodhpur Tekra,  
Satellite Road, Ahmedabad, Gujarat.

5. **Shri A.R. Dasgupta**  
S/o Shri Bhramananda Dasgupta,  
D-1/11, Sterling City,  
Bhopal, Ahmedabad (Gujarat)

6. **Shri Nilamani Mohanty**  
S/o Krushna Prasad Mohanty  
2/27 Banaja Apt,  
Unit-6, Bhubneswhar  
Odisha.

**Applicants**

**(By Advocate: Ms. Aarti Shakalya)**

**Versus**

1. **Union of India through the Secretary,  
Department of Space & Chairman ISRO**

3rd Floor, Lok Nayak Bhawan,  
Prithviraj Lane, Khan Market,  
New Delhi 110 003.

2. The Secretary,  
Department of Pension & Pension Welfare,  
Lok Nayak Bhawan,  
Prithviraj Lane, Khan Market,  
New Delhi 110 003.

Respondents

(By Advocate: Ms. Ruby Sharma for Himanshu  
Upadhyay)

## ORDER

The applicants, who have retired as Senior Scientists Grade-H from the Department of Space and ISRO, have filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 challenging their revised Pension Pay Orders annexed at Annexure A-1 to A-5.

2. The case of the applicants is based upon their claim that Scientist Grade-H is a peculiar grade which has been created only for two departments i.e. Department of Space and Department of Atomic Energy. There are few Scientists who managed to get promoted to this Grade. The Department of Space is governed by Flexible Complementary Scheme implying thereby that even though there is no post available in the next Grade and employees become eligible for being promoted to the next Grade purely on the basis of their service records. Prior to the 5th Central Pay Commission (hereinafter referred to 5th CPC), the Scientists Grade-G were having the pay scale of Rs.5900-6700 and Scientists Grade-H were having the pay scale of Rs.5900-7300, which were merged into Grade-H scale and the revised pay scale emerged as Rs.18400-22400. However, the aforementioned two Departments i.e. DRDO and DAE were given a special pay of Rs.2000/- to all Scientists in the pre-revised scale of pay of Rs.5900-7300 in lieu of separate/higher pay scales. Despite this merger, the respondents continued to retain and promote the Scientists from Grade-G to Scientists Grade-H but the special pay of Rs.2000/- was not being counted as part of their pay for the purpose of calculating the pensionary benefits for which the applicant no.1 approached this Tribunal through OA No.1153/2002. The Tribunal having considered the matter quashed and set aside the offending Memorandum with regard to non-inclusion of the special pay as part of pay for pensionary purposes, vide its order dated 14.05.2003. The respondents preferred a Writ Petition bearing WP(C) No. 1710/2007 which was dismissed with costs by the Honble High Court of Delhi vide its order dated 15.05.2008 upholding the decision of the Tribunal.

3. The 6th CPC placed the category of Scientists-H in the pay scale of Rs.37400-67000 while the special pay of Rs.2000/- was enhanced to Rs.4000/-. The 6th CPC made another significant change in the sense that all those employees who retired on completion of 20 years of service or thereafter were made eligible for full pension at 50% which in the 5th CPC was not admissible. However, the applicants claim that a serious anomaly took place in the sense that the Pay Band of S-29 in which the Scientists Grade-H had been placed was compressed by three grades below in terms of grade and pay scales for minimum assured pension. Moreover, the special pay of Rs.4000/- was not included as part of the pay as per Resolution dated 29.08.2008. Therefore, a group of similarly situated persons approached this Tribunal by filing OA No. 2509/2010, which was disposed of vide order dated 06.01.2011 allowing the benefit of Rs.4000/- as special pay to

Scientists in the DRDO which has also been extended to similarly placed Scientists in DRDO but for the present applicants.

4. The recommendations of the 6th CPC were accepted by the Government of India in respect of the applicants vide OM dated 29.08.2008, paragraph 11 of which reads as under:-

11. The Government has accepted the suggestion from the Departments of Space and Atomic Energy and Defence Research & Development Organization (DRDO) for granting variable increments to really deserving Scientists at the time of promotions. Details will be worked out in consultation with Ministry of Finance. The Government has also decided to continue the existing system of grant of Rs.2,000/- Special Pay to Scientists G on promotion and doubling of the amount to Rs.4,000/- p.m. in Departments of Space and Atomic Energy and DFRDO and the continuation of the existing practice of grant of two additional increments to Scientists from Level C to F in these departments.

5. The applicants thereafter submitted an application on 09.02.2011 giving reference to the aforesaid judgment which, inter alia, and sought that the pension of pre-2006 retirees should be derived notionally as if they had been in service on 01.01.2006 and then apply the same as applicable to post-2006 retirees. The applicants further sought that any special pay, which was an integral component of pay, should be added notionally and counted towards pension. When this request of the applicants was not acceded to, the applicants have approached this Tribunal by way of the instant OA seeking the following main relief(s):-

(i) To give the benefits of enhanced Special Pay of Rs.4000/- (50% for pensionary purpose) to the applicants which has been recommended as per the CCS Pay Rules 2008 w.e.f. 01.01.2006.

(ii) To issue directions to the respondents to re-fix their pension by taking full pension (50%) which is granted upon 20 years of completed service for post 2006 retirees only in order to bring them at par with the Post 2006 retirees with prospective effect of 01.01.2006.

(iii) Quash and set aside the Revised Pension Pay orders of all the applicants so as to clearly mention and include Grade from which they have retired by giving them a separate pay scale or merge them with the pay scale of a feeder post so that they do not stand to loose in a out of the sight situation for all the present and future pensionary benefits.

6. The respondents have filed their counter affidavit to the OA vehemently opposing the claim of the applicants. Rejoinder to the counter affidavit filed by the respondents has also filed on behalf of the applicants. Besides hearing the arguments of both the parties, they were permitted to submit their written submissions, which have also been placed on record.

7. While agreeing with the facts generally stated, the respondents in their counter affidavit have stated that consequent to the implementation of the 6th CPC recommendations, the Scientists Grade-G were placed in Pay Band-4 (Rs.37400-67000) with Grade Pay of Rs.10,000/- from 01.01.2006 while Scientists Grade-H were placed in Pay Band-4 (Rs.37400-67000) with Grade Pay of Rs.10,000/- from 01.01.2006 plus Rs.4000/- Special pay vide Resolution dated 29.08.2008 in lieu of higher pay scale/separate pay scale. Since the applicants had retired prior to 01.01.2006, they are not entitled to claim special pay of Rs.4000/- for fixation of pay for pension purpose. The respondents have further submitted that the 5th CPC and 6th CPC are two different schemes and the applicants having retired before 01.01.2006 are not entitled to claim the benefits which have been made available under the 6th CPC. If at all they are aggrieved by non-applicability of some of the provisions of the Scheme, they should have rightfully challenged the OM dated 02.09.2008. Moreover, the respondents have argued that those who have retired from 01.01.2006 onwards

and have rendered 20 years of service are entitled for full pension. Prior to 01.01.2006, full pension was linked to 33 years of qualifying service and from 01.01.2006 onwards full pension is linked with 20 years of qualifying service. Since the applicants are pre-2006 retirees, they are governed by rendering 33 years of service and, therefore, they cannot be allowed the same benefits as have been granted to post-2006 retirees.

8. I have carefully perused the pleadings of the parties, documents submitted by them, oral arguments advanced and the Notes of Written Submissions submitted by them, and on the basis thereof I find that the following issues are germane of the case:-

Whether this Original Application has become infructuous having not challenged the OM dated 02.09.2008 in good time by the applicants?

Whether the pension of the applicants would be governed by the provisions of 50% for 20 years of service rendered as per the recommendations of the 6th CPC?

Whether the Special Pay of Rs.4000/- should be reckoned as an integral part of the pay for pensionary purposes to be calculated at 50%? and

What relief(s) could be granted to the applicants?

9. In so far as the first issue of the issues is concerned, I feel that it is necessary to decide this issue before proceeding with other issues concerned. Admittedly, the applicants had retired prior to 01.01.2006 and, therefore, they are governed by the provisions of CCS (Pay) Rules, 2004 relating to 5th CPC. It is further admitted that the recommendations of the 6th CPC were implemented w.e.f. 01.01.2006 and provided for CCS (Revised Pay) Rules, 2008. The notification pertaining to implementation of the 6th CPC in respect of the applicants was made vide OM dated 02.09.2008. The relevant provisions of the OM have already been reproduced within. Since the applicants, who retired prior to 2006, have not challenged the instant OM dated 02.09.2008, it is to be examined whether the applicants needed to challenge the same or it would be ipso facto applicable to their case.

10. The applicants, while admitting that they have not challenged the validity of OM dated 02.09.2008, contended that they are not against the benefits granted consequent to the adoption of the CPC but are rather seeking benefit of a scheme that has been liberalized. Reduction of qualifying service is a liberalized scheme and the Resolution dated 29.08.2008 qua pre-2006 retirees should not be taken otherwise than the post-2006 retirees. They have further argued that no further order is required giving clarification modifying the original one under law.

11. In consideration of the above arguments, it is amply clear that the order dated 02.09.2008 has not been challenged by the applicants in this OA. However, the crux of the argument is that the applicants have pointed out to various other circulars and clarifications of the Government as also of the liberalization of the Pension Scheme to assert that in case of the individual reliefs sought, they are governed by these instructions and not challenging the OM dated 02.09.2008 is not a bar to this OA.

12. Having considered the matter carefully, I intend to agree that the OM dated 02.09.2008 extends the general benefits of the 6th CPC to all the employees. Although the applicants have not challenged the same, it does not act as an embargo to their other relief(s) being sought on individual grounds which have to be discussed individually. Hence, it is true that the applicants were at liberty to challenge the OM dated 02.09.2008 in the year 2008 within the period stipulated under Section 21 of the Administrative Tribunals Act, 1985. However, the fact of non-

challenge of the OM dated 02.09.2008 does not act as a bar to their individual relief(s) for the reasons stated above. Hence, this issue is answered in favour of the applicants.

13. In so far as issue no.2 is concerned, while examining this case, I would like to fall back upon the judgment of Five Judges Bench in D.S. Nakara and Others versus Union of India [(1983) 1 SCC 305] which continued to be good and binding insofar as basic principles of pension are concerned. In paragraph 2 of the judgment, certain basic issues are raised, one of which is that is the date of retirement a relevant consideration for eligibility when a revised formula for computation of pension is ushered in and made effective from a specified date? Likewise, it is further asked that would differential treatment to pensioners related to the date of retirement qua the revised formula for computation of pension attract Article 14 of the Constitution and the element of discrimination liable to be declared unconstitutional as being violative of Article 14? The judgment has commenced by tracing the liberalization of pension scheme from the first CPC (1946-47) which enhanced the age of retirement uniformly to 58 years for all services and the scale of pension should be 1/80 of the emoluments for each year of service, subject to a limit of 35/80 with a ceiling of Rs.8000/- per year for 35 years of service. Marching on from there in 1979, the Government of India made the formula of computation of pension liberalized but it was confined to the government servants who retired on or after March 31,1979 and those who retired prior to the specified date would not be entitled to the benefits of the liberalized pension formula. This judgment recognizes that under Article 14 of the Constitution, a reasonable classification is permitted for the purpose of legislation but it must be founded on an intelligible differentia having a rational nexus to the object sought to be achieved by the statute. These questions have been answered in paragraphs 46 & 65 of the judgment, which are reproduced hereunder for the sake of clarity:-

46. By our approach, are we making the Scheme retroactive? The answer is emphatically in the negative. Take a Government servant who retired on April 1, 1979. He would be governed by the liberalised pension scheme. By that time he had put in qualifying service of 35 years. His length of service is a relevant factor for computation of pension. Has the Government made it retroactive, 35 years backward compared to the case of a Government servant who retired on 30th March, 1979? Concept of qualifying service takes note of length of service, and pension quantum is correlated to qualifying service. Is it retroactive for 35 years for one and not retroactive for a person who retired two days earlier. It must be remembered that pension is relatable to qualifying service. It has correlation to the average emoluments and the length of service. Any liberalisation would pro tanto be retroactive in the narrow sense of the term. Otherwise it is always prospective. A statute is not properly called a retroactive statute because a part of the requisites for its action is drawn from a time antecedent to its passing. (See Craies on Statute Law, 6th Edn., p. 387). Assuming the Government had not prescribed the specified date and thereby provided that those retiring pre and post the specified date would all be governed by the liberalised pension scheme. Undoubtedly, it would be both prospective and retroactive. Only the pension will have to be recomputed in the light of the formula enacted in the liberalized pension scheme and effective from the date the revised scheme comes into force. And beware that it is not a new scheme, it is only a revision of existing scheme. It is not a new retiral benefit. It is an upward revision of an existing benefit. If it was a wholly new concept, a new retiral benefit, one could have appreciated an argument that those who had already retired could not expect it. It could have been urged that it is an incentive to attract the fresh recruits. Pension is a reward for past service. It is undoubtedly a condition of service but not an incentive to attract new entrants because if it was to be available to new entrants only, it would be prospective at such distance of thirty-five years since its introduction. But it covers all those in service who entered thirty-five years back. Pension is thus not an incentive but a reward for past service. And a revision of an existing benefit stands on a different footing than a new retiral benefit. And even in case of new retiral benefit of gratuity under the Payment of Gratuity Act, 1972 past service was taken into

consideration. Recall at this stage the method adopted when pay-scales are revised. Revised pay-scales are introduced from a certain date. All existing employees are brought on to the revised scales by adopting a theory of fitments and increments for past service. In other words, benefit of revised scale is not limited to those who enter service subsequent to the date fixed for introducing revised scales but the benefit is extended to all those in service prior to that date. This is just and fair. Now if pension as we view it, is some kind of retirement wages for past service, can it be denied to those who retired earlier, revised retirement benefits being available to future retirees only. Therefore, there is no substance in the contention that the Court by its approach would be making the scheme retroactive, because it is implicit in theory of wages.

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65. That is the end of the journey. With the expanding horizons of socio-economic justice, the socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criteria; 'being in service and retiring subsequent to the specified date' for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of 'being in service on the specified date and retiring sub-sequent to that date' in impugned memoranda, Exhibits P-1 and P-2, violates Article 14 and is unconstitutional and is struck down. Both the memoranda shall be enforced and implemented as read down as under: In other words, in Ext. P-1, the words:

"that in respect of the Government servants who were in service on the 31st March, 1979 and retiring from service on or after that date"

and in Exhibit P-2, the words:

"the new rates of pension are effective from 1st April, 1979 and will be applicable to all service officers who became/become non-effective on or after that date."

are unconstitutional and are struck down with this specification that the date mentioned therein will be relevant as being one from which the liberalised pension scheme becomes operative to all pensioners governed by 1972 Rules irrespective of the date of retirement. Omitting the unconstitutional part it is declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalised pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation is not admissible. Let a writ to that effect be issued. But in the circumstances of the case, there will be no order as to costs.

14. The question may arise here that the judgment in D.S. Nakaras case (supra) will be confined only to the petitioners therein or what has been enunciated here is a general principle and the same will have universal application. However, a plain reading of the judgment in D.S. Nakaras case (supra) would reveal that what has been arbitrary and discriminatory is that the liberalization of pension will be effective from the date from which it is granted to the other applicants. Therefore, it is applicable.

15. The applicants have further referred to a Full Bench decision of the Tribunal in OA No.655/2010 which has upheld the principle of modified parity for revising the pension of all those who retired prior to 01.01.2006. This order of the Tribunal was challenged before the Honble High Court of Delhi in WP(C) No. 1535/2013 in the matter of Union of India and Another versus Central Government SAG and Others in which the respondents filed an appeal on the ground that though a reasonable intelligible differentia having a rational nexus to the object sought to be achieved has been allowed, but the 6th CPC is a separate Scheme only applicable to a certain part of the retirees. However, considering the contention of the appellants, the Honble High Court of Delhi held as under:-

The fixation of pension will be subject to the provisions that the revised pension in no case shall be lower than 50% of the minimum of pay in the pay band and the corresponding grade pay thereon to the pre-revised pay scale from which the pensioner had retired this would clearly mean that the pay of the retiree i.e. who retired before 01.01.2006 is to be brought corresponding to the revised pay scale as per 6th Central Pay Commission and then it has to be ensured that pension fixed is such that it is not lower than 50% of the minimum of the pay in the pay band and grade pay thereon.

16. Admittedly, when the Scientists Grade-H have a pay scale other than Scientist Grade-G on account of special pay, I tend to agree with the arguments of the learned counsel for the applicants that if Scientists Grade-H are not given replacement pay scale as per 6th CPC, this would imply that there is no revision in the pay/pension of the Scientists Grade-H. In the case of Scientists Grade-G & H together, the replacement pay scale is Rs.37400-67000 + Grade Pay of Rs.10,000/-. It is in the grade of Scientist-H alone, the replacement pay scale after the 6th CPC is Rs.37400-67000 + Rs.10000 Grade Pay + Rs.4000 Special Pay. If I admit this principle as enunciated in the case of D.S. Nakara (supra) and subsequently by the Honble High Court of Delhi in Union of India and Another versus Central Government SAG and Others (supra), then the arguments of the respondents fall flat that there are two different Schemes applicable to pre 2006 retirees and post 2006 retirees.

17. This question is accordingly answered in favour of the applicants.

18. Insofar as issue no.3 is concerned, the learned counsel for the applicants while arguing that despite there is no order of revision of special pay of Rs.4000/- for pre 2006 retirees has cited the OM of the respondents Department dated 12.09.2008 which provides for the Special Pay admissible to the Scientists/Engineers in Grade-H, relevant para of which is reproduced as under:-

1. The undersigned is directed to refer to the Departments Office Memorandum of even number dated 03.02.1999 and 12.08.1999 on the subject mentioned above and to state that the issue of grant of incentives to Scientists/Engineers in the Grades of SD to SG in the form of two additional increments and Special Pay to Scientists/Engineers in the grade H has been examined in the light of implementation of the recommendations of Sixth Pay Commission.

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4. The Special Pay admissible to Scientists/Engineers in the Grade Has also revised to Rs.4000/- p.m.

The applicants have further argued that para (c) of OM dated 12.08.1999 which reads The special pay will not be treated as a part of pay for the purposes like Dearness Allowances, HRA, Pension etc. was quashed and set aside by the Tribunal in OA No. 1153/2002 and consequently superseded vide OM dated July 11, 2003 with the following modification:-

**Para 1 (I)(c)**

**The Special Pay will not be treated as part of pay for 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.**

**19. When one goes through all these orders/OMs together, one finds that pre 01.01.2006 period, the clarification of the Government that the special pay of Rs.2000/- would not count for pensionary purposes was quashed by this Tribunal in OA No. 1153/2002 and consequently it had been further clarified by the Department that it would count for pensionary purposes.**

**20. This question has been partly answered while dealing with Issue No.2. Once I have accepted the principle of modified parity with the special pay amongst the Scientists Grade G & H pay scales and further that the circulars of the Government of India have already provided, as discussed above, that the special pay is an integral part of the pay for calculating the pension, there is no reason why it should be denied to the pre 2006 retirees. This principle also stands supported further by the law as laid down by the Honble Apex Court in the case of D.S. Nakara (supra) and also by the Honble High Court of Delhi in Union of India and Another versus Central Government SAG and Others (supra).**

**21. This question is accordingly answered in favour of the applicants.**

**22. In view of the above discussions and having answered the questions in favour of the applicants, I am satisfied that the applicants, for the reasons stated above, have succeeded in proving their case. I also take into consideration of the fact that the present mode of pension is already in the process of getting phased out as the last pensioner, being the Government employee, will have retired sometime in the year 2014 or so.**

**23. Having once accepted the position in the case of D.S. Nakara (supra), there is no reason that this Liberalization Pension Scheme should not be extended to the present applicants who are eminent Scientists of the country. Hence, the present Original Application is allowed with the following directives:-**

**Revision Pension Pay Orders in respect of the applicants impugned in this OA are quashed and set aside;**

**Respondents are directed to extend the benefits of enhanced Special Pay of Rs. 4000/- (50% for pensionary purpose) to the applicants as have been recommended as per the CCS (Pay) Rules, 2008 w.e.f. 01.01.2006 and consequently revise their pension by taking full pension (50%) which is granted upon 20 years of completed service for post 2006 retirees and bring them at par with the post 2006 retirees with prospective effect of 01.01.2006.**

**The exercise ordained above be completed within a period of three months from the date of receipt of certified copy of this order.**

**There shall be no order as to costs.**

**(Dr. Birendra Kumar Sinha)  
Member (A)**