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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 17806/2024, CM APPLs. 75818/2024, 75819/2024,
75836/2024 & 75837/2024
COUNCIL OF SCIENTIFIC AND INDUSTRIAL
RESEARCHPetitioner

Through: Mr. V.S.R. Krishna, Adv.

versus

UNITED FORUM OF CSIR RETIRED (GRP IV-6)
SCIENTISTS AND ORSRespondents

Through: Mr. Vaibhav Vutts, Ms. Amna
Hasan, Ms. Anupriya Shyam and Ms. Aarya
Deshmukh, Advs.
Mr. Raj Kumar, CGSC for UOI.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

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28.01.2025

AJAY DIGPAUL, J.

1. The relevant facts that emerge from the pleadings are as follows:

The genesis of the issue lies in the special pay granted to Scientist G/Group IV(6) officers of Council of Scientific and Industrial Research¹/Petitioner, which was introduced by an order dated 07.12.2001, granting a special pay of Rs. 2,000/- per month (without Dearness Allowance) to eligible officers. This special pay was enhanced to Rs. 4,000/- per month in 2006.

¹ "CSIR", hereinafter



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2. The respondents, a group of retired CSIR scientists, contend that this special pay should be included in pension computation, as it was part of their “pay” as per F.R. 9(21)(a) of the Fundamental Rules & Supplementary Rule (FRSR)².

3. The respondents rely on parity with similarly placed scientists in Defence Research and Development Organisation (DRDO), Department of Atomic Energy (DAE), and Department of Space (DoS), who, the respondents claim, received the benefit of special pay in pension calculations.

4. Feeling aggrieved by this, the respondents submitted representations on 23.03.2021 and 26.06.2021 to the petitioner seeking the benefit granted to Scientists in the case of *Navneet Kumar Sharma & Ors. v CSIR & Anr.*³ vide order dated 26.11.2019 of this Court. However, the petitioner did not take any decision on the representations submitted by the respondents despite repeated reminders sent to them.

5. Aggrieved by this, the respondents on 07.10.2021 filed OA No. 2497/2021 before the Central Administrative Tribunal, Principal Bench, New Delhi⁴, wherein the following reliefs were sought:

“a) Direct the respondents to count Special Pay of Rs.2000/- granted to the Scientist of Applicant Association before 01.01.2006

² “(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.”

³ W.P.(C) 9070/2014

⁴ “the Tribunal”, hereinafter



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and Rs. 4000 granted w.e.f. 01.01.2006 for computing their pension and pensionary/retiral benefit with all benefits as has been granted to 96 Scientists in Scientist G/Group IV (6) of CSIR who were the petitioners in NK Sharma & Ors. V. CSIR & Anr. W.P. (C) 9070/2014 and Scientist G or its equivalent in Defence Research & Development Organisation (DRDO) Ministry of Defence, Department of Space or Department of Atomic Energy. Since scientists in NK Sharma (supra) are identically placed as present Applicant and since Scientists G/Group IV (6) of CSIR and Scientist G of DRDO are having same pay scales, same Special Pay and governed by same Pension Rules and are undertaking Scientific research and development in various fields of national endeavor, Scientists in CSIR are also entitled for counting of "Special Pay" for their pensionary benefits as has been allowed in the case of Scientist G in DRDO. Any official order contrary to counting of Special Pay for Pension and Pensionary Benefits should be set aside keeping in view the orders/directions of Hon'ble Supreme Court in OP Nijhawan CA No. 12040/2018 dated 03.01.2017 and Hon'ble Courts as such orders are unsustainable under law. Further any arbitrary or discriminatory treatment to the Applicant in matters of fixation of pension will be violative of Article 14 & 16 of the Constitution of India and will be against Rules and law on the subject.

b) Direct the Respondents to provide the same Pension and Pensionary benefits to all the scientist of Scientist G/Group IV(6) of CSIR, whether named or not in any petition, as it is not possible and illogical for every retired Scientist G/Group IV(6) of CSIR to approach the Tribunal individually on same facts and law as this would result in multiple litigations on already position of law.

c) Direct the Respondents to revise Pension Payment Order (PPO) of Applicant and pay arrears and interest of/on Pension and Pensionary benefits along with the consequential benefits to the Applicants after counting of special pay of Rs. 2000/- for those who retired before 01.01.2006 & Rs. 4000/- to those who retired after 01.01.2006 for their pension and pensionary benefits. d) Direct respondents to produce relevant records on the subject after adjudication.

e) Grant any other reliefs which Hon'ble Tribunal may deem just and proper keeping in view the facts and circumstances of the case and also that these retired Scientists have served the cause of industrial development of the nation and are in the sunset of their life.

f) Any other direction or directions which Hon'ble Tribunal may deem fit and proper keeping in view the facts and facts and



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circumstances of the case and the fact that the Applicants are senior citizens.”

6. The Tribunal, vide order dated 15.11.2021, disposed of the OA No.2497/2021 with directions to the petitioner to decide the representation dated 26.06.2021 submitted by the respondents and subsequently issue a reasoned order.

7. In compliance with the Tribunal's order, the petitioner issued an order dated 21.01.2022, clarifying that they had no objection to counting special pay of Rs. 2,000 (before 2006) and Rs. 4,000 (after 2006) for pensionary benefits. However, the matter was pending approval from the Department of Expenditure, Ministry of Finance, as it was the competent authority to approve financial implications on pension structures. Until such approval was granted, the petitioner could not implement the benefit.

8. Dissatisfied with this decision, the respondents on 08.04.2022 filed OA No. 1099/2022 before the Tribunal, asserting that the petitioner was delaying the benefit without justification as the onus of complying was shifted to another department within the government. The relief sought in OA No. 1099/2022 was identical to what was sought in the aforesaid OA No. 2497/2021.

9. During the pendency of OA No. 1099/2022, the Department of Expenditure, Ministry of Finance issued an ID Note dated 17.08.2023, agreeing to the petitioner's proposal but prescribing a specific methodology. The said communication is reproduced as under

“Ministry of Finance



**Department of Expenditure
EV Branch**

Sub: Counting of Special Pay of Rs.2000/- before 2006 and Rs.4000/- after 2006 for the purpose of reckoning pensionary benefits to retired scientists of CSIR.

1. CSIR may please refer to their ID No- 5-1(308)/2015-PD, dated 21.03.2023, on the subject mentioned above.

2. In this regard it is stated that this department agrees with the proposal of CSIR for counting of Special Pay of Rs. 2000/- before 2006 and Rs.4000/- after 2006 for the purpose of pensionary benefits to all the eligible retired Scientists of CSIR.

3. As far as the methodology to be adopted for fixation of pension is concerned, it is stated that the methodology as conveyed to DoS may also be adopted in CSIR which is as under:

- Special Pay may not be merged in the last Basic Pay. Once Pension is computed on the basis of last pay drawn, 50% of the quantum of Special

Pay as drawn by the employee on the date of retirement (Rs 2000/- and Rs.4000/- as the case may be) may be added to the Pension so fixed. In case of revision of Pension after Pay Commission in terms of respective guidelines of DoPPV, the Special Pay will not be taken into consideration. However, once Pension is revised, 50% of the Special Pay as available to the employee on the date of retirement shall be added to such revised Pension."

4. This has the approval of competent authority

(Vijay Kumar Sharma)

Under Secretary to the Govt, of India

CSIR, [Kind Attn: Shri Mahendra Kumar Gupta, JS (Admn.) I, Anusandhan Bhawan, 2, Rafi Mara. New Delhi-110001.

D/o Expenditure's I.D. Note No. 1(20)/EV/2017, dated 17.08.2023

Copy to: Shri Chetan Prakash Jain, FA, CSIR"

10. The Tribunal after considering the submissions made by both parties, pronounced its judgment on 12.03.2024, wherein it ruled in favour of the respondents and quashed the order dated 21.01.2022 issued by the petitioner. It was also held that special pay falls within



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the definition of “pay” as per F.R. 9(21)(a) and, therefore, should be merged with the last pay drawn for the purposes of pension computation. Furthermore, the Tribunal rejected the methodology prescribed by the Ministry of Finance in its ID Note dated 17.08.2023, which allowed only 50% of the special pay to be added separately to pension, instead of merging it with last pay drawn.

11. The Tribunal also observed that the exclusion of special pay from the last pay drawn for pension computation amounted to their failure to observe the principle of equity and parity, particularly when this benefit is extended to several other identical placed scientists in DRDO, DAE, and DoS were being extended this benefit.

12. In arriving at this conclusion, the Tribunal extensively relied on the judgment of the Hon’ble Supreme Court in *Union of India & Ors. v Dr. O.P. Nijhawan & Ors.*⁵, where the Court had upheld the inclusion of special pay in determining the computation of pension.

13. Aggrieved by the decision of the Tribunal, the petitioner have filed the present Writ Petition, wherein the following reliefs are sought:

“a. Quash and set aside the impugned order dated 12.03.2024 passed by the Ld. Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 1099/2022;

b. Pass any such further order(s) as deemed fit and proper in the facts and circumstances of the present case.”

14. After hearing learned Counsel for the parties, we are of the opinion that the impugned judgment of the Tribunal does not call for

⁵ (2020) 14 SCC 420



any interference for the following reasons:

- i) The case is fully covered by the judgment of the Supreme Court in ***OP Nijhawan***. It is surprising, in fact, that this petition has been filed in such a clearly covered matter. The Supreme Court was also dealing with officers of the Department of Space, and the Office Memorandum dated 12.08.1999 issued by the petitioner also purports to apply, to the petitioner, the instructions applicable to the Department of Space.
- ii) The circumstances in which special pay was granted to the respondents is thus clearly noted in para 5 of the judgment ***OP Nijhawan*** reproduced thus:

“Consequent to peer review, the Government of India, Ministry of Defence decided to sanction special pay of Rs 2000 per month to the Scientists in the pay scale of Rs 18,400-22,400 in lieu of a separate higher pay scale. An Order dated 3-2-1999 was issued by all the above three Departments. The Order dated 3-2-1999 sanctioned the above pay scales from 1-1-1996.”

15. The counter affidavit filed by the petitioner before the Supreme Court also notes thus, in para 6 (1) reproduced thus:

1. *“That with the concurrence of the Ministry of Finance vide UO Note dated 23.01.2001 and with the approval of the Governing Body of CSIR in its 150th meeting held on 15.02.2001, CSIR vide Circular letter No. 2 (RR-IV) 2001 – R&A dated 07.12.2001 granted w.e.f. 01.01.2001, the Special Pay of Rs. 2,000/- per month (without DA) in Scientist Group IV in the pay scale of Rs. 18400-22400 (pre-revised) in lieu of separate higher pay scale after peer review which was revised to Rs.4,000/- p.m. w.e.f. 01.01.2006 with the implementation of the 6th CPC in*



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CSIR. The same was notified vide CSIR letter no. 5-1(3)/2008-PD dated 21.11.2008.”

16. Thus, in the case of Respondent no. 2 as in the case of respondents in *OP Nijhawan*, the special pay was granted in lieu consequent to the recommendations of the Pay Commission, and peer review thereafter, and in view of a higher pay scale. The basis for granting special pay to the respondents in the present case is, therefore, identical to the basis on which the respondents in *OP Nijhawan* were granted special pay.

17. The Supreme Court has clearly held, in the aforeextracted paragraphs from *OP Nijhawan*, that, where the special pay is not granted on account of any arduous duties applicable to the post, but in view of the separate higher pay scale, it would have to be included in the definition of “pay” as defined in F.R. 9(21). It does not come within the exclusionary clause in the opening paragraph of F.R. 9(21)(a)(i).

“Serial Circular No.97

*Copy of CSIR circular no. RR-IV)2001-R&A dated 7.12.2001 to
Directors/Head of all National Labs.Instts.*

*Sub: Revised pay structure and career progression scheme for CSIR
Group-IV (Scientific) Personnel*

Sir,

I am directed to state that the proposal for providing incentives to the Group-IV scientists in order to attract, retain, inspire and motivate scientists to give their best contribution on the pattern of the same being given to the Scientist in DRDO, as per the concurrence given by the Ministry of Finance was placed before the Governing Body at its 150th meeting held on 15.2.2001.

The Governing Body considered the matter and approved to grant the following incentives to the Group-IV Scientists in CSIR system w.e.f. 1.1.2001:



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- i) *Special pay of Rs.2,000/- p.m. (without D.A.) to scientists Group IV in the pay scale of Rs. 18,400-22,400, in lieu of a separate higher pay scale after peer review.*
- ii) *Two additional increments (without DA) to Scientists Group IV (Recruitees/Prornotees) in the pay-scales of Rs.10,000-15,200; 12,000-16,500; 14,300-18,300 and 16,400-20,000 after their normal pay fixation.*
- iii) *Professional up-date allowance of Rs.5,000/- per annum to all Scientists Group IV.”*

18. The special circular no. 97, reproduced *supra*, whereby special pay was granted to the petitioner is also specifically states that it was granted “in lieu of a separate higher pay scale after peer review”.

19. This additionally parallelises with the case of the respondents in *OP Nijhawan*. In these circumstances, the somewhat tenuous ground on which Mr. V.S.R. Krishna, learned Counsel for the petitioner, seeks to distinguish *OP Nijhawan* by contending that the special pay was granted to the respondents “without DA” can hardly constitute a basis to distinguish such a judgment. The guiding principle, as per *OP Nijhawan*, in respect of the issue of whether special pay was required to be added to pay for computation of pension was whether the special pay was granted in view of the arduous natures of the duties being rendered by the employees concerned or in lieu of a separate higher pay scale after peer review following the Central Pay Commission. In the latter circumstance, the Supreme Court has clearly held that the special pay was required to be added to the pay. This case clearly falls within the said parameters.

20. The contention of Mr. Krishna that there is no breach, in the Memorandum issued by the petitioner, in the order passed by the



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Supreme Court, inasmuch as the methodology adopted by the petitioner for factoring in special pay while computing pension was within their discretion. He seeks to contend that the Supreme Court was not dealing with the said methodology and that, therefore, a separate *lis* had come into being, which the Tribunal was required to adjudicate upon. This argument fails to convince us. No separate *lis* had come into being. The Supreme Court clearly held that special pay was required to form a part of pay for the purposes of computation of pension except where the special pay was granted owing to arduous natures of the duties of the post. There is no ambiguity in the Supreme Court judgment. The only way of implementing the judgment was to add special pay to the pay of the respondents. The decision of the petitioner to compute pension without adding special pay and thereafter to add 50% of the special pay to the pension thus computed was, therefore, in the teeth of the judgement of the Supreme Court. There was, in fact, no need for any explanation to be sought from the petitioner in that regard at all.

21. Mr. Vaibhav Vutts, learned Counsel for the respondent, has also disputed Mr. Krishna's contention that no opportunity was granted to the petitioner to explain the methodology contained in the aforesaid Office Memorandum issued by the petitioner. The query to which para 12 of the impugned judgment refers has also been made in the order dated 19.12.2023 passed by the Tribunal. The impugned order came to be reserved on 07.03.2024. As such, the petitioner clearly had three months with them to explain the basis of the methodology. No such explanation was, however, forthcoming before the Tribunal even on 07.03.2024.



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22. Even before this Court, there is no legally sustainable basis for the aforesaid methodology. Even otherwise, the methodology cannot be accepted as it is contrary to the judgment of the Supreme Court in *OP Nijhawan*.

23. Mr. Krishna's contention that the respondents had only prayed, in the OA filed by them before the Tribunal, for counting of the special pay granted to the respondents in computing their pension and pensionary benefits and that this had been done, also fails to impress. The respondents have, in their OA, specifically pointed out that, under F.R. 9(21), the special pay was required to form part of the pay while computing pension. This, the petitioner had not done and, therefore, it cannot be said that the Office Memorandum dated 12.08.1999 issued by the petitioner granted the relief sought in the OA and that the separate *lis* had come into being the issue is squarely covered by the judgment of the Supreme Court in *OP Nijhawan*, both on facts as well as in law, we are in agreement with the judgment of the Tribunal which stands affirmed in its entirety.

24. The writ petition, accordingly, stands dismissed with no order as to costs.

AJAY DIGPAUL, J

C.HARI SHANKAR, J

JANUARY 28, 2025/AS

[Click here to check corrigendum, if any](#)