

BY REGISTERED AD POST

भारत सरकार/Government of India
परमाणु ऊर्जा विभाग/Department of Atomic Energy
सचिवालय समन्वय अनुभाग/Secretariat Coordination Section
अनुशक्ति भवन/Anushakti Bhavan,
छ.शि.म.मार्ग/C.S.M Marg,
मुंबई/Mumbai - 400 001.
८ ०२२-२२८६२६६१
Email : sectcord@dae.gov.in

No.6/6/2017-SCS/ 7319 .

June 8, 2018

To,
Shri G.Natarajan,
Office-cum Res: Flat No.M-503,
DHARMA Apartment, Plot No.2,
IP Extension, Delhi-110092.

**Subject: Reply to Legal Notice dated 25.04.2018 issued on behalf of
your client Atomic Energy Pensioners' Welfare Forum -
Regarding.**

Dear Sir,

We are in receipt of your Legal Notice No.11/2018 dated 25.04.2018 on behalf of your client Atomic Energy Pensioners' Welfare Forum, Mumbai 400088.

2. You are hereby referred to the contents of your said Legal Notice dated 25.04.2018 which alleges that in view of the clear cut direction given in the DAE O.M. No.1/2/1999-SCS/436 dated 04.06.1999 (enclosed as Annexure-C in the above legal notice) the clarification were not required which was called for by the Department with mala fide intention to circumvent the clear cut instruction and also to frustrate the Order dated 10.07.2017 passed by the Hon'ble CAT(PB) in OA No.2045 of 2016.

3. **Preliminary submissions / objections:**

3.1 At the outset, we wish to state, that the averments made that the Department has called for clarification with mala fide intention to circumvent clear cut instruction is wrong and misconceived and therefore the same are denied.

3.2 That the true facts pertaining to the matter may be noted, which is described seriatim hereunder:

3.3 That Department vide OM No.4/4/2011-SCS/Vol.III/7809 dated 13.06.2017 had taken the decision with the concurrence of Member for Finance, Atomic Energy Commission (AEC), to treat two additional increment to as "Pay" for the purpose of DA, HRA, pension, pensionary benefit w.e.f. 01.01.1996 for pensionary and similarly placed Scientist and Engineers.

3.4 That the pension papers processed as per our aforesaid decision dated 13.06.2017 were returned by Central Pension Accounting Office without disbursing any pension on the plea that the rate of two increments as per the 6th CPC does not fit into the concordance table prescribed for the pension after 7th Central Pay Commission (CPC). Hence, the Department decided to seek approval of DP&PW, New Delhi for revision in the rates of increment as per 7th CPC Pay Matrix.

3.5 That in order to avoid any hardship to the pensioners due to non-receipt of entire pension, the Department issued an O.M. No.4/4/2011-SCS/Vol.IV/16396 dated 20.12.2017 (**Annex-1**) conveying a decision that such pension cases may be processed for payment of provisional pension without taking into account the two additional increments as a temporary measure until the matter is resolved.

3.6 That based on the decision taken vide DAE OM dated 20.12.2017 mentioned above, the Department has also approached the Department of Pension & Pensioner's Welfare(DP&PW), New Delhi vide ID Note No.4/4/2011-SCS/Vol.IV/317 dated 05.01.2018 (**Annex-2**) seeking therein clarification of DP&PW regarding the procedure to be adopted in counting the two additional increments granted to scientists / engineers as 'Pay' for Pension calculations and to consider the rates of increment as per 7th CPC.

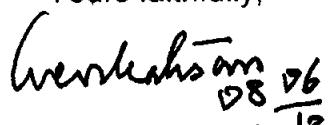
3.7 Needless to state that the DP&PW, New Delhi convened a meeting in this regard on 16.03.2018 with the representatives of DAE, DoS and DRDO. The meeting was attended by the representatives of the Department and the decision of DP&PW is awaited. The Department has been pursuing the matter with DP&PW, New Delhi requesting for early decision in the matter.

3.8 Thus, the Department has complied with the directions of Hon'ble Tribunal, and issued the O.M. dated 13.06.2017. However, due to implementation of 7th CPC and introduction of New Pay Matrix, the revised rate of increments is required to be approved by the Ministry of Finance, in consultation with DP&PW, New Delhi, which are the nodal ministries to take such decisions.

3.9 That the Department has been persistently pursuing the matter with DP&PW, New Delhi.

4. In view of the aforesaid facts, the Department of Atomic Energy denies each and every averment made by your client in the notice under reply save and except what has been specifically admitted hereinabove:

Yours faithfully,


Venkatesan
08/06/18

(G. Venkatesan)

Under Secretary

Tel: 022 2202 6861

Email: usvig@dae.gov.in

Encl: 20 Pages.

ANNEX - 1

Government of India
Department of Atomic Energy
Secretariat Coordination Section

Anushakti Bhavan,
C.S.M. Marg,
Mumbai – 400 001

Ref No.4/4/2011-SCS/Vol.IV/ 16 516

December 29 2017

OFFICE MEMORANDUM

Subject: Two additional increments granted to Scientists / Engineers in the grade of 'D', 'E', 'F' and 'G' for the purpose of pensionary benefits – Regarding

Reference: DAE OM No.4/4/2011-SCS/Vol.III/7809 dated 13.06.2017

References are being received in the Department informing that Central Pension Accounting Office, New Delhi is returning Pension Payment Orders (PPO) issued by the constituent units of the Department without authorizing pension in respect of Scientists / Engineers retired from the grade of 'D', 'E', 'F', & 'G' on plea that the two additional increments granted to them do not match with the pay scales in the Level Pay + index as per the extant rules.

2. The matter is being taken up with Department of Pension and Pensioners' Welfare who are the nodal department for all matters pertaining to pension to Central Government employees. In the meantime, in order to avoid any hardship to the pensioners due to non – receipt of pension, it has been decided in the Department that such pension cases

may be processed for payment of provisional pension without taking into account the two additional increments as a temporary measure until the matter is resolved. All units of DAE may take further action accordingly.

3. The Administrative Heads of Units are further advised that the above decision may be informed in detail as per the draft enclosed (Annex-1) to the Pensioners who are affected/Employees retiring every month through a separate letter or in the endorsement of sanction issued to them.

4. This issues with the approval of Competent Authority in the Department.

Encl: (1 page)

Venkatesan
20.12.2017
(G. Venkatesan)
Under Secretary (SCS)

All Administrative Heads of Units

Copy for information to: All Officers and Sections in DAE

DRAFT LETTER TO BE SENT TO THE PENSIONERS WHO ARE AFFECTED/EMPLOYEES
RETIRING EVERY MONTH BY THE ADMINISTRATIVE HEAD:

It has been decided by the Department vide O M No. 4/4/2011-SCS/Vol.III/7809 dated 13/06/2017 to treat two additional increments granted to Scientists/Engineers in the grade of 'D', 'E', 'F' and 'G' as pay for the purpose of Dearness Allowance, House Rent Allowance and Pension and Pensionary benefits w.e.f 01/01/1996. Accordingly, the benefit has been extended to all the concerned irrespective of the fact whether or not they sought legal remedy. However, while reckoning these two additional increments for the purpose of pension in respect of those who retired/retiring after 01/01/2016, an anomalous situation is taking place thereby post 2016 pensioners are drawing less pension as compared to pre-2016 pensioners. Also CPAO, New Delhi has returned many PPOs without authorisation as pension fixed do not fall within the prescribed concordance table. In order to come out of the anomalous situation as well as difficulty in granting pension, the Department has taken up the matter with DP&PW for a clarification. Till such time an advice is received from DP&PW, it has been decided not to reckon these two additional increments for the purpose of pension as a temporary measure so that the situation of CPAO not authorising PPOs do not arise. The moment clarification is received, these two additional increments will be considered for pension with a retrospective effect in respect of all such pensioners.

Government of India
Department of Atomic Energy
Secretariat Coordination Section

Anushakti Bhavan,
C.S.M. Marg,
Mumbai – 400 001

**Subject: Two additional increments granted to Scientists/
Engineers in the grade of 'D', 'E', 'F' and 'G' –
Regulation of pensionary benefits
retrospectively from 01.01.1996 – Regarding**

In compliance with the Judgement dated 22.04.2016 passed by the Hon'ble High Court of Hyderabad in WP No.13611/2016 (one of the writs) and also with the approval of Member for Finance, Atomic Energy Commission (AEC), this Department vide OM No.4/4/2011-SCS/7809 dated 13.06.2017(Annex-1), conveyed the approval that the two additional increments granted to scientists / engineers in the grade of 'D', 'E', 'F' and 'G' of Department of Atomic Energy shall be treated as 'Pay' for the purpose of Dearness Allowance, House Rent Allowance and Pension & Pensionary benefits w.e.f. 01.01.1996. The background of the introduction of the two additional increments in the Department and the present status of the same is enclosed as Annex-2. The aforesaid decision dated 13.06.2017 of this Department resulted in re-working the pension / family pension of all eligible Scientists retrospectively from 01.01.1996 onwards. The pension papers thus processed i.e. by taking into account the two additional increments; are being returned by CPAO without processing, in the post 7th CPC scenario, as the pension fixed do not fall within the prescribed concordance table.

2. The pension papers in respect of those who are retired prior to 01.01.2016 (which is not fixed with any concordance table) is being regulated by CPAO in normal course though the two additional increments component had been included in their pay. However, for post 2016 retirees wherever the two additional increments have been included, in compliance with the Hon'ble court order, the same is not being taken into account by CPAO as it does not fit into the concordance table. This results in non compliance of the Hon'ble

court order and also the post 2016 retirees are getting lesser pension vis a vis pre – 2016 retiree. In this regard, a copy of Noting dated 06.12.2017 of Joint Controller (F&A), DAE is also enclosed (Annex-3) for reference. Further, as a way out, the increment component for the post 2016 retirees based on 7th CPC needs to be considered and the quantum of one increment for each post as worked out is enclosed as Annex-4.

3. Since the entire pension papers are being returned without processing and in order to avoid any hardship to the pensioners, pending the aforesaid clarification being sought from DPPW, this Department vide OM No.4/4/2011-SCS/Vol.IV /16396 dated 20.12.2017 (Annex-5) has advised the constituent Units of this Department to process such pension cases without taking into account the two additional increments as a temporary measure.
4. DP & PW are requested to clarify the procedure to be adopted in counting the two additional increments granted to scientists / engineers as 'Pay' for Pension calculations, since the inclusion is in compliance with the court order and with the approval of Member for Finance, AEC.
5. If desired, the officials of the Department may like to have a meeting with DP&PW officials at a mutually convenient date.
6. This issues with the approval of Secretary, DAE.

Encl: 16 pages

venkatesan
05/01/18
(G. Venkatesan) 18
Under Secretary (SCS)
Tel: 022 – 22026861
Email: usvig@dae.gov.in

DPPW [Shri S.K. Makkar, US (A)], Lok Nayak Bhawan, Khan Market, New Delhi
110003

DAE ID No.4/4/2011-SCS/Vol-IV / 317.

January 5, 2018



भारत सरकार/Government of India
परमाणु ऊर्जा विभाग/Department of Atomic Energy
सचियालय समन्वय अनुभाग/Secretariat Coordination Section

अनुशक्ति भवन/Anushakti Bhavan,
छत्रपति शिवाजी महाराज मार्ग/C.S.M Marg.
मुंबई/Mumbai - 400 001.
(०२२- 22862661)
e-mail: sectcord@dae.gov.in

No. 4/4/2011-SCS/Vol.III/7809

June 13, 2017

OFFICE MEMORANDUM

Subject: Counting of two additional increments as pay for the purposes like DA, HRA and Pension & Pensionary benefits – Regarding.

The Cabinet in its meeting held on 26.10.1998, approved grant of two additional increments for Scientists / Engineers (recruits / promotees) in the pre-revised scales of 10000-15200, Rs.12000-16500, Rs.14300-18300 and Rs.16400-20000 in the Department of Atomic Energy (DAE) w.e.f 01.01.1996 after their normal fixation along with other incentives. Accordingly, the Department issued an OM No. 1/2/99-SCS/113 dated 03.02.1999 (**Annex-1**).

2. As these two additional increments were not intended to be part of pay and were not treated as pay for the purpose of DA, HRA, pension and pensionary benefits, the Department of Atomic Energy issued clarifications vide OM No. 1/2/99-SCS/436 dated 04.06.1999 (**Annex-2**) and OM No. 1/2/99-SCS/903 dated 29.10.2001 (**Annex-3**).

3. In modification of para (ii) of the Department's OM No.1/2/99-SCS/113 dated 03.02.1999, para 2.1 and 2.4 of OM No.1/2/99-SCS/436 dated 04.06.1999 and para 2 of OM No.1/2/99-SCS/90 dated 29.10.2001, it has been decided in the Department that the two additional increments granted to scientists / engineers in the grade of "D", "E", "F" and "G" of Department of Atomic Energy shall be treated as "Pay" for the purpose of Dearness Allowance, House Rent Allowance and Pension & Pensionary benefits w.e.f. 01.01.1996 not only for petitioners, but also for all similarly placed Scientists / Engineers. However, the two additional increments shall not be merged with pay and the same may be kept separately. This has the concurrence of Member for Finance, AEC.

4. The benefit of two additional increments for the promotion from SO/C to SO/D after the date of issue of this OM will not be allowed as the scheme is discontinued with immediate effect.

5. Two additional increments already granted for the grades SO/D, SO/E, SO/F & SO/G as per OM dated 03.02.1999, 04.06.1999 and 29.10.2001 before the date of this OM shall continue and kept separately and will not be enhanced upon promotion. The same shall not count for pay fixation benefits. Two additional increments granted in the post of SO/G prior to date of this OM shall not be continued on promotion to the Grade of SO/H.

6. Two additional increments so kept separately will be merged with basic pay upon cessation of service for the purpose of calculation of all retirement / pensionary benefits.

7. The expenditure incurred for treating the two additional increments granted to Scientists / Engineers in the grade of 'D', 'E', 'F' and 'G' as Pay for DA, HRA, Pension and pensionary benefits w.e.f. 01.01.1996 shall be met from the budget of the Department as voted expenditure and debitable to the respective salary heads / pension budget head. Further, it may be noted that before making the payment, the Units shall invariably ensure that the budget provision exists in the respective salary heads / pension budget head.

8. This issues with the approval of the Secretary, DAE.

*Received
13/6/13*
(S.S. Prasad Rao)
Under Secretary (SCS)
Tel. No. 022-22026861
Email: usvig@dae.gov.in

All Heads of Constituent Units

Copy to:

- 1. CMD, NPCIL, Mumbai
- 2. Director, Administration, DAE
- 3. Dy. Secretary (I&M), DAE
- 4. Dy. Secretary (R&D), DAE
- 5. Under Secretary (Power), DAE

Copy also to: All Officers and Sections in DAE Secretariat and Branch Secretariat

Background NoteCounting of two additional increments granted to SO/D to SO/G as pay towards payment of DA, HRA, Pension and Pensionary benefits w.e.f. 01.01.1996.BACKGROUND:

- 1) The Cabinet in its meeting held on 26.10.1998, approved grant of two additional increments for Scientists / Engineers (recruitees / promotees) in the pre-revised scales of 10000-15200, Rs.12000-16500, Rs.14300-18300 and Rs.16400-20000 in the Department of Atomic Energy (DAE), Department of Space (DOS) and Defence Research Development Organization (DRDO) w.e.f 01.01.1996 after their normal fixation, along with other incentives.
- 2) As per the approval of the Cabinet, the Department vide OM dated 03.02.1999 issued sanction for grant of two additional increments for Scientists / Engineers in the grade of SO/D to SO/G w.e.f. 01.01.1996.
- 3) Initially, two additional increments were not intended to be part of pay and not treated as pay for the purpose of DA, HRA, Pension & Pensionary benefits. In response to certain doubts raised, the Department issued clarification vide OM dated 04.06.1999 and subsequent OM dated 29.10.2001 in consonance with the order issued by Department of Space (DOS) & DRDO as the two additional increments would not be treated as pay.
- 4) Aggrieved with the above clarification from DOS, some of the retired Scientists/ Engineers of DOS filed O.As. before the CAT, Ernakulam Bench questioning the authority/power of the DOS in issuing the above mentioned clarification on presidential sanctions. Hon'ble Tribunal dismissed the respective OAs and held that DOS was competent to issue such clarifications and regulate such monetary incentives.
- 5) Hence, the applicants in the respective OAs filed W.Ps before Hon'ble High Court of Kerala at Ernakulam and prayed for counting the additional increments as pay for the purpose of DA, HRA and Pension & pensionary benefits. Hon'ble High Court of Kerala quashed the orders of the Hon'ble Tribunal by a common order dated 18.01.2007.
- 6) Since the order passed by Hon'ble High Court of Kerala was against the statutory provisions of FR and CCS (Pension) Rules, 1972, the DOS in

consultation with M/o Law & Justice, D/o Legal Affairs, New Delhi and DP&PW, challenged the order dated 18.01.2007 of Hon'ble High Court of Kerala and the order dated 03.08.2012 of Hon'ble High Court of Uttarakhand through SLP No. 555-560/2008 and 18942/2013 respectively before Hon'ble Supreme Court of India.

- 7) Hon'ble Supreme Court of India vide its order dated 04.04.2011, dismissed the SLP No. 555-560/2008 and upheld the order of Hon'ble High Court of Kerala order dated 18.01.2007. Another SLP No. 18942/2013 was also dismissed by Hon'ble Supreme Court of India and it upheld the order of Hon'ble High Court of Uttarakhand.
- 8) Hence, DOS filed review petition (C) No(s) 1348-1843 of 2011 in SLP No. 555-560/2008 before the Hon'ble Supreme Court of India. This was also dismissed by Hon'ble Supreme Court of India.
- 9) Since there was finality on this issue and in view of the contempt petition filed by the Applicants, the DOS implemented orders of Hon'ble High Court of Kerala and Hon'ble High Court of Uttarakhand in respect of petitioners only.
- 10) Further, the DOS had sought approval of M/o Finance for extending benefits of the orders of the Hon'ble High Court of Kerala and Hon'ble High Court of Uttarakhand to all similarly placed Scientists of DOS.
- 11) With the approval of M/o Finance, DOS vide OM dated 20.01.2014 had conveyed that the two additional increments sanctioned as a part of incentive to Scientists/Engineers 'SD', 'SE', 'SF' and 'SG' w.e.f. 01.01.1996 shall be treated as pay for payment of DA, HRA and Pension & Pensionary benefits.
- 12) During the course, following two OAs in respect of constituent Units of the Department of Atomic Energy on the same issue were filed by some of the scientists
 - (a) OA No.288/2013 filed by NFC (A constituent unit of the Department) Scientists before Hon'ble CAT, Hyderabad Bench.
 - (b) OA No.915/2013 filed by retired Scientists of BARC before Hon'ble CAT, Ernakulam Bench.
- 13) As the DOS had already implemented the orders of Hon'ble Supreme Court the Department has also proposed to implement the Hon'ble Supreme Court

orders to all similarly placed Scientists in the Department without waiting for the outcome of the aforesaid two OAs.

- 14) Accordingly, the Department obtained information on financial implications involved for treating two additional increments as pay for DA, HRA, Pension & Pensionary benefits and also sought the advice of Legal Adviser, DAE.
- 15) The financial implications for treating the two additional increments as pay for DA, HRA, Pension & Pensionary benefits worked out to be Rs.140 crore and the net financial implication would be less than Rs.110 crore approximately (after deduction of income tax) up to the period 31.12.2014. This was mentioned at para 6 of the note dated 05.02.2015 submitted to Member for Finance, AEC.
- 16) In this connection, when the advice of Dy. Legal Adviser was sought, he opined that defending the above OAs would be infructuous and he further advised that the Department may decide the matter administratively, taking into account the futility of defending the cases in the Hon'ble CAT.
- 17) In the meantime, the OA No.288 on the subject was allowed by the Hon'ble CAT Hyderabad Bench. The Department in consultation with CCA submitted the file to Secretary, DAE for implementation of Hon'ble CAT judgement passed in OA 288 to the Applicants. Also, four more identical OAs were allowed by the Hon'ble Tribunal of Hyderabad and the Department vide note dated 03.02.2015 informed I&M Section to instruct NFC to take further necessary action for approving payment to the applicants.
- 18) The Department submitted a proposal vide note dated 05.02.2015 to Member for Finance, AEC to accord concurrence to count the two additional increments sanctioned as a part of incentive to Scientists / Engineers w.e.f. 01.01.1996 as pay for payment of DA, HRA and Pension & Pensionary benefits on par with DOS.
- 19) Member for Finance, AEC vide Note dated 27.03.2015 directed the Department to obtain advise of M/o Law & Justice in the matter in the first place and then to refer the proposal to M/o Finance. The Department vide Note dated 28.04.2015 sought advice of D/o Legal Affairs, Branch Secretariat, Mumbai.
- 20) In the meantime, Hon'ble CAT Ernakulam Bench allowed the OA No.915 of 2013 vide judgement dated 31.07.2015 filed by retired scientists of BARC and

ordered to count additional increments granted to all scientific officers in the grade of SO/D to G for all purposes to the Applicants and all Scientists / Engineers similarly situated.

- 21) Since the Department has already implemented the Judgement dated 20.11.2014 passed by Hon'ble CAT, Hyderabad Bench, it was felt appropriate to implement the judgement dated 31.07.2015 by Hon'ble CAT, Ernakulam Bench also. Accordingly, DAE informed vide note dated 28.09.2015 BARC for implementation of the Hon'ble CAT, Ernakulam Bench order.
- 22) M/o. Law vide UO No.311-B/Adv(MUM)/2014 dated 14.09.2015 informed that:
Quote
"If financial burden of two increments are treated as pay for DA/HRA/Pension & Pensionary benefits, is important aspect to be looked into but, whether this will get priority over other issues will have to be looked into by the department. As far as legal issue is concerned, judgment of the Kerala High Court or Uttarakhand High Court has not merged in the order of the Supreme Court in SLP, hence it is binding only in the States of Kerala and Uttarakhand only".
Unquote
- 23) On receipt of Ministry of Law & Justice advice, the Department vide note dated 26.11.2015 submitted a revised proposal to Member for Finance, AEC to accord concurrence to the two additional increments sanctioned as part of incentive to all similarly placed Scientists / Engineers w.e.f. 01.01.1996 as pay for payment of DA, HRA and Pension & Pensionary benefits.
- 24) Member (Finance) vide note dated 25.01.2016 advised that DAE must exhaust all the legal remedies and thereafter refer the matter to D/o Expenditure for taking any decision in the matter, including the decision to implement CAT order, which needs to be challenged in the higher court of law.
- 25) Accordingly, the Department vide OM dated 25.02.2016, informed all the constituent units and NPCIL to take urgent action in this regard to contest the judgements delivered by various Hon'ble Tribunals before the respective High Courts by filing WPs and to file MAs before the Hon'ble CATs to keep the issue in abeyance till the disposal of WPs pending before the Hon'ble High Courts.

- 26) In response, the concerned units have taken action accordingly in consultation and with the approval of the nodal sections in DAE.
- 27) NFC, Hyderabad one of the constituent units had filed 28 WPs before the Hon'ble High Court of Telangana and Andhra Pradesh challenging the orders of Hon'ble CAT, Hyderabad Bench.
- 28) Hon'ble High Court of Hyderabad vide its order dated 22.04.2016 dismissed all the WPs taking into account the order of Hon'ble Supreme Court in the SLP No.555-560/2008 filed by DOS.
- 29) NFC vide D.O. letter dated 04.05.2016 sought Department's decision in the matter for filing SLP before the Hon'ble Supreme Court.
- 30) In response, DAE vide ID Note dated 06.06.2016 informed NFC to take further necessary action for challenging the order of the Hon'ble High Court of Hyderabad before the Hon'ble Supreme Court of India as advised by Member for Finance, AEC to exhaust all legal remedies.
- 31) As informed by DAE, NFC was in the process of filing SLP before the Hon'ble Supreme Court and sought approval of the Department for filing SLP. After examining the proposal of NFC, the Department had sought the advice of M/o Law & Justice, New Delhi and DoPT for the feasibility of filing SLP before the Hon'ble Supreme Court.
- 32) In the meantime, few more retired and serving scientific officers approached the Hon'ble CAT, Hyderabad bench to treat the two additional increments as pay for DA, HRA, Pension & Pensionary benefits vide OA No.956, 957, 1134, 1090 and 1304 of 2015 and the Hon'ble CAT, Hyderabad bench passed the orders on various dates in favour of the applicants. Since the Department has not implemented the above orders of the Hon'ble CAT, Hyderabad bench, the aggrieved applicants filed contempt petitions in the Hon'ble CAT, Hyderabad bench against the Department. The Hon'ble CAT, Hyderabad have taken serious note of the inaction of the Department and issued directions that if the orders are not implemented in two weeks, they would proceed with contempt action.

- 33) There were nearly 50 OAs filed by retired and serving scientific officers of DAE in various Hon'ble Tribunals.
- 34) The Department had sought advice of DoPT and in turn DoPT vide its OM dated 11.08.2016 advised the Department to take a view, taking into account the decision taken by the Cabinet, in consultation with the D/o Legal Affairs.
- 35) M/o Law & Justice has been consulted in the matter before filing SLP in the Hon'ble Supreme Court. To this, M/o Law and Justice, New Delhi, vide note No.21733/2016/Advice-A dated 11.08.2016 opined that there was no substantial question of law arises for filing of any SLP in the matter.
- 36) The Department has complied with the advice given by Member for Finance, AEC and issued instructions to its constituent units to take appropriate steps to challenge the respective judgements in the higher courts. However, as per the advice given by DoPT and M/o Law & Justice, there was no substantial question of law arises for filing any SLP in the matter. Therefore, the Department considered it appropriate to honour the opinion of M/o Law & Justice and to comply with the advice of DoPT and also considering the fact that the Hon'ble CAT has given two weeks time (w.e.f.8.8.2016) to take a decision in this regard.
- 37) In view of the advice given by M/o Law & Justice and DoPT as detailed above and that there was no substantial question of law arises for filing of SLP in the matter, it is felt appropriate to honour the advice of M/o Law & Justice as well as DoPT.
- 38) Accordingly, the Department submitted a proposal to Member for Finance, AEC for treating the two additional increments as pay for DA, HRA and Pension & Pensionary benefits to all similarly placed scientists / Engineers 'D', 'E', 'F' and 'G' in the pre revised scales of Rs.10000-15200, Rs.12000-16500, Rs.14300-18300 and Rs.16400-20000 respectively w.e.f. 01.01.1996.
- 39) M/o Finance vide note dated Note No.F.No.JS(F)/ DAE/IV/9/27/17 dated 19.05.2017 has conveyed that the D/o Expenditure agreed to the proposal of

the Department. While conveying the approval, M/o Finance advised the Department to discontinue with immediate effect, the scheme of providing two additional increments in respect of all promotions to take place in future, as already advised by Finance Ministry to D/o Space.

40) Based on the concurrence accorded by M/o Finance, the Department vide OM dated 13.06.2017 has conveyed that it has been decided in the Department that the two additional increments granted to scientists / engineers in the grade of "D", "E", "F" and "G" of Department of Atomic Energy shall be treated as "Pay" for the purpose of Dearness Allowance, House Rent Allowance and Pension & Pensionary benefits w.e.f. 01.01.1996 not only for petitioners, but also for all similarly placed Scientists / Engineers. However, the two additional increments shall not be merged with pay and the same may be kept separately with the following stipulations:

- (i) The benefit of two additional increments for the promotion from SO/C to SO/D after the date of issue of this OM will not be allowed as the scheme is discontinued with immediate effect.
- (ii) Two additional increments already granted for the grades SO/D, SO/E, SO/F & SO/G as per OM dated 03.02.1999, 04.06.1999 and 29.10.2001 before the date of this OM shall continue and kept separately and will not be enhanced upon promotion. The same shall not count for pay fixation benefits. Two additional increments granted in the post of SO/G prior to date of this OM shall not be continued on promotion to the Grade of SO/H.
- (ii) Two additional increments so kept separately will be merged with basic pay upon cessation of service for the purpose of calculation of all retirement / pensionary benefits.

41) Accordingly, constituent units of the Department revised the Pension papers and forwarded to CPAO for further processing.

42) CPAO returned the pension papers without processing stating that the pension fixed do not fall within the prescribed concordance table.

It is observed that units have adopted different methods for revision of pension for implementation of DAE OM dated 13.06.2017. However, only two Units viz. BARC and NFC have sought clarification on the method of revision. The two methods adopted by Units for revision of pension due to two increments are shown below:

Date of Retirement : 31.12.2015, Grade SO/F

Pay as per 6 CPC-Pay in PB3-37400 + GP 8700=46100

Last pay-46100 + Two Increments Rs.2770

Pay + Increment (46100+2770) = 48870

	<u>Method – 1</u>	<u>Method – 2</u>
Pay fixation as per 7 th CPC	48870x2.57	46100x2.57
Notional pay as per 7 th CPC	= 125595.9	= 118477
Notional Pay	126830	123100+2770(AI) = 125870
Pension as on 1.1.2016 (50% of pay)	= Rs.63400	= Rs.62935

As per DAE OM dated 13.06.2017, the 2 additional increments shall not be merged with pay and the same may be kept separately. Whereas on cessation of service, the increment will be merged with pay for calculation of pensionary benefits. Further, the additional increment shall also not count for pay fixation benefit. Therefore, in respect of serving employees, the 2 increment is not taken for pay fixation as per 7 CPC.

In method-1 the 2 additional increments is merged with pay and the merged pay is taken for fixation of notional pay as per 7th CPC giving pay fixation benefits. This results in different treatment of 2 increments for serving and retired employees. Retired employees are given 7th CPC pay fixation benefits and no such fixation benefits are given to serving employees leading to anomaly between pre-post 2016 retirees. In view of the above method – 1, results in anomaly between pre-2016 and post 2016 retirees pension as shown below:

	<u>Pre-2016 Retiree</u> Calculation as per Method-1	<u>Post 2016 Retiree</u>
Date of retirement	31.12.2015	31.01.2016
Pay as per 6 th CPC	$37400+8700(\text{GP})$ = 46100	$37400+8700(\text{GP})$ = 46100
Additional increments	2770	2770
Notional Pay/Pay	126800	$1,23,100+2770(\text{AI})$ = 125870
Pension 50% of pay	63400	62935

Due to non-revision of increment rate Method -2 result in drop in pension, when pre and post 2016 pension component of 2 increment is compared, as shown below:

	<u>As on</u> <u>31.12.2015</u> (VI CPC)	<u>As on</u> <u>31.01.2016</u> (VII CPC)
Value of two increments	2770	2770
Pension component of increment 50%	1385	1385
Rate of D.R.	119%	Nil
Amount of D.R.	1648	--
Total pension	3033	1385

The amount drawn by a serving employees on account of two increment also drops on switch over to 7th CPC as shown below:

	<u>As on</u> <u>31.12.2015</u> (VI CPC)	<u>As on</u> <u>31.01.2016</u> (VII CPC)
Value of two increments	2770	2770
Rate of DA	119%	Nil
Amount of DA	3296	--
Total amount	6066	2770

The above anomalous situation arises due to non-revision of the increment rate as per 7th CPC.

CPAO is not accepting the cases revised as per Method-2 as the notional pay and the pension fixed is not fitting into the concordance table.

When DA is admissible on the 2 additional increments and pay is revised by merging DA, the increment rate also needs to be revised correspondingly to avoid drop in the amount on account of increments. As can be seen from OM dated 09.08.2017, Department of Space has revised the increment rate as per 7th CPC and 50% of the same is taken as revised pension as on 1.1.2016

It is also necessary that all DAE Units follow uniform and correct procedure in the matter of revision of pension due to two increments. At the same time the anomalous situation arising out of implementation of DAE OM dated 13.6.2017 also needs to be addressed. In order to avoid anomalies and parity with DoS, it is proposed that we may also, if approved, revise the quantum of two increments, with the approval of Competent Authority and follow the method adopted by DoS for revision of pension.

The e-revision utility has only the facility for revision of pension as per 7th CPC, whereas the pension on account of 2 increment needs to be fixed/revised in 5th CPC, 6th CPC and 7th CPC. This revision therefore may have to be done manually in consultation with DP&PW/CPAO. As the decisions on revision of increments rates as per 7th CPC and finalisation of procedures for revision by CPAO/DP&PW takes time, it is suggested that the normal 7th CPC revision need not be kept pending till then.

To sum up the following is proposed for consideration:

1. Pending decision on revision of increment rates and clarifications on the manner of revision due to 2 increments, it is proposed that 7th CPC revisions could be carried out without taking into account the 2 increments. In order to avoid delay and hardship to post 2016 retirees, their cases also could be finalised without taking into account the two increments as a temporary measure till a decision is taken.
2. Consider revision of increment rates as per 7th CPC with the approval of Competent Authority.
3. To take up the matter with the Department of Pension / CPAO to finalise the modalities and procedure for revision of pension due to two increments.

4. On settlement of the above, issue necessary clarifications
with illustrations.

Submitted please.

J. C. (F&A)
JC (F&A)

Annexure 4

Revised value of one increment based on 7TH CPC Pay Matrix

Sr. No.	Level in the Pay Matrix	Revised Value of one increment	Earlier Increment Value
1.	Level – 16	6200	2270
2.	Level – 15	5500	1920
3.	Level – 14	4300	1650
4.	Level – 13A	3900	1460
5.	Level – 13	3600	1390
6.	Level – 12	2400	900
7.	Level – 11	2000	760
8.	Level – 10	1700	630
9.	Level – 9	1600	630
10.	Level – 8	1400	570
11.	Level – 7	1300	560
12.	Level – 6	1100	490
13.	Level – 5	900	340
14.	Level – 4	800	300
15.	Level – 3	700	250
16.	Level – 2	600	240

Government of India
Department of Atomic Energy
Secretariat Coordination Section

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Ref No.4/4/2011-SCS/Vol.IV/ 16316

December 24 2017

OFFICE MEMORANDUM

Subject: Two additional increments granted to Scientists / Engineers in the grade of 'D', 'E', 'F' and 'G' for the purpose of pensionary benefits – Regarding

Reference: DAE OM No.4/4/2011-SCS/Vol.III/7809 dated 13.06.2017

References are being received in the Department informing that Central Pension Accounting Office, New Delhi is returning Pension Payment Orders (PPO) issued by the constituent units of the Department without authorizing pension in respect of Scientists / Engineers retired from the grade of 'D', 'E', 'F', & 'G' on plea that the two additional increments granted to them do not match with the pay scales in the Level Pay + index as per the extant rules.

2. The matter is being taken up with Department of Pension and Pensioners' Welfare who are the nodal department for all matters pertaining to pension to Central Government employees. In the meantime, in order to avoid any hardship to the pensioners due to non – receipt of pension, it has been decided in the Department that such pension cases may be processed for payment of provisional pension without taking into account the two additional increments as a temporary measure until the matter is resolved. All units of DAE may take further action accordingly.

3. The Administrative Heads of Units are further advised that the above decision may be informed in detail as per the draft enclosed (Annex-1) to the Pensioners who are affected/Employees retiring every month through a separate letter or in the endorsement of sanction issued to them.

4. This issues with the approval of Competent Authority in the Department.

Encl: (1 page)

Venkatesan
20.12.2017
(G. Venkatesan)
Under Secretary (SCS)

All Administrative Heads of Units

Copy for information to: All Officers and Sections in DAE

DFA

DRAFT LETTER TO BE SENT TO THE PENSIONERS WHO ARE AFFECTED/EMPLOYEES RETIRING EVERY MONTH BY THE ADMINISTRATIVE HEAD

It has been decided by the Department vide O.M No. 4/4/2011-SCS/Vol.III/7809 dated 13/06/2017 to treat two additional increments granted to Scientists/Engineers in the grade of 'D', 'E', 'F' and 'G' as pay for the purpose of Dearness Allowance, House Rent Allowance and Pension and Pensionary benefits w.e.f 01/01/1996. Accordingly, the benefit has been extended to all the concerned irrespective of the fact whether or not they sought legal remedy. However, while reckoning these two additional increments for the purpose of pension in respect of those who retired/retiring after 01/01/2016, an anomalous situation is taking place thereby post 2016 pensioners are drawing less pension as compared to pre-2016 pensioners. Also CPAO, New Delhi has returned many PPOs without authorisation as pension fixed do not fall within the prescribed concordance table. In order to come out of the anomalous situation as well as difficulty in granting pension, the Department has taken up the matter with DP&PW for a clarification. Till such time an advice is received from DP&PW, it has been decided not to reckon these two additional increments for the purpose of pension as a temporary measure so that the situation of CPAO not authorising PPOs do not arise. The moment clarification is received, these two additional increments will be considered for pension with a retrospective effect in respect of all such pensioners.