

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH NEW DELHI

C.P. No. 386/19

IN

O.A. NO. 2045/2016

IN THE MATTER OF:

Atomic Energy Pensioners, Welfare
Forum through its General Secretary ...Petitioners

Versus

1. Shri K.N. Vyas,
Secretary to the Government of India,
Department of Atomic Energy
2. Dr. T.V. Somanathan,
Secretary to the Government of India,
Department of Expenditure,
Ministry of Finance ...Respondents

REPLY TO THE CONTEMPT PETITION ON BEHALF OF THE
RESPONDENTS

MOST RESPECTFULLY SHOWETH:

Affidavit of Shri Bipin Kurup S/o Sh. Bhargavan Kurup, aged about 46 years, at present working as Under Secretary, Department of Atomic Energy do hereby solemnly affirm and declare as under:



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1. That I have gone through the contents of the contempt petition as filed by the petitioner Association against the deponent/Department and I deny the contents of the petition and only admit to the extent the submissions made herein after, the submissions made in the reply are true and correct to my knowledge and are based on the official record as maintained in the department.
2. The deponent states that upon the OA as filed by the petitioner Association, whereby they claimed the relief of treating the two additional increments granted to them as pay for all purposes and for granting the benefits thereof on promotion and then after fixation of pay grant the two additional increments in the scale in which the applicants were promoted. That before the counter reply in the OA could be filed, the department issued the OM dated 13.06.17 and thus, the counsel for the applicants, stated before this Hon'ble' Court on 10.07.17 that in view of the said OM dated 13.06.17 a substantial part of the relief as sought for has been granted to them and thus it was submitted that the arrears in terms of Para 3 of the OM may be directed to be released within a reasonable time and accordingly the Tribunal directed to do so within a period of three months.
3. That before adverting to the facts of the case, it is submitted that the said contempt petition is not maintainable as it has been filed beyond the period of



limitation. The order of which the contempt has been filed was passed on 10.07.17 and the present contempt petition has been filed on 30.07.19 and thus, the same is time barred and no cognizance of the same can be taken by this Hon'ble Court.

4. That the contempt petition as filed is further liable to be dismissed as the Petitioner Welfare Association cannot maintain the same. In service jurisprudence, every employee has his own individual rights and the same cannot be espoused through a Welfare Association. This is not a PIL.

5. That on the merits of the matter it is stated that the department vide Note dated 18.08.2016 (Annexure-I) sought concurrence of Member for Finance, AEC for treating the two additional increments as pay for the purposes of DA, HRA, Pension and pensionary benefits to all similarly placed Scientists/Engineers 'D', 'E', 'F' and 'G' in the pre-revises scales w.e.f. 01.01.1996. The above proposal was submitted to Member for Finance, AEC after due consultation with Ministry of Law & Justice, since there were court cases filed by the applicants and various Hon'ble' Tribunal / High Courts have passed the orders in favour of applicants and that the M/o, Law & Justice opined that there was no substantial question of law arises for filing of any SLP in the manner.

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6. In response to the Department's proposal, the DS (Finance), DAE vide Note dated 19.05.2017 (Annexure-II), conveyed that the Ministry of Finance agrees to the Department's proposal and further advised to discontinue the scheme with immediate effect in respect of all promotions to take place in future. Finance has also advised to seek approval of the Cabinet for the purpose. Based on the decision of M/o. Finance, the Department issued OM dated 13.06.2017 (Annexure-III) and conveyed the decision for treating two additional increments as "pay" for the purpose of DA, HRA, Pension and pensionary benefits and discontinued the scheme with immediate effect in respect of all promotions to take place in future.

7. Accordingly, Constituent Units of the Department revised the pension papers and forwarded to CPAO for further processing. However, while reckoning the two additional increments for the purpose of pension in respect of those who retired/retiring after 01.01.2016, an anomalous situation took place whereby post 2016 pensioners are drawing less pension as compared to pre-2016 pensions. Moreover, CPAO, New Delhi returned the pension papers stating that the pension fixed do not fall within the prescribed concordance table.

8. That in order to come out of the anomalous situation as well as difficulty in granting pension, the Department

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vide ID Note dated 05.01.2018 (Annexure-IV) had taken up the matter with DP&PW for clarification. Till such time an advice or clarification is received from DP&PW, the Department vide OM dated 20.12.2017 (Annexure-V) advised the Constituent Units to process such pension cases without taking into account the two additional increments as a temporary measure.

9. That in this regard, a meeting to resolve the issue was held in DP&PW on 16.03.2018 which was attended by the representatives of Dept. of Space, DRDO and DAE. DP&PW vide OM dated 28.05.2018 and 18.06.2018 (Annexure-VI) stated that based on the discussions in the aforesaid meeting, the matter has been referred to Department of Expenditure and requested the Department to indicate the financial implications by merging two additional increments with the basic pay drawn at the time of retirement and thereafter by fixing the pay w.e.f. 01.01.2016 at the appropriate stage/level in the 7th CPC matrix in respect of pre-2016 Scientists / Engineers pensioners. As regards, Post-2016 Engineers/Scientists pensioners, DP&PW have stated that their pension would be fixed based on their emoluments at the time of retirement. In case, additional increments are allowed to them in pay after 01.01.2016, the same will also be taken into account for pension in the usual manner. Subsequently, the Department vide ID Note dated 03.08.2018 (Annex-VII) furnished the financial



implications to DP&PW in respect of pre-2016 retirees and requested DP&PW to issues separate guidelines in case of post-2016 retirees.

10. That DP&PW vide OM dated 30.12.2018 (Annexure-VIII) have informed that the Dept. of Expenditure vide ID Note date 11.11.2013 and 12.08.2018 advised Department of Space and DRDO respectively to consider withdrawing the two additional increments immediately in view of the fact that the Performance Related Incentive Scheme (PRIS) had since been implemented in the light of the recommendations of the 6th CPC. DP&PW further informed that Dept. of Expenditure have sought to know whether Dept. of Space, DRDO and DAE have withdrawn the benefit of two additional increments and, if so, from which date. In this connection, the Department vide ID Note dated 19.12.2018 (Annex-IX) informed the DP&PW that the Department has withdrawn the benefit of two additional increments w.e.f. 13.06.2017 vide OM dated 13.06.2017.

11. DP&PW vide D.O. No. 38/01/18-P&PW(A) dated 29.03.2019 (Annex-X) informed that the matter regarding counting of two additional increments for the purpose of revision of pension w.e.f. 01.01.2016 is awaiting approval/decision of the Department of Expenditure and requested the Department to pursue the matter with Department of Expenditure for an early resolution of the

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matter. Hence, the Department vide D.O. No. 4/4/2011-SCS/Vol.IV/7242 dated 05.06.2019 (Annex-XI) requested Department of Expenditure to expedite the decision.

12. DP&PW vide OM dated 31.07.2019 (Annex-XII) informed the decision of the Department of Expenditure that the proposal to merge two increments with basic pay for the purpose of revision of pension from 01.01.2016 in case of those who retired before 01.01.2016 is not agreed to as instruction issued to withdraw the increment were not adhered to w.e.f. 01.01.2016 and those Department who have not implemented the advise should be responsible for such non-implementation of advice/order.

13. On consulting the Department of Space (DoS) for furnishing a homogenous reply to DP&PW in the matter, the DoS have forwarded a copy of their OM dated 05.10.2019 wherein they have taken a decision to withdraw the said Scheme in its entirety w.e.f. 01.07.2019. However, the DAE discontinued the scheme w.e.f. 13.06.2017 in respect of all promotions to take place in future and continued the same to those who were already in receipt of the aforesaid increments and the rate of increments shall remain static even after their future promotions.

14. That on receipt of copy of DOS OM dated 05.10.2019, it was noticed that there is an anomaly in implementation of the advice of Dept. of Expenditure to discontinue the

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scheme in both the Departments. It may be stated here that the scheme of grant of two additional increments has been implemented in both DAE and DoS in a uniformed manner w.e.f. 01.01.1996 and the Department felt appropriate that the scheme has to be discontinued with effect from the date which is uniform in both the Departments. Therefore, it was felt appropriate to bring the above facts to the notice of Finance, DAE for seeking advice in the matter so as to avoid any legal issues in future.

15. In view of the facts mentioned herein above, the Department vide Note dated 18.03.2020 (Annex-XIII) sought clarification from JS (Finance), DAE regarding: (a) Review of implementation of discontinuation of the Scheme of the two additional increments in its entirety w.e.f. 13.06.2017 (i.e. from the date of issue of DAE OM dated 13.06.2017); (b) Uniformity in discontinuation of two additional increments in DAE & DoS; and (c) Payment w.e.f. 13.06.2017 onwards to till date to the working as well as retired Scientific personnel.

16. That in response, Finance vide Note dated 22.05.2020 (Annex-XIV) advised that the decision conveyed vide their Note No. JS(F)/DAE/IV/9/27/17 dated 19.05.2017 may be followed. On seeking comments/views of Chief Controller of Accounts, DAE, he also advised (Annex-XV) that the advice given by Finance vide Note dated 22.05.2020 may be allowed.

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17. Hence, the Department with the approval of Secretary, DAE, reviewed the Scheme and issued the following instructions to its Constituent Units vide OM No. 4/4/2011-SCS/Vol. VI dated 03.08.2020 (Annex-XVI):-

- (i) To withdraw the scheme of two additional increments granted to Scientists / Engineers in the grade of 'D', 'E', 'F', and 'G' in its entirety with effect from the date of issued of DAE OM No. 4/4/2011-SCS/Vol.III/7809 dated 13.06.2017.
- (ii) To recover the payment made to all eligible Officers viz. Scientist/Engineers in the grade of 'D', 'E', 'F', and 'G' from 13.06.2017 onwards till date of issue of the OM dated 13.08.2020 in convenient installments.

18. It is to state that the Department vide ID Note dated 08.06.2021 (Annex-XVII) requested Dept. of Expenditure, Ministry of Finance to review their decision as conveyed vide DP&PW OM dated 31.07.2019 and also to clarify the procedure to be adopted for counting the two additional increments granted to Scientists/Engineers who retired between 01.01.2016 and 12.06.2017.

19. Since the issues regarding Special Pay (in the case of SO/H) and two additional increments (in the case of Scientists/Engineers in the grade of 'D' to 'G') are similar and relate to all the three Depts. i.e. DRDO, DoS and DAE



and in order to take a holistic view, DP&PW vide their OM dated 10.11.2021 sought certain clarification/information in the matter. The Department vide ID Note dated 25.03.2022 (Annex-XVIII) furnished the requisite information to DP&PW. The decision reply of DP&PW in this regard is awaited.

20. Further, in response to this Department's ID Note dated 08.06.2021 (Annex-XVII), the Department of Expenditure, Ministry of Finance vide their ID Note dated 21.02.2022 have stated that in-principle approval was given to Department of Space (DoS) to treat the two additional increments for revision of pension/Family pension and was advised to find out the methodology in consultation with DP&PW. Hence, Department of Expenditure directed this Department to take up the matter with DoS to maintain the uniformity in both the Departments and then approach DP&PW for approval before forwarding the final proposal to them. Accordingly, this Department vide ID Note dated 16.06.2022 (Annex-XIX) requested DoS to furnish the methodology worked out by them for revision of pension in respect of pre-2016 and post-2016 retired Scientists/Engineers in the grade of 'D', 'E', 'F' & 'G' by considering the two additional increments. DoS vide their ID Note dated 08.07.2022 (Annex-XX) furnished the required inputs. Based on the direction given by Department of Expenditure and the inputs received by DoS

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this Department is approaching DP&PW for correctness of the methodologies being followed in the Department and DoS. On clearance from DP&PW, the matter will then be taken up with Department of Expenditure for final approval/implementation.

21. It can be seen from the facts that the Department has taken all actions timely, however, the issues related to revision of pension can only be resolved in consultation with DP&PW/DoE even after issue of latest DAE OM dated 03.08.2020.

22. The Deponents humbly submits that on receipt of the reply from DP&PW and after receiving necessary approval from DoE, order dated 10.07.2017 shall be complied and the compliance report will be submitted before this Hon'ble CAT.

23. I tender my unconditional apology for not complying with the order passed by the Hon'ble Tribunal within the time limit granted to us. I respectfully submit that such non-compliance of the order of this Hon'ble Tribunal is neither intentional nor deliberate attempt on my part. However, I have no intention to justify the delay for non-compliance of order of the Hon'ble Tribunal. The said delay is not an intentional nor the said delay has been caused to show any disrespect or dishonour to this Hon'ble Tribunal.

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I say and submit that I hold this Hon'ble Tribunal in high esteem. I again tender my sincere and unconditional apology for delay caused and the same may be accepted.

24. The deponent states that in view of the factual position submitted above, it is humbly prayed that the Contempt Petition as filed is not maintainable and the deponent has committed no Contempt of this Hon'ble Tribunal and the same is liable to be dismissed.

PRAYER

It is therefore most humbly and respectfully prayed that this Hon'ble Court/Tribunal be pleased enough to reject/dismiss the Contempt Petition as filed by the petitioners in view of the facts and circumstances of the case and in view of the averments and submissions as made above.

In the interest of justice, it is prayed accordingly.



Deponent/Respondent

बिपिन कुरुप/Bipin Kurup

अवर सचिव/Under Secretary

भारत सरकार/Government of India

परमाणु ऊर्जा विभाग/Department of Atomic Energy

अनुशक्ति भवन/Anushakti Bhavan

सी.एस.ए. मार्ग, मुंबई, महाराष्ट्र, मुंबई - 400 001.

Delhi

Dated: 09/08/2022