

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision : February 01, 2023

+ **W.P.(C) 569/2018**
SHAIL ATTREY

..... Petitioner

Through: Mrs. Avnish Ahlawat, Mr. N.K. Singh
and Ms. Aliza Alam, Advocates.

versus

GOVT OF INDIA AND ORS.

..... Respondents

Through: Ms. Pratima N. Lakra, CGSC with
Mr. Chandan Prajapati and Mr.
Apoorv Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ANOOP KUMAR MENDIRATTA, J (ORAL)

1. The challenge in the present writ petition is to an order dated August 03, 2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (in short Tribunal) in O.A. No. 3019/2012 whereby the Tribunal declined to interfere in the Office Order dated April 27, 2012 fixing the pay of the petitioner in DRDO.

2. The facts as enumerated in para 2 & 3 of the impugned order dated August 03, 2016 passed by the Tribunal may be briefly recapitulated.

"2(i) The applicant was a Colonel in the Indian Army. He joined the DRDO in the civilian capacity in the year 2002. While in the Army, the applicant was drawing rank pay of Rs.2000/-. When he was absorbed as Scientist 'E' in DRDO, the respondents did not include rank pay while fixing his pay as Scientist 'E'.

(ii) The applicant approached the Tribunal in O.A. No. 1802/2005 and the Tribunal vide order dated 29.03.2007 directed the respondents to pay to the applicant, from the time he joined DRDO, his full Army pay including basic pay, rank pay, stagnation increments and NPA as he was drawing at the time of joining in DRDO as Scientist 'E'. However, the Tribunal also

directed that interest @ 6% p.a. be paid on the arrears of pay calculated as above.

(iii) The order of the Tribunal was upheld by the Hon'ble High Court in Writ Petition No.7645/2007 vide order dated 11.12.2007 and the SLP filed by the respondents was also dismissed by the Hon'ble Supreme Court on 18.08.2008.

(iv) The respondents have issued office order dated 27.04.2012 (Annexure-A) by which last salary being drawn by the applicant of Rs.25313/- in Army was protected while fixing his pay at Rs.25313/- in the scale of Rs. 14300-400-18300 (scale of Scientist 'E') as follows:

<i>Basic Pay</i>	<i>18300/-</i>
<i>Personal Pay</i>	<i>1950/-</i>
<i>(to be absorbed in future increments)</i>	
<i>NPA @ 25%</i>	<i>5063/-</i>
	<i>-----</i>
<i>TOTAL</i>	<i>25313</i>
	<i>-----</i>

Actually, the applicant joined DRDO on 28.02.2003.

3. The bone of contention between the parties is that the applicant states that the order of the Tribunal in O.A. No. 1802/2005 was that his rank pay should be protected along with basic pay, stagnation increment and NPA. Though his rank pay was Rs.2000/-, the respondents have not shown that in the new pay fixation and instead reduced it to Rs.1950/- and designated as personal pay."

3. It is submitted by the learned counsel for the petitioner that since the respondents did not pay the full dues in terms of order dated March 29, 2007 passed by the Central Administrative Tribunal and upheld by the High Court as well as Hon'ble Supreme Court of India, late Col. D.P. Attrey was constrained to file contempt petition against the respondents vide C.P. No.432/2009. The Tribunal closed the contempt petition vide order dated October 21, 2009 accepting the reply and calculations given by the respondents. Thereafter, an application was preferred before the Tribunal for revival of the contempt petition on discovering the discrepancies in fixation

of pay of late Col. D.P. Attrey. The same was disposed of by the Tribunal vide order dated July 12, 2010 directing the respondents to decide the representation of the applicant dated February 27, 2010 as expeditiously as possible and preferably within a period of six weeks from the date of receipt of certified copy of the order. Since the respondents failed to pass any speaking order and fix the pay giving rank pay/military service pay and consequently re-fixing the pension, O.A No. 2593/2011 was filed before the Tribunal. On production of order dated April 27, 2012 fixing the pay of late Col. D.P. Attrey, the O.A. was disposed of vide order dated May 03, 2012 giving liberty to challenge the order dated April 27, 2012 by filing separate O.A.

4. Accordingly, O.A. No.3019/2012 was preferred by late Col. D.P. Attrey which was turned down by the Tribunal vide impugned order dated August 03, 2016. It may be noticed that due to death of Col. D.P. Attrey, the present writ petition has been preferred by Smt. Shail Attrey w/o late Col. D.P. Attrey, Scientist 'E' aggrieved against the order dated August 03, 2016 passed by the Tribunal.

5. It is contended by the learned counsel for the petitioner that the order dated March 29, 2007 in O.A. No.1802/2005 as upheld by the Division Bench of the High Court in W.P. (C) No.7645/2007 granting full army pay including basic pay, rank pay, stagnation increments and NPA as Col. Attrey was drawing at the time of joining DRDO has not been implemented and the reasoning of the Tribunal vide order dated August 03, 2016 is fallacious.

6. On the other hand, learned counsel for the respondents contends that full military pay including rank pay was protected in respect of late Col. D.P. Attrey who had joined DRDO in civilian capacity as Scientist 'E' as referred

in the short reply filed on behalf of the respondents. It is further pointed out that the maximum basic pay in the scale of Scientist 'E' was granted and in terms of FR 19 it is not permissible to increase the basic pay beyond the maximum pay sanctioned for the post. Further, as the rank pay does not exist in the pay structure of Scientist 'E', the same could not be paid as rank pay and in order to obviate the pecuniary loss to late Col. D.P. Attrey, an amount of Rs.1,950/- was granted as personal pay and the same was paid to him. As such, it is contended that at no point of time, late Col. D.P. Attrey drew less than the salary drawn in the rank of Colonel and did not suffer any pecuniary loss. Further, he also drew two additional increments @ Rs.400/- each applicable for Scientist 'E' and as such his total salary drawn exceeded that in the scale of Colonel in the Army. It is also pointed out that as reflected in the aforesaid reply, on joining DRDO as Scientist 'E', late Col. D.P. Attrey drew perks such as professional allowance applicable only to Scientists and not as Colonel in the Army. The difference in the due drawn shown by the petitioner from February 2005 onwards is stated to have arisen due to wrong assumption of the rules by the petitioner. Further, as per extant guidelines of Government of India vide FR 22 (I) (a) (3) and FR 15 (a), the personal pay has to be absorbed in the future increments and the difference between the due and drawn is only due to the same for which the petitioner is using an incorrect rule position. It is also pointed out that late Col. D.P. Attrey was likely to complete the superannuation age i.e. 56 years in the Army in December, 2003 and willfully and knowingly joined DRDO as Scientist 'E' in civilian capacity in view of enhanced superannuation till the age of 60 years. Thereafter, Col. Attrey was promoted as Scientist 'F' w.e.f. July 01, 2006 and consequently drew all benefits applicable to Scientist 'F'. Thus,

any difference assumed by the petitioner w.e.f. January 01, 2006 is stated to be devoid of merit.

7. We have given considered thought to the contentions raised.

It may be noticed that order dated April 27, 2012 issued by the Defence Institute of Physiology and Allied Sciences reflects that the last drawn salary of Col. D.P. Attrey in Army was as under:-

“Basic Pay	17350/-
Rank Pay	2000/-
02 Stagn. increment (@ 450 each)	900/-
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TOTAL	20250/-
+25% NPA 5063/-	
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GRANT TOTAL	25313/-”
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Further, the pay of Col. D.P. Attrey stood refixed for giving him protection of Army pay of Rs.25,313/- in the pay scale of Rs.14,300-400-18,300/- in the following terms:-

“Basic pay	18300 (w.e.f. 28.02.2003)
Personal pay	1950/-
(to be absorbed in future	
Increments NPA @ 25%)	5063/-
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TOTAL	25313/-
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Also, perusal of letter dated April 30, 2009 forwarded by Ministry of Defence to late Col. D.P. Attrey as relied by him further reflects the details about the pay fixation in Scientist ‘E’ cadre w.e.f. February 28, 2003 in view of the judgment passed in his favour, as under:

“3. The details of pay fixation are given below: -

Initial pay fixation in Sc 'E' Grade

As on 28.02.2003 :

Pay scale Rs. 14300-400-18300

Basic pay Rs.18300/+ PP Rs.1950/-

(+) NPA Rs.5063/- (25%)

Pay after grant of

1st stagnation

increment on 28.02.2005 :

Basic pay Rs. 18700/- PP

Rs.1550/- (+) NPA

Rs.5063/-

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Pay fixed under CCS (RP) Rules

2008 in the grade of Sc "E" w.e.f

01.01.06 :

PB-4 RS.37400-67000+GP

Rs. 8700/- RS.45370/+

GP Rs.8700/- NPA

13518/-

Granted Annual Increment @ 3%

w.e.f. 01.07.06 :

Rs.47000/-+ GP

Rs.8700/- +NPA

Rs. 13925/-

Pay fixed on promotion to Sc 'F'

w.e.f 01.07.06 :

PB-4 Rs. 37400-

67000+GP Rs.8900/-

Rs.48680/+ GP

Rs.8900/-+NPA

Rs.14,395/-

Granted Annual Increment @ 3%

w.e.f 01.07.07 :

Rs.50410/+GP

Rs.8900/- + NPA

Rs. 14828/-

4. You have been paid following arrears of pay fixation.

(a) On fixation of pay in Sc 'E' grade by DFRL:	Rs.90675/-
By DIPAS	Rs.2,42,755/-
NPA arrears	
Feb 04	Rs. 23,875/-
Stagnation increment	
March 09	Rs. 14,592/-

(b) On fixation pay under CCS (RP)

Rule 2008 and on promotion to Rs. 1,94,999/-

The grade of Sc V by DIPAS 40%

Total Rs.5,73,896/-

Thus, on the face of record, the initial pay protection was given to Col. Attrey w.e.f. February 28, 2003 and the rank pay was reflected as personal pay of Rs.1,950/- instead of Rs.2,000/- since the grand total was to be Rs.25,313/- and could not be lower than the total emoluments drawn by Col. Attrey in the Army. Further, the basic pay could not have been increased beyond Rs.18,300/- in accordance with the Fundamental Rule 19 as relied by the respondents. In view of above, the fixation of initial pay w.e.f. February 28, 2003 by the respondents after consideration of relevant Rules appears to be in order and the contention of the petitioner challenging the same is devoid of merits and is dismissed.

However, it may be observed that it was not only at the initial joining that the pay protection was required to be given to ensure that Col. Attrey did not draw pay less than as was drawn by him as a Colonel in the Army but also the benefits extended by way of re-fixation as on February 28, 2003 alongwith rank pay given as personal pay could not have been subsequently

withdrawn on further re-fixation on grant of stagnation increments/annual increments/re-fixation w.e.f. January 01, 2006 or on promotion to Scientist 'F'. The same is apparent in view of the orders passed by the High Court in W.P.(C) No.7645/2007 as upheld by the Hon'ble Supreme Court, wherein it was observed that the pay given to the Respondent over and above that admissible to scientist E shall be treated as personal to him and it would not be treated as a precedent. Further, being an unprecedented case with unusual features, it was to be given unprecedented treatment. In view of above, the benefit of re-fixation as on February 28, 2003 could not have been withdrawn by the respondents by absorbing personal pay in future increments on further re-fixation. As such, the respondents are directed to ensure that re-fixation of pay after February 28, 2003 does not amount to withdrawal of benefits granted at the time of initial re-fixation w.e.f. February 28, 2003. The pay be accordingly re-fixed by the respondents.

The petition is accordingly disposed of with aforesaid observations. In the facts and circumstances, no order as to costs.

ANOOP KUMAR MENDIRATTA, J.

V. KAMESWAR RAO, J.

FEBRUARY 1, 2023/A/sd