

**Central Administrative Tribunal
Madras Bench**

OA/310/00258/2014

Dated 19th day of February Two Thousand Sixteen

P R E S E N T

**Hon'ble Mr.K.Elango, Member(J)
&
Hon'ble Mr.R.Ramanujam, Member(A)**

V.Sankaran, IAS(retd),
27, Desikachari Road,
Mylapore, Chennai 600 004. .. Applicant

By Advocate M/s.V.C.Vijayaraghavan

Vs.

The Union of India, rep by
The Secretary to the Government of India,
M/o.Personnel, Public Grievance & Pension,
Department of Personnel & Training,
North Block, New Delhi 110 01. .. Respondents

By Advocate Mr.K.Rajendran

ORDER
(Pronounced by Hon'ble Mr.R.Ramanujam, Member(A))

The applicant is a former IAS Officer who retired voluntarily from the service on 11.11.1980. As per the then existing rule 8(A) of the All India Services (DCRB) Rules, he was given a weightage of service of 3 years and 5 days for purposes of pension. Thereafter in terms of the new rule 8(A) that came into effect from 3.11.84, his qualifying service was increased by 5 years subject to the condition that his total qualifying service would not exceed 33 years and it would not take him between the age of superannuation. The AG(Accounts & Entitlements) Tamil Nadu accordingly calculated the service rendered by the applicant after giving weightage by 5 years at 29 years, 6 months and 24 days. On this basis, his pension was fixed w.e.f. 1.1.2006 at Rs.21,187/- p.m. keeping in view the minimum of notional pay band of Rs.37,000 - 67,000 with a grade pay of Rs.10,000 applicable to the post last held by the applicant and applying a pro-rata deduction thereon for the short fall in the minimum qualifying service of 33 years required for full pension.

2. The applicant contends that after the implementation of the recommendations of the VI Pay Commission, a Government servant who had put in a service of 20 years is entitled to voluntary retirement and full pension. Such a person would get 50% of the pay band and grade pay from which he retired after 01.1.2006 as pension. Following the decision rendered by the Hon'ble Supreme

Court in the case of D.S.Nakara Vs. U.O.I., all pensioners belong to one homogeneous group and could not be divided as per the year of retirement. All pensioners are entitled to retirement benefits as applicable to serving Government officials.

3. The applicant accordingly seeks revision of his pension without prorata cut for short fall in service from the minimum required qualifying service of 33 years. The applicant relies in this regard on the decision rendered by CAT, Principal Bench in OA 0655/2010 dated 1.11.2011.

4. The respondent contests the relief claimed by the applicant on the ground that as a pre-2006 retiree, the applicant is only entitled to pension fixation as per the applicable rules at the relevant time. The pensioner had already been granted the benefit of an additional 5 years of qualifying service over and above the actual service rendered by him. His pension had been determined after allowing for a pro-rata deduction in terms of the orders of the Ministry of Personnel, Public Grievances & Pensions, Department of Pension & Pensioners' Welfare. To justify their stand that the applicant has to be subjected to the necessary pro-rata deduction for short fall in the qualifying service, the respondents rely on the OM No.38/37/08-P&PW(A) Pt.1 dated 1.9.2008 (Annexure R4) issued by the Department of Pension & Pensioners' Welfare (DoP&PW) as clarified by OM dated 3.10.2008 (Annexure R5). The matter was further clarified by the DoP&PW by their OM 38/37/08-P&PW(A) Pt.1 dated 14.10.2008 (Annexure R6). According to the respondent, the linkage of full pension to 33 years of qualifying

service has only been dispensed with from 1.1.2006 by DoP&PW No.38/37/08-P&PW(A) dated 10.12.2009 (Annexure R7). The benefit of this OM could only be granted prospectively to persons who retired after the said date, it is contended.

5. Heard the learned counsel for the applicant and the respondents and perused the pleadings and material produced by the rival parties.

6. Learned counsel for the applicant submitted that the respondent insisted on distinguishing between pre-2006 and post-2006 retirees but such differentiation had already been rejected in several orders of the Tribunal and judgments of Hon'ble High Court and the Apex Court. The applicant is entitled to a similar relief. Learned counsel for the respondent however, pointed out that the applicant had relied on the decision given by the CAT, Principal Bench in OA 0655/2010 and drew our attention to the observations of the Tribunal at para 8 thereof which is reproduced below:-

“8. If the matter is seen in the light of the law laid down by the Apex Court, it cannot be said that fixation of cut off date of 1.1.2006 for the purpose of extending retiral benefits is arbitrary and it is permissible for the Government to fix a cut off date for introducing any existing scheme. Thus, the challenge made by the applicants based upon the judgment in D.S.Nakara (supra) that pre-2006 retirees should be extended the same pensionary benefits as that of post-2006 retirees cannot be accepted.”

7. We have carefully considered the facts of the case in the light of the decision given by this Tribunal in similar cases. The matter has been covered

comprehensively in the judgment of the Hon'ble High Court of Delhi dated 07.5.2015 in WP(C) 8012/2013. In this judgment the Hon'ble Delhi High Court has examined the import of the relevant judicial pronouncements on the issue and also considered the validity of the aforesaid OMs of the DoP&PW which is relied upon by the respondents herein. We reproduce below the concluding paras of the said judgment:-

"24. Reverting to the facts of the instant case we find that the respondents have failed to show any nexus between the criteria with the object of the policy. To give benefit of full pension to those who have rendered 20 years service but have retired on or after January 01, 2006 but subject the pensioners who have retired on or before December 31, 2005 to a pro-rata cut in pension unless backed by a reasonableness of the criteria with the object sought to be achieved would render the cut-off date as an arbitrary criteria and thus liable to be quashed.

25. To summarize, the petitioners must succeed on two points. Firstly that the policy decision of the Government in the Office Memorandum dated September 01, 2008 to fix pension for all category of pensioners did not classify post and pre January 01, 2006 retirees and all were entitled to pension as per a common formula. Under the garb of clarification the Office Memorandum of October 03, 2008 followed by the Office Memorandum dated October 14, 2008 and repeated in the Office Memorandum dated January 28, 2013 the cut-off date was inserted by an officer of the Government having no authority to cut down the beneficial policy decision notified on September 01, 2008. Secondly for the reason the cut-off date is arbitrary and fouls Article 14 of the Constitution of India.

26. The Writ petitions are allowed. The Office Memorandums introducing the cut-off date and

mandating that pre January 01, 2006 pensioners would have their pension fix by pro-rata reducing the same by such numbers of years they have rendered less service than 33 years are quashed. It is declared that the writ petitioners would be entitled to full pension post January 01, 2006 without any pro-rata cut therein. Pension deducted from the petitioners (after it was correctly fixed and paid but later on reduced and hence deductions made) shall be refunded as also the arrears paid within six weeks from today failing which the amount payable would bear simple interest @ 9% per annum reckoned six weeks hereinafter."

8. It is clear that the OMs relied upon by the respondent stand quashed. We have, therefore, no hesitation to quash and set aside the impugned order of the respondent Ministry in the DoPT dated 10.4.2013 at Annexure A7, rejecting the request of the applicant for full pension of Rs.23,700/-p.m. without the prorata deduction. Consequently, the respondent shall redetermine the pension of the applicant w.e.f. 1.1.2006 in the light of the directions contained in the aforesaid judgment of the Hon'ble High Court of Delhi and disburse the arrears within a period of three weeks from the date of receipt of a copy of this order, failing which interest @ 9 percent per annum shall be payable on the amount due from such date.

9. With the above direction, the OA is allowed. No order as to costs.