

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00018/2019

Monday, this the 9th day of December, 2019

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

S. Radhakrishna Pillai, S/o. Late K. Sivarama Pillai, aged 64 years,
 Retd. Senior Chargeman, Naval Ship Repair Yard, Naval Base,
 Kochi – 682 004, residing at SP 2002, Koippallil, Satellite Township,
 Padamugal, Kakkanad, Kochi – 682 030. **Applicant**

(By Advocate : Mr. M.R. Hariraj)

V e r s u s

1. Union of India, represented by the Secretary to Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners' Welfare, Lok Nayak Bhawan, New Delhi – 110 003.
2. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad – 211 014.
3. Flag Officer, Commanding-in-Chief, Southern Naval Command, Kochi – 682 004. **Respondents**

(By Advocate : Mr. Thomas Mathew Nellimoottil, Sr. PCGC)

This application having been heard on 09.12.2019 the Tribunal on the same day delivered the following:

O R D E R (Oral)

Hon'ble Mr. Ashish Kalia, Judicial Member –

The applicant is aggrieved by the discriminatory and ultra virus classification of pensioners for the purpose of revision of the pension. He is also aggrieved by the refusal of the respondents to revise his pension at par with other pensioners. The present Original Application is filed seeking

following relief:

“i. To declare that para 11 of Annexure A4 is ultra-virus and void and direct the respondents not to implement the same as against the applicant.

ii. To quash Annexure A7 and direct the respondents to revise the pension of the applicant as stipulated in Annexure A4 and A6 with all consequential benefits including arrears of pension with interest @ 12% per annum.

iii. Grant such other reliefs as may be prayed for and the court may deem fit to grant, and

iv. To grant the costs of this Original Application.”

2. The brief facts of the case are that the applicant was compulsorily retired on 6.2.2012 (sic 6.2.2002) and he is drawing the pay of Rs. 6,650/- in the pay scale of Rs. 5,000-8000/-. The pension was revised on the recommendation of VIth CPC. The applicant was granted 50% of minimum revised pension in the revised pay scale. The applicant is seeking parity with the applicant in OA No. 207 of 2012 which was decided by this Tribunal on 16th January, 2015. The decision in OA No. 207 of 2012 was challenged before the Hon'ble High Court of Kerala in OP (CAT) No. 2 of 2016 and the Hon'ble High Court on 7.2.2016 dismissed the above OP (CAT). Thereafter the pension of the applicant in the said OA No. 207 of 2012 has been revised on implementation of VIIth CPC. Feeling aggrieved by non-grant of the revised pension, applicant has made a detailed representation as Annexure A5 on 7th March, 2018 which was rejected by the impugned order Annexure A7 dated 31st October, 2018. He has filed the present Original Application relying upon the order of this Tribunal as well as the judgment of the Hon'ble High Court of Kerala in OP (CAT) No. 2 of 2016.

3. Notices were issued. Respondents put appearance through Shri Thomas Mathew Nellimoottil, Sr. PCGC who filed a detailed reply statement. On going through the reply statement and during the course of argument, learned counsel for the respondents has drawn my attention to Rule 40 of CCS (Pension) Rules which reads thus:

“40. Compulsory retirement pension

(1) A Government servant compulsorily retired from service as a penalty may be granted by the authority competent to impose such penalty, pension or gratuity or both at a rate not less than two-thirds and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement.

(2) Whenever in the case of a Government servant the President passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these rules, the Union Public Service Commission shall be consulted before such order is passed.

Explanation – In this sub-rule, the expression “pension” includes gratuity.

(3) A pension granted or awarded under sub-rule (1) or, as the case may be, under sub-rule (2), shall not be less than the amount of [Rupees three hundred and seventy-five] (Rupees one thousand nine hundred and thirteen from 1.4.2004. See GID below Rule 33) per mensem.”

Learned counsel for the respondents further submitted that for the purpose of revision of pension of those pensioners who were drawing compulsory retirement pension they have been excluded under Rule 40 and that is why the respondents have rejected the claim of the applicant.

4. Heard the learned counsel appearing for the parties at length and perused the records.

5. This Tribunal has already dealt with this issue in OA No. 207 of 2012 and held as under:

“10. The above extracted Government of India's decision of 1957 read with Rule 40 CCS (Pension) Rules 1972 shows that the intention of the rule makers was not to treat reduction of pension as a necessary concomitant to all cases compulsory retirement. The persons on whom the penalty of compulsory retirement is imposed should be ordinarily granted the full compensation pension and retirement gratuity, admissible on the date of compulsory retirement. However, the authority competent to impose penalty of compulsory retirement may make reductions in the pensionary benefits within the limits prescribed as it may think appropriate. Thus, reduction of pension is not necessarily a concomitant event in all cases of compulsory retirement. A reduction in pension can be made applicable to a compulsorily retired person only if the authority imposing penalty has made it specific in the order imposing penalty. In the instant case, nothing is perceivable from the records produced by both sides that the order imposing penalty against the applicant contained a provision for reduction of his pension / gratuity.

11. For the reasons stated above, respondents are directed to ignore Annexure A6 and to re-consider the reduction effected to the applicant's pension departing from the Annexure A-2 O.M dated 01.06.2008. The pension of applicant shall be fixed at not less than 50% of the minimum pay in the pay band plus grade pay corresponding to the pre-revised pay scale from which the applicant had retired, in the light of the decision of the full bench of the Principal Bench of this Tribunal in OA655/2010 and connected cases. It is further made clear that any reduction from the aforesaid mode of revising the pension of applicant as stated above shall be made only if the order imposing the penalty of compulsory retirement on the applicant contains a direction for reduction of pension. Respondents shall pass necessary orders in the light of the observations made in this order re-fixing the pension of the applicant within three months from the date of receipt of a copy of this order. There will be no order as to costs.”

This Tribunal held that this cannot be applied in general. In case of reduction of the pension the competent authority has to pass a speaking order for reduction as well as non-revision. The order has been questioned before the Hon'ble High Court of Kerala which has also dealt with this issue and held as under:

“4. We heard Shri N. Nagaresh, learned Assistant Solicitor General of India appearing for the petitioners and Shri M.R. Hariraj, learned counsel appearing for the respondent. We have also gone through the impugned order. A reading of Annexure A6 indicates that the Government of India have taken the stand that the benefit of minimum pension pursuant to and in terms of the recommendations of the Sixth Central Pay Commission will not be available to those pensioners who have been compulsorily retired from service. The Government of India did not by Annexure A6 amend

Rule 40 of the Central Civil Services (Pension) Rules, which reads as follows :

"40. Compulsory retirement pension:

(1) A Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity or both at a rate not less than two-thirds and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement.

(2) Whenever in the case of a Government servant the President passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these rules, the Union Public Service Commission shall be consulted before such order is passed.

Explanation - In this sub-rule the expression "pension" includes gratuity.

(3) A pension granted or awarded under sub-rule (1) or, as the case may be, under sub-rule (2), shall not be less than the amount of Rupees three hundred and seventy-five per mensem."

It is evident from a reading of Rule 40 that except in cases where an order is passed in consultation with the Union Public Service Commission, a pensioner governed by the said rule is entitled to full compensation pension. In the case of the respondent, though he was compulsorily retired from service pursuant to the initiation of disciplinary proceedings, an order reducing his pension in consultation with the Union Public Service Commission was not passed when he was compulsorily retired from service. Subsequently also, an order reducing his pension has not been passed. In such circumstances, we are in agreement with the Central Administrative Tribunal that Annexure A6 cannot be relied on to hold that the respondent is not entitled to the benefit of stepping up of pension to 50% of the minimum pay in the pay band plus grade pay corresponding to the pre-revised pay scale from which he had retired. Though learned Assistant Solicitor General of India appearing for the petitioners contended, relying on paragraph 2.1 of Annexure A2 Office Memorandum dated 1.9.2008 that the recommendations of the Sixth Central Pay Commission applies only to pensioners who were drawing pension/family pension on 1.1.2006 under the Central Civil Services (Pension) Rules, 1972 and CCS (Extraordinary Pension) Rules, that the respondent was drawing only compulsory retirement pension and not pension, he is not entitled to the reliefs prayed for before the Tribunal, we are afraid, the said contention is without any merit. **The Central Civil Services (Pension) Rules, 1972 contemplates grant of various types of pensions and one such is compulsory retirement pension. The petitioners have no case that the service conditions of the respondent are not governed by the above rules. All that the Government of India meant when it is stated in paragraph 2.1 of Annexure A2 Office Memorandum that it applies to all pensioners/family pensioners under the CCS (Pension) Rules, 1972 and CCS (Extraordinary Pension) Rules, is that the pensioner must be a person governed by the provisions contained in the CCS**

(Pension) Rules, 1972. The Government of India did not make a distinction between persons drawing different types of pensions under the CCS (Pension) Rules, 1972. We therefore find no merit in the said contention as well.

We accordingly hold that there is no merit in the instant original petition. It fails and is dismissed.

(emphasis supplied)”

6. In view of the above, this Tribunal finds that the applicant is similarly situated to that of the applicant in OA No. 207 of 2012. Therefore, the benefit of the judgment is also extended to the applicant as well. Accordingly, Annexure A7 is quashed and set aside. This Tribunal holds that the applicant is entitled to get pension revised with effect from 1.1.2016 with all consequential benefits arising thereof. However, the monetary benefits of arrears will be restricted to three years prior to the date of filing of this OA as laid down by the apex court in *Union of India & Ors. v. Tarsem Singh* – (2008) 8 SCC 648. The respondents shall implement the order within three months from the date of receipt of a copy of this order. Parties are directed to bear their own costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

“SA”

Original Application No. 180/00018/2019**APPLICANT'S ANNEXURES**

- Annexure A1** - True copy of OM No. 38/37/2016-P&PW(A) dated 12.5.2017.
- Annexure A2** - True copy of the final order dated 16.1.2015 in OA 207/2012.
- Annexure A3** - True copy of letter No. PA/05/2420/546 dated 15.1.2016.
- Annexure A4** - True copy of OM No. 38/37/2016-P&PW(A) dated 12.5.2017.
- Annexure A5** - True copy of the representation dated 7.3.2018.
- Annexure A6** - True copy of the letter No. PA/05/5030/01 dated 21.3.2018.

RESPONDENTS' ANNEXURES

- Annexure R-1** - Copy of relevant page of Rule 40(1) of CCS (Pension) Rules, 1972.
- Annexure R-2** - Copy of relevant page of Rule 49(2) of CCS (Pension) Rules, 1972.
- Annexure R-3** - Copy of Ministry of Personnel, Public Grievances & Pensions resolution dated 04 Aug 16.
- Annexure R-4** - Copy of Ministry of Personnel, Public Grievances & Pensions Office Memorandum dated 04 Aug 16.

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