

**ERNAKULAM BENCH
CIRCUIT BENCH SITTING
AT KAVARATTI
UT OF LAKSHADWEEP**

Saturday, this the 14th day of December, 2019

Purushothaman K.A
Son of the late K.K.Ayyappan, aged 84 years
Graduate Trained Teacher (Retired)
Directorate of Education
Union Territory of Lakshadweep
Residing at Neelima, S.naluvazhi
Paravur, Ernakulam – 683 513

Respondents

**(By Advocate – Mrs.Mini.R.Menon,ACGSC for R 1&2,
Mr.S.Manu R 3&4 and Mr.P.Ramakrishnan for R5))**

This Original Application having been heard on 14.12.2019,
the Tribunal on the same day delivered the following:

O R D E R (ORAL)

JUSTICE L. NARASIMHA REDDY, CHAIRMAN

The applicant retired as a Teacher from the Lakshadweep Administration on 31.12.1992, on attaining the age of superannuation. He has put in 28 years of service by the time of retirement, and his pension was calculated accordingly.

2. One of the recommendations of 6th Pay Commission was to ensure that full pension is payable to an employee who completes 20 years of service, instead of linking it to the full length of 33 years of service. In the context of implementation of the recommendations, there are some uncertainties at various stages. The delinking of the pension with the full length of 33 years of service emerged only as a result of some adjudication by the year 2012 also.

3. The applicant contends that his pension was determined on the basis of his 28 years of service, and accordingly he did get the full pension at the time of retirement. He contends that in view of the recommendations of the 6th Pay Commission and implementation thereof, his pension is liable to be revised in such a way that not only he must get

minimum of 50% of the corresponding Pay Band and Grade Pay, but also the benefits of service over and above 20 years.

4. Through an order dated 06.04.2016, the respondents denied such benefit to the applicant.

5. This OA is filed with a prayer to set aside the order dated 06.04.2016, and to quash some portions of a letter dated 16.05.2017, and ultimately grant pension to the applicant without insisting on the condition of 50% of the minimum pay in the pay band and grade pay. The other ancillary reliefs are also prayed.

6. The applicant contends that the very purpose of delinking the pension of an employee with 33 years of service is to ensure that on completion of 20 years of service, he gets the minimum of 50% pension, and thereafter the additional amount depending upon the length of service over and above 20 years. Heavy reliance is placed upon certain passages and paragraphs in the recommendations of the 6th Pay Commission, as well as the orders issued for implementation thereof.

7. The respondents filed the counter affidavit opposing the OA. It is stated that with the recommendations of the 6th Pay Commission, a different concept of reckoning of pension has come into existence, and all the benefits thereof were extended to the applicant. It is also stated that as of now, the

applicant is drawing a pension which is equivalent to his corresponding pay grade and grade pay, and he cannot have any further grievance.

8. We heard Mrs. Rekha Vasudevan, learned counsel for the applicant, Shri Rajendran for Smt. Mini R. Menon, ACGSC, Shri S. Manu and Shri P. Ramakrishnan, learned counsel for the respondents.

9. Before the 6th Pay Commission made its recommendations, the pension of a government employee used to be determined by applying the formula of half of the Basic Pay last drawn with qualifying service of 33 years. It is only an employee who has put in 33 years of service that used to get the full pension. It is used to be reduced corresponding to the short fall of service. The 6th Pay Commission made its recommendations in this behalf as under:-

“Linkage of full pension with 33 years of qualifying service should be dispensed with. Once an employee renders the minimum pensionable service of 20 years, pension should be paid at 50% of the average emoluments received during the past 10 months or the pay last drawn, whichever is more beneficial to the retiring employee. Simultaneously, the extant benefit of adding years of qualifying service for purposes of computing pension/related benefits should be withdrawn as it would no longer be relevant.”

Through this, the 6th Pay Commission brought out radical changes. According to this, once an employee completes 20 years of service, he becomes entitled to be extended the

pension at the rate of 50% of the overall emoluments received during past ten months or the pay last drawn, whichever is more beneficial to him. The DoP&T issued OM dated 01.09.2008 for implementation thereof. However, some representations were received pointing out some problems in the context of calculation of pension in terms of the 6th Pay Commission's recommendations. The reference was also made to the judgments rendered by the Ernakula Bench of this Tribunal as well as the Hon'ble Kerala High Court, and Hon'ble Supreme Court. Taking note of the fact that the DoP&T issued OM dated 06.04.2016, It is beneficial to reproduce the entire OM so that a comprehensive view can be added. It reads as under:-

Dated the 06th April, 2016
OFFICE MEMORANDUM

Sub:- Revision of pension of pre-2006 pensioners - delinking of revised pension from qualifying service of 33 years.

The undersigned is directed to say that as per Para 4.2 of this Department's OM of even number dated 1.9.2008 relating to revision of pension of pre-2006 pensioners w.e.f 1.1.2006, the revised pension w.e.f. 1.1.2006, in no case, shall be lower than 50% of the sum of the minimum of pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired. A clarification was issued vide DoP&PW OM of even number dated 3.10.2008 that the pension calculated at 50% of the minimum of pay in the pay band plus grade pay would be calculated at the minimum of the pay band (irrespective of the pre-revised scale of pay) plus the grade pay corresponding to the pre-revised pay scale.

2. Several petitions were filed in the Central Administrative Tribunal, Principal Bench, New Delhi inter alia claiming that the revised pension of the pre-2006 pensioners should not be less than 50% of the minimum of the pay band + grade pay, corresponding to the pre-revised pay scale from which pensioner had retired, as arrived at with reference to the fitment tables annexed to Ministry of Finance, Department of Expenditure OM No.1/1/2008-IC dated 30th August, 2008. Hon'ble CAT, Principal Bench, New Delhi vide its common order dated

1.11.2011 in OA No.655/2010 and three other connected OAs directed to re-fix the pension of all pre-2006 retirees w.e.f. 1.1.2006 based on the Resolution dated 29.08.2008 of the Department of Pension & Pensioners' Welfare and in the light of the observations of Hon'ble CAT in that order.

3. Orders were issued vide this Department's OM of even number dated 28.1.2013 for stepping up of pension of pre-2006 pensioners w.e.f. 24.9.2012 to 50% of the minimum f pay in the pay band and grade pay corresponding to pre-revised pay scale from which the pensioner retired. Para 5 of this OM provides that in case the consolidated pension/family pension calculated as per para 4.1 of O.M. No.38/37/08-P&PW(A) dated 1.9.2008 is higher than the pension/family pension calculated in the manner indicated in the O.M. dated 28.1.2013, the same (higher consolidated pension/family pension) will continue to be treated as basic pension/family pension.

4. Subsequently, in compliance of the order dated 1.11.2011 of the Hon'ble CAT, Principal Bench in OA No.655/2010, order dated 29.4.2013 of Hon'ble High Court of Delhi in WP (C) No. 1535/2012 and order dated 17.3.2015 of Hon'ble Supreme Court in SLP (C) No.36148/2013, order were issued vide this Department's OM of even number dated 30.7.2015 that the pension/family pension of all pre-2006 pensioners/family pensioners may be revised in accordance with this Department's O.M.No.38/37/08-P&PW(A) dated 28.1.2013 with effect from 1.1.2006 instead of 24.9.2012.

5. In accordance with the order issued in implementation of the recommendation of the 6h CPC, the pension of Government servants retired/retiring on or after 1.1.2006 has been delinked from qualifying service of 33 years. In OA No.715/2012 filed by Shri M.O.Inasu, a pre-2006 pensioner. Hon'ble CAT, Ernakulam Bench, vide its order dated 16.8.2013 would not be reduced based on the qualifying service of less than 33 years. The appeals filed by Department of Revenue in the Hon'ble High Court of Kerala and in the Hon'ble Supreme Court have also been dismissed. Similar orders have been passed by Hon'ble CAT/High Court in several other cases also.

6. The matter has been examined in consultation with the Ministry of Finance (Department of Expenditure). It has now been decided that the revised consolidated pension of pre-2006 pensioners shall not be lower than 50% of the minimum of the pay in the Pay Band and the grade pay (wherever applicable) corresponding to the pre-revised pay scale as per fitment table without pro-rata reduction of pension even if they had qualifying service of less than 33 years at the time of retirement. Accordingly, Para 5 of this Department's OM of even number dated 28.1.2013 would stand deleted. The arrears of revised pension would be payable with effect from 1.1.2006.

7. Ministry of Agriculture, etc. are requested to bring the contents of these orders at the notice of Controller of Accounts/Pay and Accounts Officers and Attached and Subordinate Offices under them for revising the pension of all those pre-2006 pensioners who had rendered less than 33 years of qualifying service at the time of retirement in the manner as indicated above on top priority. Revised Pension Payment Orders in all these cases may also be issued immediately.

8. All pension disbursing offices/banks are also advised to prominently display these orders on their notice boards for the benefit of pensioners.

9. This issues with the approval of Ministry of Finance, Deptt. of Expenditure vide ID Note No.2()/EV/2015, dated 15.3.2016.

10 Hindi version will follow.”

10. The entire issue is clarified, particularly, in para 6, it was mentioned that the revised consolidated pension of pre-2006 pensioners shall not be lower than 50% of the minimum of the pay in the pay band and the grade pay (wherever applicable) corresponding to the pre-revised pay scale as per fitment table without any pro-rata reduction, even if the qualifying service is less than 33 years. What the applicant, however, contends is that on completion of 20 years of service, he is entitled to get the minimum of 50% of the corresponding pay scale, and for the service rendered by him over and above 20 years, the pro rata pension shall be added. In other words, the applicant contends that there does not exists any cap of 50% of the emoluments while calculating the pension, and the cap, if at all, is about the minimum. We find it difficult to accept this argument. It is fairly well known and well settled that the pension of a government servant can never be more than 50% of the emoluments drawn by the employee at the time of retirement.

11. Earlier, there used to be a facility for reduction thereof in case the service rendered by him is less than 33 years.

Now that such requirement is taken away, the full pension can be drawn, and the employee would be entitled to full pension in terms of the last pay drawn, once he has rendered 33 years of service. The difference between an employee who retired on completion of 20 years on the one hand, and the one who retired on completion of 33 years of service on the other, would be only referable to the last pay drawn and not the length of service. Whatever be the formula adopted, pension never exceeds 50% of the emoluments last drawn.

12. By filing MA No.250/2019, the applicant has brought on record some exhibits, Annexure A/7 & A/8. Even from a perusal of Annexure A/8, it becomes clear that para 6 contained in OM dated 06.04.2016 was reiterated as under:-

“(2) Now, GOI, Ministry of P, PG and pension, Dept of P&PW have further issued order under their OM No.38/37/08 P&PW (A) dated 6th April, 2016, that “The revised consolidated pension of pre-2006 pensioners shall not be lower than 50% of the sum of minimum of the pay in the Pay Band and the Grade Pay (wherever applicable) corresponding to the pre-revised pay scale as per fitment table annexed to Ministry of Finance, Department of Expenditure OM No.1/1/2008-IC dated 30th August, 2008 without pro-rata reduction of pension even if they had qualifying service of less than 33 years at the time of retirement.” Accordingly, Para 5 of the Om dated 28.01.2013 would stand deleted. The arrears of revised pension would be payable with effect from 01.01.2016.”

13. When a specific question was pointed out to learned counsel for the applicant as to whether there existed any facility for an employee to draw pension at a higher rate than

50% of his last drawn emoluments, either in the form of any rule made by the competent authority, judgment rendered by a Court, or other source, she is not able to come out with any specific plea in this behalf.

14. The applicant does not complain that he is not getting pension of 50% of the pay drawn and the grade pay of the corresponding pay scale. Once that is accomplished, he cannot have any genuine grievance.

15. We do not find any merit in the OA. It is accordingly dismissed.

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

(JUSTICE L.NARASIMHA REDDY)
CHAIRMAN

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List of Annexures

Annexure A-1 - True copy of the Government Resolution GIMF No.38/37/08-P&PW(A) dated 29.8.2008 along with the relevant portion of the Annexure Thereon

Annexure A-2 - True copy of the Final order dated 1.11.2011 in O.A No.655/2010 and connected cases of the Principal Bench of this Tribunal

Annexure A3 - True copy of the office memorandum No.38/37/08-P&PW(A) dated 6.4.2016 issued by the 1st respondent

Annexure A4 - True copy of the representation dated 27.1.2017 submitted by the applicant to the 5th respondent

Annexure A5 - True copy of the letter No.CPAO/A-2/2017/VOL-381/P-5 dated 13.4.2017 issued by the 2nd respondent to the 3rd respondent.

Annexure R3(a) - True copy of OM No.38/37/08-P&PW(A) dated 28.1.2013, issued by the Department of Pension and Pensioners' Welfare\

Annexure R3(b) - True copy of OM No.38/37/08-P&PW(A) dated 30.7.2015, issued by the Department of Pension and Pensioners' Welfare

Annexure R3(c) - True copy of OM No.38/37/08-P&PW(A) dated 6.4.2016, issued by the Department of Pension and Pensioners' Welfare.

Annexure R1 - Copy of Annexure A3 submitted by the petitioner

Annexure RII - Copy of Annexure A6 submitted by the petitioner

Annexure RIII - Copy of Ministry of Finance, Department of Expenditure OM dated 16.5.2012

Annexure A7 - True copy of the O.M F.No.38/37/08-P&PW(A) dated 1.9.2008 issued by the 1st respondent

Annexure A8 - True copy of the Circular No.C-149 dated 8.4.2016 issued by the office of the Pr.Controller of Defence Accounts (Pensions) Allahabad.

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