

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

OA/020/00233/2019

Date of CAV : 31.12.2020

Date of Pronouncement: 04.01.2021



Hon'ble Mr. B.V. Sudhakar, Admn. Member

B. Nagaraja Rao S/o Sri Hanumantha Rao,
Aged about : 82 years, Occ : Rtd. Income Tax Officer, Gr.'B',
R/o 15-14-300, 2nd lane, Nalanda Nagar, Ring Road,
GUNTUR – 522006. ...Applicant

(By Advocate : Mr.V.Venkateswara Rao)

Vs.

- 1.The Union of India, Rep by
The Director, Dept of Pension and Pensioners Welfare,
Ministry of Personnel, PG & Pensions, 3rd Floor,
Lok Nayak Bhavan, Khan Market, New Delhi.
2. The Pay & Accounts Officer,
(Revision Authority for Central Civil Pensions),
Govt of India, Trikoot – 2, Bhikanji Cama Place,
New Delhi – 110 066.
3. The Zonal Accounts Officer,
O/o Prl. Chief Controller of Accounts,
Central Board of Direct Taxes,
Zonal Accounts Office, 5th Floor,
Aayakar Bhavan, Basheerbagh, Hyderabad-500 004.
- 4.The Prl.Chief Commissioner of Income Tax, A.P,
C Block, IT Towers, 10-2-3, AC Guards,
Hyderabad-500 004.
5. IncomeTax Officer, Ward-1,
Income Tax Office, Gudivada.Respondents

(By Advocate : Mr. D. Satyaveer, Addl. CGSC)

ORDER**(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)****Through Video Conferencing:**

2. The OA is filed for non grant of grade pay of Rs.5400 and the consequential re-fixation of pension.

3. Brief facts of the case are that the applicant voluntarily retired from service on 31.5.1995 as Income Tax Officer (ITO) with a pension of Rs.1567, which was revised to Rs.4720 w.e.f. 1.1.1996, Rs.10,671 w.e.f. 1.1.2006 and Rs.29,300 w.e.f. 1.1.2016. The scale of pay of the ITO of Rs.7500- 12000 was split into 2 with the advent of 6th CPC as Rs.7500- 12000 with G.P. of Rs.4800 in PB-2 & Rs.8000–13,500 with grade pay of Rs.5400. The grade pay of Rs.5400 is to be granted after rendering 4 years of regular service as ITO. Applicant has rendered more than 4 years service as ITO and hence, eligible for grade pay of Rs.5400, which was not granted and hence the OA.

4. The contentions of the applicant are that as per CBDT letters 6.3.2009, 31.12.2009 and Rules 5 & Note 2A below Rule 7 of CCS (RP) Rules, 2008, he is eligible for the grade pay sought. The re-fixation of pension with grade pay of Rs.4200 is incorrect. The fitment table, on which the respondents revised the pension is meant for working out the replacement scale and not for those scales involving up-gradation, as in the case of ITO. The OM's dated 12.5.2017, 13.10.2017 have not been properly reckoned in re-fixing the pension. The applicant is suffering a monthly

recurring loss due to improper revision of the pension. Decision not to grant the grade pay of Rs.5400 contravenes Articles 14 & 16 of the Constitution of India.



5. Respondents in their reply statement state that the pension of the applicant was fixed as per DOP&PW memos dated 12.5.2017 & 6.7.2017 and as per Concordance Table No.24 appended to OM dated 6.7.2017. Grade Pay of Rs.5400 was granted to those ITOs, who were in service as on 1.1.2006 and rendered 4 years service in the said grade. Applicant had retired prior to 2006 and hence, is not eligible. In revising the pension, the pay scale is considered and not the post held.

Applicant filed a rejoinder stating that the judgment of the Hon'ble Principal Bench in OA No.655/2010 made it clear that the employee need not be in service as on 1.1.2006 to avail of the benefit sought. He has cited judgments of the Hon'ble High Court and Supreme Court in support of his contentions.

Respondents filed an additional reply wherein they claim that for grant of higher grade pay of Rs.5400, vigilance clearance has to be taken and since the applicant had retired, there is no scope to obtain the same.

6. Heard both the counsel and perused the pleadings on record.

7. I. The issue is about grant of grade pay of Rs.5400 for rendering a minimum of 4 years of service in the ITO Cadre. In this nexus, we observe that the applicant has served for 4 years in the ITO before he voluntarily retired on 31.5.1995. The applicant's contention is that as per CBDT (Central Board of Direct Taxes) letter dated 6.3.2009, all the ITOs

who have completed 4 years of service as on 1.1.2006 would be entitled for the grade pay of Rs.5400 w.e.f. 1.1.2006 irrespective of the fact that the pay scale of the ITO was revised into 2 scales as per 6th CPC viz. Rs.7500-12000 with GP Rs.4800 and Rs.8000-13500 with GP Rs.5400 in PB-2. The letter clearly states that the higher grade would be eligible to those who were in service as on 1.1.2006. The applicant retired in 1995 and hence, the OM is not relevant to the applicant is the initial stand of the respondents.



However, as claimed by the applicant, there can be no discrimination amongst pensioners as observed in various judgments of the higher judicial fora. However, CBDT letter dated 14.9.2009 lays the condition that for grant of GP of Rs.5400, the ITO has to render not only 4 years of service but also he should be clear from the vigilance angle. The applicant, though had rendered 4 years of service in the ITO, he did retire in 1995 and therefore, seeking vigilance clearance is not envisioned in the rules for a retired employee. Hence, the 2nd proviso of the letter dated 14.9.2009 is not fulfilled in respect of the applicant. Applicant has not contested this fact in the rejoinder.

II. More than the above, as per para 4 of the OM dated 12. 5.2017 on which the applicant heavily banked upon, the revised pension of the pensioner who retired prior to 1.1.2016 has to be fixed by notionally fixing their pay in the pay matrix recommended by the 7th CPC in the level corresponding to the pay scale in which they retired. By fixing the notional pay for each intervening Pay Commission as per the Pay Commission formula, the notional pay has to be arrived at and then the revised pension has to be fixed. In accordance with the said proviso, the pay scale of the

applicant has been fixed as per recommendations of different Pay Commissions as under:



S.No	Year	Pay commission	Corresponding Pay scale in the relevant pay commission
1	1.1.1986	4 th CPC	Rs.2000 – 3500 (scale in which applicant retired)
2	1.1.1996	5 th CPC	Rs.6500- 10,500
3.	1.1.2006	6 th CPC	Rs.9300-34,800 with GP Rs.4200
4.	1.1.2016	7 th CPC	Level 7- corresponding to pay scale of Rs 2000-3500 held at the time of retirement by the applicant.

The notional fixation of pay of the applicant in the 6th CPC has to be in the pay band of Rs.9300- 34,800 with GP Rs.4200 corresponding to the pay scale at the time of his retirement. The GP of Rs.4800 claimed by the applicant is therefore incorrect in view of the above. Importantly, it should be observed here that the revision of the pension depends on the pay scale in which the employee has retired and not based on the designation of the post he held at the time of retirement. The applicant has been harping on the fact that he has retired as ITO ignoring the scale in which he has retired. Rules of pension fixation cannot be overlooked. In addition, the claim of the applicant in the rejoinder that he is to be treated as if he is deemed to be in service as on 1.1.2006 and therefore, eligible for higher grade pay lacks justifiable logic. Even the CCS (RP) Rules 2008 are applicable to the extent of revising the pay of the applicant prior to 1.1.2006 on a notional basis for fixing the pension as per the relevant concordance table.

III. DOP&PW (Dept. of Pension & Pensioners' Welfare) vide dated 4.8.2016 has laid down 2 options for fixing the revised pension as per 7th CPC. The first option was to refer the re-fixation to a committee and based on its recommendation, work out the revised pension. Till the



recommendations are out, the second option spoke of, was to re-fix the pension as per the 7th CPC, as an initial temporary measure by multiplying the basic pension of the 6th CPC with the factor of 2.57. Thereafter, vide memo dated 12.5.2017, as per the committee recommendation, the formula framed was to work out the notional pay, commission wise and then re-fix the pension as per 7th CPC. The pension which works out to be higher by applying the two formulae would be fixed as the revised pension. Accordingly, the pension of the applicant was fixed as Rs.29,300 as per 7th CPC. We also observe that at para 7 of the memo dated 12.5.2017, it has been emphasized that the actual pay scale in which the employee has retired has to be reckoned while working out the notional pay in the succeeding Pay Commissions to re-fix the final pension in accordance with 7th CPC.

IV. The argument of the applicant is that the respondents have applied the wrong Concordance table number 24 of Memo dated 6.7.2017, since it was meant only for replacement scales, whereas his claim is that of an upgraded scale. As per memo dated 12.5.2017, the scale for which the applicant is eligible has been brought out in the above table and it has also been made clear that in accordance with memo 14.9.2009, he is disqualified for not satisfying both the conditions stipulated in the memo. Hence, the respondents were correct in considering the replacement scale in respect of the applicant as re-fixing the pension as per the concordance table cited.

V. The applicant relied on the judgment of Hon'ble Principal Bench of this Tribunal in OA 655/2010 & batch dt. 01.11.2011 wherein it was held that the pension fixed as per the 6th CPC should not be less than 50% of the minimum of the pay plus the pay band corresponding to the pay

scale in which the employee has retired. By applying this principle to the case of the applicant, it is seen that his pension as per 6th CPC has been fixed as Rs.10,671 and the relevant pay band as per 6th CPC is Rs.9300 – 34,800 with GP of Rs.4200. The minimum pension would work out as Rs.(9300 + 4200)/ 2 = 6750, whereas the pension of the applicant has been fixed as Rs.10,671 which is greater than Rs.6750 and therefore, the fixation of pension has been in accordance with the judgment cited. The said principle was upheld by the Hon'ble High Court of Delhi in WP (C) 1535/2012 on 29.4.2013 which was cited by the applicant.



VI. Now coming to the judgments of the Hon'ble High Courts of Punjab and Haryana, Gujarat in LPA No.1955 of 2012 dated 14.1.2013; LPA Nos.1175 /2014 & batch dt.20.06.2017 respectively and Hon'ble Supreme Court in CA No.1123 of 2015 dated 1.7.2015, the important distinction one can make out is that the petitioners/ appellants in the writ petitions/appeal filed, worked in the relevant scale for the prescribed period of 3 years and more before retirement for seeking the higher scale of pay/ grade pay and yet they were not granted. Therefore, they had a case to make out. Whereas, the applicant has not worked in the grade pay of Rs.4800 before his retirement, to be declared eligible for the grade pay of Rs.5400. Hence, none of the judgments relied upon by the applicant would come to his rescue.

VII. In respect of plea of the applicant for 3% increment, it is to be observed that when the applicant is not eligible for the grade pay of Rs.5400, then the question of granting of increment @ 3 % of the pay in the pay band with higher grade pay, would not arise at all. In addition, with



regard to the assertion of the applicant in the connected OA No. 232/2019, which was heard along with the present OA, that the benefit of higher grade pay has been granted in respect of Lecturers (Selection Grade) and non teaching staff, who retired from the Central Universities and Colleges prior to 1.1.2006 by Ministry of HRD vide letter dated 15.12.2009, the memo cited by the applicant therein was not enclosed with the OA. However, the Tribunal perused the Memo on the internet and found that the memo was discussed in the Prabhudas C. Barot v. State of Gujarat by the Hon'ble High Court Of Gujarat at Ahmedabad in Letters Patent Appeal No. 1175, 1248 of 2014 with LPA Nos.32, 459, 498, 499, 500 of 2015; LPA No.92 Of 2016 and Civil Application No. 1145 of 2016, vide Judgment dt. 20-06-2017, as under:

A learned Single Judge of the Rajasthan High Court considered the regulations of 2010, and other Notifications including the letter dated 15.12.2009 issued by the Government of India, Ministry of Human Resources Development, wherein it was clarified that pay band of Rs. 37,000- 400-Rs. 67,000/- was to be given to all those who had already completed three years of service in the Selection Grade prior to 01.01.2006 and, more specifically, the pensioners, and on that analysis allowed the writ petitions.

As has been pointed out in the verdict, the Lecturers worked in the relevant Selection Grade for the prescribed residency period and yet they were not granted the higher grade pay as per the Ministry HRD OM cited. In case of the applicant, he did not work in the grade pay of Rs.4800 for 4 years as required and hence, the OM cited is not relevant to the applicant.

VIII. Other OMs, material papers, averments submitted by the applicant were carefully gone through and found them to be not appropriately relevant to comment upon.

IX. Thus, in the above the circumstances, the Tribunal has come to the conclusion that the OA lacks merit and hence, dismisses it with no order as to costs.



evr

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER