

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00745/2018

Thursday, this the 21st day of October, 2021

CORAM:

Hon'ble Mr. P. Madhavan, Judicial Member

Nagajothi S., S/o. Lakshmanan, aged 57 years,
 Retired Postal Assistant, GPO, Department of Post,
 Trivandrum, residing at VP 12/744, Bharatha Badra,
 Neerazhi lane, Vellanadu, Trivandrum – 695 543. **Applicant**

(By Advocate : Mr. V. Sajith Kumar)

V e r s u s

1. Union of India, represented by Secretary to Government,
 Department of Pension & Pensioners Welfare,
 Ministry of Personnel PG & Pensions, Government of India,
 New Delhi – 110 001.
2. The Chief Postmaster General, Kerala Circle, Trivandrum-695 033.
3. Senior Superintendent of Post Office, Trivandrum Postal
 Division, Trivandrum North – 695 033.
4. Director of Postal Accounts, O/o. CPMG, Kerala Circle,
 Trivandrum – 695 033. **Respondents**

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

This application having been heard on 18.10.2021 through video conferencing, the Tribunal on 21.10.2021 delivered the following:

ORDER

Hon'ble Mr. P. Madhavan, Judicial Member –

This is an Original Application filed by the applicant seeking the following reliefs:

“(i) To quash clause 11 of Annexure A1 to the extent applicant is denied the benefits ordered in other clauses.

(ii) To direct the respondents to revise pension payable to applicant in terms of clause 4 of Annexure A1 and to grant him all consequential benefits including arrears of pension.

(iii) Grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.

(iv) Grant cost of this OA.”

2. In short the applicant's case is that he was compulsorily retired from service and was granted pension under Rule 40 of CCS (Pension) Rules, 1972. According to him the 1st respondent had denied revision of pension extended to other pensioners and it amounts to further punishment after retirement. According to the applicant it was denied as per paragraph 11 of Annexure A1 wherein it is stated that the implementation order will not be applicable to those pensioners who were drawing compulsory retirement pension under Rule 40 of CCS (Pension) Rules, 1972. The applicant was appointed as a Postman on 1.12.1980 and consequent to holding of an inquiry under Rule 14 CCS (CCA) Rules, 1965 he was compulsorily retired from service. At first the applicant was ordered to be dismissed from service and in appeal the dismissal order was changed to removal from service. The applicant approached the Tribunal by filing OA No. 774 of 2007 and the Tribunal found the punishment imposed on the applicant as shocking and disproportionate and modified the penalty to compulsory retirement with effect from 9.6.2006. It was also ordered that all benefits admissible to the employee compulsorily retired from service have to be extended to him as well. The Writ Petition filed against the order of the Tribunal in WP© No. 2349 of 2009 was dismissed and the copy of the order is produced as Annexure A2. Even though an appeal was filed before the Hon'ble Supreme

Court the order of the Tribunal was confirmed and the applicant was found eligible for all benefits under Rule 40 of CCS (Pension) Rules, 1972. The applicant was paid all the benefits enjoyed by a retiring employee till Annexure A1 order was issued. When the VIIth Pay Commission order came, revision of pension of pre-2006 pensioners were ordered by OM dated 4.8.2016. The pension/family pension has to be fixed with effect from 1.1.2016 and it will be determined by multiplying the pension by 2.57. The revision of pension includes dearness relief also. A true copy of the implementation order was produced as Annexure A3. However, on the basis of paragraph 11 of Annexure A1 dated 12th May, 2017 the applicant was denied the benefit of revision of pension granted as per VIIth Pay Commission. So he prays for the relief sought in this OA.

3. The respondents filed a reply statement admitting the service details and the order of compulsory retirement passed against the applicant. They also admitted that the applicant was granted all the benefits admissible to an employee under Rule 40 of CCS (Pension) Rules, 1972. The Writ Petition filed against the order of the Tribunal was dismissed by the Hon'ble High Court and the SLP filed by the Department was also dismissed by the Hon'ble Supreme Court. The pensioner was only 51 years old and have 25 years, 7 months and 12 days of service at the time of retirement. Fixed medical allowance was also granted to him. His commutation application is under process. According to them as per paragraph 11 of Annexure A1 the compulsorily retired persons are not entitled to get any revision of pension and it is because of that the applicant's case was not considered for revision. According to them the SLP No. 6726 of 2017 was filed by the Department

in a similar case which was ordered by the Tribunal (OA No. 640 of 2014) is still pending before the Hon'ble Supreme Court. The counsel admitted that similar cases came up before this Tribunal earlier also.

4. Counsel for the applicant submitted before the Tribunal that this is a matter squarely covered by a decision of this Tribunal in OA No. 207 of 2012 dated 16th January, 2015 and confirmed by the Hon'ble High Court in OP (CAT) No. 2 of 2016 dated 7th February, 2016. The Hon'ble High Court has confirmed the decision of the Tribunal and held as under:

“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.”

5. On reading of the above decision of the Hon'ble High Court in OP (CAT) No. 2 of 2016 it can be seen that the respondents cannot restrict the pension eligible through OM issued by Annexure A1. Paragraph 11 of Annexure A1 cannot be given applicability in the matter of ordinarily compulsorily retired persons. In this case also the respondents had not made any consultation with the UPSC and had not reduced the eligibility of pension when the compulsory retirement order was passed. So this case can be considered only as ordinarily compulsorily retired person and this Tribunal hold that the applicant is entitled to all the benefits of a person

retired on that date. This Tribunal finds that the above decision is clearly binding on this Tribunal and the applicant is entitled to get all the benefits which he is otherwise entitled under Rule 40 of CCS (Pension) Rules, 1972 and he cannot be denied the benefits on the basis of paragraph 11 of Annexure A1. Paragraph 11 of Annexure A1 has to be ignored as it is against the rules framed by the Parliament.

6. In the result this Tribunal directs the respondents to grant all the monetary benefits of arrears arising out of the implementation of the VIIth Pay Commission under Rule 40 of CCS (Pension) Rules, 1972 within a period of three months from the date of receipt of a copy of this order.

7. The Original Application is disposed of as above. No order as to costs.

**(P. MADHAVAN)
JUDICIAL MEMBER**

“SA”

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APPLICANT'S ANNEXURES

- Annexure A1** – True copy of the Office Memorandum issued as per order No. 38/37/2016-P&PW(A), dated 12.5.2017 by the 1st respondent.
- Annexure A2** – True copy of the judgment dated 2.12.2014 of WP© 28640/2009.
- Annexure A3** – True copy of the office memorandum F. No. 38/37/2016-P&PW(A)(ii) dated 4.8.2016 issued by the 1st respondent.
- Annexure A4** – True copy of the order dated 9.12.2019 in OA 18/2019 of the Hon'ble Central Administrative Tribunal, Ernakulam Bench.

RESPONDENTS' ANNEXURES

- Annexure R-1** – True copy of the extract of Rule 40 of CCS (Pension) Rules.
- Annexure R-2** – True copy of OM No. 45/86/97.P&PW(A) pt. V, dated 25.3.2004.
- Annexure R-3** – True copy of the OM No. 38/37/08-P&PW(A) dated 22.7.2011.

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