

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00953/2019

Monday, this the 4th day of October, 2021

CORAM:

Hon'ble Mr. P. Madhavan, Judicial Member

Hon'ble Mr. K.V. Eapen, Administrative Member

K. Gopalakrishnan Nair, aged 78 years,
S/o. Kesava Pillai, (Retd. Cashier/Institute of
Armament Technology/Girinagar/Pune-411 025),
Residing at Kolaseri House, Thekkumgopuram,
Kottayam, Pin – 686 001. **Applicant**

(By Advocate : Ms. Sreekala T.N.)

V e r s u s

1. Union of India, represented by the Secretary to Government of India, Ministry of Defence, New Delhi-110 001.
2. The Secretary to the Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Pension & Pensioner's Welfare, III Floor, Lok Nayak Bhavan, Khan Market, New Delhi – 110 001.
3. The Director, Armament Research and Development Establishment (ARDE), Pashan, Pune, Maharashtra, Pin – 411 021.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad, Pin – 211 014.
5. Defence Pension Disbursing Officer, Defence Pension Disbursing Office, NSS Taluk Building, Thirunakkara, Kottayam, Pin – 686 001. **Respondents**

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

This application having been heard on 20.09.2021 through video conferencing, the Tribunal on 04.10.2021 delivered the following:

ORDER

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

This is an Original Application filed seeking the following reliefs:

- “(i) *Call for the records leading to Annexures A1 to A4 and quash the same;*
- (ii) *Declare that the applicant is entitled to have his pay fixed for revision of pension as per the methodology prescribed in A6 as pre-1986 pensioner, is entitled for fixation of pay for revision of pension as per the method prescribed in Annexure A6;*
- (iii) *Direct the respondents to fix the applicant's pay and revise the pension as per the methodology prescribed in Annexure A6, thereafter to consolidate the pension as on 1.1.1996 in accordance with the provisions contained in paragraph 4.1 of Annexure A7, and direct further to grant the same with all the consequential benefits including arrears w.e.f. 1.1.1996;*
- (iv) *Direct the respondents to revise the applicant's pension and other retirement benefits, as per provisions contained in Annexure A14 consequently, and direct further to grant the same with all the consequential benefits thereof;*
- (v) *Direct the respondents to further fix the pay of the applicant as per A15 then to revise the pension and other retirement benefits consequently, and direct further to grant the same with all the consequential benefits thereof;*
- (vi) *Award costs of and incidental to this application;*
- (vii) *Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.”*

2. In short the applicant's case is that he took voluntary retirement from service as a Cashier from the Institute of Armament Technology, Pune on 15.1.1985. The applicant is aggrieved by Annexures A1 and A4 orders and according to him the respondents had not taken the special pay granted to him in the post of Cashier i.e. Rs. 30/- while re-fixing his salary as per Annexure A6. According to him he is a pre-1986 retiree and when he retired from service special pay was also part of pay and he is entitled to get the same considered in the average emoluments calculated. According to the

applicant the respondents has not properly implemented Annexure A6 order of the Ministry of Personnel, Public Grievances & Pension, Department of Pension & Pensioners' Welfare issued on 10.2.1998. According to him the special pay was not taken into consideration when the Vth CPC was implemented. So he prays for the reliefs mentioned above. He had produced the pension fixation order Annexure A1 and the reply given by the Department to him regarding the emoluments calculated as per Annexure A2. Annexure A3 is an another letter issued to the applicant stating that the cashier allowance will not form part of the emoluments as per Rule 33 of CCS (Pension) Rules, 1972 and as per Fundamental Rules 9 (21)(a)(i). So his pension cannot be revised. Annexure A4 is another communication issued to the applicant regarding the same matter by the Department.

3. The respondents entered appearance and filed a detailed reply denying the averments in the OA. According to the respondents, special pay will not form part of the pay for fixation of pension under IVth, Vth, VIth and VIIth CPC reports. It is also stated that as per Rule 33 of CCS (Pension) Rules, 1972 the expression 'emoluments' is the basic pay as defined under Rule 9(21)(a)(i) of the Fundamental Rules, which the Government servant was receiving immediately before his retirement. As per Fundamental Rule 9(21)(a) 'pay' means as under:

"FR 9(21)(a) Pay means the amount drawn by a Government servant as –

- (i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre.*
- (ii) overseas pay, special pay and personal pay; and*
- (iii) any other emoluments which may be specially*

classed as pay by the President.”

The pension revision done for the applicant is correct as per the existing rules mentioned in Annexure R1 and no injustice is done to the applicant. So the OA is devoid of merit and it is liable to be dismissed.

4. Applicant filed a rejoinder also on the reply filed by the respondents. According to him CCS (Pension) Rules, 1972 which came into force on 1.6.1972 deals with ‘emoluments’ for pensionary benefits. Originally as per Rule 33 of CCS (Pension) Rules, 1972 the expression ‘emoluments’ for pensionary benefits means basic pay as defined under Fundamental Rule 9(21). It reads as follows:

“The expression ‘emoluments’ means basic pay as defined in Rule 9 (21) of the Fundamental Rules (including dearness pay, as determined by the order of the Government issued from time to time) which a Government servant was receiving immediately before his retirement or on the date of his death.”

Later on Rule 33 of CCS (Pension) Rules was amended and amendment came to be enforced from 1.1.1986. As per amended rules expression ‘emoluments’ for pensionary benefits means basic pay as per Fundamental Rule 9(21)(a)(i) which reads as follows:

“(1) Meaning of the term emoluments effective from 1.1.1986 – The term ‘Emoluments’ for purposes of calculating various retirement and death benefits shall mean basic pay as defined in FR 9 (21) (a) (i) which the Government servant was receiving immediately before his retirement or on the date of his death. Similarly, ‘Average Emoluments’ shall be determined with reference to emoluments drawn by a Government servant during the last ten months of his service..”

The applicant had produced a copy of the manual of Railway Pension Rules and code of Indian Railway Establishment Code etc. in support of his case. A copy of the CCS (Pension) Rules, 1972 was also produced as Annexure MA-1 and a copy of Rule 33 defining emoluments and average emoluments

is also produced.

5. We have perused the pleadings and heard Advocate Ms. Sreekala T.N. appearing for the applicant and Advocate Mr. Thomas Mathew Nellimoottil, Sr. PCGC appearing for the respondents. On a perusal of pleadings we find that the question to be decided is whether the special pay granted to the applicant while he was working in the Department has to be considered for fixing notional pay for the purpose of calculating the pension?

6. Even according to the applicant the respondents had not implemented Annexure A6 properly. On going through Annexure A6 it can be seen that the said Office Memorandum was issued specifically for the purpose of revising the pension of pre-1986 pensioners on the basis of Vth CPC recommendations. As per the said OM the pension of all pre-1986 pensioners were based on the average emoluments drawn by them during the last completed 10 months immediately preceding the date of retirement and similarly family pension is based on the last pay drawn by the deceased Government servant/pensioner. The Government accepted the recommendations of the Vth CPC to the effect that the pension of all pre-1986 retirees will be calculated by updating notional fixation of their pay as on 1.1.1986 and by adopting the same formula as for serving employees and thereafter for the purpose of consolidation of their pension/family pension as on 1.1.1986. Accordingly, the pay of all these Government servants who retired prior to 1986 had to be fixed. As per the said OM, while fixation of pay on notional basis the pay fixation formulae approved by the Government and other relevant instructions on the subject in force at the relevant time

shall be strictly followed. The notional pay so arrived as on 1.1.1986 has to be treated as the average emoluments for the purpose of calculating of pension and accordingly the pension shall be calculated as on 1.1.1986. The pension so worked out shall be consolidated as on 1.1.1986 in accordance with the provisions of the circular. So from the above OM it can be seen that the Government had introduced a new scheme for calculating the pension of pre-1986 pensioners and issued Annexure A6 memorandum. Annexure A6 memorandum clearly makes a distinction from the earlier pension calculation and directs to calculate notional income and then fix the pension as per report of the Pay Commission. So there is a deviation from the earlier pension calculation and the pension calculation as per OM dated 10.2.1998. If we go through the present Fundamental Rules under Rule 9(21)(a)(i) pay means the amount drawn monthly by a Government servant. As regards special pay and other emoluments it has to be approved as pay by the President.

7. Rule 33 of the CCS (Pension) Rules, 1972 defines 'emoluments' as basic pay as defined under Rule 9(21)(a)(i) of Fundamental Rules which the Government servant was receiving immediately before his retirement. So when the Vth CPC was implemented the special pay was not formed part of the 'pay' or 'average emoluments'. So there is no merit in the contention that the applicant who retired in 1985 is eligible for counting his special pay also in the 'average emoluments' for notional pay fixed as per Annexure A6. It is specifically mentioned in Annexure A6 that the fixation of pay on notional basis should be based on the fixation normally approved by the Government and other relevant instructions on the subject in force at the

relevant time. So when the Vth CPC report was implemented notional pay was fixed on the same principle both for pre-1986 pensioners and post-1986 pensioners similarly. The notional pay has to be fixed first and pension has to be calculated on the basis of the principles laid down therein. We do not find any injustice or irregularity or distinction done by the respondents in this case. They had just complied with the Official Memorandum Annexure A6 and there is no merit in the contention raised by the applicant in this case. Since there is all together change in the method of calculation there is no merit in the contention that the applicant was discriminated.

8. We find no merit in the contentions and accordingly, the OA stands dismissed. No order as to costs.

(K.V. EAPEN)
ADMINISTRATIVE MEMBER

(P. MADHAVAN)
JUDICIAL MEMBER

“SA”

Original Application No. 180/00051/2020

APPLICANT'S ANNEXURES

- Annexure A1** – True copy of the corrigendum PPO No. C/CORR/MISC/PRE86/9619/99, issued by the 4th respondent.
- Annexure A2** – True copy of the order NO. G-1/C/MISC/SP/V, dated 7.8.2019 issued by the 4th respondent.
- Annexure A3** – True copy of the order No. ARDE/13/2/58-Est./IAT/KGN, dated 30.8.2019, issued by the 3rd respondent.
- Annexure A4** – True copy of the letter No. DPDO/KTM/P01477, dated 5.11.2019 by the 5th respondent.
- Annexure A5** – True copy of the Pension Payment Order No. C/129/86 issued by the 3rd respondent.
- Annexure A6** – True copy of the Office Memorandum bearing F. No. 45/86/97-P&PW(A)-Part III, dated 10.2.1998 issued by the 2nd respondent.
- Annexure A7** – True copy of the OM No. 45/86/97-P&PW(A)-Part II dated the 27th October, 1997 issued by the 2nd respondent.
- Annexure A8** – True copy of the communication bearing No. DPDO/KTM/P-1477/SBI Kottayam dated 11/04/2017, from the 5th respondent.
- Annexure A9** – True copy of the letter dated 22.11.2017, from the 5th respondent.
- Annexure A10** – True copy of the communication addressed to Adalath Officer from 5th respondent, bearing No. DPDO/KTM/P-1477/SBI Kottayam, dated 8.12.2017.
- Annexure A11** – True copy of the representation dated 5.2.2018 submitted by the applicant to the 2nd respondent.
- Annexure A12** – True copy of the letter bearing No. DPDO/KTM/PS-1477, dated 11.5.2018 by the 5th respondent.
- Annexure A13** – True copy of the complaint dated 4.6.2018 submitted before the CDA, Adalath Cell, Chennai.
- Annexure A14** – True copy of the Office Memorandum bearing F. No. 38/37/08-P&PW(A), dated 1.9.2008, issued by the 2nd

respondent.

Annexure A15 – True copy of the Office Memorandum bearing F. No. 38/37/2016-P & PW(A)(ii), dated 4.8.2016 issued by the 2nd respondent.

Annexure A16 – True copy of the Office Memorandum bearing No. 38/37/2016-P&PW(A) dated 12.5.2017, issued by the 2nd respondent.

Annexure A17 – True copy of the order of this Hon'ble Tribunal dated 3.6.2019 in OA 180/381/2019.

Annexure A18 – True copy of the representation dated 15.6.2019 submitted by the applicant to the 5th respondent.

Annexure A19 – True copy of para 501 of the Manual of Railway Pension Rules, 1950.

Annexure A20 – True copy of para 2003 (FR 9) of Indian Railway Establishment Code Vol II.

Annexure MA1 – True copy of the relevant pages of the pre-amended CCS (CCA) Rules.

RESPONDENTS' ANNEXURES

Annexure R1 – Emoluments and average emoluments.

Annexure R2 – FR-9(21)(a) – Oversees pay definition.

Annexure MA-R1 – (PPO, Application dated 4.9.2017 and ARDE letter dated 25.6.2018)

-X-X-X-X-X-X-X-X-